Volume 31
Number 24
September 2, 2014
Pages 677 - 2560

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

Mary Fallin, Governor
Chris Benge,
Secretary of State
Peggy Coe, Editor-in-Chief

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INFORMATION ABOUT THIS PUBLICATION may be obtained by contacting the OAR by mail at Oklahoma Secretary of State, Office of Administrative Rules, 2300 North Lincoln Boulevard, Suite 101, Oklahoma City, OK 73105, by phone at (405) 521-4911, or by fax at (405) 522-3555. Information may also be obtained by visiting the OAR's office, located in Room 220, Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 45 copies have been prepared and distributed at a cost of $2663.69. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.
ISSN 0030-1728

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PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates *(abolished 7-1-06; see also Title 365)*	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
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REAL Estate Appraiser Board	600
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Board of Regents of **REDLANDS** Community College *(exempted 11-1-98)*	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College *(exempted 11-1-98)*	615
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Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College *(exempted 11-1-98)*	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH-LANGUAGE** Pathology and Audiology (*Formerly:* Board of Examiners for **SPEECH** Pathology and Audiology)	690
STATE Employee Charitable Contributions, Oversight Committee for (*Formerly*: **STATE** Agency Review Committee)	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) –*See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
TOBACCO Settlement Endowment Trust Fund	723
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority (*Name changed to* Oklahoma **TURNPIKE** Authority *11-1-05*) - *See* Title 731	
Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority) - *See* also Title 745	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College *(exempted 11-1-98)*	740
Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See* Title 731)	745
Oklahoma **UNIFORM** Building Code Commission	748
Board of Trustees for the **UNIVERSITY** Center at Tulsa *(exempted 11-1-98)*	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma *(exempted 11-1-98)*	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma *(exempted 11-1-98)*	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Statewide **VIRTUAL** Charter School Board	777
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College *(exempted 11-1-98)*	790
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Oklahoma **WORKERS'** Compensation Commission	810

Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #14-836]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Incorporation by Reference

252:205-3-1. [AMENDED]

SUMMARY:

The purpose of the proposed amendment is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2014. Changes to the federal regulations for this time period include Conditional Exclusions for Solvent-Contaminated Wipes. The purpose of this final rule is to provide a consistent regulatory framework that is appropriate to the level of risk posed by solvent-contaminated wipes in a way that maintains protection of human health and the environment, while reducing overall compliance costs for industry, many of which are small businesses.

Because the solvent-contaminated wipes rule is less stringent than current federal requirements, the Department of Environmental Quality is not required to adopt the rule to maintain its authorized program. We are choosing to do so to reduce regulatory burden on business while still ensuring protection of human health and the environment.

AUTHORITY:

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

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from September 2, 2014 through October 9, 2014.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 9, 2014, at 10:00 a.m. in the multipurpose room of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73101.

Before the Environmental Quality Board on November 13, 2014 at 9:30 am in the Administration Building, Annex Room at Northeastern State University, 3100 East New Orleans Street, Broken Arrow, OK 74014.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement for the proposed rules will be on file at the DEQ and may be requested from the contact person listed below.

CONTACT PERSON:

Mike Edwards, Hazardous Waste Compliance and Inspection Section, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101 - 1677, e-mail at mike.edwards@deq.ok.gov, phone 405-702-5226, or fax 405-702-5101.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Hazardous Waste Management Advisory Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5226 or by using TDD relay number 1-800-522-8506.

[OAR Docket #14-836; filed 8-8-14]

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

[OAR Docket #14-837]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 303. TNI Laboratory Accreditation [REVOKED]

SUMMARY:

The rules of this Chapter proposed for revocation provided standards for the accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons and applied to laboratories accredited or applying to be accredited by the Department of Environmental Quality consistent with The NELAC Institute (TNI) standards. This chapter, which has never become effective, is revoked due to inconsistency with TNI Standards language and difficulty in enforcing the chapter as written.

This rule revocation process is progressing in tandem with the adoption of a new Chapter 307, TNI Laboratory Accreditation.

This rulemaking will not affect finally adopted permanent rules effective September 12, 2014.

AUTHORITY:

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

COMMENT PERIOD:

The public hearing for this rulemaking was held at the Water Quality Management Advisory Council meeting on July 8, 2014. The comment period was held from June 2, 2014 through July 2, 2014, following publication of the Notice of Rulemaking Intent in the *Oklahoma Register* on June 2, 2014. Oral comments may be made at the Environmental Quality Board meeting on November 13, 2014.

PUBLIC HEARINGS:

The purpose of this notice is to announce the location of the Environmental Quality Board meeting on November 13, 2014 at 9:30 a.m. in the Administrative Services Building, Annex Room at Northeastern State University, 3100 East New Orleans Street, Broken Arrow, OK 74014. The location for this meeting wasn't available when the first Notice of Rulemaking Intent was published in the Oklahoma Register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE CHANGES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. 303(D), a rule impact statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

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

ADDITIONAL INFORMATION:

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

[OAR Docket #14-837; filed 8-8-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 307. TNI LABORATORY ACCREDITATION

[OAR Docket #14-838]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction [NEW]
Subchapter 3. Laboratory Accreditation Process [NEW]
Subchapter 5. Conditions of Accreditation [NEW]
Subchapter 7. Onsite Assessment Requirements [NEW]
Subchapter 9. Management and Technical Requirements [NEW]
Part 1. Proficiency Testing [NEW]
Part 3. Personnel and Subcontractors [NEW]
Part 5. Quality Systems [NEW]
Part 7. Record keeping and Reporting [NEW]
Subchapter 11. Secondary Accreditation [NEW]

SUMMARY:

This Chapter will provide standards for the voluntary accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons and will apply to laboratories accredited or applying to be accredited by the Department of Environmental Quality consistent with The NELAC Institute (TNI) standards.

This rule adoption process is progressing in tandem with the revocation of Chapter 303, TNI Laboratory Accreditation. Chapter 303 is to be replaced with Chapter 307 due to inconsistency with TNI Standards language and difficulty in enforcing the rule as previously written.

AUTHORITY:

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

COMMENT PERIOD:

The public hearing for this rulemaking was held at the Water Quality Management Advisory Council meeting on July 8, 2014. The comment period was held from June 2, 2014 through July 2, 2014, following publication of the Notice of Rulemaking Intent in the *Oklahoma Register* on June 2, 2014. Oral comments may be made at the Environmental Quality Board meeting on November 13, 2014.

PUBLIC HEARINGS:

The purpose of this notice is to announce the location of the Environmental Quality Board meeting on November 13, 2014 at 9:30 a.m. in the Administrative Services Building, Annex Room at Northeastern State University, 3100 East New Orleans Street, Broken Arrow, OK, 74014. The location for this meeting wasn't available when the first Notice of Rulemaking Intent was published in the Oklahoma Register.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE CHANGES:

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

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

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

ADDITIONAL INFORMATION:

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

[OAR Docket #14-838; filed 8-8-14]

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

[OAR Docket #14-839]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:606-1-1 [AMENDED]
252:606-1-2 [AMENDED]
252:606-1-4 [AMENDED]
252:606-1-6 [AMENDED]
Subchapter 3. Discharge Permitting Process for individual And General discharge Permits
252:606-3-3 [AMENDED]
252:606-3-7 [NEW]
Subchapter 5. Discharge Permit Requirements
252:606-5-2 [AMENDED]
Subchapter 8. Biosolids Requirements
252:606-8-6 [AMENDED]
Subchapter 11.Tests and Reports
252:606-11-2 [AMENDED]
252:606-11-4 [AMENDED]

SUMMARY:

The Department is proposing to: (1) reference the applicable laboratory accreditation rules; (2) include a citation to the Oklahoma Water Quality Standards; (3) add or modify definitions for "accredited laboratory," "compliance testing," "DMR," and "control tests;" (4) delete the definitions of "approved laboratory" and "laboratory checks;" (5) replace all language using "approved laboratory" with "accredited laboratory," which is consistent with simultaneous changes being made in OAC 252:301 (revoke) and OAC 252:307 (new); (6) update the CFR publication date to the most recent CFR publication year; (7) clarify the language regarding the OPDES permit applications, including adding section titles; (8) add section 606-3-7 that authorizes the continuation and/or enforcement of expired state permits; (9) allow a university familiar with Oklahoma crops and soils to perform certain soil analyses; (10) clarify that analytical results for compliance tests are to be from an accredited laboratory; (11) clarify that DMRs are to include all valid compliance test results; (12) and other minor language clarifications.

This rulemaking will not affect finally adopted permanent rules effective September 12, 2014.

AUTHORITY:

Environmental Quality Board, 27A O.S. § 2-2-101 and 2-3-402; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 5:00pm on October 2, 2014 at the following address: Mark Hildebrand, Water Quality Division, 707 N. Robinson, Oklahoma City, Oklahoma 73102 or Mark.Hildebrand@deq.ok.gov.

Oral comments may be made at the Water Quality Management Advisory Council meeting on October 7, 2014, and at the Environmental Quality Board meeting on November 13, 2014.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 7, 2014, at 1:00 p.m. in the Multi-Purpose Room on the first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 13, 2014, at 9:30 a.m. in the Administration Services Building, Annex room, Northeastern State University, 3100 East New Orleans Street, Broken Arrow, OK 74014.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide to the agency with information, in dollar amounts if possible, about increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Mark Hildebrand at the above address during the period from September 2, 2014 to October, 2, 2014.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) or reviewed online at http://www.deq.state.ok.us/wqdnew/index.htm.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be on file at the Department of Environmental Quality and may be obtained from the contact person listed below.

CONTACT PERSON:

Mark Hildebrand, (405) 702-8100 or Mark.Hildebrand@deq.ok.gov (Procedural, legal and technical questions). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #14-839; filed 8-8-14]

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

[OAR Docket #14-840]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Introduction
252:631-1-2 [AMENDED]
252:631-1-3 [AMENDED]
Subchapter 3. Operations
252:631-3-2 [AMENDED]
252:631-3-3 [AMENDED]
252:631-3-4 [AMENDED]
252:631-3-10 thru 252:631-3-11 [AMENDED]

SUMMARY:

The Department is proposing to: (1) replace "approved laboratory" with "accredited laboratory", add a definition for "accredited laboratory", and add a definition for "point of connection"; (2) update the rules concerning the date of the incorporation by reference of certain federal regulations from July 1, 2013, to July 1, 2014; (3) remove language referring to "laboratory approval" and replace with language for "laboratory accreditation"; (4) add the minimum free and total chlorine residual requirements for points of connection; (5) add a requirement to determine the chlorine residual once daily at the point(s) of connection to the wholesale system for purchase water systems; (6) clarify the requirements for submitting fluoridation analytical reports to DEQ and ODH; and (7) other minor clarifications.

This rulemaking will not affect finally adopted permanent rules effective September 12, 2014.

AUTHORITY:

Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-303 and 2-6-306.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 pm on October 2, 2014 at the following address: Mark Hildebrand, Water Quality Division, 707 N. Robinson, Oklahoma City, Oklahoma 73102 or Mark.Hildebrand@deq.ok.gov.

Oral comments may be made at the Water Quality Management Advisory Council meeting on October 7, 2014, and at the Environmental Quality Board meeting on November 13, 2014.

PUBLIC HEARING:

Before the Water Quality Management Advisory Council on October 7, 2014, at 1:00 p.m. in the Multi-Purpose Room on the first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

Before the Environmental Quality Board on November 13, 2014 at 9:30 am in the Annex room of the Administration

Services building at Northeastern State University, 3100 East New Orleans Street, Broken Arrow, OK 74014.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide to the agency with information, in dollar amounts if possible, about increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to Mark Hildebrand at the above address during the period from September 2, 2014 to October, 2, 2014.

COPIES OF PROPOSED RULES:

The proposed rules may be viewed on the agency's website at http://www.deq.state.ok.us and copies may be obtained from the Department of Environmental Quality's at 707 N. Robinson, Oklahoma City, Oklahoma, during normal business hours (8:00 am - 4:30 pm Monday through Friday) Copies may also be obtained by written request mailed to the attention of Mark Hildebrand, at 707 N. Robinson, Oklahoma City, Oklahoma 73102 or emailed to Mark.Hildebrand@deq.ok.gov

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a rule impact statement will be on file at the Department of Environmental Quality and may be requested from the contact person.

CONTACT PERSON:

Mark Hildebrand, (405) 702-8100 or Mark.Hildebrand@deq.ok.gov.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three (3) days in advance of the hearing. For hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #14-840; filed 8-8-14]

Emergency Adoptions

"If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated" if the Governor approves the rules after determining "that the rule is necessary as an emergency measure to do any of the following:

a. protect the public health, safety or welfare,
b. comply with deadlines in amendments to an agency's governing law or federal programs,
c. avoid violation of federal law or regulation or other state law,
d. avoid imminent reduction to the agency's budget, or
e. avoid serious prejudice to the public interest." [75 O.S., Section 253(A)]

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

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

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

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

[OAR Docket #14-833]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-126. [AMENDED]
(Reference APA WF # 14-12)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 483.12
ADOPTION:
June 26, 2014
APPROVED BY GOVERNOR:
June 26, 2014
EFFECTIVE:
September 12, 2014 (amends finally adopted permanent rules scheduled to be effective September 12, 2014)
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's individual provider and specialties guidelines. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.
ANALYSIS:
Rules are revoked to eliminate payment for hospital leave to nursing facilities and ICF/IIDs. Hospital leave is planned or unplanned leave when the patient is admitted to a licensed hospital. This change in procedure regarding payment to nursing facilities is needed in order to reduce overall costs of the Medicaid program.
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-126. Therapeutic leave and Hospital leave

Therapeutic leave is any planned leave other than hospitalization that is for the benefit of the patient. Hospital leave is planned or unplanned leave when the patient is admitted to a licensed hospital. Therapeutic leave must be clearly documented in the patient's plan of care before payment for a reserved bed can be made.

(1) Effective July 1, 1994, the nursing facility may receive payment for a maximum of seven (7) days of therapeutic leave per calendar year for each recipient to reserve the bed.

(2) ~~Effective January 1, 1996, the nursing facility may receive payment for a maximum of five days of hospital leave per calendar year for each recipient to reserve the bed when the patient is admitted to a licensed hospital.~~No payment shall be made to a nursing facility for hospital leave.

(3) The Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) may receive payment for a maximum of 60 days of therapeutic leave per calendar year for each recipient to reserve a bed. No more than 14 consecutive days of therapeutic leave may be claimed per absence. Recipients approved for ICF/IID on or after July 1 of the year will only be eligible for 30 days of therapeutic leave during the remainder of that year. No payment shall be made for hospital leave.

(4) Midnight is the time used to determine whether a patient is present or absent from the facility. The day

of discharge for therapeutic leave is counted as the first day of leave, but the day of return from such leave is not counted. ~~For hospital leave, the day of hospital admission is the first day of leave. The day the patient is discharged from the hospital is not counted as a leave day.~~

(5) Therapeutic ~~and hospital~~ leave balances are recorded on the Medicaid Management Information System (MMIS). When a patient moves to another facility, it is the responsibility of the transferring facility to forward the patient's leave records to the receiving facility.

[OAR Docket #14-833; filed 8-6-14]

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

[OAR Docket #14-834]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241.2 [AMENDED]
317:30-5-241.3 [AMENDED]
(Reference APA WF # 14-13)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.130; 42 CFR 440.230
ADOPTION:
June 26, 2014
APPROVED BY GOVERNOR:
June 26, 2014
EFFECTIVE:
September 12, 2014 (amends finally adopted permanent rules scheduled to be effective September 12, 2014)
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's individual provider and specialties guidelines. These emergency revisions are necessary to reduce the Oklahoma Department of Mental Health Substance Abuse Services' operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Department is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Behavioral Health Program.
ANALYSIS:
Outpatient behavioral health rules are amended to add additional eligibility criteria required in order to receive psychosocial rehabilitation (PSR) services. Adult PSR services will be limited to members with a history of psychiatric hospitalization or admissions to crisis centers; have been determined disabled by the Social Security Administration for mental health reasons; are residing in residential care facilities; or are receiving services through a specialty court program. Children's PSR services will be limited to members with a history of psychiatric hospitalization or admissions to crisis centers; have been determined disabled by the Social Security Administration for mental health reasons; have a current Individual Education Plan (IEP) or 504 Plan for emotional disturbance; or have been evaluated by a school psychologist, licensed psychologist, or psychiatrist and determined to be "at risk". Narrowing the eligibility criteria for PSR services comports with the Federal definition of rehabilitative services found in 42 CFR 440.130(d) which defines them as "any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts...for maximum reduction of physical or mental disability and restoration of a beneficiary to his best possible functional level."
CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-241.2. Psychotherapy

(a) **Psychotherapy.**

(1) **Definition.** Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. The therapy must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.

(2) **Interactive Complexity.** Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the LBHP. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e. related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with implementation of the service plan.

(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e. abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.

(D) Use of play equipment, physical devices, interpreter or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.

(3) **Qualified professionals.** Psychotherapy must be provided by a Licensed Behavioral Health Professional (LBHP) in a setting that protects and assures confidentiality.

(4) **Limitations.** A maximum of 6 units per day per member is compensable. Except for psychotherapy involving interactive complexity as described in this Section, only the member and the Licensed Behavioral Health Professional (LBHP) should be present during the session. Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.

(b) **Group Psychotherapy.**

(1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the interaction between the LBHP and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under Behavioral Health Rehabilitation Services.

(2) **Group sizes.** Group Psychotherapy is limited to a total of eight adult (18 and over) individuals except when the individuals are residents of an ICF/IID where the maximum group size is six. For all children under the age of 18, the total group size is limited to six.

(3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight families/units. Billing is allowed once per family unit, though units may be divided amongst family members.

(4) **Qualified professionals.** Group psychotherapy will be provided by a LBHP. Group Psychotherapy must take place in a confidential setting limited to the LBHP, an assistant or co-therapist, if desired, and the group psychotherapy participants.

(5) **Limitations.** A maximum of 12 units per day per member is compensable. Group Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.

(c) **Family Psychotherapy.**

(1) **Definition.** Family Psychotherapy is a face-to-face psychotherapeutic interaction between a LBHP and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the Evidence Based Practice titled Family Psychoeducation.

(2) **Qualified professionals.** Family Psychotherapy must be provided by a LBHP.

(3) **Limitations.** A maximum of 12 units per day per member/family unit is compensable. The provider may not bill any time associated with note taking and/or medical record upkeep. The provider may only bill the time spent in direct face-to-face contact. Provider must comply with documentation requirements listed in OAC 317:30-5-248.

(d) **Multi-Systemic Therapy (MST).**

(1) **Definition.** MST intensive outpatient program services are limited to children within an Office of Juvenile Affairs (OJA) MST treatment program which provides an intensive, family and community-based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, antisocial, and/or substance abusing behaviors, and are at risk for out of home placement. Case loads are kept low due to the intensity of the services provided.

(2) **Qualified professionals.** Masters level professionals who work with a team that may include bachelor level staff.

(3) **Documentation requirements.** Providers must comply with documentation requirements in 317:30-5-248.

(4) **Service limitations.** Partial billing is not allowed, when only one service is provided in a day, providers should not bill for services performed for less than 8 minutes.

(e) **Children/Adolescent Partial Hospitalization Program (PHP).**

(1) **Definition.** Partial hospitalization services are services that (1) Are reasonable and necessary for the diagnosis or active treatment of the member's condition; (2) Are reasonably expected to improve the member's condition and functional level and to prevent relapse or hospitalization and (3) Include the following:

(A) Assessment, diagnostic and service plan services for mental illness and/or substance use disorders provided by LBHPs.

(B) Individual/Group/Family (primary purpose is treatment of the member's condition) psychotherapies provided by LBHPs.

(C) Substance use disorder specific services are provided by LBHPs qualified to provide these services.

(D) Drugs and biologicals furnished for therapeutic purposes.

(E) Family counseling, the primary purpose of which is treatment of the member's condition.

(F) Behavioral health rehabilitation services to the extent the activities are closely and clearly related to the member's care and treatment, provided by a Certified Behavioral Health Case Manager II, Certified Alcohol and Drug Counselor (CADC)or LBHP who meets the professional requirements listed in 317:30-5-240.3.

(G) Care Coordination of behavioral health services provided by certified behavioral health case managers.

(2) **Qualified professionals.**

(A) All services in the PHP are provided by a clinical team, consisting of the following required professionals:

(i) A licensed physician;

(ii) Registered nurse; and

(iii) One or more of the licensed behavioral health professionals (LBHP) listed in 30-5-240.3(a).

(B) The clinical team may also include a Certified Behavioral Health Case Manager.

(C) The service plan is directed under the supervision of a physician and the number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program.

(3) **Qualified providers.** Provider agencies for PHP must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA) for partial hospitalization and enrolled in SoonerCare. Staff providing these services are employees or contractors of the enrolled agency.

(4) **Limitations.** Services are limited to children 0-20 only. Children under age 6 are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity. Services must be offered at a minimum of 3 hours per day, 5 days per week. Therapeutic services are limited to 4 billable hours per day. PHP services are all inclusive with the exception of physician services and drugs that cannot be self-administered, those services are separately billable. Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning. Occupational, Physical and Speech therapy will be provided by the Independent School District (ISD). Academic instruction, meals, and transportation are not covered.

(5) **Service requirements.**

(A) Therapeutic Services are to include the following:

(i) Psychiatrist/physician face-to-face visit 2 times per month;

(ii) Crisis management services available 24 hours a day, 7 days a week;

(B) Psychotherapies to be provided a minimum of four (4) hours per week and include the following:

(i) Individual therapy - a minimum of 1 session per week;

(ii) Family therapy - a minimum of 1 session per week; and

(iii) Group therapy - a minimum of 2 sessions per week;

(C) Interchangeable services which include the following:

(i) Behavioral Health Case Management (face-to-face);

(ii) Behavioral health rehabilitation services/alcohol and other drug abuse education (except for children under age 6, unless a prior authorization has been granted for children ages 4 and 5);

(iii) Medication Training and Support; and

(iv) Expressive therapy.

(6) **Documentation requirements.** Documentation needs to specify active involvement of the member's family, caretakers, or significant others involved in the individual's treatment. A nursing health assessment must be completed within 24 hours of admission. A physical examination and medical history must be coordinated with the Primary Care Physician. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to Section OAC 317:30-5-248.

(7) **Staffing requirements.** Staffing requirements must consist of the following:

(A) RN trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available onsite during program hours to provide necessary nursing care and/or psychiatric nursing care (1 RN at a minimum can be backed up by an LPN but an RN must always be onsite). Nursing staff administers medications, follows up with families on medication compliance, and restraint assessments.

(B) Medical director must be a licensed psychiatrist.

(C) A psychiatrist/physician must be available 24 hours a day, 7 days a week.

(f) **Children/Adolescent Day Treatment Program.**

(1) **Definition.** Day Treatment Programs are for the stabilization of children and adolescents with severe emotional and/or behavioral disturbances. Treatment is designed for children who have difficulty functioning in mainstream community settings such as classrooms, and who need a higher intensity of services than outpatient counseling provides. Treatment is time limited and includes therapeutically intensive clinical services geared towards reintegration to the home, school, and community.

(2) **Qualified professionals.** All services in Day Treatment are provided by a team, which must be composed of one or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP), a case manager, or other certified Behavioral Health/Substance Abuse paraprofessional staff. Services are directed by an LBHP.

(3) **Qualified providers.** Provider agencies for Day Treatment must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA).

(4) **Limitations.** Services must be offered at a minimum of 4 days per week at least 3 hours per day. Behavioral Health Rehabilitation Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning. Children under age 6 are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity.

(5) **Service requirements.** On-call crisis intervention services must be available 24 hours a day, 7 days a week (When members served have psychiatric needs, psychiatric services are available which include the availability of a psychiatrist 24 hours a day, 7 days a week. A psychiatrist can be available either on site or on call but must be available at all times). Day treatment program will provide assessment and diagnostic services and/or medication monitoring, when necessary.

(A) Treatment activities are to include the following every week:

(i) Family therapy at least one hour per week (additional hours of FT may be substituted for other day treatment services);

(ii) Group therapy at least two hours per week; and

(iii) Individual therapy at least one hour per week.

(B) Additional services are to include at least one of the following services per day:

(i) Medication training and support (nursing) once monthly if on medications;

(ii) Behavioral health rehabilitation services to include alcohol and other drug education if the child meets the criteria established in 317:30-5-241.3 and is clinically necessary and appropriate (except for children under age 6, unless a prior authorization has been granted for children ages 4 and 5);

(iii) Behavioral health case management as needed and part of weekly hours for member;

(iv) Occupational therapy as needed and part of weekly hours for member; and

(v) Expressive therapy as needed and part of weekly hours for the member.

(6) **Documentation requirements.** Service plans are required every three (3) months.

317:30-5-241.3. Behavioral Health Rehabilitation (BHR) services

(a) **Definition.** Behavioral Health Rehabilitation (BHR) services are goal oriented outpatient interventions that target the maximum reduction of mental and/or behavioral health impairments and strive to restore the members to their best possible mental and/or behavioral health functioning. BHR services must be coordinated in a manner that is in the best interest of the member and may be provided in a variety of community and/or professional settings that protect and assure confidentiality. For purposes of this Section, BHR includes Psychosocial Rehabilitation, Outpatient Substance Abuse Rehabilitation, and Medication Training and Support.

(b) **Psychosocial Rehabilitation (PSR).**

(1) **Definition.** PSR services are face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of curriculum based education and skills training.

(2) **Clinical restrictions.** This service is generally performed with only the members and the qualified provider, but may include a member and the member's family/support system when providing educational services from a curriculum that focuses on the member's diagnosis, symptom management, and recovery. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance abuse, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires a licensed provider.

(3) **Qualified providers.** A Certified Behavioral Health Case Manager II (CM II), CADC, and LBHP may perform PSR, following development of a service plan and treatment curriculum approved by a LBHP. The CM II and CADC must have immediate access to a fully licensed LBHP who can provide clinical oversight and collaborate with the qualified PSR provider in the provision of services. A minimum of one monthly face-to-face consultation with a fully licensed LBHP is required for PSR providers ~~regularly rendering services in an agency setting~~. A minimum of one face-to-face consultation per week with a ~~fully licensed~~LBHP is required for PSR providers regularly rendering services away from the outpatient behavioral health agency site.

(4) **Group sizes.** The maximum staffing ratio is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(5) **Limitations.**

(A) **Transportation.** Travel time to and from PSR treatment is not compensable. Group PSR services do not qualify for the OHCA transportation program,

but OHCA will arrange for transportation for those who require specialized transportation equipment.

(B) **Time.** Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time.

(C) **Location.** In order to develop and improve the member's community and interpersonal functioning and self care abilities, PSR services may take place in settings away from the outpatient behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(D) **Eligibility for PSR services.** ~~PSR services are intended for adults with Serious Mental Illness (SMI), children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. The following members are not eligible for PSR services:~~All PSR services require prior authorization and must meet established medical necessity criteria.

(i) **Adults.** PSR services for adults are limited to members who have a history of psychiatric hospitalization or admissions to crisis centers, have been determined disabled by the SSA for mental health reasons, are residing in residential care facilities or are receiving services through a specialty court program.

(ii) **Children.** PSR services for children are limited to members who have a history of psychiatric hospitalization or admissions to crisis centers; have been determined disabled by the SSA for mental health reasons; have a current Individual Education Plan (IEP) or 504 Plan for emotional disturbance; or have been evaluated by a school psychologist, licensed psychologist or psychiatrist and determined to be "at risk" as outlined in the Prior Authorization Manual.

(iii) The following members are not eligible for PSR services:

(~~i~~I) Residents of ICF/IID facilities, unless authorized by OHCA or its designated agent;

(~~ii~~II) children under age 6, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on the criteria in (5)(D)(ii) above as well as a finding of medical necessity;

(~~iii~~III) children receiving RBMS in a group home or therapeutic foster home, unless authorized by OHCA or its designated agent;

(~~iv~~IV) inmates of public institutions;

(~~v~~V) members residing in inpatient hospitals or IMDs; and

(~~vi~~VI) members residing in nursing facilities.

(E) **Billing limits.** PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to compliment more intensive behavioral health therapies. Service limits are based on the member's needs according to the CAR or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation diminishing return by remaining within reasonable age and developmentally appropriate daily limits. PSR services authorized under this Section are separate and distinct from, but should not duplicate the structured services required for children residing in group home or therapeutic foster care settings, or receiving services in Day Treatment or Partial Hospitalization Programs. Children under an ODMHSAS Systems of Care program and adults residing in residential care facilities may be prior authorized additional units as part of an intensive transition period. PSR is billed in unit increments of 15 minutes with the following limits:

(i) **Group PSR.** The maximum is 24 units per day for adults and 16 units per day for children.

(ii) **Individual PSR.** The maximum is six units per day.

(iii) **Per-Member service levels and limits.** Unless otherwise specified, group and/or individual PSR services provided in combination may not exceed the monthly limits established in the individual's prior authorization. Limits on PSR services are established based on the level for which the member has been approved.

(iv) **EPSDT.** Pursuant to OAC 317:30-3-65 et seq., billing limits may be exceeded or may not apply if documentation demonstrates that the requested services are medically necessary and are needed to correct or ameliorate defects, physical or behavioral illnesses or conditions discovered through a screening tool approved by OHCA or its designated agent. The OHCA has produced forms for documenting an EPSDT child health checkup screening which the provider can access on the OHCA website.

(F) **Progress Notes.** In accordance with OAC 317:30-5-241.1, the behavioral health service plan developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level. Progress notes for PSR day programs may be in the form of daily summary or weekly summary notes.

Progress notes for all Behavioral Health Rehabilitation services must include the following:

(i) Curriculum sessions attended each day and/or dates attending during the week;

(ii) Start and stop times for each day attended and the physical location in which the service was rendered;

(iii) Specific goal(s) and objectives addressed during the week;

(iv) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(v) Member satisfaction with staff intervention(s);

(vi) Progress, or barrier to, made towards goals, objectives;

(vii) New goal(s) or objective(s) identified;

(viii) Signature of the lead qualified provider; and

(ix) Credentials of the lead qualified provider;

(G) **Additional documentation requirements.**

(i) a list/log/sign in sheet of participants for each Group rehabilitative session and facilitating qualified provider must be maintained; and

(ii) Documentation of ongoing consultation and/or collaboration with a LBHP related to the provision of PSR services.

(H) **Non-Covered Services.** The following services are not considered BHR and are not reimbursable:

(i) Room and board;

(ii) educational costs;

(iii) supported employment; and

(iv) respite.

(c) **Outpatient Substance Abuse Rehabilitation Services.**

(1) **Definition.** Covered outpatient substance abuse rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance abuse rehabilitation services is to begin, maintain, and/or enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of curriculum based education and skills training.

(2) **Limitations.** Group sessions may not be provided in the home.

(3) **Eligibility.** Members eligible for substance abuse rehabilitation services must meet the criteria for ASAM PCC Treatment Level 1, Outpatient Treatment.

(4) **Qualified providers.** CM II, CADC or LBHP.

(5) **Billing limits.** Group rehabilitation is limited to two (2) hours per session. Group and/or individual outpatient substance abuse rehabilitation services provided in combination may not exceed the monthly limits established in the individual's prior authorization. Limits on services are established based on the level for which the member has been approved. There are no limits on substance abuse rehabilitation services for individuals determined to be Level 4.

(6) **Documentation requirements.** Documentation requirements are the same as for PSR services as set forth in 30-5-241.3(b)(5)(F).

(d) **Medication training and support.**

(1) **Definition.** Medication Training and Support is a documented review and educational session by a registered nurse, advanced practice nurse, or physician assistant focusing on a member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the medical or clinical record. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization.

(2) **Limitations.**

(A) Medication Training and Support may not be billed for SoonerCare members who reside in ICF/IID facilities.

(B) Two units are allowed per month per patient.

(C) Medication Training & Support is not allowed to be billed on the same day as an evaluation and management (E/M) service provided by a psychiatrist.

(3) **Qualified professionals.** Must be provided by a licensed registered nurse, an advanced practice nurse, or a physician assistant as a direct service under the supervision of a physician.

(4) **Documentation requirements.** – Medication Training and Support documented review must focus on:

(A) a member's response to medication;

(B) compliance with the medication regimen;

(C) medication benefits and side effects;

(D) vital signs, which include pulse, blood pressure and respiration; and

(E) documented within the progress notes/medication record.

[OAR Docket #14-834; filed 8-6-14]

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

[OAR Docket #14-832]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-696 [AMENDED]

317:30-5-698 [AMENDED]
317:30-5-699 [AMENDED]
(Reference APA WF # 14-11)

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

ADOPTION:
June 26, 2014

APPROVED BY GOVERNOR:
July 31, 2014

EFFECTIVE:
September 12, 2014 (amends finally adopted permanent rules scheduled to be effective September 12, 2014)

EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

FINDING OF EMERGENCY:
The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the agency's individual providers and specialties guidelines. These emergency revisions are necessary to reduce the Agency's operations budget in order to meet the balanced budget requirements as mandated by State law. Without the recommended revisions, the Agency is at risk of exhausting its State appropriated dollars required to maintain the State's Medicaid Program.

ANALYSIS:
Dental rules are revised to eliminate the perinatal dental benefit.

CONTACT PERSON:
Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), WITH A LATER EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) **Adults.**

(A) Dental coverage for adults is limited to:

(i) medically necessary extractions and~~;~~ approved boney adjustments. Surgical tooth extraction must have medical need documented if not apparent on images of tooth. In the SoonerCare program, it is usually performed for those teeth which are damaged to such extent that no tooth is visible above the gum line, the tooth fractures, the tooth is impacted, or tooth can't be grasped with forceps~~.~~;

(ii) Smoking and Tobacco Use Cessation Counseling; and

(iii) medical and surgical services performed by a dentist or physician to the extent such services may be performed under State law when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and who have been approved for ICF/IID level of care, similar to the scope of services available to individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4)of this Section).

(2) **Home and community based waiver services (HCBWS) for the intellectually disabled.** All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. All other dental services must be prior authorized. Anesthesia services are covered for children in the same manner as adults. All providers performing preventive services must be available to perform needed restorative services for those members receiving any evaluation and preventive services.

(A) **Comprehensive oral evaluation.** This procedure is performed for any member not seen by any dentist for more than 12 months.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if not seen by any dentist for more than six months.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint. This procedure is only compensable to the same dentist or practice for two visits prior to an examination being completed.

(D) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be of diagnostic quality and medically necessary. A clinical examination must precede any radiographs, and chart documentation must include member history, prior radiographs, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical radiograph must include at least 3 millimeters beyond the apex of the tooth being x-rayed. Panoramic films and full mouth radiographs (minimum of 12 periapical films and two posterior bitewings) are allowable once in a three year

period and must be of diagnostic quality. Individually listed intraoral radiographs by the same dentist/dental office are considered a complete series if the fee for individual radiographs equals or exceeds the fee for a complete series. Panoramic films are only compensable when chart documentation clearly indicates the test is being performed to rule out or evaluate non-caries related pathology discovered by prior examination. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of age and is compensable only once per lifetime. Replacement of sealants is not a covered service under the SoonerCare program.

(F) **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

(G) **Composite restorations.**

(i) This procedure is compensable for primary incisors as follows:

(I) tooth numbers O and P to age 4 years;

(II) tooth numbers E and F to age 6 years;

(III) tooth numbers N and Q to 5 years; and

(IV) tooth numbers D and G to 6 years.

(ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.

(iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

(H) **Amalgam.** Amalgam restorations are allowed in:

(i) posterior primary teeth when:

(I) 50 percent or more root structure is remaining;

(II) the teeth have no mobility; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) any permanent tooth, determined as medically necessary by the treating dentist.

(I) **Stainless steel crowns for primary teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are allowed if:

(I) the child is five years of age or under;

(II) 70 percent or more of the root structure remains; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) Stainless steel crowns are treatment of choice for:

(I) primary teeth with pulpotomies or pulpectomies, if the above conditions exist;

(II) primary teeth where three surfaces of extensive decay exist; or

(III) primary teeth where cuspal occlusion is lost due to decay or accident.

(iii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iv) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(J) **Stainless steel crowns for permanent teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are the treatment of choice for:

(I) posterior permanent teeth that have completed endodontic therapy if three or more surfaces of tooth is destroyed;

(II) posterior permanent teeth that have three or more surfaces of extensive decay; or

(III) where cuspal occlusion is lost due to decay prior to age 16 years.

(ii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iii) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(K) **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre-and post-operative periapical x-rays must be available for review, if requested.

(I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;

(II) Tooth numbers O and P before age 5 years;

(III) Tooth numbers E and F before 6 years;

(IV) Tooth numbers N and Q before 5 years;

(V) Tooth numbers D and G before 5 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(L) **Endodontics.** Payment is made for the services provided in accordance with the following:

(i) This procedure is allowed when there are no other missing anterior teeth in the same arch requiring replacement.

(ii)The provider documents history of member's improved oral hygiene and flossing ability in records.

(iii) Prior authorization is required for members who have a treatment plan requiring more than two anterior and/or two posterior root canals.

(iv) Teeth with less than 60 percent of clinical crown should not be treatment-planned for root canal therapy.

(v) Pre and post-operative periapical x-rays must be available for review.

(vi) ~~Pulpotomy~~Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA.

(vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.

(viii) Endodontically treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.

(M) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

(I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.

(II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.

(III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.

(IV) The teeth numbers shown on the claim should be those of the missing teeth.

(V) Post-operative bitewing x-rays must be available for review.

(VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.

(ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:

(I) Lingual arch bar is used when permanent incisors are erupted and the second primary molar (K or T) is missing in the same arch.

(II) The requirements are the same as for band and loop space maintainer.

(III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age 4 years to prevent abnormal swallowing habits.

(IV) Pre and post-operative x-rays must be available.

(iii) **Interim partial dentures.** This service is for anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16 years.

(N) **Analgesia.** Analgesia services are reimbursable in accordance with the following:

(i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation or general anesthesia. The medical need for this service must be documented in the member's record.

(ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and /or the dentist, it must be medically necessary.

(O) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted calcium hydroxide or Mineral Trioxide Aggregate materials, not a cavity liner or chemical used for dentinal hypersensitivity. Indirect and direct pulp cap codes require specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect pulp cap. Utilization of these codes is verified by post payment review.

(P) **Sedative restorations.** This restoration includes removal of decay, if present, and ~~are~~is reimbursable for the same tooth on the same date of service with a direct or indirect pulp cap, if needed. Permanent restoration of the tooth is allowed after 60 days

unless the tooth becomes symptomatic and requires pain relieving treatment.

(Q) **History and physical.** Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.

(R) **Local anesthesia.** This procedure is included in the fee for all services.

(S) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, nurse midwives, Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS) in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(T) **Periodontal scaling and root planing.** This procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 3 or more of the 6 point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under age 10. This procedure is not allowed in conjunction with any other periodontal surgery.

~~(4) **Pregnant Women.** Dental coverage for this special population is provided regardless of age.~~

~~(A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).~~

~~(B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.~~

~~(C) In addition to dental services for adults, other services available include:~~

~~(i) Comprehensive oral evaluation must be performed and recorded for each new member, or established member not seen for more than 24 months;~~

~~(ii) Periodic oral evaluation as defined in OAC 317:30-5-696(3)(B);~~

~~(iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same member, or if the member is under active treatment;~~

~~(iv) Radiographs as defined in OAC 317:30-5-696(3)(D);~~

~~(v) Dental prophylaxis as defined in OAC 317:30-5-696(3)(F);~~

~~(vi) Composite restorations:~~

~~(I) Any permanent tooth that has an opened lesion seen on radiograph or that is a documented food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.~~

~~(II) Class I One and two surface posterior composite resin restorations are allowed in posterior teeth that qualify;~~

~~(vii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and~~

~~(viii) Analgesia. Analgesia services are reimbursable in accordance with OAC 317:30-5-696(3)(N).~~

~~(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).~~

~~(E) Periodontal scaling and root. Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 30 or more of the 6 point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under age 10. This procedure is not allowed in conjunction with any other periodontal surgery.~~

(~~5~~4) **Individuals eligible for Part B of Medicare.**

(A) Payment is made based on the member's coinsurance and deductibles.

(B) Services which have been denied by Medicare as non-compensable should be filed directly with the OHCA with a copy of the Medicare EOB indicating the reason for denial.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis (See OAC 317:30-5-695(d)(2). Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. X-rays, six point periodontal charting and comprehensive treatment plans are required. Study models and narratives may be requested by OHCA or representatives of OHCA. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense. Submitted documentation used to base a decision will not be returned.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the

determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under 21 and eligible ICF/IID residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays or images and periapical films or images of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be submitted with film mounts and each film or print must be of diagnostic quality. X-rays and/or images must be identified by the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All x-rays or images, regardless of the media, must be submitted together with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, and a completed current ADA form requesting all treatments requiring prior authorization. The film, digital media or printout must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. The provider must document that the member has improved oral hygiene and flossing ability over a minimum of two months, in the member's records.~~Pulpotomy~~Pulpal debridement may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics.

(A) Prior authorization is required for members who have a treatment plan requiring more than two anterior and/or two posterior root canals. All rampant, active caries must be removed prior to requesting anterior endodontics. Payment is made for services provided in accordance with the following:

(i) Permanent teeth only.

(ii) Accepted ADA materials must be used.

(iii) Pre and post-operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider documents that the member has improved oral hygiene and flossing ability over a minimum of two months, in this member's records.

(ii) Teeth that ~~would require~~ require pre-fabricated post and cores to retain a restoration due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post-operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) an opposing tooth has super erupted;

(II) loss of tooth space is one third or greater;

(III) opposing second molars are involved unless prior authorized; or

(IV) the member has multiple teeth failing due to previous inadequate root canal therapy or follow-up~~.~~:

(V) all rampant, active caries must be removed prior to requesting posterior endodontics.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(2) **Crowns for permanent teeth.** Crowns are compensable for restoration of natural teeth for members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and who have been approved for (ICF/IID) level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) all rampant, active caries must be removed prior to requesting any type of crown.

(~~i~~ii) The tooth must be decayed to such an extent to prevent proper cuspal or incisal function.

(~~ii~~iii) The clinical crown is fractured or destroyed by one-half or more.

(~~iii~~iv) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered for a crown.

(B) The conditions listed in (A)(i) through (A)~~(iii)~~(iv) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown. Non authorized restorative codes may be used if available.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Provider is responsible for replacement or repair of all crowns if failure is caused by poor laboratory processes or procedure by provider for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or two or more missing posterior teeth in the same arch for members 16 through 20 years of age. Provider must indicate which teeth will be replaced. Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up for a period of two years post insertion.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of three or more missing teeth in the same arch for members 12 through 16 years of age. Provider must indicate tooth numbers to be replaced. This appliance includes all necessary clasps and rests.

(5) **Occlusal guard.** Narrative of medical necessity must be sent with prior authorization. Model should not be made or sent unless requested.

(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members 17 through 20 years of age will be considered for this treatment. Destruction of healthy teeth to replace a single missing tooth is not considered medically necessary. Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up until member loses eligibility.

(7) **Periodontal scaling and root planing.** Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 3 or more of the six point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under the age 10. This procedure is not allowed in conjunction with any other periodontal surgery.

317:30-5-699. Restorations

~~(a) **Use of posterior composite resins.** Payment is not made for certain restorative services when posterior composite resins are used in restorations involving:~~

~~(1) replacement of any occlusal cusp or~~

~~(2) sub-gingival margins~~

(~~b~~a) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 24 months. Additional restorations may be authorized upon approval of OHCA in cases of trauma. Teeth receiving a restoration are eligible within three months for consideration of single crown if endodontically treated. Providers must document type of isolation used in treatment progress notes. The provider is responsible for follow-up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible. Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.

(~~c~~b) **Coverage for dental restorations.** Restoration of incipent lesions is not considered medically necessary treatment. Any diagnosis not supported by radiographs requires documentation of the medical need on which the diagnosis was made. Services for dental restorations are covered as follows:

(1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one surface restoration.

(2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.

(3) If any three separate surfaces on a posterior tooth are restored at the same appointment, it is a three surface restoration.

(4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four surface restoration.

(5) If any two separate surfaces on an anterior tooth are restored at the same appointment, it is a two surface restoration.

(6) If any three separate surfaces on an anterior tooth are restored at the same appointment, it is a three surface restoration.

(7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the

mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

(8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.

(9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well as either the buccal groove pit or buccal surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

[OAR Docket #14-832; filed 8-6-14]

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

[OAR Docket #14-823]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 5. Operational Policies
Part 21. Establishment
340:25-5-179.1 [AMENDED]
(Reference WF 14-11)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Social Security Act (SSA), codified at Chapter 7 of Title 42 of the United States Code (42 U.S.C. §§ 301-1397mm); Child Support Performance and Incentive Act of 1998, Public Law (Pub. L.) 105-200; 10 O.S. § 83 and 56 O.S. § 238.6B.
ADOPTION:
July 21, 2014
APPROVED BY GOVERNOR:
July 31, 2014
EFFECTIVE:
November 1, 2014
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency approval is requested to bring the Oklahoma Administrative Code into compliance with state law. Senate Bill 1993 reduced the paternity judgment time frame from 5 years to 2 years.
ANALYSIS:
Senate Bill 1993 amended Title 10 § 83 and Tile 56 § 238.6B of the Oklahoma Statutes changing the paternity judgment time frame from 5 years to 2 years. The proposed amendment to Chapter 25 Subchapter 5 amends the rule to reflect the change.
CONTACT PERSON:
Dena Thayer at 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE NOVEMBER 1, 2014 AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 21. ESTABLISHMENT

340:25-5-179.1. Establishment of support for a prior period

(a) Oklahoma Department of Human Services Child Support Services ~~(OCSS)~~(CSS) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form 03PA209E, Acknowledgment of Paternity, ~~OCSS~~CSS establishes current support and support for a prior period at the same time per Sections 83 and 7700-636 of Title 10 (10 O.S. §§ 83 and 7700-636), 43 O.S. §§ 118-118I and 119, and 56 O.S. § 238.6B.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, ~~OCSS~~CSS establishes support for a prior period per 43 O.S. §§ 118-118I and 119 and 56 O.S. § 238.1.

(A) ~~OCSS~~CSS establishes support for a prior period under this subsection only when:

(i) current child support is sought; and

(ii) Temporary Assistance for Needy Families (TANF) or Title IV-E and non-Title IV-E eligible foster care has been expended in any month during the past ~~five~~two years ~~per OAC 340:75-13-26~~.

(B) ~~OCSS~~CSS may issue a Notice of Support Debt or file a district court action to establish support for a prior period. ~~OCSS~~CSS limits this prior period to the number of months on TANF or Title IV-E and non-Title IV-E eligible foster care during the ~~five~~two years immediately before the date ~~OCSS~~CSS issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent (NCP), ~~OCSS~~CSS establishes support for a prior period under the criteria for establishing current child support per Oklahoma Administrative Code (OAC) 340:25-5-178.

(c) ~~OCSS~~CSS does not establish an order for support for a prior period on an incarcerated NCP. ~~OCSS~~CSS requests the court reserve the amount of child support for the period prior to the entry of the court order through the time of incarceration to the date the current child support obligation begins per OAC 340:25-5-178.

(d) When ~~OCSS~~CSS establishes an order for support for a prior period for a child of a NCP or a custodial person who is a servicemember, ~~OCSS~~CSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When the NCP is a current TANF or Supplemental Security Income (SSI) recipient and ~~OCSS~~CSS:

(1) has information that the NCP had no obligation based on the child support guidelines for the prior period, ~~OCSS~~CSS requests the court set the judgment at $0; or

(2) determines a debt may be owed for a prior period, ~~OCSS~~CSS requests the court reserve the issue of support for a prior period until the NCP is no longer receiving TANF or SSI.

(f) ~~OCSS~~CSS sets a monthly payment schedule per OAC 340:25-5-140.

[OAR Docket #14-823; filed 8-4-14]

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

[OAR Docket #14-822]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 29. Pharmacy Benefits Managers [NEW]
365:25-29-1. Purpose [NEW]
365:25-29-2. Scope [NEW]
365:25-29-3. Authority [NEW]
365:25-29-4. Surety bond [NEW]
365:25-29-5. License applications, license renewals, fees, and fines [NEW]
AUTHORITY:
Insurance Commissioner, 59 O.S. §§ 358(B)
COMMENT PERIOD:
n/a
PUBLIC HEARING:
n/a
ADOPTION:
June 26, 2014
APPROVED BY GOVERNOR:
July 1, 2014
EFFECTIVE:
Immediately upon Governor's approval
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
FINDING OF EMERGENCY:
The rule amendments are necessary to implement the provisions of Sections 357-360 of Title 59 of the Oklahoma Statutes, which were enacted by House Bill 2100 in 2014.
ANALYSIS:
365:25-29-1, 365:25-29-2, and 365:25-29-3 set out the purpose, scope, and authority of the rules. 365:25-29-4 sets out that applicants for a pharmacy benefits manager license must provide proof of a surety bond. 365:25-29-3 sets out an initial application fee of $1,000, a renewal fee of $500, and a reinstatement fee of $1,000. The rule also outlines how a PBM applicant may contest a declination of its application and sets out the fine amounts for violations of the statutes applicable to PBM's.
CONTACT PERSON:
Buddy Combs, Oklahoma Insurance Department, (405) 522-4609

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

SUBCHAPTER 29. PHARMACY BENEFITS MANAGERS

365:25-29-1. Purpose

The purpose of this Subchapter is to set forth the regulations and procedures relating to the licensing and oversight of pharmacy benefits managers under 59 O.S. §§ 357-360.

365:25-29-2. Scope

This Subchapter shall apply to all pharmacy benefits managers which must be licensed pursuant to 59 O.S. § 358(A).

365:25-29-3. Authority

This Subchapter is promulgated under the authority granted to the Insurance Commissioner in 59 O.S. § 358(B).

365:25-29-4. Surety bond

(a) Prior to the issuance of a pharmacy benefits manager ("PBM") license, the PBM applicant shall file with the Commissioner and thereafter keep in effect, as long as the license remains in effect, a surety bond in an amount determined by the Commissioner, and in a form acceptable to the Commissioner. The bond is intended to secure conformity with the laws, rules, and regulations governing pharmacy benefits managers. The bond shall be for the benefit of parties protected by the provisions 59 O.S. §§ 357-360.

(b) The surety bond must provide that no party may cancel the bond without first giving thirty (30) days' written notice to the principal and the Commissioner.

365:25-29-5. License application, license renewals, fees, and fines

(a) An application for a PBM license shall be in a form provided by the Commissioner and shall be accompanied by a fee of One Thousand Dollars ($1,000.00). This fee shall not be refundable if the application is denied, withdrawn, cancelled, or refused for any reason by either the applicant or the Commissioner.

(b) The PBM license shall continue in force no longer than twelve (12) months from the original month of issuance. Upon filing a PBM license renewal application on a form provided by the Commissioner, a renewal license shall be issued by the Commissioner to a PBM licensee who has continuously maintained such license upon payment of a renewal fee of Five Hundred Dollars ($500.00).

(c) If the PBM fails to timely apply for renewal of its license or fails to pay any applicable fees or outstanding fines by the last day of the month in which the license was originally issued, the license shall expire automatically. After expiration, the PBM license may be reinstated for up to one (1) year following the expiration date upon filing a PBM license

renewal application on a form provided by the Commissioner and the payment of a reinstatement fee of One Thousand Dollars ($1,000.00). If after the one-year date the license has not been reinstated, the licensee shall be required to apply for a license as a new PBM licensee applicant.

(d) In the event that the Commissioner declines to issue or renew a PBM license for any of the reasons provided in 59 O.S. § 358(D), the Commissioner shall notify the applicant or licensee of such declination and advise the applicant or licensee, in writing, of the reason for the declination. The applicant or licensee may make written demand upon the Commissioner within thirty (30) days of the date of notification by the Commissioner for a hearing before the Commissioner or an independent hearing examiner appointed by the Commissioner to determine the existence of the grounds provided in 59 O.S. § 358(D) for the Commissioner's action. The hearing shall be held within a reasonable time period pursuant to the Oklahoma Administrative Procedures Act.

(e) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 59 O.S. §§ 357-360 of the Oklahoma Statutes, or upon finding the existence of grounds to decline the issuance or renewal of such license, the Commissioner may suspend or revoke a PBM's license, assess a civil penalty of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each instance of violation, or both. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.

[OAR Docket #14-822; filed 8-1-14]

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

[OAR Docket #14-831]

RULEMAKING ACTION:
EMERGENCY adoption
PROPOSED RULES:
Subchapter 11. Risk Management
Part 1. Drug Policy
377:3-11-10. Consequences of positive test results [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs; 10A O.S., Sections 2-7-101(H)(3) and 2-7-101(I)(1); 75 O.S., Section 302(A)(1).
ADOPTION:
April 18, 2014
APPROVED BY GOVERNOR:
May 14, 2014
EFFECTIVE:
Immediately upon Governor's approval
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
Pursuant to 75 O.S., § 253, the emergency rule is necessary as an emergency in order to protect the public health and welfare. Under Oklahoma state laws and the federal Controlled Substances Act, the use and possession of marijuana remains illegal in Oklahoma, even with the legalization in other states, such as the passage of Amendment 64 to the Colorado Constitution. OJA believes this necessitates the promulgation of emergency rules to clarify OJA's drug testing continues to apply, even if drugs found in the system were purchased and consumed legally in another state in which the controlled substance is legalized.
ANALYSIS:
This emergency rule interprets Oklahoma state laws pertaining to OJA drug testing.
CONTACT PERSON:
JLynn Hartman, (405) 530-2866

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

SUBCHAPTER 11. RISK MANAGEMENT

PART 1. DRUG POLICY

377:3-11-10. Consequences of positive test results

(a) Any employee who has a positive test result will be subject to discipline up to and including discharge from employment. Such an employee will also be referred to the Administrator of Employee Assistance Program. After evaluation, the employee may be required to complete drug and alcohol education and/or treatment. Unsuccessful completion or refusal to participate will result in termination of employment.

(b) Any job applicant who has received a conditional offer of employment and who has a positive test result will not be hired by OJA.

(c) An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test shall be considered to have been discharged for misconduct for purposes of unemployment compensation benefits as provided for in Section 2-406 and 406.1 of Title 40.

(d) Any job applicant who has received a conditional offer of employment and any employee subject to OJA's drug testing policy shall be subject to the consequences set forth in this Rule even if the drugs found in the applicant's or employee's system were purchased and consumed in any state in which the controlled substance is legalized, as long as the drug in question remains illegal in Oklahoma.

[OAR Docket #14-831; filed 8-5-14]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #14-835]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-5. [AMENDED]
AUTHORITY:
Oklahoma Board of Nursing; 59 O.S., §§ 567.2 A, 567.4 F, 567.5a
ADOPTION:
July 14, 2014
EFFECTIVE:
Immediately upon Governor's approval
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency rule OAC 485:10-15-5 is necessary as an emergency measure to allow Advanced Practice Registered Nurses to reinstate licensure, thereby enhancing protection of the public's health, safety or welfare. The proposed changes allow for submission of evidence of current national certification to meet the requirements for reinstatement of Advanced Practice Registered Nurse (APRN) licensure. Meeting current requirements for reinstatement have proven difficult for APRN licensure reinstatement applicants. Currently there is no APRN Board-approved refresher course in Oklahoma, and the Board of Nursing does not control when the offering will be available. In addition, APRN licensure reinstatement applicants find it difficult to be admitted to an APRN nursing education program to complete at least six (6) academic semester credit hours, including both didactic and clinical instruction, in the same role and population focus as was previously held by the applicant. Providing the option as included in the emergency rule is consistent with current APRN initial licensure requirements and reinstatement requirement options for Registered Nurse and Licensure Practical Nurse applicants.
ANALYSIS:
The emergency rule of OAC 485:10-15-5 allows for submission of evidence of current national certification to meet the requirements for reinstatement of Advanced Practice Registered Nurse (APRN) licensure. Two of the current options for APRN reinstatement are not easily accessible to APRN reinstatement applicants, further delaying re-entry into practice. While submission of an official transcript or certificate of completion of an APRN nursing refresher course meeting Board requirements is a current option, no nursing education program currently provides an APRN refresher course. APRN reinstatement applicants have also expressed difficulty in meeting the option of successful completion of at least six (6) academic semester credit hours of APRN graduate-level nursing courses in the same role and population focus as was previously held by the APRN. According to APRN reinstatement applicants, the two Oklahoma APRN nursing programs have waiting lists for applicants interested in enrollment and completion of the APRN curriculum in its entirety, as compared to completing only six (6) academic semester credit hours. As previously mentioned, providing the option of submitting evidence of current national certification as an APRN is consistent with APRN initial licensure requirements and reinstatement requirement options for Registered Nurse and Licensed Practical Nurse applicants.
CONTACT PERSON:
Jackye Ward, Deputy Director, (405) 962-1809, 2915 North Classen Boulevard, Suite 524, Oklahoma City, OK 73106

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

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE REGISTERED NURSE

485:10-15-5. Renewal, reinstatement and inactive status of licensure

(a) **Renewal.**

(1) Renewal shall be concurrent with the two-year licensure renewal for Registered Nurse.

(2) The renewal form shall include a statement that the nurse's national certification is current and that certification will be maintained during the period of licensure renewal.

(3) Each Advanced Practice Registered Nurse shall submit a copy of a current national certification document to the Board with the renewal form, if requested.

(4) The applicant must submit an application containing such information as the Board may prescribe.

(b~~c~~) **Reinstatement.**

(1) If an Advanced Practice Registered Nurse fails to renew licensure prior to the expiration date of that license, the advanced practice license shall lapse.

(2) The applicant may request reinstatement of advanced practice licensure by submitting a completed application and the required fee. If the reinstatement is not approved within two (2) years of the expiration date of licensure, the applicant must meet current requirements for initial advanced practice licensure.

(3) The applicant must submit an application containing such information as the Board may prescribe.

(4) In addition to meeting other requirements for reinstatement established by the Board in these rules, if the Oklahoma APRN license has not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement of the APRN license must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of a completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of an APRN nursing refresher course meeting the requirements established by the Board in policy;

(B) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of APRN nursing courses in the same role and population focus as was previously held by the APRN in a graduate-level APRN program, which includes classroom and clinical instruction; and/or

(C) Present evidence of licensure or recognition as an APRN in another state with employment in a position that requires APRN licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

(D) Submission of evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board.

(c~~d~~) **Inactive Status.**

(1) An Advanced Practice Registered Nurse may submit a written request to place advanced practice licensure on inactive status.
(2) The date of inactive status will be the date of approval by the Board.
(3) The Board may delegate approval to place advanced practice licensure on inactive status to Board staff.
(4) The applicant may request return-to-active status of advanced practice licensure by submitting a completed application containing such information as the Board may prescribe and the required fee. If the advanced practice license has been on inactive status for two or more years, the applicant must meet current requirements for initial advanced practice licensure.
(5) In addition to meeting other requirements for return to active status established by the Board in these rules, if the Oklahoma APRN license has not been in an active licensure status for a period of two (2) years or more, the applicant for return to active status of the APRN license must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of a completed application in the Board office:
(A) Submission of an official transcript or certificate of completion verifying completion of an APRN nursing refresher course meeting the requirements established by the Board in policy;
(B) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of APRN nursing courses in the same role and population focus as was previously held by the APRN in a graduate-level APRN program, which includes classroom and clinical instruction; and/or
(C) Present evidence of licensure or recognition as an APRN in another state with employment in a position that requires APRN licensure or recognition with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for return to active status in the Board office.
(D) Submission of evidence of current national certification consistent with educational preparation and by a national certifying body recognized by the Board.

[OAR Docket #14-835; filed 8-7-14]

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD CHAPTER 10. STATEWIDE VIRTUAL CHARTER SCHOOLS

[OAR Docket #14-824]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. Statewide Virtual Charter School Sponsorship [NEW]
777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools [NEW]
AUTHORITY:
Statewide Virtual Charter School Board; 70 O.S. §§ 3-132; 3-140; 3-145.1; 3-145.3; 3-145.4
ADOPTION:
July 8, 2014
APPROVED BY GOVERNOR:
July 8, 2014
EFFECTIVE:
Immediately upon Governor's approval
EXPIRATION:
Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The proposed emergency rule is necessary as an emergency measure to ensure that sufficient policies and procedures governing application, renewals, and nonrenewal/termination of statewide virtual charter schools are in place until the new permanent rule at 777:10-3-3 goes into effect. Further, the additional language at 777:10-3-3(f) is necessary as an emergency measure to ensure that statewide virtual charter schools assumed by the Board in accordance with the provisions of 70 O.S. § 3-145.5 and the accompanying emergency rule at 777:10-3-5 are provided with appropriate due process mechanisms in the event of contract termination.
ANALYSIS:
The proposed emergency rule at 777:10-3-3 establishes procedures for submission and disposition of applications for sponsorship of statewide virtual charter schools by the Statewide Virtual Charter School Board. The proposed rule also establishes procedures for renewals of contracts for sponsorship of statewide virtual charter schools by the Statewide Virtual Charter School Board and procedures for termination of contracts for sponsorship of statewide virtual charter schools by the Statewide Virtual Charter School Board. The proposed emergency rule contains the same language in the permanent rule at 777:10-3-3 that was finally adopted on June 19, 2014, but adds additional language necessary to clarify that the due process provisions set forth in the new permanent rule at 777:10-3-3(f), are applicable to statewide virtual charter schools assumed by the Board in accordance with the provisions of 70 O.S. § 3-145.5 and the accompanying emergency rule at 777:10-3-5, which was signed by the Governor on July 1, 2014.
CONTACT PERSON:
Stephanie Moser Goins, (405) 521-4890

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

SUBCHAPTER 10. STATEWIDE VIRTUAL CHARTER SCHOOLS

777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools

(a) **Sponsorship application cycle and timelines.** To ensure that timely processing, review, and consideration of applications for sponsorship occurs within the time periods specified by 70 O.S. § 3-134, and to ensure that the application process is completed with sufficient time for new schools to

comply with all statutory reporting requirements for the beginning of the next school year, (e.g., statutory state finance reporting deadlines for state aid purposes) the Statewide Virtual Charter School Board shall establish a schedule for each year's application cycle for charter school sponsorship requests. No later than September 1 of each school year, the Board shall approve a timeline for the application cycle for the following school year that sets forth deadlines for each of the following events:

(1) Completion of charter school training required by 70 O.S. § 3-134(A);

(2) Submission of a letter of intent to submit an application;

(3) Submission of a full application for statewide virtual charter school sponsorship;

(4) Public presentation of application/proposal for sponsorship;

(5) Review of application and recommendation by State Department of Education staff;

(6) Statewide Virtual Charter School Board decision on application for sponsorship;

(7) Submission of an amended application;

(8) Board decision on amended application; and

(9) Negotiation and execution of a contract for sponsorship;

(b) **Sponsorship application requirements.** In addition to meeting the requirements of 70 O.S. § 3-134, new applications to the Statewide Virtual Charter School Board for sponsorship of a statewide virtual charter school must include the following information in the sponsorship proposal:

(1) For initial consideration for sponsorship, every applicant shall submit a set of policies and procedures governing administration and operation of the proposed statewide virtual charter school. The policies and procedures governing administration and operation of the proposed statewide virtual charter school shall be incorporated into the terms of the contract of the virtual charter school, and shall include, but are not limited to, all of the following subject areas:

(A) Each of the following provisions required by 70 O.S. § 3-135:

(i) A description of the charter school program offered by the school which complies with the purposes outlined in 70 O.S. § 3-136;

(ii) Student admission policies and procedures;

(iii) Management and administration of the charter school;

(iv) Requirements and procedures for program and financial audits;

(v) All of the requirements set forth in 70 O.S. § 3-136, including, but not limited to, compliance with all regulations of the State Department of Education pertaining to health, safety, civil rights and insurance and financial reporting and auditing requirements;

(vi) Assumption of liability by the charter school;

(vii) Employment rights and personnel policies of the school required to be included in employee contracts pursuant to 70 O.S. § 3-135(B);

(B) Duties and responsibilities of the charter school governing body;

(C) Student grade placement, promotion, retention, and graduation requirements;

(D) Use and maintenance of charter school property and facilities, including:

(i) Virtual provider technology, course delivery and technical support;

(ii) Facility safety and emergency and crisis management;

(iii) School calendar, school instructional hours, school holidays, dismissals and closures; and

(E) Any other topics deemed necessary by the Statewide Virtual Charter School Board to assess the applicant's capability to administer and operate the charter school in compliance with all applicable provisions of federal and state laws and regulations to which charter schools are required to comply.

(2) Each applicant shall provide documentation of its school's ability to meet each of the following requirements specific to the virtual delivery of education services:

(A) That each statewide virtual charter school is adequately prepared to deliver services to all enrolled students on the school's first day of operation and for all required instructional hours for every school year through a stable virtual platform;

(B) That each statewide virtual charter school has consistent procedures in place governing admission, transfers, enrollment, and withdrawal of students;

(C) That each statewide virtual charter school has consistent procedures in place governing admission, child find responsibilities, evaluation, and re-evaluation of students with disabilities, as well as applicable procedural safeguards and policies and procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs in compliance with applicable federal and state laws and regulations, including:

(i) Students who require or may require individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA); and

(ii) Students who require or may require accommodations, regular or special education and related aids, or other services under a plan developed in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act;

(D) That each statewide virtual charter school has consistent procedures in place governing the

admission, identification, evaluation, re-evaluation, parental notification, and provision of educational programs and services in compliance with applicable federal and state laws and regulations to students with special needs or unique abilities, including, but not limited to:

(i) Students who are English Language Learners/Limited English Proficient and who require services as necessary to overcome language barriers and ensure that they can participate meaningfully in the district's education programs; and

(ii) Students who meet the definition of "gifted and talented children" set forth in 70 O.S. § 1210.301;

(E) That each statewide virtual charter school complies with state and federal law in protection and handling of student records and data, including, but not limited to, protocols for secure storage and transmission of student data;

(F) That each statewide virtual charter school has consistent procedures and technology in place necessary to monitor and report student attendance, student participation in online school activities, and any necessary instruction in accordance with the requirements of state law;

(G) That each statewide virtual charter school has fair and consistent procedures in place to implement necessary and appropriate practices to promote student discipline that include sufficient due process protections for students facing accusations of conduct which may result in suspension and/or expulsion of a student;

(H) That each statewide virtual charter school has consistent procedures and technology in place to ensure delivery of services and that each virtual charter school provider has an adequate plan in place for communicating emergency procedures to students in the event of technical failures of equipment and/or loss of connectivity as a result of weather conditions;

(I) That each statewide virtual charter school has consistent procedures and technology in place to ensure consistent and adequate communication with parents/guardians of students and provide student progress and academic reports to parents/guardians of students; and

(J) That each statewide virtual charter school has provided a full description and explanation of the grade levels in which the provider intends to provide instruction and, for each charter school that offers secondary level coursework for grades nine (9) through twelve (12), whether the charter school will offer coursework as necessary to comply with the graduation requirements of 70 O.S. § 11-103.6 and accompanying regulations.

(3) Each applicant shall provide a written plan for compliance with all state and federal financial recording and reporting requirements for state and federal funds that are applicable to public school districts, including, but not limited to compliance with:

(A) The School District Transparency Act at 70 O.S. § 5-135.4 et seq.;

(B) The Oklahoma Public School Audit Law at 70 O.S. §22-101 et seq.;

(C) Annual itemized expenditure budget and request for appropriated funds and estimate of revenues required by 70 O.S. § 5-128.1; and

(D) Statutes and regulations pertaining to the Oklahoma Cost Accounting System (OCAS).

(4) Each application shall include a contact name, mailing address of record, phone number, and email address of the governing body at which all written notices required by 70 O.S. § 3-134 shall be served. In the event that a change in contact information occurs during the application process, the Board shall provide the Secretary of the Board with updated contact information in writing within five (5) business days of the date that the change occurs.

(c) **Filing, review, approval, and denial of charter school applications for sponsorship.** All applications for sponsorship shall be submitted by the governing body of the prospective charter school to the Statewide Virtual Charter School Board by filing three (3) copies of the application with the Secretary of the Statewide Virtual Charter School Board. Upon receipt of an application for sponsorship, the Secretary shall stamp the application to record the date of receipt, and shall promptly submit written confirmation of the receipt of the application to the contact name and address of record of the governing body listed on the application. In addition, the Secretary shall forward a copy to the State Department of Education Executive Director of School Choice for review and recommendation in accordance with the deadlines established pursuant to (a) of this Section.

(1) **Application review and criteria.** In reviewing an application for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall determine whether the applicant's proposal for sponsorship complies with the provisions of 70 O.S. § 3-134 and other applicable provisions of the Oklahoma Charter Schools Act. In addition, the Board may consider any other factors demonstrating the applicant's capacity to successfully comply with the goals set forth in its mission statement and applicable state, federal, tribal and/or local statutes and regulations. Such factors may include, but are not limited to the following:

(A) Whether the applicant can demonstrate previous experience in operation of one or more virtual charter schools;

(i) If the applicant cannot demonstrate previous experience in operation of one or more virtual charter schools, whether applicant has sufficient resources in place to ensure compliance with applicable state, federal, tribal and/or local statutes and regulations;

(ii) If the applicant can demonstrate previous experience in operation of a virtual charter school,

whether applicant has a history of non-compliance with applicable state, federal, tribal and/or local statutes and regulations either in the State of Oklahoma or in other jurisdictions;

(B) Whether the applicant has provided evidence demonstrating financial stability;

(C) Whether the criteria designed to measure the effectiveness of the charter school proposed by the applicant is reasonably calculated to provide accurate benchmarks for evaluation of teacher effectiveness and student learning; and

(D) Whether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide services to students with disabilities, English Language Learners, and gifted and talented students.

(2) **Acceptance or denial of sponsorship applications.** The Statewide Virtual Charter School Board shall review and consider the application in accordance with the timeline established pursuant to (a) of this Section, provided that a final decision on the application shall be made no later than ninety (90) calendar days from the date of receipt of the application by the Secretary of the Statewide Virtual Charter School Board. The Secretary of the Board shall promptly submit written notification of the decision of the Board to the applicant via certified mail, return receipt requested, to the contact and address of record of the governing body designated on the application.

(3) **Reconsideration of sponsorship applications.** In the event of a denial of an application for sponsorship, the applicant may submit a revised application for reconsideration in accordance with the following procedures:

(A) The application for reconsideration shall be filed with the Secretary of the Board within thirty (30) calendar days after the date of receiving notification of the rejection. The revised application shall meet all of the application requirements set forth in (b) and (c)(1) of this Section. In the event that delivery of written notification required by (2) of this subsection is refused by the applicant or returned as undeliverable due to the applicant's failure to update the contact of record in accordance with the requirements of (b)(4) of this Section, the date of receipt of notification of the rejection shall be considered the date of the meeting at which the Board took action on the proposed application.

(B) Within five (5) business days of the date of receipt of the application for reconsideration, the Secretary shall set promptly set the application for consideration at a meeting of the Board and submit notification of the date, time, and place of the meeting to the applicant to the contact of record. The meeting to consider the application shall occur within thirty (30) days of the date of receipt of the application.

(C) The Statewide Virtual Charter School shall take action to accept or reject the revised application within thirty (30) days of its receipt by the Secretary of the Board.

(4) **Appeal of denial of sponsorship applications.** In the event that the governing body of the charter school elects to appeal the decision of the Board to deny the application for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(d) **Requirements of the sponsorship contract.** Contracts for sponsorship between the Statewide Virtual Charter School Board and the governing body of a statewide virtual charter school shall include terms that meet all of the following requirements:

(1) The contract shall incorporate the provisions of the charter of the school in accordance with the requirements of 70 O.S. § 3-135, and the charter shall comply with the provisions of 70 O.S. § 3-136;

(2) The contract shall contain terms addressing all of the requirements set forth in 70 O.S. § 3-135;

(3) The contract shall contain terms setting forth measurable goals and objectives for student performance;

(4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording and reporting receipt and expenditures of public funds, including, but not limited to:

(A) Terms providing that the charter school shall conduct annual financial audits in accordance with the requirements of the Oklahoma Public School Audit Law;

(B) Terms providing that the charter school shall comply with all State Department of Education deadlines necessary for budgeting, calculation of appropriations and/or disbursements of state aid and/or federal aid;

(C) Terms providing that the charter school shall comply with all deadlines for recording and reporting of state aid revenue and expenditures;

(D) Terms providing that the charter school shall comply with all requirements of the Oklahoma Cost Accounting System (OCAS); and

(E) Terms providing that the charter school shall comply with all provisions of the School District Transparency Act at 70 O.S. § 5-135.4 et seq.

(5) The policies and procedures governing administration and operation of the statewide virtual charter school shall be incorporated into the terms of the contract;

(6) The term of the contract shall be effective for no longer than five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137;

(7) The term of the contract shall designate at least one contact name and address of record of the governing body of the charter school to which all notices required by the terms of the contract and/or this Section shall be served, including the name, title, mailing address, email address, and phone number of all individual(s) authorized to receive service of notices required by this Section and pursuant to the terms of the contract; and

(8) The contract shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.

(e) **Renewals of contracts for sponsorship of statewide virtual charter schools.** Renewal of a contract with a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall be conducted in accordance with the requirements of the Oklahoma Charter Schools Act.

(1) **Requests for renewal of contract for sponsorship.** Requests for renewal of the contract for sponsorship shall be submitted by the governing body of the charter school in accordance with the following procedures:

(A) At least one (1) year prior to expiration of the initial contract term, but no earlier than eighteen (18) months prior to the date of expiration of the contract; the governing body of the charter school may submit a proposal for renewal of the contract to the Statewide Virtual Charter School Board by filing three (3) copies of the proposal with the Secretary of the Board.

(B) Within ten (10) calendar days of the date of receipt of the request for informal hearing, the Secretary shall schedule the request for renewal as an action item on the agenda for the next regular meeting of the Board, or at a subsequent meeting if the proposal for renewal is not received until after the agenda for the next meeting has already been set. The Secretary shall timely submit written notice of the date, time, and location of the meeting at which the proposal for renewal will be considered by regular mail to the governing body of the charter school at the address of record set forth in the sponsorship contract. In addition, the Secretary may send a courtesy copy of the notice by facsimile, and/or email.

(C) The Board shall review the proposal for renewal and take action on the request for renewal no later than eight (8) months prior to the date of expiration of the contract.

(D) The Board may base its decision to deny the charter school governing body's request for renewal upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.

(2) **Notice of intent of non-renewal of contract for sponsorship.** Notwithstanding the provisions of (1) of this subsection, the Statewide Virtual Charter School Board may elect to not renew a contract for sponsorship in accordance with the following procedures:

(A) No later than eight (8) months prior to the date of expiration of the contract. The Statewide Virtual Charter School Board shall submit written notice of its intent of non-renewal via certified mail, return receipt requested to the governing body of the charter school at the address of record set forth in the contract. The notice shall include:

(i) A statement of any and all factual and legal grounds upon which the Board's intent to non-renew the contract is based;

(ii) A statement of the date, time, and location of the meeting at which the Board intends to take action on the proposed non-renewal, which shall be held no earlier than thirty (30) calendar days from the date of the notice of intent to non-renew the contract is sent to the charter school.

(B) The Board may base its decision to non-renew the contract for sponsorship upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.

(C) In the event that the governing body of the charter school elects to appeal the decision of the Board to not renew the contract for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(f) **Terminations of contracts for sponsorship of statewide virtual charter schools.** Termination of a contract for sponsorship with a statewide virtual charter school, including any contract for sponsorship assumed by the Board pursuant to 70 O.S. § 3-145.5 and accompanying regulations at 777:10-3-5, shall be conducted in accordance with the following procedures:

(1) **Grounds for termination of a contract for sponsorship.** At any time during the term of the contract, the Statewide Virtual Charter School Board may terminate the contract on one or more of the following grounds:

(A) Failure to meet the requirements for student performance set forth in the terms of the contract;

(B) Failure to meet the standards of fiscal management set forth in the terms of the contract;

(C) Violations of applicable state, federal, tribal, or local laws, statutes, and/or regulations;

(D) Other good cause as established by the Board, which may include, but shall not be limited to:

(i) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to meet reporting deadlines necessary for compliance with state or federal statutes or regulations;

(ii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school

contractors to accurately report student enrollment counts;

(iii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report and/or classify student accountability data;

(iv) Identification and/or designation of the charter school by the State Board of Education as consistently in need of improvement in accordance with subsection (g)(6) of Section 1003 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), pursuant to 70 O.S. § 1210.544;

(v) Any material breach of the terms set forth in the contract for sponsorship; and

(vi) Any action or failure to act by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors that presents or results in an immediate and serious danger to the health, safety, and welfare of its students.

(2) **Notice of intent to terminate contract.** At least ninety (90) calendar days prior to termination of a contract for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall submit written notice of its intent to terminate the contract via certified mail, return receipt requested to the governing board of the charter school at the address of record set forth in the contract. The notice shall include:

(A) A statement of any and all factual and legal grounds upon which the Board's intent to terminate the contract is based;

(B) A statement of the date, time, and location of the meeting at which the Board intends to take final action on the proposed termination, which shall be held no earlier than forty-five (45) calendar days from the date the notice of intent to terminate is mailed to the charter school; and

(C) A statement that the governing board of the school may request an informal hearing before the Board to present evidence in opposition to the proposed termination by delivering a written request to the Secretary of the Board within fourteen (14) calendar days of receipt of notice of the intent to terminate the contract that includes:

(i) A response to the factual and legal grounds for termination set forth in the notice; and

(ii) A summary of evidence that the school intends to submit in support of its response.

(D) Within ten (10) calendar days of the date of receipt of the request for informal hearing, the Secretary shall schedule an informal hearing and submit written notice of the date, time, and location of the hearing by regular mail to the charter school's address of record set forth in the sponsorship contract. The Secretary may send a courtesy copy of the notice by facsimile, and/or email.

(3) **Informal hearing on termination.** In the event that an informal hearing is requested pursuant to the provisions of (2)(C) of this subsection, the Secretary of the Board shall promptly schedule an informal hearing at which the statewide virtual charter school may present argument and/or evidence in opposition to the proposed termination. The Board shall prescribe the time allotted for oral argument and presentation of evidence. Upon completion of the hearing, the Board may consider the merits of the argument and presentation of evidence and take action on the proposed termination, or it may schedule action on the proposed termination for a subsequent board meeting to provide the board with further opportunity for deliberation.

(4) **Appeals of termination.** In the event that the governing body of the charter school elects to appeal the decision of the Board to terminate the contract for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(g) **Negotiation and execution of contracts for sponsorship.** To facilitate and/or expedite negotiations for new contracts for sponsorship, the Statewide Virtual Charter School Board may adopt a model contract for sponsorship of a statewide virtual charter school for use by the Board and potential statewide virtual charter schools sponsored by the Board. Adoption of a model contract shall not prohibit the Board from further negotiation of contract terms or addition of terms to the contract for sponsorship prior to execution of the contract so long as such terms are in compliance with applicable state, federal, local, and/or tribal law and the provisions of this Section.

(h) **Execution of the contract.** The final contract for sponsorship shall not be executed until approved by the Statewide Virtual Charter School Board at a regular or special meeting. The Board may delegate authority to the Chairman to execute the approved contract for sponsorship on behalf of the Board.

[OAR Docket #14-824; filed 8-5-14]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption," as defined in 75 O.S., Section 250.3(5), of the proposed rules.

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

Permanent rules are published in the *Oklahoma Administrative Code*, along with a source note entry that cites the *Register* publication of the finally adopted rules in the permanent rule document.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 308, 308.1 and 308.3.

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-496]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
5:2-1-2. Definitions [AMENDED]
AUTHORITY:
Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"; Oklahoma Abstractors Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed revisions to Subchapter 1 are intended to provide definitions for new terms to clarify the meaning and intent of these Rules and the Act. Further, they clarify what records are to be copied and how indexes are to be acquired and to provide a way for consumers to be aware of payment policies of abstract companies and when their order has been accepted by an abstract company. It also requires the abstract company to prepare and retain a comprehensive invoice for their services in accordance with Title 5:11-5-1(c).
CONTACT PERSON:
Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 NW 23rd St., Suite 60B, Oklahoma City, OK 73107 (405) 522-5019

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

5:2-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the definitions of the following words and terms shall be applied when implementing the Act and rules adopted by the Board:

"Abstractor" means the holder of an abstract license, certificate of authority, or temporary certificate of authority.

"Abstract Plant" shall consist of a set of records in which an entry has been made of all documents or matters which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrances thereon, which are filed, recorded and currently available for reproduction in the offices of the county clerk and the court clerk in the county for which such abstract plant is maintained including any satellite offices for the county clerk or district court clerk. Such records shall consist of:

(A) a "land index" in which notations of or references to any documents that describe the property affected are included, according to the property described or in which copies or briefs of all such documents that describe the property affected are sorted and filed according to the property described which is compiled from the instruments of record affecting real property in the county and recorded in the county offices and not copied or reproduced from any county index:

(B) a "name index" compiled from the following:

(i) records from the court clerk sorted or filed according to the names of the parties listed in the pending suits which shall include but not be limited to probates, divorces, dissolutions of marriage, guardianships, and civil suits affecting real property; and,

(ii) records from the county clerk sorted or filed according to the names of the parties listed in the documents which shall include but not be limited to liens, tax warrants, statements of judgment, and any other documents which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrance thereon which are filed, recorded, and currently available for reproduction in the office of the county clerk. The index shall be compiled from instruments of record affecting real property in the office of the county clerk and not copied from any county index.

"Billing Information" means a copy of an invoice reflecting all abstract related charges.

"Compile" means to arrange in an orderly and logical manner all recorded instruments relating to a particular chain of title of real property.

"Employee" means a person who is compensated, directly or indirectly, by a holder of a certificate of authority, permit, or temporary certificate of authority, who performs duties regulated by the Act.

"Final title report" means the document resulting from the final title search required to be conducted by a certificate of authority holder in the county where the property is located prior to the issuance of a title insurance policy pursuant to the rules of the Oklahoma Insurance Department and shall include all information as mandated by Section 11-5-3 of these rules.

"Licensee" means a person who holds an abstract license.

"Supervision" means all work of an employee must be supervised within the authorized activities of a certificate of authority holder or a permit holder, respectively.

(A) Supervision of an abstract licensee by a certificate of authority holder means the oversight of the licensee to search or remove from county offices county records, summarize or compile copies of such records, maintain an independent set of abstract books or indexes, or compile an abstract of title for certification.

(B) Supervision of an abstract licensee by a permit holder means the oversight of the licensee to build, construct or develop an abstract plant and activities directly related thereto pursuant to 5:11-7-3 of these rules.

(C) Supervision of a non-licensed employee means the oversight of any person who is employed by a holder of a permit or certificate of authority who performs the activities set forth in 5:11-3-1(b) of these rules.

"Upfront commitment to pay" may be:

(A) A written document whether by e-mail, facsimile, contract of sale, or other written instruction by a party to the transaction that agrees to pay the invoice upon delivery, unless the certificate holder:

(i) notifies the customer within two (2) full business days that other payment terms must be satisfied, or

(ii) the certificate holder has a uniform payment policy posted at its office.

(B) The acceptance of an order from a party to the transaction whether by e-mail, facsimile, contract of sale, or other written or oral instruction by a certificate holder, and the holder proceeds to complete the requested abstracting service.

[OAR Docket #14-496; filed 6-23-14]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT

[OAR Docket #14-495]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Abstract Licenses, Certificates of Authority and Permits
5:11-3-10 [AMENDED]
Subchapter 5. Regulation of Licensees, Certificate Holders and Permit Holders
5:11-5-3 [AMENDED]
5:11-5-5 [NEW]
Subchapter 7. Application for Permit to Develop Abstract Plant
5:11-7-3 [AMENDED]
AUTHORITY:
Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"; Oklahoma Abstractors Board
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amendment in Subchapter 3 would decrease the amount of time certificate of authority or permit holders are allowed in which to notify the Board concerning the change of controlling interest of their business so that the Board is always aware of the ownership of companies. Proposed amendments in Subchapter 5 allow for the implementation of new technology to promote more accurate and timely preparation of abstracts. New text is also added so that when there are natural disasters or other acts beyond the abstractor's control, the company will not be penalized if they are unable to complete building abstracts in the time periods mandated by Title 1. In Subchapter 7, new text has been added to help new permit holders know and understand the guidelines for building a new plant and for the OAB inspector to have an approved list of guidelines that must be conformed to.
CONTACT PERSON:
Glynda Reppond, Executive Director, Oklahoma Abstractors Board, 2401 NW 23rd St., Suite 60B, Oklahoma City, OK 73107 (405) 522-5019

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS

5:11-3-10. Report of change of controlling interest

(a) The holder of a certificate of authority or a permit shall report a change of controlling interest to the Board within ~~60~~10 days after the change of control becomes effective, unless such time period is extended upon request to the Board. Such report shall include:

(1) the number of shares or percentage interest sold and by whom and

(2) the number of shares or percentage interest purchased and by whom.

(b) As used in this section, the term 'controlling interest' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the holder of a certificate of authority or permit as represented by an ownership interest. A change in ownership of 40% or more of the voting stock, entity interest, or individual interest of a holder of a certificate of authority or permit shall be reported as a change of controlling interest to the Board.

SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS

5:11-5-3. Preparation of abstracts

(a) **Type of abstract.** A certificate of authority holder shall cause the preparation of an abstract of title on real property which shall cover:

(1) a fee simple estate, less and except oil, gas and other mineral interests; or

(2) upon the request of a customer, a fee simple estate including oil, gas, and other mineral interests; or

(3) oil, gas and other mineral interests.

(b) **Abstract certificate.** The abstract certificate and caption sheet shall reflect an appropriate disclaimer regarding that which is excluded.

(c) **Contents of abstract.** For the time period covered by the certification, an abstract of title shall include but not be limited to the following:

(1) all instruments that have been filed for record and have been recorded in the office of the county clerk for the county in which the property is located which:

(A) legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;

(B) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said real estate; and

(C) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(2) the records of the court clerk for the county in which the subject property is located which:

(A) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said subject property; and

(B) judgments or transcripts of judgments against any of the parties appearing within the chain of title.

(3) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the office of the county treasurer for the county in which the subject property is located due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon, and unpaid personal property taxes which are a lien on said real estate.

(d) **Federal court certificate.** Upon request of a consumer, a holder of a certificate of authority in Muskogee, Okmulgee, Oklahoma, and Tulsa counties may certify to the records of the Clerk of the United States District Court and the Clerk of the United States Bankruptcy Court for such federal judicial districts located in such counties for the time period covered by the certification, that disclose:

(1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property; and

(2) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(e) **Final certification for title insurance.** For purposes of a title insurance policy, a certificate of authority holder in the county where the insured property is located shall prepare either of the following:

(1) an extension of the abstract or supplemental abstract; or

(2) a final title report after a final title search has been conducted. The final title report shall include all information required for an abstract of title pursuant to the Act and these rules, and shall be certified up to and including the effective date of the title insurance policy.

(f) **Other services.** Any service performed or product produced by the holder of a certificate of authority that does not qualify as an abstract of title or final title report shall not be designated as an abstract of title and shall not include an abstract certificate.

(g) **Statement of abstracting charges.** All charges for abstracts, abstract extensions, supplemental abstracts, or final title reports shall be separately stated and shall not be combined with title insurance, closing fees, or examination charges on invoices, statements, settlement statements, and consumer estimates.

(h) **Digital abstracts.**

(1) Digital abstracts may be offered pursuant to customer requests;

(2) Must be in an open non-proprietary format;

(3) If charges will be different from those charged for paper copies, the charges must be set out on the rate sheet

5:11-5-5. Abstracts furnished without delay

Failure by a certificate holder to furnish an abstract, abstract extension, supplemental abstract, or final title report within the time periods of 1 O.S.§32 shall be deemed to constitute unnecessary delay, unless the reason for the delay was beyond the control of the abstractor.

SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP ABSTRACT PLANT

5:11-7-3. Business activities of a permit holder

(a) During the period of development of the abstract plant by a holder of a permit, until a certificate of authority is issued to such permit holder, the business activities of a permit holder and licensees under its supervision are limited to the construction of the abstract plant and activities directly related thereto. A permit holder shall not sell or provide products or services to the public or for its own benefit from its plant under development and may not charge or collect fees for such products or services.

(b) The applicant shall comply with the Guidelines for Developing a New Abstract Plant as established by the Board.

[OAR Docket #14-495; filed 6-23-14]

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-741]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
10:1-1-4.1. [AMENDED]
AUTHORITY:
Oklahoma Accountancy Board; 59 O.S. Section 15.5.B.6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 24, 2013
COMMENT PERIOD:
October 15, 2013 through November 15, 2013
PUBLIC HEARING:
November 21, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 20, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The change to this rule allows for flexibility to accommodate the profession and meet registrants' needs by scheduling earlier or later office hours.
CONTACT PERSON:
Randall A. Ross, CPA, Executive Director, or LaLisa Semrad, Staff Liaison to the OAB Rules Committee, Oklahoma Accountancy Board, 201 NW 63rd Street, Suite 210, Oklahoma City, OK 73116, (405) 521-2397, rross@oab.ok.gov or lsemrad@oab.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

10:1-1-4.1. Board office

The Board maintains an office in Oklahoma City, Oklahoma. The Board office is open five (5) days a week, Monday through Friday, ~~from 8:00 A.M. until 5:00 P.M.~~during the most appropriate business work hours. The Board office is closed on Saturday and Sunday and state legal holidays as set out in Section 82.1 of Title 25 of the Oklahoma Statutes.

[OAR Docket #14-741; filed 7-17-14]

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

[OAR Docket #14-742]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 24. Return of Certificate or License
10:15-24-1 [AMENDED]
Subchapter 27. Fees
10:15-27-9.1 [REVOKED]
Subchapter 33. Peer Review
10:15-33-2 [AMENDED]
10:15-33-5 [AMENDED]
10:15-33-6 [AMENDED]
10:15-33-7 [AMENDED]
Subchapter 35. Reinstatement
10:15-35-1 [AMENDED]
Subchapter 43. ~~Audits~~ Attest Engagements Performed in accordance with Government Auditing Standards [AMENDED]
10:15-43-1 [AMENDED]
10:15-43-4 [AMENDED]
10:15-43-7 [AMENDED]
AUTHORITY:
Oklahoma Accountancy Board; 59 O.S. Section 15.5.B.6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 24, 2013
COMMENT PERIOD:
October 15, 2013 through November 15, 2013
PUBLIC HEARING:
November 21, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 20, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision to Chapter 15, Subchapter 24, Return of Certificate or License, allows a registrant who has voluntarily surrendered his or her CPA certificate, to keep the certificate if the individual has retired from all forms of employment regulated by the Oklahoma Accountancy Board. The revocation of 10:15-27-9.1., in Subchapter 27, Fees, is to remove obsolete language since the proration period for registration has ended. The revisions to Subchapter 33, Peer Review, are to eliminate obsolete language to reflect current peer review reporting after changes within the profession. The revision

to Subchapter 35, Reinstatement, is to clarify that both individuals and firms must make application for reinstatement on forms prescribed by the Oklahoma Accountancy Board. The revisions to Subchapter 43 adopt the Board policy that attest engagements include audits *and* agreed upon procedures, and clarify which engagements for government entities require registration on the list maintained by the Board.

CONTACT PERSON:

Randall A. Ross, CPA, Executive Director, or LaLisa Semrad, Staff Liaison to the OAB Rules Committee, Oklahoma Accountancy Board, 201 NW 63rd Street, Suite 210, Oklahoma City, OK 73116, (405) 521-2397, rross@oab.ok.gov or lsemrad@oab.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 24. RETURN OF CERTIFICATE OR LICENSE

10:15-24-1. Voluntary surrender of certificate or license

(a) Upon voluntary surrender of a certificate or license, the registrant shall not be required to return the certificate or license into the custody of the Board if:

(1) The registrant has retired from all types of employment regulated by the Oklahoma Accountancy Board regardless of the registrant's age; and

(2) The Board's records indicate that no enforcement actions have been taken against the registrant within the last ten (10) years.

(b) If the registrant has not retired from all types of employment ~~but~~regulated by the Oklahoma Accountancy Board and no longer wishes to hold an Oklahoma certificate or license, ~~a request for the return of the certificate or license shall be made~~the certificate or license shall be returned to the Board.

SUBCHAPTER 27. FEES

10:15-27-9.1. Proration of fees for transition to birth month renewals [REVOKED]

~~The Board shall provide a schedule of prorated fees for purposes of transitioning into the new staggered annual renewal dates.~~

SUBCHAPTER 33. PEER REVIEW

10:15-33-2. Special definitions

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

~~**"Adverse report"** means there are significant deficiencies in the design of the firm's system of quality control, pervasive instances of noncompliance with the system as a whole, or both, resulting in several material failures to adhere to professional standards on engagements.~~

"Deficiency" in a system review means one or more findings that the peer reviewer has concluded that due to the nature, causes, pattern, or pervasiveness, including the relative importance of the finding to the reviewed firm's system of quality control taken as a whole, could create a situation in which the firm would not have reasonable assurance of performing and/or reporting in conformity with applicable professional standards in one or more important respects. It is not a significant deficiency if the peer reviewer has concluded that except for the deficiency or deficiencies, the reviewed firm has reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

"Deficiency" in an engagement review is one or more findings that the review captain concludes are material to the understanding of the financial statements or information and/or related accountant's reports or that represent omission of a critical procedure, including documentation, required by applicable professional standards. When the review captain concludes that deficiencies are not evident on all of the engagements submitted for review, or when the exact same deficiency occurs on each of the engagements submitted for review and there are no other deficiencies, such deficiencies are communicated in a report with a peer review rating of *pass with deficiencies*.

"Deficient report" means any report which is ~~adverse, modified,~~ pass with deficiencies~~,~~ or fail.

"Engagement Review" means a peer review where the peer reviewer evaluates and reports on whether engagements submitted for review by the practice unit are performed and reported on in conformity with applicable professional standards in all material respects.

"Fail" on a system review (audit is highest level of service) means ~~there are significant deficiencies in the design of the firm's system of quality control, pervasive instances of noncompliance with the system as a whole, or both, resulting in several material failures to adhere to professional standards on engagements.~~ significant deficiencies have been identified and the firm's system of quality control is not suitably designed to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects or the firm has not complied with its system of quality control to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Fail on an engagement review means the engagements submitted for review were not performed and/or reported in conformity with applicable professional standards in all material respects. A fail report with deficiencies related specifically to compilations would not be considered deficient for the purposes pursuant to these rules.

~~**"Modified report"** means the design of the firm's system of quality control created a condition in which the firm did not have reasonable assurance of complying with professional standards or that the firms degree of compliance with its quality control policies and procedures did not provide it with reasonable assurance of complying with professional standards. A report modified due to scope limitations specifically related~~

~~to compilations would not be considered modified for the purposes pursuant to these rules.~~

"Pass" on a system review means the reviewed firm's system of quality control ~~has been designed to meet the requirements of the quality control standards for an accounting and auditing practice and the system was being complied with during the peer review year to provide the firm with reasonable assurance of complying with professional standards in all material respects.~~ for the accounting and auditing practice has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Pass on an engagement review means nothing came to the reviewer's attention that the engagements submitted for review were not performed and reported in conformity with applicable professional standards in all material respects.

"Pass with deficiencies" on a system review means the design of the firm's system of quality control ~~created a condition in which the firm did not have reasonable assurance of complying with professional standards or that the firm's degree of compliance with its quality control policies and procedures did not provide it with reasonable assurance of complying with professional standards in all material respects with the exception of a certain deficiency or deficiencies that are described in the report. A pass with deficiencies report issued due to scope limitations specifically related to compilations would not be considered deficient for the purposes pursuant to these rules.~~ for the accounting and auditing practice has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects with the exception of a certain deficiency or deficiencies that are described in the report. Pass with deficiencies on an engagement review means that nothing came to the attention of the reviewer that caused him/her to believe ~~on~~that the engagements submitted for review ~~that the firm did not comply with professional standard except for the deficiencies that are described in the report.~~ were not performed and reported on in conformity with applicable professional standards in all material respects except for the deficiencies that are described in the report. A pass with deficiencies report with deficiencies related specifically to compilations would not be considered deficient for the purposes pursuant to these rules.

"Peer review due date" must be a date within six (6) months after the peer review year end, plus any extensions granted by the sponsoring organization or the Board.

"Peer review program"means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a permittee or licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

"Peer review year end" means the year end as determined by the firm and its reviewer.

"Performance of services" is deemed to start when an engagement letter is signed or agreement reached.

~~**"Review program"** means the peer review conducted under the peer review program.~~

"Review year" means the peer review covers a one-year (twelve-month) period. Engagements selected for peer review normally would have periods ending during the year under peer review.

"Significant deficiency"in a system review means one or more deficiencies that the peer reviewer has concluded results from a condition in the reviewed firm's system of quality control or compliance with it such that the reviewed firm's system of quality control taken as a whole does not provide the reviewed firm with reasonable assurance of performing and/or reporting in conformity with applicable professional standards in all material respects.

"Significant deficiency"in an engagement review means the review captain concludes that all engagements submitted for review were not performed and/or reported on in conformity with applicable professional standards in all material respects. The exception is when more than one engagement has been submitted for review, the exact same deficiency occurs on each of those engagements, and there are no other deficiencies, which ordinarily would result in a report with a peer review rating of *pass with deficiencies.*

"Sponsoring organization" means ~~an individual or entity that meets the standards specified by the Board for administering the peer review.~~ a Board-approved professional society, or other organization responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards. The Board shall periodically publish a list of sponsoring organizations, which have been approved by the Board.

"System Review"means a peer review intended to provide the peer reviewer with a reasonable basis for expressing an opinion on whether, during the year under review: a) the reviewed practice unit's system of quality control for its accounting and auditing practice has been designed in accordance with quality control standards and b) the reviewed practice unit's quality control policies and procedures were being complied with to provide the practice unit with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects.

~~**"Unmodified report"** means the reviewed firm's system of quality control has been designed to meet the requirements of the quality control standards for an accounting and auditing practice and the system was being complied with during the peer review year to provide the firm with reasonable assurance of complying with professional standards.~~

10:15-33-5. Effect of consecutive deficient reports

~~(a) Effective for peer reviews commencing on or before December 31, 2008, a firm, including a succeeding firm, which receives two (2) consecutive modified reports and/or one (1) adverse report, may be required by the Board or its designee to have a pre-issuance review or team captain revisit within eighteen (18) months from the year end of the firm's last peer review.~~

~~(b) If the pre-issuance review or team captain revisit required by subsection (a) above results in continued oversight:~~

~~(1) The firm may complete any review and audit engagement for which field work has already begun only if, prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the Board or its designee.~~

~~(2) The firm shall be referred to the Vice Chair of the Board for enforcement investigation.~~

~~(3) A firm may petition the Board for a waiver from the provisions of this rule subsection (b).~~

(~~c~~a) ~~Effective for peer~~ Peer reviews ~~commencing on or after January 1, 2009,~~for a firm, including a succeeding firm which receives two (2) consecutive pass with deficiencies reports and/or one (1) fail report, may be required by the Board or its designee to have an accelerated peer review ~~within eighteen (18) months from the year-end of the firm's last peer review.~~ The year-end and due date of such peer review is to be determined by the Board giving consideration of the time required for the firm to implement remedial actions.

(~~d~~b) If the accelerated review required by subsection (a) ~~or (c)~~above results in a deficient report:

(1) The firm may complete any service requiring a peer review for which field work has already begun only if:

(A) Prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the Board or its designee; and

(B) The engagement is completed within ninety (90) days of the acceptance of the peer review report, and letter of response (when applicable) by the sponsoring organization;

(2) The firm shall be referred to the Vice Chair of the Board for enforcement investigation.

(3) A firm may petition the Board for a waiver from the provisions of this rule ~~subsection (d)~~.

10:15-33-6. Reporting to the board

~~(a) Any report or document required to be submitted under this subsection shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:~~

~~(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or~~

~~(2) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and~~

~~(3) A copy of the Public Company Accounting Oversight Board (PCAOB) report, if applicable.~~

(~~b~~a) Any report or document required to be submitted under this subsection shall be made available to the Board by a secure website or other secure means unless the sponsoring organization does not have access to a secure website or other secure means. In such case the report may be directly submitted by the firm.

(~~c~~b) Any report or document required to be submitted under this subsection shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:

(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is pass; or

(2) A copy of the report, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is pass with deficiencies or fail.

(3) A copy of the Public Company Accounting Oversight Board (PCAOB) report, if applicable.

(~~d~~c) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

10:15-33-7. Peer review oversight committee

(a) The Board shall appoint a Peer Review Oversight Committee for the purpose of:

(1) Monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with peer review minimum standards;

(2) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review minimum standards; and

(3) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(b) The Peer Review Oversight Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. ~~Initial appointment of the three (3) committee members shall be as follows: one (1) member appointed for three (3) years; one (1) member appointed for two (2) years; and one member appointed for one (1) year.~~ Subsequent committee members shall serve three (3) year terms. Compensation, if any, of Peer Review Oversight Committee members shall be set by the Board, not to exceed One Hundred Fifty Dollars ($150.00) per hour. Each member of the Peer Review Oversight Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or above in an audit function of a state or local government. The member or member's firm must be enrolled in an approved practice/monitoring program and have received an unmodified or pass report on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(1) No more than one Peer Review Oversight Committee member may be from the same firm.

(2) A Peer Review Oversight Committee member may not concurrently serve as a member of the AICPA's or any state's CPA society ethics or peer review committee.

(3) A Peer Review Oversight Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board

may appoint alternate committee member(s) to serve in these situations.

(c) Information concerning a specific firm or reviewer obtained by the Peer Review Oversight Committee during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(d) As determined by the Board, the Peer Review Oversight Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(e) The Peer Review Oversight Committee may:

~~(1) When necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures and provide such results to the Board;~~

~~(2) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;~~

(~~3~~1) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(2) Review remedial and correction actions prescribed that address the deficiencies in the reviewed firm's system of quality control policies and procedures;

(3) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(4) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(5) Communicate to the ~~governing body of the sponsoring organization~~ Board on a recurring basis:

(A) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) Problems experienced in the implementation of the peer review program; and

(C) A summary of the historical results of the peer review program.

(f) Committee members shall become disqualified to serve on Peer Review Oversight Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

SUBCHAPTER 35. REINSTATEMENT

10:15-35-1. Application for reinstatement

(a) Upon application in a format prescribed by the Board an individual or firm may request reinstatement of a canceled, suspended, or revoked certificate or license.

(b) Evidence, by means established in Title 59, Section 15.9 of the Act, is obtained to substantiate that the applicant is of good moral character;

(c) In addition to the application fee the applicant shall pay the required registration fees and permit fee, if applicable, as well as all costs and fines assessed by the Board which remain unpaid at the date the application is filed.

(d) Individuals applying for the reinstatement of a certificate or license must meet the requirements to return to active status in 10:15-30-9 if they will be providing any services associated with accounting work.

(e) Individuals applying for the reinstatement of a certificate or license must show evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board.

SUBCHAPTER 43. ~~AUDITS~~ATTEST ENGAGEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

10:15-43-1. Registration

Pursuant to Title 74 Oklahoma Statutes Section 212A(B), all registrants, prior to entering into contracts to perform an ~~audit~~attest engagement of a governmental entity, must register, in a format prescribed by the Board which attests to the registrant's compliance with Government Auditing Standards.

10:15-43-4. Denial of registration

(a) Any registrant whose registration has been denied shall be notified in writing. The written notice shall include the reason(s) for the denial.

(b) If a registration is denied, the registrant may file a written request with the Board for a review of the denial. The registrant shall have the burden of demonstrating to the Board that the qualifications to perform ~~audits~~attest engagements in accordance with Government Auditing Standards have been met. Any evidence submitted by the registrant shall be in documentary form.

10:15-43-7. Disqualification

At any time the firm's registration or permit to practice public accounting in Oklahoma is revoked, cancelled, dissolved or suspended, the firm's registration under this subchapter shall be disqualified and the firm's name shall be automatically removed from the list of Registrants Performing Governmental ~~Audits~~Attest Engagements in Accordance with Government Auditing Standards.

[OAR Docket #14-742; filed 7-17-14]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 1. COMMISSION OPERATIONS

[OAR Docket #14-715]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
25:1-1-3. Definitions [AMENDED]
25:1-1-8. Windsock program [AMENDED]
AUTHORITY:
3 O.S. Section 83 (b); Oklahoma Aeronautics Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 16, 2014
ADOPTION:
January 5, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORORATIONS BY REFERENCE:
n/a
ANALYSIS:
Per 3 O.S. Section 83 (b), which sets the requirements and procedures to be followed by the Aeronautics Commission in the administration of the windsock program. The changes in the rules allow designated emergency management use landing sites to receive a windsock from the Commission, free of charge.
CONTACT PERSON:
Jane Mitchell, Administrative Rules Liaison, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

25:1-1-3. Definitions

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

"Aeronautical hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or that is otherwise hazardous to the operation and navigation of aircraft.

"Aeronautics" means the science, art and practice of flight, including, but not limited to, transportation by aircraft and matters relating to air commerce; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

"Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Aircraft" means any contrivance now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

"Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge

"Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings, clear zones, or other airport facilities or right-of-ways, together with all airport buildings and facilities located thereon.

"Airspace" means the portion of the atmosphere overlying a designated geographical area considered as subject to territorial jurisdiction or international law in respect to its use by aircraft, guided missiles, and rockets.

"Commission" means the Oklahoma Aeronautics Commission.

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

"Designated Emergency Management Use Landing Site" means any area of land which has been designated for the landing and take-off of aircraft for emergency management use, including, but not limited to law enforcement, search and rescue, and medical.

"Municipality" means any incorporated city, village, or town of this state and any county or political subdivision or district in this state which is, or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports, airstrips, and aeronautical navigation facilities.

"Operation of aircraft" or **"operate aircraft"** means the use, navigation, or piloting of aircraft in the airspace over this state or upon any airport within this state of the inspection, maintenance, overhauling, or repair, of aircraft, aircraft engines, propellers, and appliances.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

"Resources" means services, facilities, funds, equipment, property, personnel, and such other activities as are customarily included within the term.

"State" means the State of Oklahoma.

25:1-1-8. Windsock program

In order to insure that a functional wind indicator is present and visible at each airport, open to the public, within the State of Oklahoma, replacement wind socks shall be made available, upon request and proof of need, free of cost to the airport. Airports which are not open to the public shall be provided a wind sock upon request for a fee equal to the cost of the item to the Oklahoma Aeronautics Commission. To insure that a functional wind indicator is present and visible at designated emergency management use landing sites, within the State of Oklahoma, wind socks shall be made available, upon request and proof of need, free of cost to the emergency management use landing site.

[OAR Docket #14-715; filed 7-14-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #14-472]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
35:10-1-3 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4; 14-31 et seq.; Oklahoma State Board of Agriculture
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2014 Edition) and Handbook 130 "Uniform Laws and Regulations" (2014 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
Incorporating Rules:
35:10-1-3
Availability:
See contact person below.
ANALYSIS:
The rule amendments update references to the Code of Federal Regulations.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

35:10-1-3. Handbook and publication editions

References to a Handbook or publication in these rules shall mean the following edition of the National Institute of Standards and Technology (NIST), unless a different reference is made in the text of the rule:

(1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (~~2013~~2014 Edition).

(2) Handbook 130 "Uniform Laws and Regulations" (~~2013~~2014 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."

(3) Handbook 133 "Checking the Net Contents of Packaged Goods" (2013 Edition).

(4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).

(5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).

(6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).

(7) Publication 14 (2009 Edition).

(8) Publication 12 (1991 Edition).

(9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

[OAR Docket #14-472; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #14-473]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
35:13-1-1 [AMENDED]
35:13-1-2 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4(A)(2) and 11-20 et seq.; Oklahoma State Board of Agriculture
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
27 CFR Part 19.661 et seq. (2013 Revision)
Incorporating Rules:
35:13-1-1
35:13-1-2
Availability:
See contact person below.
ANALYSIS:
The rule amendments update references to the Code of Federal Regulations.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

35:13-1-1. Incorporation by reference of federal distilled spirits for fuel use regulations

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) (~~2012~~2013 Revision), Part 19.661 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.669, 19.670, 19.699, and 19.700 (~~2012~~2013 Revision).

[OAR Docket #14-473; filed 6-20-14]

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

[OAR Docket #14-471]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
35:15-1-2 [AMENDED]
Subchapter 5. Biological Products and Laboratories
35:15-5-2 [AMENDED]
Subchapter 11. Importation of Livestock, Poultry, and Pets
Part 1. General
35:15-11-1 [AMENDED]
Part 3. Official Health Certificates [REVOKED]
35:15-11-5 [REVOKED]
35:15-11-6 [REVOKED]
Part 7. Livestock
35:15-11-17 [AMENDED]
Part 11. Poultry and Other Avian Species
35:15-11-41 [AMENDED]
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-3 [AMENDED]
35:15-13-5 [AMENDED]
35:15-13-6 [AMENDED]
Subchapter 17. Bovine and Bison Brucellosis
Part 11. Entry Permit and Retest Requirements
35:15-17-73 [AMENDED]
Subchapter 22. Swine Psuedorabies and Brucellosis
Part 3. Requirements for Swine Entering Oklahoma
35:15-22-33 [AMENDED]
35:15-22-34 [AMENDED]
35:15-22-35 [AMENDED]
Part 5. Requirements for a Validated/Qualified Herd
35:15-22-51 [AMENDED]
Part 7. Requirements for Swine Exhibitions
35:15-22-71 [AMENDED]
Subchapter 34. Feral Swine
35:15-34-7 [AMENDED]
35:15-34-13 [AMENDED]
Subchapter 36. Scrapie
35:15-36-1 [AMENDED]
35:15-36-2 [AMENDED]
Subchapter 38. Bovine Trichmoniasis
35:15-38-2.1 [AMENDED]
Subchapter 40. Bovine Tuberculosis
Part 1. Definitions
35:15-40-1 [AMENDED]
Part 7. Import Requirements
35:15-40-90 [AMENDED]
35:15-40-92 [AMENDED]
Subchapter 42. Tuberculosis Eradication in Cervidae
Part 7. Incorporations by Reference
35:15-42-54 [AMENDED]
Subchapter 44. Farmed Cervidae
35:15-44-8 [AMENDED]
35:15-44-10 [AMENDED]
35-15-44-20 [AMENDED]
35:15-44-21 [AMENDED]
Subchapter 47. Chronic Wasting Disease (CWD) in Cervids
Part 3. Herd Certification Standards
35:15-47-6 [AMENDED]
Part 7. Interstate Movement Requirements
35:15-47-18 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4, 6-1 et seq., 6-91 et seq., 6-131 et seq., 6-141 et seq., 6-150 et seq., 6-181 et seq., 6-290.1 et seq., 6-501 et seq., 6-601 et seq., 9-130 et seq., and 9-143; Oklahoma State Board of Agriculture.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
9 CFR Part 79 (2013 Revision), with exceptions; 9 CFR §§ 77.20 - 77.41 (2013 Revision); 9 CFR Part 55 (2013 Revision); and 9 CFR Part 81 (2013 Revision).
Incorporating Rules:
35:15-36-1, 35:15-36-2, 35:15-42-54, 35:16-47-6, and 35:15-47-18.
Availability:
See contact person below.
ANALYSIS:
The rule amendments update definitions, revise identification and recordkeeping requirements for certain livestock and animals, delete outdated or unnecessary rules, make minor textual changes, and update references to the Code of Federal Regulations.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

35:15-1-2. Definitions

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

"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

"Animal disease traceability" means the ability to trace an animal to its site of application of official identification and/or premises of origin as set out in 9 CFR Parts 71, 77, 78, 86, et al. Traceability for Livestock Moving Interstate; Final Rule.

"Approved tagging site" means a premises, authorized by APHIS, State, or Tribal animal health officials, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.

"Backtag" means a USDA approved identification system consisting of a tag of special tough paper, bearing identification codes relating to origin of animals, which are stuck to animals a few inches from the midline and just behind the shoulder with very strong glue. The backtag is designed as temporary identification for easy reading in livestock auction markets to help trace the origin of livestock in Department investigations.

"Certificate of veterinary inspection" means an official document or its electronic equivalent approved by the chief livestock official of the state of origin issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; purpose of shipment; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term certificate of veterinary inspection shall also include an official health certificate, an official certificate, or a certificate.

"Designated epidemiologist" means an epidemiologist selected by the State Veterinarian who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with a particular disease, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors.

"Official identification" means any official method of identification approved by USDA, as described by 9 C.F.R. § 86.1, or the State Veterinarian~~, including but not limited to a metal ear tag that provides unique identification for each animal by conforming to the national uniform ear tagging system, and electronic identification or radio frequency identification (RFID)~~. Official identification for specific species may be further defined within the applicable section of the Oklahoma Administrative Code. Backtags shall not be considered official identification unless the animal is shipped directly to slaughter. ~~Animals identified by the livestock auction market veterinarian as too debilitated to enter the identification chute may be officially identified by a backtag or any other form of official identification and shall have a "slaughter only" tag applied.~~ The term "official eartag" is synonymous with "official identification."

"Owner-Shipper statement" means a statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of animals covered by the statement; the species of animal covered; the name and address of the owner at the time of the movement; the name and address of the shipper; and the identification of each animal, as required by the regulations, unless the regulations specifically provide that the identification does not have to be recorded.

"Quarantine" means a written notice or order issued by an authorized agent of the Department showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.

"State animal health official" means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in a state.

SUBCHAPTER 5. BIOLOGICAL PRODUCTS AND LABORATORIES

35:15-5-2. Laboratories

(a) **Privately owned laboratories requesting authority to perform certain procedures.** Privately owned laboratories requesting authority to perform certain official laboratory procedures must apply for said approval on an application provided by the Area Veterinarian in Charge (AVIC) which provides for a joint signature of recommendation for approval of the AVIC and the Chief Animal Health Official of the Oklahoma Department of Agriculture.

(b) **Initial request for laboratory approval.** All initial requests for laboratory approval shall be made to the Area Veterinarian in Charge (AVIC) or Chief Animal Health Official of the Oklahoma Department of Agriculture. Laboratories must specify those terms which they are requesting approval to perform. These tests include, but are not limited to, Bluetongue, Bovine ~~Leucosis~~Leukosis, Equine Infectious Anemia, Johne's Disease, Pseudorabies, Bovine Trichomoniasis, and those diseases that are reportable to the Oklahoma Department of Agriculture.

(c) **Requirements prior to approval of laboratory.** Prior to approval of any laboratory to conduct any official laboratory procedure, the following requirements must be met:

(1) An authorized representative of the Oklahoma Department of Agriculture and/or U.S.D.A. will review with laboratory officials the responsibilities, regulatory and technical, inherent in conducting and reporting official tests.

(2) The physical facilities of the laboratory will be inspected by a Federal and/or State representative. Inspection results will be recorded on a laboratory inspection worksheet. This inspection must be determined as satisfactory before approval will be considered.

(d) **Procedures to be followed by approved laboratories.**

(1) Only antigen licensed by Animal and Plant Health Inspection Service (APHIS) or supplied by National Veterinary Services Laboratories (NVSL) and accompanying antiserum will be used.

(2) All tests will be conducted according to protocol provided by NVSL.

(3) Official test results will be reported promptly to State and/or Federal regulatory officials and the veterinarian submitting the sample.

(4) Only samples submitted by a licensed veterinarian, ~~State~~state or ~~Federal~~federal animal health official, or military veterinarian will be accepted.

(5) Information with sample submission shall include:

(A) Name and address of submitting veterinarian.

(B) Name and address of owner.

(C) Location (including county) or animal(s) at time of test.

(D) Age, breed, and sex of animal tested.

(E) Identification of animal(s) tested, which may include eartag, tattoo, registration number or physical description adequate to provide positive individual identification of animal(s) tested.

(6) Periodic proficiency testing will be required for continuous authority to conduct approved testing. NVSL will supply the samples and evaluate test results.

(7) If any proficiency test is failed, the approved laboratory shall immediately notify the Oklahoma Department of Agriculture, and shall suspend further testing until recertified by NVSL.

(e) **Training.**

(1) Personnel who perform any approved official test must be recognized as qualified by Veterinary Services and the Oklahoma Department of Agriculture. The AVIC and the State animal health official must recommend personnel for approval and training by NVSL.

(2) The person(s) responsible for conducting official tests for private laboratories will be trained by NVSL.

(3) With approval of the AVIC and the State animal health official, personnel previously trained by NVSL for Federal, State, and University laboratories may train others in the laboratory to conduct official tests. Training will include regulatory responsibility.

(4) NVSL will certify training of personnel for Federal, State, and University laboratories by proficiency testing which must be completed in accordance with standards established by NVSL, and maintained by periodic proficiency testing.

(f) **Evaluation of personnel.** The AVIC, State animal health official, and NVSL will evaluate personnel who do not successfully complete proficiency testing in order to determine if additional training is necessary.

(g) **Laboratories approved to conduct official tests.** Laboratories approved to conduct official tests must notify in writing the AVIC, State animal health official and NVSL when any person trained by NVSL to conduct official tests is no longer employed. If no one with approved training is available to conduct these tests, approval of the laboratory will be cancelled.

(h) **Recommendation for approval.** The AVIC and the State animal health official must recommend approval of the laboratory prior to obtaining official status. A jointly signed memorandum and the originals of all completed documents of application and approval shall be mailed through the appropriate Regional Director for his or her concurrence to the Director of NVSL.

(i) **Approval of laboratories.** After the requirements of training have been satisfactorily completed, the laboratory will

be approved by the Director of NVSL and will be so notified of approval by a telegram or a letter signed by the Director of NVSL.

(j) **Removal or suspension of laboratory approval.**

(1) Laboratory approval will be removed or suspended by the Director of NVSL or State animal health official when any criteria are not met. If the laboratory is approved to perform tests for more than one disease, removal or suspension will apply only to the disease for which proficiency is not maintained. The laboratory will be informed of removal or suspension by a telegram signed by the Director of NVSL, or by certified letter from the Oklahoma Department of Agriculture, or both.

(2) Failure to maintain competency or failure to perform within any established protocol, shall constitute a violation of this Section and shall submit the laboratory to actions outlined under the Administrative Procedures Act of the State of Oklahoma, above and beyond any action deemed appropriate by Veterinary Services.

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 1. GENERAL

35:15-11-1. General import requirements

(a) All persons importing livestock, as defined in 2 O.S. Section 6-150, shall have a certificate of veterinary inspection ~~or an approved commuter herd agreement on file with the Department prior to entry into Oklahoma, however, livestock transported directly to an Oklahoma veterinarian for treatment may enter the state without a certificate of veterinary inspection provided that the animal is returned to the premises of origin within two (2) days following the cessation of treatment.~~with the following exceptions:

(1) Livestock transported as part of a commuter herd with a copy of the commuter herd agreement;

(2) Livestock transported directly to an Oklahoma veterinarian for treatment if returned to the premises of origin within two (2) days following cessation of treatment;

(3) Livestock transported from a premises of origin in another state to an approved tagging site or approved livestock market and they are accompanied by an owner-shipper statement;

(4) Livestock transported from a premises of origin in another state directly to a slaughtering establishment and they are accompanied by an owner-shipper statement or a completed Drive-In document; or

(5) Livestock transported as a restricted movement accompanied by a VS form 1-27.

(b) The Commissioner of Agriculture or the State Veterinarian shall be authorized to impose pre-entry test requirements on any species if it becomes known that the threat of disease exists which could place the livestock industries of Oklahoma at risk or could become a public health hazard.

(c) Import requirements of this section may be in addition to import requirements for a species or disease found in this subchapter.

PART 3. OFFICIAL HEALTH CERTIFICATES [REVOKED]

35:15-11-5. Official health certificate [REVOKED]

~~An official health certificate is an official document or its electronic equivalent approved by the chief livestock official of the state of origin and issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term official health certificate shall also include a certificate of veterinary inspection, an official certificate, or a certificate.~~

35:15-11-6. Provisions for health certificates [REVOKED]

~~(a) The health certificate shall contain the name and address of the consignor and the consignee, age, sex, number, breed of livestock, and sufficient identifying marks and tags to positively identify said livestock, and shall also contain positive identification of the motor vehicle or common carrier used in the transportation of the livestock covered by the health certificate. The health certificate shall also contain a statement by the accredited veterinarian that such livestock are free from all contagious, infectious, or communicable diseases and do not originate from a district of quarantine, infestation or infection. A health certificate shall be void thirty (30) days after the date of its issuance. A copy of the health certificate must be approved by the chief livestock sanitary official of the state of origin, and shall be forwarded to the Oklahoma State Veterinarian, Oklahoma City, Oklahoma.~~

~~(b) All brucellosis agglutination blood tests of animals, which are intended for importation into Oklahoma, shall be made or confirmed at the state or federal laboratory.~~

PART 7. LIVESTOCK

35:15-11-17. Companion animal importation

All dogs, cats, and ferrets ~~over four (4) months of age,~~ shipped or transported into Oklahoma, shall be admitted only when accompanied by an official ~~health certificate certifying they did not originate from an area under quarantine for rabies, have not been exposed to rabies within the previous~~

~~six (6) months, and~~Certificate of Veterinary Inspection (CVI). All companion animals over three (3) months of age shall have been officially vaccinated against rabies within twelve (12) months prior to the date of entry with an approved rabies vaccine or within three (3) years with the use of a three (3) year vaccine if the primary vaccination and subsequent boosters are documented on the ~~health certificate~~CVI. ~~The date of the vaccinations, subsequent boosters, and the product name shall be recorded on the health certificate.~~A permit shall be obtained from the Oklahoma Department of Agriculture, Food, and Forestry within thirty days prior to the entry of a companion animal that originates from an area under quarantine for rabies or has been exposed to rabies within six (6) months prior to entry.

PART 11. POULTRY AND OTHER AVIAN SPECIES

35:15-11-41. Poultry and other avian species importation

(a) No person shall import poultry or other avian species or products of poultry or other avian species originating from or transported through an area under quarantine by any state or federal animal health official for Avian Influenza or Exotic Newcastle Disease.

(b) Poultry or other avian species determined to be infected with or exposed to Avian Influenza or Exotic Newcastle Disease shall be destroyed without compensation to the owner.

SUBCHAPTER 13. TESTING AND INSPECTION FOR DISEASE AND RELEASE OF LIVESTOCK AT AUCTION MARKETS

35:15-13-3. General requirements for a livestock auction market

(a) Any person owning, operating, conducting, or maintaining a livestock auction market shall be required to:

(1) Submit an application for a license to the Department on an official form prior to operation.

(2) Bond the market pursuant to 2 O.S. Section 9-132, as amended or according to the provisions of the Federal Packers and Stockyards Act as amended.

(3) Employ ~~aa~~a livestock auction market veterinarian for auctions selling cattle, horses, swine, or other species as determined by the state veterinarian.

(b) The livestock auction market license shall cost Twenty Five Dollars ($25.00) per year and shall expire on December 31 of each year.

(c) Both the buyer's and seller's invoices shall include the name, address of the owner and description of the cattle as to breed, sex and age. Invoices for swine shall show the predominate breed and shall show them to be feeding, breeding or slaughter swine.

(d) The livestock auction market veterinarian or sale company shall not be responsible for results of any tests that are made properly, or any reactor or responder animals found in the market. ~~Ownership of all reactor or responder animals shall revert back to the consignor.~~

(e) Refusal or failure to comply with the Department rules shall be just cause for the revocation or suspension of the livestock auction market license.

(f) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any of the following animals to leave the livestock auction market unless it is individually identified by an official ~~identification with~~identification with an exception for weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person. Weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person may be sold with a back tag and slaughter only tag to be transported directly to slaughter.

(1) All beef cattle eighteen (18) months of age or older, except terminal fed steers~~, heifers, and bulls,~~and heifers, going directly to a feedlot or slaughter which will not be reintroduced into the breeding herd;

(2) All dairy cattle ~~two (2) months of age or older~~;

(3) All "M" branded cattle, and

(4) All roping, exhibition, event, and rodeo cattle.

(g) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to the livestock auction market for a period of ~~two (2)~~five (5) years for disease traceback purposes, including but not limited to the following:

(1) "Drive-in" or any other documents identifying the backtag, owners name and address, and license tag of mode of transportation;

(2) Any records kept pursuant to the Livestock Auction Market Act;

(3) Records of any official identification applied to the animal or already existing with the animal; and

(4) Any records available regarding the purchaser of the animals.

(h) Each livestock auction market shall sign and have on record with the Department the most current livestock market contract for each of the species sold at the market.

35:15-13-5. Approval and responsibilities of veterinarians in livestock auction markets

(a) The veterinarian shall make application for approval to the Department and shall be examined as to his or her ability to function as ~~aa~~a livestock auction market veterinarian.

(b) The livestock auction market veterinarian shall inspect cattle, bison, horses, swine, or other species as determined by the State Veterinarian at the livestock auction market for the purposes of determining the condition of health and freedom from infectious or contagious diseases.

(c) The livestock auction market veterinarian shall arrive at the market in sufficient time to do all required testing, official identification, and inspection prior to the beginning of the sale.

(d) The livestock auction market veterinarian is responsible for completion of state and federal forms necessary for the release of livestock from markets and other state and federal

forms required for disease traceability, control, and eradication programs.

(e) In the event that an official identification is already present in the animal being tested, the livestock auction market veterinarian shall use this tag instead of retagging, and include all prefixes and numbers in recording the tag on test charts and official documents.

(f) The livestock auction market veterinarian shall use separate bleeding needles or separate syringes for each animal. The use of the same syringe or needle for all animals is prohibited.

(g) If the livestock auction market veterinarian cannot determine the class of livestock to be shipped by the description on the purchaser's invoice, the livestock auction market veterinarian shall look at each shipment prior to release.

(h) All reactor or responder cattle received for sale shall be examined as to official identification by the livestock auction market ~~veternarian~~veterinarian prior to sale.

(i) Copies of all forms shall be forwarded to the office of the State Veterinarian by the livestock auction market veterinarian immediately after sale.

(j) All official ear tags, forms, certificates of veterinary inspection, or documents and official stamps and signature stamps, shall be kept in the exclusive possession of the livestock auction market veterinarian and shall be dated and signed by him or her only at the time it is filled out and issued. Under no circumstances shall any official document be ~~pre-signed~~pre-signed or ~~prestamped~~pre-stamped by the livestock auction market veterinarian. Use of any official stamp by persons other than the livestock auction market veterinarian or a state or federal employee is expressly prohibited. The livestock auction market veterinarian shall be solely responsible for the unauthorized or improper issuance of any official document or the use of any official stamp or signature stamp.

(k) The livestock auction market veterinarian shall ensure another livestock auction market veterinarian is available at the market when the regular livestock auction market veterinarian is absent from the market.

(l) The livestock auction market veterinarian shall not resign his duties without written notice to the sale company and State Veterinarian's office at least ten (10) days prior to resignation.

(m) The livestock auction market veterinarian's failure or neglect to perform any of the functions in this Section shall be cause for disapproval and immediate removal from the livestock auction market.

35:15-13-6. Movement of livestock through livestock auction markets

(a) All certificates of veterinary inspection, permits, and other documents, including out-of-state documents accompanying livestock into Oklahoma livestock auction markets that are incomplete or have been altered in any way are void and shall not be accepted. This includes documents that are incomplete as to official identification number and description of animal it represents. In order to be accurate and acceptable, the prefix of each official identification number shall be recorded.

(b) All livestock~~, including slaughter, feeding, breeding, and dairy animals,~~ shipped or exported from the State of Oklahoma~~, regardless of "purpose of movement," shall be accompanied by a certificate of veterinary inspection. The livestock~~ shall ~~also~~ meet the state of destination importation requirements.

SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS

PART 11. ENTRY PERMIT AND RETEST REQUIREMENTS

35:15-17-73. Brucellosis requirements for entry of cattle and bison into Oklahoma

(a) All cattle and bison shall have a Certificate of Veterinary Inspection prior to entry. Test eligible cattle and bison from ~~Class B and C~~ states or areas not classified as "Brucellosis free" shall have a permit in addition to a Certificate of Veterinary Inspection prior to entry. All test eligible cattle and bison from states or areas not classified as "Brucellosis free" shall test negative within thirty (30) days prior to entry and ~~those test eligible cattle from Class Band C States~~ shall be quarantined and retested at owner's expense ~~in~~ not less than fort-five (45) nor more than one hundred twenty (120) days after entry. ~~All test eligible cattle and bison from Class A states shall test negative within thirty (30) days prior to entry. Cattle from Certified Free Herds and "Free" states are exempt from the test requirements prior to entry provided they are officially identified and the certified free herd number or "Free" state status is recorded on the Certificate of Veterinary Inspection.~~

(b) All brucellosis agglutination blood tests associated with the importation of animals into Oklahoma, shall be conducted or confirmed at a state or federal laboratory.

SUBCHAPTER 22. SWINE PSEUDORABIES AND BRUCELLOSIS

PART 3. REQUIREMENTS FOR SWINE ENTERING OKLAHOMA

35:15-22-33. Entry requirements for transitional production swine

(a) A person importing transitional production swine into Oklahoma shall obtain an entry permit from the Department.

(b) Transitional production swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection, containing the following information:

(1) the entry permit number~~,~~;

(2) official identification number, which may be from an official USDA National Uniform Eartagging System (NUES) metal or plastic eartag, a Premise Identification Number (PIN) tag with a unique within-herd management number, or an electronic USDA tag beginning with the digits 840;

(~~2~~3) a statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies and brucellosis has not existed in the herd of origin in the past

six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow~~,~~; and

(~~3~~4) if applicable, the V/Q herd number and date of last pseudorabies and brucellosis quarterly test.

(c) Transitional production exhibition and prospective exhibition swine entering Oklahoma shall either:

(1) be accompanied with a negative official pseudorabies and brucellosis test performed within thirty (30) days prior to entry~~,~~; or

(2) originate from a V/Q herd.

(d) An exception to import test requirements may be issued by the Department to purchasers of exhibition swine. To qualify for the exception, prospective purchasers of exhibition swine shall:

(1) Apply for an anticipatory entry permit during the Department's office hours prior to traveling to a state where swine for exhibition purposes are proposed to be purchased;

(2) Contact the Department on the next business day following a purchase to report the number of swine purchased and the seller of the swine or to notify the Department no swine were purchased on the anticipatory entry permit;

(3) Obtain a certificate of veterinary inspection issued a maximum of thirty (30) calendar days prior to entry for the movement of the swine; and

(4) Immediately quarantine any swine entering Oklahoma for exhibition purposes pursuant to this subsection until tested negative for brucellosis and pseudorabies within thirty (30) calendar days of entry.

35:15-22-34. Entry requirements for livestock auction market and slaughter swine

(a) All swine from an out-of-state approved livestock market and consigned to an Oklahoma livestock auction market shall be accompanied by a certificate of veterinary inspection listing the swine's official individual identification number and an entry permit.

(b) All farm origin swine shipped directly, with no diversion enroute, to ~~an~~a livestock auction market or slaughtering establishment operating under state or federal supervision shall be accompanied by one of the following:

(1) a certificate of veterinary inspection, or

(2) a way bill, bill of lading, or owner-shipper certificate that lists the consignor, the point of origin of the shipment, and the livestock auction market or slaughtering establishment to which the swine are being shipped.

(c) For market swine only, the results from an official pseudorabies and brucellosis test on a nursing sow shall constitute evidence of the pseudorabies status of its nursing pigs, if the pigs accompany that sow.

35:15-22-35. Commuter herd agreement requirements

(a) A written commuter herd agreement shall be effective upon review and approval by the State Veterinarian.

(b) A written commuter herd agreement shall include the following:

(1) premises identification numbers for all premises covered by the agreement;

(~~1~~2) global positioning system (GPS) data for all premises covered by the agreement~~,~~;

(~~2~~3) the location of the premise of origin and destination for all swine imported into Oklahoma under the commuter herd agreement~~,~~; and

(~~3~~4) the acceptable surveillance and testing requirements as determined by the designated epidemiologist based on the status of the state of origin, history of the herd of origin, and the intended purpose of the swine entering Oklahoma.

(c) All pseudorabies and brucellosis testing performed pursuant to a commuter herd agreement shall utilize an official 95/10 random sample test.

(d) By the tenth (10th) of each month, the producer shall submit a monthly report of all swine entering Oklahoma.

(e) A commuter herd agreement shall be completed and approved prior to any interchange or movement of commuter herd swine between states.

PART 5. REQUIREMENTS FOR A VALIDATED/QUALIFIED HERD

35:15-22-51. Validated/qualified herd establishment

(a) A person shall establish a swine herd as a V/Q herd status by completing the following:

(1) Each pig shall be permanently and individually identified ~~by official identification~~.

(2) The herd owner shall submit a completed application and inventory no later than thirty (30) days after a complete herd test for brucellosis and pseudorabies.

(A) The application shall include, at a minimum, the herd owner's name, mailing address, telephone number, signature, and date of application.

(B) The inventory shall include, at a minimum, ~~of-ficial~~animal identification, age, breed, sex, and date of inventory.

(3) The herd owner shall test negative all swine six (6) months of age or older to an official brucellosis and pseudorabies test to establish a V/Q herd.

(4) A minimum of ninety (90) percent of the swine in the herd shall have been on the premises and a part of the herd for at least ninety (90) days prior to the whole herd test or have entered directly from another VQ herd.

(b) Swine maintained outside of the primary herd premises shall not be considered a part of the V/Q herd.

(c) Herd owners shall have a minimum of four (4) adult sows to be eligible for the V/Q herd program.

(d) V/Q herd status and herd number shall be issued after completion of the first quarterly test following the whole herd test.

PART 7. REQUIREMENTS FOR SWINE EXHIBITIONS

35:15-22-71. Exhibition requirements

(a) Each person who presents swine for a swine exhibition, special sale, or show shall provide verification of one of the following:

(1) A federal premise identification number; or

(2) ~~a~~A state location identification number.

(b) All swine shall be individually identified. Out of state swine shall be identified with official individual identification.

(c) All swine shall meet one of the following testing requirements:

(1) Oklahoma origin swine shall have a negative brucellosis and pseudorabies test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to pseudorabies or brucellosis. The swine shall also be accompanied by a copy of the official test chart or a certificate of veterinary inspection listing the test results, laboratory name, laboratory accession number, and individual identification.

(2) Swine originating from outside of Oklahoma shall meet the requirements of OAC 35:15-22-33(a) - (c).

(3) Each swine shall originate from a V/Q herd and only be exhibited by an immediate family member of the VQ herd owner. The V/Q herd number, most recent quarterly test date, and official identification of all swine being exhibited shall be listed on the certificate of veterinary inspection ~~with the current quarterly test date and official identification~~.

SUBCHAPTER 34. FERAL SWINE

35:15-34-7. Handling facilities

(a) An owner or operator ~~of a breeding facility~~ shall obtain a handling facility license prior to operation of any new handling facility.

(b) The owner or operator of a ~~breeding~~handling facility shall maintain a perimeter fence at least forty-eight (48) inches tall made of solid walls, game fence, or other material constructed in a manner adequate to reasonably prevent the escape of enclosed feral swine, and the unsolicited additions of feral swine from outside the enclosure.

(c) The owner or operator shall keep records of the following:

(1) Number of head of feral swine added to the facility and the date such swine were added to the facility;

(2) Name, address, and telephone number of the person who provided the feral swine;

(3) Destination of any removed feral swine; and

(4) Number of head removed from the facility, method of removal, date of removal, and the name, mailing address, and phone number of any consignee.

(d) Any person applying for a facility license shall provide the following information on a form prepared by the Department:

(1) Name, mailing address, email address and telephone number of the owner;

(2) Name, mailing address, email address, and telephone number of the operator, if different from the owner;

(3) Name, physical address, and county of the ~~breeding~~handling facility;

(4) Legal description to the nearest quarter section and GPS coordinates, if available, of the ~~breeding~~handling facility;

(5) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;

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

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

(8) Whether the property where the ~~breeding~~handling facility is located is owned or leased;

(9) Driving directions from the nearest town; and

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

(f) Effective July 1, 2013, the expiration date of all active licenses for handling facilities shall be extended so that the active license expires on June 30, 2014. After July 1, 2013, handling facilities shall be licensed for a one year term beginning July 1 of each calendar year and ending on June 30 of the following calendar year. Beginning April 1, 2014, applications for the renewal of a handling facility license shall be due on April 1 of each calendar year.

35:15-34-13. License fees

(a) Sporting facilities that are not licensed as a commercial hunting area by the Oklahoma Department of Wildlife Conservation:

(1) Application fee - $325.

(2) Renewal fee - $200.

(b) Handling facility:

(1) Application fee - $125.

(2) Renewal fee - $75.

SUBCHAPTER 36. SCRAPIE

35:15-36-1. Incorporation by reference of federal regulations

Regulations of the United States Department of Agriculture concerning scrapie in sheep and goats found at 9 CFR Part 79 (~~2012~~2013 Revision) are adopted by reference with the exception of the deleted regulations specified in 35:15-36-2.

35:15-36-2. Deleted regulations

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (~~2012~~2013 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

SUBCHAPTER 38. BOVINE TRICHOMONIASIS

35:15-38-2.1. Intrastate change of ownership requirements for bulls

(a) Any bull changing ownership within the state of Oklahoma shall have a negative official T. foetus test within sixty (60) days prior to change of ownership with no exposure to females from seven (7) days prior to the test to the time of change of ownership.

(b) Exceptions to this rule shall include the following:

(1) A bull accompanied by a virgin bull affidavit;

(2) A bull sold directly to slaughter; or

(3) A bull sold for feeding and slaughter to be fed in a registered feedlot only and leaves the feedlot only to be slaughtered.

(c) Any bull presented for sale at a livestock auction market without a virgin bull affidavit or verification of a negative official T. foetus test:

(1) Shall be tagged for slaughter only and sold for slaughter only;

(2) May go to the purchaser's destination so long as the market veterinarian takes a sample for an official T. foetus test and the purchaser agrees to keep the bull under quarantine at the destination until receipt of negative test results.

(d) A livestock auction market shall not be liable for a virgin bull affidavit ~~verifying no sexual contact with females within seven (7) days prior to arrival at the livestock auction market,~~ and shall not be liable for the results of a market veterinarian's sampling and results for an official T. foetus test.

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

"Accredited free state" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

"Accredited herd" means a herd of cattle, bison, or dairy goats that passed at least two (2) consecutive negative caudal fold tuberculin tests at an interval of not less than ten (10) months nor more than fourteen (14) months, has no other evidence of bovine tuberculosis, and meet the standards of this Subchapter.

"Affected herd" means a herd of cattle, bison, or dairy goats that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis and has not passed the required tests necessary for release from quarantine.

"Annual tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Auction" means a public sale of cattle, bison, or dairy goats to the highest bidder.

"Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

"Bovine Tuberculosis" means a disease in cattle, bison, or dairy goats caused by Mycobacterium bovis.

"Cattle" means all domestic bovine (genus Bos).

"Caudal Fold Tuberculin Test" or **"CFT"** means the intradermal injection of 0.1 milliliters of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or - 6 hours) following injection. Animals or herds of unknown status shall not be subjected to retest at intervals of less than sixty (60) days.

"Commission firm" means a person, partnership, or corporation that buys or sells livestock as a third party and reports to the seller or to the buyer details of the transactions whether or not a fee is charged for the services.

"Comparative Cervical Tuberculin Test" or **"CCT"** means the intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (M. bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection.

"Dairy cattle" means any typical dairy framed animals as determined by the inspecting veterinarian.

"Dairy goats" means domestic caprine (genus Capra) kept for the purpose of producing milk for human consumption.

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on the dealer's own account or as the employee or agent of the vendor or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include any person who buys or sells cattle, bison, or dairy goats as a part of their own bona fide breeding, feeding, or dairy operation; is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or receives cattle, bison, or dairy goats exclusively for immediate slaughter on the person's own premise.

"Eradication" means the complete elimination of bovine tuberculosis from cattle and bison in the state so that the disease does not appear unless introduced from another species or from outside the state.

"Exposed animals" means cattle, bison, or dairy goats that have been exposed to bovine tuberculosis by reason of associating with known tuberculous animals.

"Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

"Herd" means one or more cattle, bison, or dairy goats maintained on common ground or two (2) or more groups of cattle, bison, or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd plan" means a herd management and testing plan designed by a state or federal regulatory veterinarian and the herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd.

"High risk cattle" means cattle from countries, states, or areas that are not considered Bovine Tuberculosis free, including but not limited to, dairy cattle, exhibition cattle, rodeo cattle, and Mexican origin cattle.

"Mexican origin" means cattle that originate or have ever resided in Mexico.

"Modified Accredited Advanced State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Modified Accredited State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Natural additions" means animals born and raised in a herd.

"No Gross Lesion Animals" or **"NGL"** means any cattle, bison, or dairy goats that do not reveal a lesion of bovine tuberculosis upon postmortem inspection. Any animal with skin lesions alone shall be considered a NGL animal.

"Official in charge" means any manager, superintendent, secretary, or other person responsible for an exhibition.

"Official tuberculin test" means a test for tuberculosis conducted and reported by approved personnel in accordance with this Subchapter and the USDA Uniform Methods and Rules for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test, gamma interferon test, or any other test that is approved by the United States Department of Agriculture (USDA).

"Permit" means a VS 127 issued by an authorized agent of the State Board of Agriculture, a representative of USDA APHIS Veterinary Services or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter.

"Reactor" means any animal that may be classified as a reactor by the designated epidemiologist based on supplemental diagnostic tests results from approved laboratories or other information.

"Restricted feedlot" means ~~a feedlot that operates as a terminal feeding facility only, does not engage in grazing or backgrounding of cattle or bison, has official identification of all animals, can trace all animals to the state of origin, and makes all records available to the Department upon request~~a feedlot that has the ability to manage higher risk cattle in such a way as to assure they do not expose cattle in the feedlot that will not go directly to slaughter. A restricted feedlot must agree to identify high risk cattle and handle them in such a way as to prevent the exposure of other cattle and trace the high risk cattle in case of a disease traceback.

"Rodeo bulls" means sexually intact male cattle kept for the purposes of performances at rodeos, bucking events, exhibition purposes, or for breeding to produce rodeo bulls.

"Suspect" means any cattle, bison, or goats that show a response to the caudal fold tuberculin test and are not classified as reactors, and cattle, bison, or goats that are classified suspects by a comparative cervical test.

"Tuberculin" means a product that is approved by and produced under USDA license for injection into cattle, bison, or goats for the purpose of detecting bovine tuberculosis.

PART 7. IMPORT REQUIREMENTS

35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone

(a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

(b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.

~~(c) All dairy steers and spayed heifers shall be accompanied by a certificate of veterinary inspection.~~

(~~d~~c) All ~~sexually intact~~ dairy cattle ~~under two (2) months of age~~ shall be individually identified by official identification and accompanied by a certificate of veterinary inspection.

~~(e) All sexually intact dairy cattle six (6) months of age and older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:~~

(1) Originate from a tuberculosis free herd; ~~or~~

(2) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection~~.~~; or

(3) Be sent directly to slaughter or to a restricted feedlot.

~~(f) Beef cattle under the age of eighteen (18) months and all spayed heifers or steers shall be accompanied by a certificate of veterinary inspection.~~

~~(g) All other beef cattle eighteen (18) months or older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:~~

~~(1) Originate from a tuberculosis free state;~~

~~(2) Originate from a tuberculosis free herd; or~~

~~(3) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.~~

~~(h) Any cattle that do not meet these testing requirements shall be tagged as slaughter only and sent either directly to slaughter or to a restricted feedlot.~~

35:15-40-92. Importation of Mexican origin steers and spayed heifers

(a) Mexican origin steers and spayed heifers imported as stocker, feeder, slaughter animals may enter Oklahoma provided they test negative for tuberculosis in accordance with the Norma Official Mexicana (NOM) within sixty (60) days prior to entry into Oklahoma and they obtain a telephone entry permit prior to entering Oklahoma providing the following information:

(1) A certificate of veterinary inspection containing the individual identification and all tag numbers, tuberculosis testing information, statement that the animals are "Mexican Origin Cattle," and complete consignor or consignee information including telephone numbers; and

(2) A VS Form 17-30.

(3) Cattle from states in Mexico that meet USDA Tuberculosis Free standards are not required to have a negative NOM tuberculosis test.

(b) Mexican origin steers and spayed heifers and any commingled cattle shall not be diverted from the stocker, feeder, slaughter channel.

(c) Mexican origin steers and spayed heifers shall not be commingled with any cattle other than stocker, feeder, slaughter cattle.

(d) Holstein and Holstein-cross steers and spayed heifers from Mexico shall not enter Oklahoma regardless of test history.

(e) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock prior to entry into Oklahoma shall obtain an entry permit, provide individual identification and all tag numbers, and be accompanied by a negative tuberculosis test that meets one of the following:

(1) Performed by ~~an~~a U.S. accredited veterinarian within the previous 365 days; or

(2) Performed in accordance with the Norma Official Mexicana (NOM), the animal is accompanied by a VS 17-30, and the animal is quarantined upon entry into Oklahoma until retested by ~~an~~a U.S. accredited veterinarian within sixty (60) to one hundred twenty (120) days of the original tuberculosis test.

(f) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock moving within the state shall meet the following requirements:

(1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days;

(2) Be identified with an official identification; and

(3) There is no change of ownership since the date of the last official test.

(g) No sexually intact Mexican origin rodeo stock shall enter Oklahoma.

(h) The official in charge of an event shall be responsible for verifying that all Mexican origin cattle utilized as rodeo stock entering any exhibition meet all testing requirements.

(1) The official in charge of an event shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.

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

(i) Any official in charge of an event who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

SUBCHAPTER 42. TUBERCULOSIS ERADICATION IN CERVIDAE

PART 7. INCORPORATIONS BY ~~REFERNCE~~REFERENCE

35:15-42-54. Incorporation by reference of federal regulations

Title 9, sections 77.20 through 77.41 of the Code of Federal Regulations (~~2012~~2013 Revision) and the requirements contained therein pertaining to the eradication of tuberculosis in cervidae, unless otherwise specified, adopted and incorporated by reference in their entirety.

SUBCHAPTER 44. FARMED CERVIDAE

35:15-44-8. Fencing and facility requirements

The perimeter of each new farmed cervidae facility shall be an eight (8) foot game or high tensile fence designed in a manner to prevent ingress and egress of cervidae.

(1) Facilities in operation prior to the effective date of the Oklahoma Farmed Cervidae Act shall maintain fencing sufficient to prevent ingress and egress of cervidae.

(2) The owner or operator shall install eight (8) foot game or high tensile fence for any new perimeter fencing at a new or existing facility.

(3) All cervidae shall be provided adequate food, water, and space.

(4) All cervidae shall be provided adequate natural or manmade shelter to provide shade at all times.

(5) Pens shall not have excessive standing water, mud, or other pen conditions which negatively impact animal well-being.

(6) Any licensee that is non-compliant with the aforementioned rules, shall be subject to a review by a committee comprised of a producer from each Oklahoma farmed

cervidae organization, the state veterinarian, and the Department farmed cervidae coordinator. The committee's decision shall be implemented by the Department.

35:15-44-10. Slaughter requirements

(a) Licensees may slaughter their own farmed cervidae for personal or noncommercial consumption, but in no case shall someone other than the licensee be allowed to ~~hunt or shoot~~ kill the farmed cervidae.

(b) Any person holding meat or antlers with attached skull plates from a farmed cervidae facility that obtained it through noncommercial methods shall hold a receipt from the licensee of the farmed cervidae facility for so long as they hold the meat or antlers with attached skull plates.

35:15-44-20. Animal identification requirements

(a) All cervids twelve (12) months or older shall be individually identified by at least one form of identification approved by the Department. Non-breeding hunting animals that are natural additions and do not participate in any disease monitoring programs shall be exempt from this identification requirement.

(b) All cervids of any age shall be individually identified by at least one form of identification prior to movement from the original herd premises unless being moved directly to a licensed commercial hunting area.

35:15-44-21. Registration of Exotic Cervidae Species

Any person owning, maintaining, or possessing any species in the cervidae family, other than whitetail deer, mule deer, elk, and red deer shall submit a registration form to the Department. This form shall contain the owner's contact information, species owned, and location of the animals. Facility licensing shall not be required of these species. Any person or facility already licensed by the Department, the Oklahoma Department of Wildlife Conservation, or Animal Care Division of the United States Department of Agriculture shall be exempt from registration.

SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDS

PART 3. HERD CERTIFICATION STANDARDS

35:15-47-6. Minimum requirements for herd certification

(a) Regulations of the United States Department of Agriculture concerning the control of CWD found at 9 CFR Part 55 (~~2012~~2013 Revision) are adopted by reference.

(b) The Board shall issue a quarantine on any herd that contained a CWD positive cervid. The quarantined herd shall not participate in the herd certification program until all herd plan requirements are completed.

(c) All deaths of cervids twelve (12) months of age or older, regardless of cause of death, shall have the obex and medial retropharyngeal lymph nodes samples and submitted to an approved laboratory by a certified CWD sample collector. CWD sample collectors shall submit written test results to the Department within seven (7) days after receiving said test results from the laboratory.

(d) If eligible animal deaths are not tested due to a missed sample, improper sample, or untestable sample, an additional live animal over twelve (12) months of age shall be sacrificed for sampling.

(e) The State Veterinarian may relax the minimum requirements for herd certification for extraordinary circumstances.

(f) Herd owners shall report any animals displaying clinical signs of CWD, which may include but are not limited to, weight loss, behavioral changes, excessive salivation, increased drinking and urination, and depression.

PART 7. INTERSTATE MOVEMENT REQUIREMENTS

35:15-47-18. Minimum CWD requirements for interstate movement of cervids

(a) Regulations of the United States Department of Agriculture concerning the interstate movement of cervidae found at 9 CFR Part 81 (~~2012~~2013 Revision) are adopted by reference.

(b) Caribou and Reindeer shall meet all interstate movement regulations that apply to cervidae found at 9 CFR Part 81 (~~2012~~2013 Revision).

[OAR Docket #14-471; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. ~~COMBINED PESTICIDE~~CONSUMER PROTECTION

[OAR Docket #14-474]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 17. Combined Pesticide
Part 1. Commercial and Non-Commercial Categories of Pesticide Application
35:30-17-1 [AMENDED]
Part 3. Certification, Conduct of Examinations, and Recertification
35:30-17-5 [AMENDED]
35:30-17-6 [AMENDED]
Part 8. Pesticide Registrations and Permits
35:30-17-17 [AMENDED]
Subchapter 29. Fertilizer
Part 5. Licenses and Complaints
35:30-29-51 [AMENDED]
Subchapter 37. Nursery Stock Sales
35:30-37-8 [AMENDED]
Subchapter 45. Scrap Metal Dealers [NEW]
35:30-45-1 [NEW]
35:30-45-2 [NEW]
35:30-45-3 [NEW]
35:30-45-4 [NEW]
35:30-45-5 [NEW]
35:30-45-6 [NEW]
35:30-45-7 [NEW]

35:30-45-8 [NEW]
35:30-45-9 [NEW]
35:30-45-10 [NEW]
35:30-45-11 [NEW]
35:30-45-12 [NEW]
35:30-45-13 [NEW]
35:30-45-14 [NEW]

AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4, 3-32.1 et seq., 3-81 et seq., and 8-77.1 et seq.; and 59 O.S. § 1421 et seq.; Oklahoma State Board of Agriculture

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 3, 2014

PUBLIC HEARING:
January 3, 2014

ADOPTION:
January 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 45. Scrap Metal Dealers [NEW]
35:30-45-1 [NEW]
35:30-45-2 [NEW]
35:30-45-3 [NEW]
35:30-45-4 [NEW]
35:30-45-5 [NEW]
35:30-45-6 [NEW]
35:30-45-7 [NEW]
35:30-45-8 [NEW]
35:30-45-9 [NEW]
35:30-45-10 [NEW]
35:30-45-11 [NEW]
35:30-45-12 [NEW]
35:30-45-13 [NEW]
35:30-45-14 [NEW]

Gubernatorial approval:
August 6, 2013

Register publication:
31 Ok Reg 41

Docket number:
13-1202

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed rule changes rename Chapter 30 as "Consumer Protection", update and clarify pesticide regulations, correct fees associated with the distribution and sale of fertilizer and reset such fees to the amount required by statute at 2 O.S. § 8-77.7(A), revise the expiration dates associated with nursery stock sales, and make emergency scrap metal rules permanent.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 1. COMMERCIAL AND NON-COMMERCIAL CATEGORIES OF PESTICIDE APPLICATION

35:30-17-1. License Categories

License categories of pesticide application are as follows:

(1) 1a: Agricultural Plant Category - Includes the application of pesticides to agricultural crops, agricultural grassland, and noncrop agricultural land. This category does not include the production of trees for any purpose.

(2) 1b: Agricultural Animal Category - Includes the application of pesticides to animals, including those in feedlots, sales barns, egg production facilities and the animal holding facilities. This excludes Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice.

(3) 2: Forest Pest Control Category - Includes the application of pesticides in forest nurseries, forest seed production areas, trees grown for the production of forestry products, and other forest areas.

(4) 3a: Ornamental and Turf Outdoor Pest Control Category - Includes the application of pesticides within residential or business areas to lawns, ornamental trees and shrubs, including park areas, golf courses, and other recreational areas, except as defined under licensed categories 2, 3b-c, 7, and 8.

(5) 3b: Interiorscape Category - Includes the application of pesticides to interior plantings inside structures (i.e. hospitals, buildings, shopping malls, etc.) excluding residential structures with the exception of common use areas of multiple residential structures (i.e. foyers, atriums, indoor swimming pools, management offices, meeting rooms, etc.) except as defined under licensed categories 3c, 7, and 8.

(6) 3c: Nursery/Greenhouse Category - Includes the application of pesticides in nursery and greenhouse facilities and to fields except as defined under licensed categories 2 (Forest Pest Control).

(7) 4: Seed Treatment Category - Includes the application of pesticides to seed for any purpose.

(8) 5: Aquatic Pest Control Category - Includes the application of pesticides to standing or running water in man-made or natural impoundments, streams, etc. This excludes public health activities (e.g. mosquito control) and water in totally closed systems.

(9) 6: Right-of-Way Category - Includes the application of pesticides for public road maintenance, power line maintenance, railroad right-of-way, storage tank areas, and other similar areas.

(10) 7a: General Pest Control Category - Includes the application of pesticides within and immediately adjacent to a structure, except for fumigation activities, control of termites and other wood destroying organisms in or on a structure, and control of birds or predatory animals. "Immediately adjacent to a structure" means not further

than three (3) feet from the structure. Applications to restaurants are permitted in this category.

(11) 7b: Structural Pest Control Category - The application of pesticides for the purpose of controlling termites and other wood destroying organisms in or on a structure, including wood borers and fungus.

(12) 7c: Fumigation Category - The use of liberated gas within a structure or storage area, to include railcars, ships, etc.

(13) 8: Public Health Pest Control Category - The application of pesticides by local, state, federal or other governmental employees or commercial pesticide applicators in public health programs, to include municipal and other areawide mosquito control programs.

(14) 9: Regulatory Pest Control Category - Includes the application of pesticides by state, federal or other government employees for the control of designated regulated pests.

(15) 10: Demonstration and Research Pest Control Category - Includes persons engaged in the application of pesticides for scientific research or for the purpose of demonstrating pesticide products or methods of application.

(16) ~~11~~11a: Bird and ~~Predatory~~Vertebrate Animal Pests Control Category - The application of pesticides for the control of birds or ~~predatory~~vertebrate animals pests and subject to the rules of the Oklahoma Department of Wildlife Conservation and the Wildlife Services Division of the Board.

(17) 11b: Predatory Animal Control Category - The application of pesticides for the control of predatory animals and subject to the rules of the Oklahoma Department of Wildlife Conservation, and the Wildlife Services Division of the Board.

(~~17~~18) 12a: Pressure Facility Timber Treating Category - Includes the treatment of wood in a pressure treating facility by the impregnation or application of chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~18~~19) 12b: Ground Line Utility Pole Timber Treating Category - Includes the ground line treatment of utility poles with chemical solutions for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~19~~20) 12c: Construction Industry Timber Treating Category - Includes the application of chemical solutions to wood members of structure which will be covered by paint, varnish, or similar covering for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~20~~21) 12d: Home Owner Timber Treating Category - Includes the application of chemical solutions to wood constructions around the home, including decks, for the purpose of retarding or preventing deterioration or destruction by insects, fungi, bacteria, or other wood destroying organisms.

(~~21~~22) 13: Specialty Category - Includes any area of pesticide application not defined in Category 1 thru 12 when the pesticide to be used is classified as restricted.

PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION

35:30-17-5. Conduct of examinations

(a) Written examinations may be conducted at locations within Oklahoma designated by the Board for groups of five (5) or more applicators, provided that no less than ten (10) examinations shall be administered.

(b) Other examination locations, dates, and times shall be at the discretion of the Board upon request. A written request shall be made a minimum of thirty (30) calendar days in advance of the desired examination date.

~~(c) Written or practical examinations shall not exceed one in any thirty (30) calendar day period per person.~~

35:30-17-6. Recertification

(a) Each certified applicator shall seek recertification every five (5) years.

(b) A certified applicator shall either pass a written examination or earn a specified number of Continuing Education Units (CEU) approved by the Department to successfully complete recertification. Approximately one (1) hour of education shall be the equivalent of one (1) CEU. The CEU requirements for each category are as follows:

(1) 1a - Agricultural Plant:
  (A) Total in five years - 20 CEU
  (B) Maximum in any one year - 10 CEU

(2) 1b - Agricultural Animal:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year - 2 CEU

(3) 2 - Forest:
  (A) Total in five years - 10 CEU
  (B) Maximum in any one year - 5 CEU

(4) 3a - Ornamental and Turf Outdoor:
  (A) Total in five years - 20 CEU
  (B) Maximum in any one year - 10 CEU

(5) 3b - Interiorscape:
  (A) Total in five years - 10 CEU
  (B) Maximum in any one year - 5 CEU

(6) 3c - Nursery/Greenhouse:
  (A) Total in five years - 15 CEU
  (B) Maximum in any one year - 7 CEU

(7) 4 - Seed Treatment:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year 2 CEU

(8) 5 - Aquatic:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year 2 CEU

(9) 6 - Right-of-Way:
  (A) Total in five years - 15 CEU
  (B) Maximum in any one year 7 CEU

(10) 7a - General Pest:
  (A) Total in five years - 20 CEU

(B) Maximum in one year - 10 CEU

(11) 7b - Structural Pest:

(A) Total in five years - 20 CEU

(B) Maximum in one year - 10 CEU

(12) 7c - Fumigation:

(A) Total in five years - 10 CEU

(B) Maximum in one year - 5 CEU

(13) 7d - Food Processing:

(A) Total in five years - 15 CEU

(B) Maximum in one year - 7 CEU

(14) 8 - Public Health:

(A) Total in five years - 15 CEU

(B) Maximum in one year - 7 CEU

(15) 9 - Regulatory:

(A) Total in five years - 10 CEU

(B) Maximum in one year - 5 CEU

(16) 10 - Demonstration & Research in app. Category:

(A) Total in five years - 20 CEU

(B) Maximum in one year - 10 CEU

(17) ~~11~~11a - Bird &~~Predatory~~Vertebrate Animal Pest:

(A) Total in five years - 5 CEU

(B) Maximum in one year - 2 CEU

(18) 11b - Predatory Animal

(A) Total in five years - 5 CEU

(B) Maximum in one year - 2 CEU

(~~18~~19) 12 - Timber Treating (all subcategories):

(A) Total in five years - 5 CEU

(B) Maximum in one year - 2 CEU

(~~19~~20) 13 - Specialty Category:

(A) Total in five years - 5 CEU

(B) Maximum in any one year - 2 CEU

(~~20~~21) 14 - Aerial:

(A) Total in five years - 5 CEU

(B) Maximum in any one year - 2 CEU

(c) No more than one-half (1/2) of the total credit units shall be accepted for any one (1) calendar year.

(1) Credit units shall be obtained in at least three (3) of the five (5) years, in any combination, so that the total number obtained equals or exceeds the five (5) year requirement.

(2) The continuing education units may be prorated for any applicator whose recertification period is less than five (5) years.

(3) The Department may allow a CEU to be credited to more than one (1) category.

(d) The CEU shall be structured to provide the following information over the five (5) year period:

(1) Laws and rules;

(2) Pesticides (formulations, registration, labeling and label comprehension, handling and storage, toxicity, and hazards);

(3) Application equipment and calibration;

(4) Pests and IPM;

(5) Identification of hazardous areas;

(6) Drift prevention;

(7) Endangered species;

(8) Groundwater; and

(9) Worker protection.

(e) Any person may request approval of an education program as CEU.

(1) The request for approval shall include the following:

(A) A list of proposed topics including a description of the content and their relative value for meeting the standards of continuing certification;

(B) A list of speakers and their qualifications; and

(C) Method used to verify attendance and evaluate the progress of participants.

(2) The Department and the Oklahoma State University Pesticide Coordinator shall review the request for approval to determine if it meets the criteria of CEU.

(A) If the education program is approved for CEU, the person requesting approval shall be notified of the number of assigned CEU.

(B) The person requesting approval may appeal the number of assigned CEU to a three-person review committee with a representative from each of the following:

(i) Oklahoma State University;

(ii) the Department; and

(iii) certified applicators.

PART 8. PESTICIDE REGISTRATIONS AND PERMITS

35:30-17-17. Pesticide registrations

(a) Pesticide registrations shall be issued for a period of one (1) year and shall expire annually as follows:

(1) Companies whose names begins with the letters A, B, C, D, E, & F shall expire on March 31st of each year (group 1).

(2) Companies whose names begins with the letters G, H, I, J, K, L, & M shall expire on June 30th of each year (group 2).

(3) Companies whose names begins with the letters N, O, P, Q, R, & S shall expire on September 30th of each year (group 3).

(4) Companies whose names begins with the letters T, U, V, W, X, Y, & Z shall expire on December 31st of each year (group 4).

(b) Pesticide registration applications must be received no later than the fifteenth day of the month following the date of expiration.

(c) Unless provided otherwise, registrants shall be responsible for the registration of pesticides and devices and may be sanctioned by the Department if unregistered pesticides or devices are distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate or interstate commerce by registrants, distributors or dealers.

(d) Pesticides and devices classified under sections 24(c) or 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. shall be registered with the Department and shall comply with all registration requirements established by the Department.

(e) The Department may waive the annual pesticide registration fee when granting experimental use permits. Before issuing an experimental use permit, the Department may require the registrant to provide a complete copy of the use plan, label, contact information for the person responsible in Oklahoma and any other information required for pesticide or device registration.

(f) Registrants shall submit a laboratory standard and an analytical method for each new pesticide product registered for which either/or both have not previously been submitted or has changed since the previous submission. Submissions shall be made to: Supervisor, ODAFF Pesticide Laboratory, 2800, N. Lincoln Blvd. Oklahoma City, Oklahoma.

SUBCHAPTER 29. FERTILIZER

PART 5. LICENSES AND COMPLAINTS

35:30-29-51. Fertilizer license and schedule of fertilizer fees

(a) Any person engaged in the distribution or sale of fertilizer shall obtain a license.

(b) The Board shall not issue a fertilizer license to any bulk dry, liquid, or anhydrous ammonia facility unless the following are approved by the Board:

(1) Completed fertilizer license application.

(2) A completed fertilizer facility application package shall be submitted in a format approved by the Board.

(3) Site inspection performed by the Board prior to construction.

(4) Final construction of the facility.

(5) Completion of all other conditions required by the Board.

(c) The Board shall not issue and may revoke any fertilizer registration if the Board determines:

(1) The nutrient value of the product or substance has inadequate plant food content.

(2) The registration is for the primary purpose of disposal of the product or substance.

(d) Fertilizer license renewal applications received thirty (30) or more days after the renewal date shall result in the Board charging a penalty equal and in addition to the cost of the license.

(e) Fees for the fertilizer program shall be as follows:

(1) The annual fee for persons operating a business engaged in the distribution or sale of a ~~commercial~~ fertilizer shall be Fifty Dollars ($50.00) and expire on December 31 of each year.

(2) An inspection fee of ~~sixty-five ($0.65) cents~~one dollar ($1.00) per ton of which ~~thirty cents ($0.30)~~fifty cents ($0.50) per ton shall be forwarded directly to a special Soil Fertility Research Account in the ~~Plant and Soil Sciences~~ Department of Plant and Soil Sciences of the Division of Agricultural Sciences and Natural Resources at Oklahoma State University for the ~~sole~~ purpose of conducting soil fertility research and extension involving efficient fertilizer use for agronomic crops and forages and groundwater and surface water protection from plant food nutrients~~,~~. Oklahoma State University shall present an annual report to the Agriculture Committees of the Legislature on the use of the special Soil Fertility Research Account Fund.

(3) Each registrant distributing ~~commercial~~ fertilizer in this state shall file with the Board not later than the last day of January and July of each year, a semiannual statement under oath, setting forth the number of net tons of ~~commercial~~ fertilizer distributed during the preceding ~~three (3)~~six (6) calendar months. The inspection fee and tonnage report shall be due within thirty (30) days following the close of the filing period and upon return of the statement the licensee shall pay the inspection fee. If no fertilizer was sold or distributed in this state for the ~~quarter~~semiannual period, the registrant shall submit a statement reflecting that information and shall remit a minimum fee of ~~Ten Dollars~~ten dollars ($10.00). If the inspection fee and tonnage report is not filed and the payment of inspection fee is not made within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the inspection fee due or a minimum ~~Ten Dollars~~ of ten dollars ($10.00), shall be assessed and added to the amount due.

(4) If the Board finds any deficient inspection fees due as a result of an audit of the records of any person subject to the provisions of the Oklahoma Fertilizer Act, the Board shall assess a penalty fee of ten percent (10%) of the amount due, with a maximum not to exceed ~~Two Thousand Dollars~~ two thousand dollars ($2,000.00) or a minimum of ~~One Hundred Dollars~~one hundred dollars ($100.00) whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment shall be made within thirty (30) days of notice of the deficiency.

(5) Annual registrations for specialty fertilizer products sold in packages of less than thirty (30) pounds shall pay a ~~One hundred Dollar~~one hundred dollar ($100.00) registration fee for each product. Specialty fertilizer product registrations shall expire on June 30 of each year. The penalty for failure to register any specialty fertilizer product shall be ~~One hundred Dollars~~one hundred dollars ($100.00) per product and shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

SUBCHAPTER 37. NURSERY STOCK SALES

35:30-37-8. Expiration dates and late fees

(a) ~~All growers, dealers, and landscapers license shall be issued for one (1)year and shall expire annually as follows:~~All dealer and landscaper licenses shall expire annually on December 31st.

~~(1) Companies whose name begins with a symbol or number and the letters A, B, C, D, E, & F and spring~~

~~sales only companies shall expire on March 31st each year (Group 1);~~

~~(2) Companies whose name begins with the letters G, H, I, J, K, L, & M, shall expire on June 30th each year (Group 2);~~

~~(3) Companies whose name begins with the letters N, O, P, Q, R, & S shall expire on September 30th each year (Group 3); and~~

~~(4) Companies whose name begins with the letters T, U, V, W, X, Y, & Z shall expire on December 31st each year (Group 4).~~

(b) ~~For purposes of implementing this rule, because current licenses expire on October 31st each calendar year, during the first year of implementation companies shall be charged a license fee for the following amount:~~All grower licenses shall expire annually on September 30th.

~~(1) Group 1 shall pay a license fee in the amount of 125% of the yearly fee. This will apply 25% through March 31st and 100% through the following twelve (12) month period;~~

~~(2) Group 2 shall pay a license fee in the amount of 150% of the yearly fee. This will apply 50% through June 30th and 100% through the following twelve (12) month period;~~

~~(3) Group 3 shall pay a license fee in the amount of 75% of the yearly fee. This will apply 75% through September 30th at which time they shall be charged 100% for the following twelve (12) month period; and~~

~~(4) Group 4 will have no change to the license fee process. They shall pay a license fee in the amount of 100% of the yearly fee.~~

(c) A late fee equal to the amount of the license fee shall be assessed in addition to the license fee and shall be due after the 15th day of the month following the renewal month.

(d) As used in this subchapter, the term "grower" means a person engaged in the production of nursery stock from cuttings, plugs, seeds, or transplants for wholesale or retail sale.

SUBCHAPTER 45. SCRAP METAL DEALERS

35:30-45-1. Purpose

These rules establish regulation and licensing requirements for scrap metal dealers doing business in Oklahoma pursuant to the Oklahoma Agricultural Code at 2 O.S. § 2-4(A)(33) and Oklahoma Scrap Metal Dealers Act at 59 O.S. §§ 1421 et seq. The Oklahoma Scrap Metal Dealers Act shall be administered by the Department and the State Board of Agriculture and shall conform to the Administrative Procedures Act, 75 O.S. §§ 250 et seq., to the Oklahoma Agricultural Code 2 O.S. §§ 1-1 et seq., and to the procedural rules promulgated by the State Board of Agriculture found in Title 35 of the Oklahoma Administrative Code.

35:30-45-2. Definitions

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

"Department" means the Oklahoma Department of Agriculture, Food, and Forestry and its employees, officers and divisions.

"Investigative fee" means the investigative fee of $100 charged by the Department for conducting an investigation of the applicant upon receipt of an initial application for a license as authorized by 59 O.S. § 1429(C).

"License" means a scrap metal dealers license.

"License fee" means the application fee of $100 charged by the Department for processing an initial application for a license as authorized by 59 O.S. § 1429(C) and the renewal fee of $100 charged by the Department for processing an application for the renewal of a license as authorized by 59 O.S. § 1429(H).

"Oklahoma Scrap Metal Dealers Act" means the Oklahoma Scrap Metal Dealers Act, codified at 59 O.S. §§ 1421 et seq.

"Scrap metal" means any copper material, aluminum material except aluminum beverage cans, or any item listed in Section 1424 of the Oklahoma Scrap Metal Dealers Act, offered for sale or resale or purchased by any person, firm, or corporation.

"Scrap metal dealer" means any person, firm or corporation being an owner, keeper or proprietor of a retail or wholesale business which buys, sells, salvages, processes or otherwise handles scrap metal materials regulated by the provisions of the Oklahoma Scrap Metal Dealers Act.

"Yard" means the place where any scrap metal dealer stores scrap metal materials or keeps such materials for purposes of sale.

35:30-45-3. License required

(a) No person or entity shall act, offer to act, or hold himself or herself out as a scrap metal dealer in this state unless the person holds a license obtained from the Department.

(b) Any person or entity who intends to become a scrap metal dealer shall obtain a license prior to operation.

(c) A separate license shall be required for each yard.

(d) The license shall begin on November 1 or on the date of issuance and shall expire on October 31 of each calendar year.

(e) If the scrap metal dealer is a firm, corporation, or other legal entity; the scrap metal dealer shall designate a scrap metal dealer's representative to act as a contact person for the agency. The scrap metal dealer's representative shall be a natural person with the legal authority to bind the entity in a contract.

(f) Any person or entity who does not meet the definition of a scrap metal dealer but chooses to voluntarily obtain a license shall comply with all rules as though they do meet the definition of a scrap metal dealer.

35:30-45-4. Initial license application

(a) The Department shall issue a license to each person or entity who:

(1) Complies with the requirements of the Oklahoma Scrap Metal Dealers Act;

(2) Applies to the Department using the form prescribed by the Department; and

(3) Pays the license fee, investigative fee, and charges related a national criminal history check.

(b) Each yard shall be licensed separately and shall require the submission of a separate application, along with payment of related fees and charges.

(c) The applicant shall submit a completed license application containing the following information:

(1) If the applicant is an individual: the applicant's full name, telephone and email contact information, and place of residence;

(2) If the applicant is a firm, corporation, or other legal entity;

(A) The scrap metal dealer representative's full name, telephone and email contact information, residential address, and position with the entity, and

(B) The entity's full name as registered with the Oklahoma Secretary of State, any trade names, and the name and mailing address of the entity's registered service agent;

(3) The address of the yard where the applicant conducts or intends to conduct business or, if the yard does not have a physical address, driving directions from the nearest municipality and a legal description of the yard;

(4) Proof of ownership, a contract, or lease agreement that permits the applicant to engage in business as a scrap metal dealer at the yard described in the license application;

(5) Proof of a dedicated telephone line for the yard;

(6) Proof of a general liability insurance policy for the yard verifying insurance in an amount not less than $500,000;

(7) Proof of a current discharge permit for the yard issued pursuant to the provisions of the Oklahoma Pollutant Discharge Elimination System Act;

(8) The sales tax identification number for the applicant;

(9) Whether the applicant has ever had a license refused, revoked, or suspended;

(10) Whether the applicant has been previously convicted of, or pled guilty or nolo contendere to any felony or misdemeanor, the court or governmental entity in which the matter was adjudicated, a description of the charges, the date of the conviction, and the sentence received;

(11) An Affidavit of Lawful Presence in the United States of America, as provided under 56 O.S. § 71;

(12) A notarized statement swearing that the information submitted on the application is true and correct;

(13) Any other relevant information required by the Department.

(d) In addition to the application, each applicant shall submit a full set of fingerprints and a photograph to the Department. The fingerprints and photograph shall be used for a national criminal history check as provided in 74 O.S. § 150.9. The applicant shall pay for fingerprints, photographs, and the national criminal history records check separately from the license fee and investigative fee charged by the Department.

(e) If the applicant submits an incomplete application or the Department requests additional information, the Department shall notify the applicant that the application is incomplete and identify the information on the application that is incomplete or needs additional information. The applicant may submit additional information within twenty (20) working days to supplement and complete the application. If the applicant does not respond to the request for additional information in a timely manner, the application shall be denied.

(f) The applicant may withdraw its application from consideration at any time.

(g) An applicant whose application is denied due to insufficient information provided by the applicant or the withdrawal of the application may submit a new application. Any fees and charges paid by the applicant in connection with the denied or withdrawn application shall not be applied to the processing of a new application.

35:30-45-5. License renewal application

(a) A scrap metal dealer may renew a license by:

(1) Complies with the requirements of the Oklahoma Scrap Metal Dealers Act;

(2) Applies to the Department using the form prescribed by the Department; and

(3) Pays the license fee and charges related a national criminal history check.

(b) Any scrap metal dealer who fails to timely apply for a renewal in a manner prescribed by the Department, and whose license has expired, may not engage in activities that require a license.

(c) Not later than sixty (60) days before the expiration of the license, the Department shall send written notice of the impending license expiration to the scrap metal dealer at the last known address according to the records of the Department.

(d) A license shall not be valid after the expiration date. If the scrap metal dealer submits an application for license renewal after the license has expired, the application shall be considered an initial application and shall require the payment of all fees and charges associated with the submission of an initial application.

35:30-45-6. Fees and charges

(a) The Department shall charge the following nonrefundable license fees:

(1) License fee for an initial application: $100.00;

(2) Investigative fee for an initial application: $100.00;

(3) License fee for a renewal application: $100.00; and

(4) Any expenses by the Department relating to the national criminal history check.

(b) Expenses of the Department relating to the national criminal history check shall be paid by the applicant.

(c) The Department shall not be required to obtain nor the applicant required to pay charges for more than one national criminal history check if the Department is processing several applications or renewals simultaneously for the same applicant and all pertinent information is identical.

(d) If a national criminal history check was conducted for the Department in relation to an initial application or renewal and the resulting report is less than six (6) months old; the Department may use the older report and waive any requirement that requires the applicant submit to a new national criminal history check as a condition for an initial license or renewal.

35:30-45-7. Display of license

A scrap metal dealer shall prominently display a copy of the license at the yard.

35:30-45-8. Changes of information

A scrap metal dealer shall notify the Department in writing not later than thirty (30) days after the date any change occurs in the address, name, management, substantial control, or ownership of the business or operation.

35:30-45-9. Purchases, sales and records

A scrap metal dealer shall conduct business and maintain records of all business transactions in a manner consistent with the provisions of the Oklahoma Scrap Metal Dealers Act.

35:30-45-10. Complaints

(a) On receipt of a valid written complaint alleging a violation of the Oklahoma Scrap Metal Dealers Act, an authorized agent of the Department, a local law enforcement authority, or an inspector designated by the Department may investigate the alleged violation.

(b) Any person may submit a written and signed complaint to the Department alleging a violation of the Oklahoma Scrap Metal Dealers Act or rules promulgated thereunder.

(c) The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, and legal remedies appropriate to the circumstances.

35:30-45-11. Inspections

The Department may inspect any licensed business location, including but not limited to, the premises and the books and records of the licensed Scrap Metal Dealer.

35:30-45-12. Grounds for denial, suspension, or revocation of a license

The Department may deny, suspend, cancel, revoke, or refuse reissuance of a license of any applicant or scrap metal dealer who:

(1) Violates the Oklahoma Scrap Metal Dealers Act;

(2) Violates or fails to follow administrative rules adopted by the Department;

(3) Engages in fraud or deceit in obtaining or renewing a license;

(4) Acts as a scrap metal dealer in this state without a valid license;

(5) Aids or abets another person in acting as a scrap metal dealer without a license;

(6) Is convicted of a crime involving moral turpitude or dishonesty; or

(7) Is convicted of a felony punishable under the Oklahoma Racketeer-Influenced and Corrupt Organizations Act.

35:30-45-13. Sanctions for misconduct

If the Department determines that a scrap metal dealer has violated the Oklahoma Scrap Metal Dealers Act, Department rules, or other applicable legal authorities, the Department may

(1) Refer the matter to the appropriate law enforcement authority for criminal prosecution; and/or

(2) Deny, suspend, cancel, revoke, or refuse reissuance of a license or licenses held by the scrap metal dealer after an administrative hearing conducted in a manner consistent with OAC 35:1-9-1 et seq.

35:30-45-14. Other requirements or acts prohibited

Scrap metal dealers shall comply with all applicable state and federal laws, municipal ordinances, and other reasonable requirements of the Department.

[OAR Docket #14-474; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 37. FOOD SAFETY

[OAR Docket #14-475]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Meat Inspection
Part 1. General Provisions
35:37-3-1 [AMENDED]
35:37-3-3 [AMENDED]
Subchapter 5. Poultry Products Inspection
35:37-5-1 [AMENDED]
35:37-5-2 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4; 6-181 et seq., and 6-251 et seq.; Oklahoma State Board of Agriculture
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
Incorporated Standards:
Title 9 of the Code of Federal Regulations (CFR) (2013 Revision), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442, and 500.
Incorporating Rules:
35:37-3-1
25:37-3-3
35:37-5-1
35:37-5-2
Availability:
See contact person below.
ANALYSIS:
The rule amendments update references to the Code of Federal Regulations.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2012~~2013 Revision), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2 (2013 Revision); 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; 392; 439; and 590 (2011 Revision).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2012~~2013 Revision), Parts 381; 416; 417; 418; 424; 430; 441; 442; and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

(b) All words and terms defined or used in the federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) **"Act"** means the Oklahoma Poultry Products Inspection Act.

(2) **"Director"** means the Director of Meat Inspection.

(3) **"Poultry"** means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).

(4) **"Poultry product"** means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part that can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(5) **"Poultry byproduct"** means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381; 416; 417; 418; 424; 441; 442; and 500), (~~2012~~2013 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

(1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;

(2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry and poultry products do not move in commerce. Poultry producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry producer;

(4) The producers submit a certificate of registration to the Board;

(5) The poultry is healthy, the poultry is slaughtered and processed under sanitary standards, practices, and procedures that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product bears a label that lists the customer's name, the producer's name, and the following statement, "This poultry product has not been inspected and passed";

(6) The poultry is sold directly to the household consumer and transported by either the household consumer or the poultry producer without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation; and

(7) The poultry producers, allow an authorized agent of the Board access to their facilities and an opportunity to examine records at all reasonable times upon notice.

[OAR Docket #14-475; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 40. MARKET DEVELOPMENT

[OAR Docket #14-477]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Agritourism [NEW]
35:40-17-1 [NEW]
35:40-17-2 [NEW]
35:40-17-3 [NEW]
35:40-17-4 [NEW]
35:40-17-5 [NEW]
35:40-17-6 [NEW]
AUTHORITY:
OKLA. CONST., Article 6, Section 31; 2 O.S. § 2-4 and 5-12; Oklahoma State board of Agriculture
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The new rules establish eligibility and registration requirements for agritourism venues seeking to participate in the Oklahoma Agritourism Program as described in 2 O.S. § 5-12.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. AGRITOURISM

35:40-17-1. Purpose

The purpose of the Agritourism Program is to stimulate economic growth and viability in rural communities by promoting and fostering agritourism ventures within Oklahoma. The Oklahoma Department of Agriculture, Food, and Forestry shall operate the Agritourism program in a manner consistent with the provisions of 2 O.S. § 5-12.

35:40-17-2. Definitions [RESERVED]

35:40-17-3. Eligibility and registration

(a) Agritourism activities that are eligible for registration with the Department shall allow members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities that include farming, ranching, historic, cultural, harvest-your-own, or natural activities and attractions.

(b) An activity may be an eligible agritourism activity regardless of whether the participant is required to pay to participate in the activity.

(c) An agritourism activity shall be evaluated by the Department prior to registration.

(d) When evaluating an agritourism activity and determining whether registration may be permitted, the Department may consider a variety of factors, including but not limited to:

(1) Whether the agritourism professional or facility hosting the agritourism activity complies with federal, state, and local regulations for health, safety, sanitation, and zoning.

(2) Whether the agritourism professional or facility hosting the agritourism activity carries liability insurance.

(3) Whether the agritourism professional or facility hosting the agritourism activity has complied with the requirements of the Oklahoma Tax Commission.

(e) Each facility hosting an eligible agritourism activity shall specify and post regular business hours and adhere to the same.

(f) Each facility hosting an eligible agritourism activity shall be maintained and in good repair.

(g) The Department may refuse to register or revoke the registration of an agritourism activity for failure to meet the standards of the Agritourism Program.

(h) If the Department finds that a proposed agritourism activity is not eligible for registration, the Department may provide the agritourism professional with a written explanation of its denial and what improvements, if any, would permit registration as an agritourism activity.

35:40-17-4. Additional requirements for hunting facilities

In addition to the other eligibility requirements of this subchapter, hunting facilities shall include lodging and at least one meal per day provided or furnished on site to be registered as an agritourism activity.

35:40-17-5. Additional requirements for country stay facilities

In addition to the other eligibility requirements of this subchapter, country stay facilities shall permit the agritourism participant to engage in no less than five (5) of the following activities:

(1) Fishing on site with a dock or other improvements made to enhance the experience;

(2) Wildlife watching or photography opportunities;

(3) Presence of farm or ranch animals on site for petting, viewing, photography, or educational opportunities;

(4) Coordinated picnic or chuckwagon dinners;

(5) Consumption of food grown or raised at the agritourism facility;

(6) Use or display of farm equipment;

(7) Harvesting food grown at the agritourism facility;

(8) Hayrides;

(9) Wagon rides;

(10) Working with or observing work with natural fibers;

(11) Observing or experiencing recreations of pioneer methods of living, crafts, or practices;

(12) Participating in traditional farm or ranch activities;

(13) Observing a dairy;

(14) Skeet shooting;

(15) Observing or participating in cattle drives; or

(16) Participating in crop production by observation, consumption, education, or purchase.

35:40-17-6. Additional requirements for winery facilities

In addition to the other eligibility requirements of this subchapter, wineries shall comply with Alcoholic Beverage Laws Enforcement Commission registration requirements, liquor license requirements, and have a tasting room for visitors to be registered as an agritourism activity.

[OAR Docket #14-477; filed 6-20-14]

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

[OAR Docket #14-469]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Agriculture Environmental Permitting and AGPDES
Part 1. General Provisions
35:44-1-3 [AMENDED]
Subchapter 3. Permit Conditions and Requirements
35:44-3-3 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4; 2-18.2, 2A-1 et seq., and 2A-21 et seq.; Oklahoma State Board of Agriculture
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
Code of Federal Regulations, Title 40, as published July 1, 2013
Incorporating Rules:
35:44-1-3
35:44-3-3
Availability:
See contact person below.
ANALYSIS:
The rule amendments update references to the Code of Federal Regulations.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

PART 1. GENERAL PROVISIONS

35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2012~~2013.

SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS

35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2012~~2013.

[OAR Docket #14-469; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 45. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

[OAR Docket #14-470]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Water Quality Standards Implementation Plan
35:45-1-2 [AMENDED]
35:45-1-7 [AMENDED]
35:45-1-8 [AMENDED]
AUTHORITY:
OKLA. CONST., Art. 6, § 31; Oklahoma State Board of Agriculture 2 O.S. §§ 2-4(A)(2), 2A-1 et seq., 2A-21 et seq., 10-9 et seq., 10-9.13 et seq., 10-9.16 et seq., 10-9.22 et seq., 10-10.1, 20-1 et seq., and 20-40 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 3, 2014
PUBLIC HEARING:
January 3, 2014
ADOPTION:
January 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendments incorporate textual changes for the purpose of clarification and modernization of Department rules.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

35:45-1-2. Pertinent definitions, abbreviations, and acronyms

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

"303" means Section 303 of the CWA, which requires states to review and, as necessary, revise their water quality standards at least every three (3) years.

"402" means Section 402 of the CWA, which establishes the National Pollutant Discharge Elimination System (NPDES).

"AgPDES" means Agriculture Pollutant Discharge Elimination System, as authorized by Oklahoma Agriculture Pollutant Discharge Elimination System Act, 2 O.S. § 2A-1 et seq.

"Animal Feeding Operation" means a lot or facility where the following conditions are met:

(A) animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

(B) crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Animal Waste" means animal excrement, animal carcasses, feed wastes, process wastewaters, or any other waste associated with the confinement of animals from an animal or poultry feeding operation.

"Appendix F" means Appendix F of the OWQS, OAC 785:45, which has the statistical values of historic data for TDS, chloride, and sulfate for streams in most of the watersheds across the state.

"Background" means the ambient level of a pollutant relative to a potential source of pollution, and which is characterized by upstream (to the source being investigated) concentrations of a pollutant for surface waters or hydraulically upgradient concentrations for groundwater.

"BMP" means Best Management Practices, which are schedules of activities, prohibitions on practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state.

"CAFO" means Concentrated Animal Feeding Operation, as defined by the Oklahoma Concentrated Animal Feeding Operations Act, 2 O.S. § 20-41(B)(11).

"CPP" means the Continuing Planning Process document, submitted by the state to EPA, which describes present and planned water quality management programs and the strategy used by the State in conducting these programs. Information on how the state utilizes the WQS and WQS Implementation Criteria are contained in this document.

"CWA" means the federal Clean Water Act and amendments.

"CWAC" as defined in OAC 785:45, means Cool Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support warm water intolerant climax fish communities and includes an environment suitable for the full range of cool water benthos.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 9-204.1 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.

"EPA" means the federal Environmental Protection Agency.

"Fish and Wildlife Propagation" means the WQS beneficial use designation for promoting fish and wildlife propagation for the fishery classifications of HLAC, WWAC, CWAC, and Trout Fishery (Put and Take).

"Fish Consumption" means the WQS beneficial use designation for the protection of human health for the consumption of fish.

"HLAC" as defined in OAC 785:45, means Habitat-Limited Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water chemistry or habitat are not adequate to support a warm water aquatic community (WWAC).

"HQW" means High Quality Water, defined as those waters of the state which possess existing water quality which exceeds that necessary to support the propagation of fishes, shellfishes, wildlife, and recreation in and on the water. HQWs must receive special protection against degradation.

"Land Application" means the application of substances including animal waste and other substances to the land, at approved rates within the capacity of the land or crops.

"LMFO" means a Licensed Managed Feeding Operation, as defined by the Oklahoma Swine Feeding Operations Act at 2 O.S. § 20-3(B)(18).

"MDL" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero. MDL is dependent upon the analyte of concern.

"NOI" means Notice of Intent.

"Nonpoint Source" means a source of pollution without a well defined point of origin or a single identifiable source such as an outfall pipe, often involving overland flow of pollutants with storm water or subsurface flow of pollutants with groundwater over a wide area.

"NPDES" means the National Pollutant Discharge Elimination System, as authorized by Section 402 of the CWA.

"Nutrient-Limited Watershed" means a watershed of a ~~waterbody~~water body that is designated as nutrient limited in the most recent Oklahoma Water Quality Standards.

"Nutrient-Vulnerable Groundwater" means groundwater that is designated nutrient-vulnerable in the most recent Oklahoma Water Quality Standards.

"OAC" means Oklahoma Administrative Code.

"ODAFF" means the Oklahoma Department of Agriculture, Food, and Forestry.

"ORW" means Outstanding Resource Water, defined as a water of the state that constitutes an outstanding resource or is of exceptional recreational or ecological significance. ORWs must receive special protection against degradation.

"O.S." means Oklahoma Statutes.

"OWRB" means the Oklahoma Water Resources Board.

"PBCR" means Primary Body Contact Recreation, a WQS beneficial use designation.

"Plan" means the Water Quality Standards Implementation Plan, or portion thereof, promulgated by ODAFF in this chapter for the programs that affect water quality within ODAFF's jurisdictional areas of environmental responsibility.

"Point Source" means any discernible, confined and discrete conveyance from which pollutants are or may be discharged such as a discharge pipe (see also definition in OAC 785:45).

"Poultry Feeding Operation" means a property or facility where the following conditions are met:

(A) poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

(B) crops vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and

(C) producing over ten (10) tons of poultry waste per year.

"PPP" means Pollution Prevention Plan and is a written plan to control the discharge of pollutants that has been prepared in accordance with industry acceptable engineering and management practices.

"PQL" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"PPWS" means Public and Private Water Supply, a WQS beneficial use designation for the protection of human health for the consumption of water and consumption of fish and water.

"Remediation" means the removal of pollutants from soil or water by absorption, excavation, pumping, natural attenuation, biological, chemical, or other means or combination of methods.

"Scenic River" means a river or stream so designated pursuant to the Wild and Scenic Rivers Act. A scenic river is automatically considered an ORW.

"Silviculture" means the art and science of controlling the establishment, composition, and growth of forests.

"SWS" means Sensitive Public and Private Water Supply.

"TMDL" means Total Maximum Daily Load, a written, pollutant-specific and water body-specific plan establishing pollutant loads for point and nonpoint sources, incorporating safety reserves, to ensure that a specific water body will attain and maintain the water quality necessary to support existing and designated beneficial uses. The term also includes consideration of increases in pollutant loads.

"UAA" means Use Attainability Analysis, an investigation by OWRB of whether a WWAC or CWAC subcategorization (for the Fish and Wildlife Propagation beneficial use) is reasonably attainable.

"USAP" means Use Support Assessment Protocols, defining how sampling and other data shall be used to determine whether or not a water body is meeting its beneficial uses, as defined at OAC 785:46, Subchapter 15.

"USDA NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"USGS" means the United States Geological Survey.

"Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or promulgated rules, are not waters of the state.

"WQS (or OWQS)" means the Oklahoma Water Quality Standards, established pursuant to Section 303 of the CWA, and which serve as goals for water quality management planning and benchmark criteria for the NPDES/OPDES permitting process. Water Quality Standards consist of beneficial use classifications for navigable waters, water quality criteria to support those uses, and an antidegradation policy statement. Oklahoma's Water Quality Standards are found at OAC 785:45.

"WQSIP" means Water Quality Standards Implementation Plan.

"WWAC" as defined in OAC 785:45, means Warm Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities and includes an environment suitable for the full range of warm water benthos.

35:45-1-7. Animal waste programs

(a) Compliance with antidegradation requirements and protection of beneficial uses.

(1) This area of jurisdiction includes the licensing or registering of CAFOs, LMFOs and poultry operations. These programs include land application of animal or poultry waste. Discharges of animal and poultry waste into waters of the State are statutorily prohibited. As a result, no discharge shall result from the operation of the facility. CAFOs and LMFOs may only discharge in the event of a 25 year/24 hour rainfall event and are required to construct the waste retention structures to contain the 25 year/24 hour rainfall event; except for new LMFO (swine), poultry and veal calves CAFOs, which are required to have waste management and storage facilities to contain all waste and runoff for 100 year/24 hour rainfall event. In addition, OAC 35:17-3-14(b)(3)(C) allows a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the state.

(2) Beneficial uses that could potentially be impaired by improper land application, leakage from animal waste lagoons, or breach of a lagoon could impact both ground water and surface water. Beneficial uses that could be affected include, but are not limited to: (1) Fish and Wildlife Propagation may be impaired by lack of DO due to nutrient loading. (2) Public and Private Water Supplies may be impaired by fecal coliform, algae growth, and nutrient loading. (3) Recreation may be impaired by pathogens. (4) Aesthetics may be impacted by nutrient loading. All of these impairments could be caused by unauthorized discharges to waters of the state.

(3) Violations of the "no discharge" standard for CAFOs, LMFOs, and poultry feeding operations result in enforcement actions. These actions integrate corrective or remedial activities that can include ~~clean up~~clean-up activities and restoration activities. Remediation requirements are determined on a case-by-case basis. The Department shall assess and review all approved remediation requirements to provide technical standards for future remediations.

(4) Education programs are also required for all poultry waste applicators, operators of poultry feeding operations, and employees of LMFOs. Employees responsible for CAFO permit compliance must be annually trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal.

(5) OAC 785:46-13-5 provides that no new or increased point source discharges are allowed in ~~waterbodies~~water bodies and watersheds designated by the WQS as ORW or Scenic River. Waters that have been classified as HQW and SWS according to OAC 785:45-5-25 (c) (3) and (4) are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point sources discharge(s), except as provided in the regulations. CAFOs are by definition point sources. In addition, all nonpoint sources shall implement best management practices in watersheds designated as ORW. However,

if nonpoint sources are identified as significantly contributing to the degradation of a ~~waterbody~~water body designated as an ORW, conservation plans shall be developed in subwatersheds. Finally, LMFOs established after August 1, 1998 applying for a new CAFO license or expansion after March 9, 1998 shall not be located within three (3) miles of any designated scenic river area or within one (1) mile of a ~~waterbody~~water body designated as ORW.

(6) LMFO's that are located in nutrient-limited watersheds and or nutrient-vulnerable groundwaters as designated by the OWRB must meet current lagoon liner criteria according to Title 2, O.S. § 20-12(H)(3), and meet land application nutrient loading rate requirements per OAC 35:17-3-14(b)(4).

(7) Poultry feeding operations that are located in nutrient limited watersheds or nutrient vulnerable groundwaters as designated by OWRB shall meet soil and litter testing and litter application rate requirements per 2 O.S. § 10-9.7(E).

(b) Application of USAP - In the event ~~ODA~~ODAFF engages in surface water monitoring, USAP as adopted by OWRB will be consulted to determine if beneficial uses have been impaired. All animal waste programs require no discharges from facilities, therefore USAP is not applicable. Any discharge will be a violation of the license and subject to enforcement action and possible fines.

(c) Description of programs affecting water quality.

(1) The Agricultural Environmental Management Services (AEMS) Division of ODAFF is responsible for the review of applications for animal feeding operations that meet size and type requirements. The division also investigates complaints received by the Department regarding animal waste issues that could affect water quality.

(2) In December 2012, The EPA authorized ODAFF to perform NPDES permitting pursuant to the CWA. ODAFF reviews NOIs for authorizations pursuant to a general permit and reviews applications for individual permits. Ag-PDES activities include CAFOs, pesticides, silviculture, and storm water at agricultural facilities.

(~~2~~3) The animal waste ~~programs~~program, pesticide program, fertilizer program, and forestry management program can affect groundwater and surface water beneficial uses if facilities are not designed and operated properly. The application process is targeted at removing the possible threat of pollution to the waters of the State by not allowing any discharge to surface water, except in limited circumstances, by promoting recycle and beneficial reuse of wastewater, by not permitting any hydrologic connection between waste storage facility and groundwater, by preparing or reviewing animal waste management plans, nutrient management plans, or equivalent documents, emphasizing best management practices and conservation measures, and by routine inspections of regulated CAFOs, LMFOs, and poultry feeding operations.

(d) Technical information and procedures for implementation.

(1) All programs are involved in regulating the animal and poultry feeding operations to assure that facilities meet the minimum requirements. The programs evaluate facility location, watershed, soils, groundwater data, stream data, flood information, water samples, manure and litter samples, and other pertinent information. The application process evaluates the potential effects of the proposed operation on the waters of the State to insure that both groundwater and surface water are not polluted. Potential impacts on beneficial uses designated in water quality standards will be further evaluated during the license application process to assist elimination of the threat to nutrient vulnerable groundwaters and nutrient impaired waters. Data collected from monitoring wells or soil test reports submitted by regulated operations will be evaluated to assess the potential impact on waters of the state. If noncompliance with operating requirements is found, technical assistance or appropriate enforcement measures will be used to bring regulated facilities into compliance with state laws and rules.

(2) The CAFO and poultry programs utilize a number of databases, software programs and models for implementation. These include: stream gage data from the U.S. Geological Survey; Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS, MapWindows+MMP Tool software data analysis and mapping; precipitation and evaporation data from the National Weather Service and Oklahoma Climatological Survey; maps and hydrologic information from the U.S Geological Survey, Oklahoma Geological Survey, and Oklahoma Water Resources Board; USDA NRCS Soil Surveys and Technical Standards; OSU Oklahoma Cooperative Extension Service Fact Sheets; and other tools, software, and other guidance related to manure management planning developed by EPA, universities, and professional organizations, the MMP (Manure Management Plan) developed by Purdue University. Models may be obtained or developed to analyze information and data to assist in meeting WQS as necessary.

(e) Integration of WQSIP into water quality management activities - ODAFF rules for these programs require compliance with WQS pursuant to 2 O.S. § 20-10 (B) (4) (c) and 20-48(B)(4)(c) ensure that watersheds and groundwater are adequately protected pursuant to 20-10 (B)(4)(h) and 20-48(B)(4)(f). Future changes in Water Quality Standards may require additional rules and policies. Amendments will be made as necessitated by those changes.

(f) Compliance with mandated statewide water quality requirements - ODAFF will comply with other statewide water quality requirements by participating in the update of WQS, and in updates of the state's Continuing Planning Process document, Integrated Report, water quality management plan and other planning efforts. ODAFF will continue to participate in the Nonpoint Source Working Group and will cooperate with the Oklahoma Conservation Commission and others involved in NPS pollution prevention programs. ODAFF will participate in the TMDL process as resources permit, and will make

use of the Beneficial Use Monitoring Program data compiled in cooperation with other state environmental agencies to modify its water quality program as necessary.

(g) Public and interagency participation.

(1) ODAFF interacts with other environmental agencies through the Water Quality Standards Implementation Advisory Committee. The agencies review and comment on each agency's plan and consult with each other as needed.

(2) Public participation requirements of the Oklahoma Administrative Procedures Act are followed in promulgating rules that integrate water quality standards into these program areas.

(h) Evaluation of effectiveness of agency activities.

(1) The effectiveness of these programs in the protection of designated beneficial uses for designated stream segments will be evaluated utilizing the following processes: review and integration of CAFO monitoring well sampling, soil analysis, stream gage data from the U.S. Geological Survey, U.S. Army Corps of Engineers, Oklahoma Conservation Commission, and Oklahoma Water Resources Board, and all other available data.

(2) The swine LMFO monitoring well sampling and laboratory analysis project began in 2000. All LMFOs with more than 1,000 swine animal units were required by Senate Bill 1175 of 1998 [Title 2 O.S. § 20-12(F)] to install and maintain a leak detection system or sufficient monitoring wells both upgradient and downgradient around the perimeter of each waste retention structure. ODAFF is required by Title 2 O.S. § 20-12(F) to sample and laboratory analyze the samples from the LMFO monitoring wells at least annually. The LMFO monitoring well samples are required in Title 35, Chapter 17, Subchapter 3 of the CAFO Permanent Rules [35:17-3-11.(6)(H)] to be sampled and laboratory analyzed for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus and fecal coliform bacteria. The information and data collected under this program is published in a report annually by ODAFF.

(3) Groundwater samples from other wells are also taken from LMFO facilities during each annual inspection by ODAFF environmental specialists. These samples and some surface water samples are analyzed in accordance with procedures and protocol developed by ODAFF. Water well samples are also taken and analyzed on a voluntary basis from residents located in the vicinity of animal feeding operations. The latter sampling project has been in place since 1992.

(4) In the event groundwater problems are identified, ODAFF will take steps to identify the sources of the problems. If CAFOs or LMFOs are identified as the source, appropriate remediation activities will be implemented.

35:45-1-8. Pesticide program

(a) ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) All pesticide programs and regulatory activities require no degradation of surface or groundwater by pesticide use. Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(2) Beneficial uses that could be impaired by improper handling and application of pesticides include Fish and Wildlife Propagation, Private and Public Water Supply, Recreation, and Agriculture. The potential for pesticides to enter ground water and surface water exist and is supported by the fact that several water bodies are classified as impaired by pesticides on the current 303(d) list. Pesticide residue in fish could render them unfit for human consumption. Antidegradation is automatically implemented because the presence of pesticide in any water is a violation of the standards no matter how the water body is classified.

(3) Recent spills and newly located polluted sites are remediated by the responsible party, or by the use of EPA superfund monies to the extent necessary to meet ODAFF goals. Pesticide remediation brings any impaired surface or groundwater back to the quality prior to the pesticide spill, including restoration of all beneficial uses pursuant to the WQS. Procedures for groundwater protection are covered in the ODAFF Generic Pesticide Management Plan in Groundwater.

(4) The certification of persons to become pesticide applicators involves training and testing of the individual in the safe use and handling of pesticides. Training includes information on how to read a pesticide label, pesticide storage, pesticide container disposal and proper procedures to follow in the event of a pesticide spill. The protection of surface water and groundwater is an integral part of the certification process.

(c) Application of USAP - The procedures for pesticide monitoring are outlined in the Quality Assurance Project Plan, the pesticide operating procedures and the Generic Pesticide Management Plan in Groundwater. USAP will be utilized in assessing beneficial uses of all monitored surface waters. USAP does not apply to groundwater at this time.

(d) Description of programs affecting water quality.

(1) The Consumer Protection Services Division of ODAFF is responsible for the licensing and certifying of pesticide applicators. ODAFF registers all pesticides distributed in the state and has authority to restrict the use of pesticides to prevent unreasonable risk to the quality of Oklahoma's water.

(2) Under the Generic Pesticide Management Plan, ODAFF will develop and implement point and non-point source prevention measures, participate in relaying use

information, carry out monitoring, develop and implement response to detection, keep records of action taken and provide progress reports to EPA.

(3) ODAFF will also develop and maintain a statewide agriculture chemical database and a pesticide concerns list in regard to water quality standards.

(4) ODAFF licenses all commercial applicators of pesticides and requires the certification of private applicators before they can use restricted pesticides. When spills or other environmental problems, resulting from current or historic practices, are found, ODAFF's goal is to prevent impairment of the surface water and groundwaters of the state. This includes preventing significant risk to humans, livestock, or ecological receptors from inhalation of fumes, direct contact, or ingestion.

(5) The Consumer Protection Services Division assists AEMS Division with disseminating information related to AgPDES permit requirements for pesticides applicators and with reviewing permit applications or notices of intent submitted by permit applicators.

(~~5~~6) Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. All ODAFF activities related to pesticides are geared toward maintaining WQS. Specific programs include the following:

(A) Certification of individuals and the licensing of companies to apply pesticides;

(B) Investigation of pesticide spills and misuse;

(C) Inspection of pesticide producer establishments;

(D) Inspection of pesticide applicator facilities for proper pesticide storage;

(E) Audit records of restricted use pesticide dealers;

(F) Conduct private applicator record keeping inspections;

(G) Monitor pesticide application at new construction sites;

(H) Requiring backflow prevention devices on chemigation wells, as well as requiring every applicator of pesticides to employ an appropriate method to prevent the backflow of spray materials during filling, mixing, or application operations. The method shall include, but not be limited to, the employment of a check valve or similar in-line device, or positive mechanical method, such as an air gap, designed to insure that backflow shall not occur;

(I) Monitoring the irrigation tailwater return flow on several large container nurseries on the Illinois River in Cherokee County; and

(J) Groundwater monitoring.

(e) Technical information and procedures for implementation - The pesticide program utilizes a number of databases, software programs and models for implementation. These include: Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS software data analysis and mapping; and pesticide leaching models from EPA to map and analyze data. EPA standards are used to calibrate laboratory equipment when analyzing for specific pesticides. Many cases will require samples to be taken. The Pesticide Inspectors Manual covers the procedures for taking, sealing and shipping pesticide samples to the lab. Sampling results become a part of the complaint file. Notice of violations, stop work orders, informal or formal hearings, cleanup orders, fines and referral to US EPA for federal prosecution are some of the enforcement actions available to the ODAFF in the event a water quality or other violation is found. The Oklahoma Combined Pesticide Law and Rules set the standards used in the storage, use and disposal of pesticides, pesticide containers, and pesticide waste.

(f) Integration of WQSIP into water quality management activities - Future changes in WQS may require additional rules and policies. Amendments will be made as necessitated by those changes.

(g) Compliance with mandated statewide water quality requirements - Compliance with statewide water quality requirements is the primary goal of the pesticide certification program, pesticide facility inspections, pesticide spill and misuse investigations and pesticide monitoring programs.

(h) Public and interagency participation.

(1) ODAFF has been charged with the regulatory responsibilities of agricultural activities that could impact the WQS of the waters of Oklahoma. The "Agricultural Resources Protection and Management Operation" document outlines standard operating procedures to fulfill this charge for the present and provides guidance for future needs. This document contains no new or modified authorities not subject to legislative approval. Should subsequent events call for law, rule or regulation changes or additions, these shall be subject to approvals in accordance with the APA or the legislative process.

(2) Public participation requirements of the APA were followed in promulgating rules that integrate water quality standards into this program area. Section III of this document contains a summary of comments received and responses relating to the promulgation of ODAFF's WQSIP.

(i) Evaluation of effectiveness of agency activities - The effectiveness of the pesticide programs will be evaluated through the routine monitoring of surface water and groundwater. Special monitoring may be initiated if potential sources of contamination are identified. USAP will assist in dictating surface water monitoring.

[OAR Docket #14-470; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 48. WILDLIFE SERVICES

[OAR Docket #14-476]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
35:48-1-1 [NEW]

Subchapter 3. Aerial ~~Hunting~~Management of Depredating Animals
35:48-3-1 [REVOKED]
35:48-3-2 [REVOKED]
35:48-3-3 [REVOKED]
35:48-3-4 [REVOKED]
35:48-3-5 [REVOKED]
35:48-3-6 [NEW]
35:48-3-7 [NEW]
35:48-3-8 [NEW]
35:48-3-9 [NEW]
35:48-3-10 [NEW]
35:48-3-11 [NEW]
35:48-3-12 [NEW]
35:48-3-13 [NEW]
35:48-3-14 [NEW]
35:48-3-15 [NEW]
35:48-3-16 [NEW]
35:48-3-17 [NEW]
35:48-3-18 [NEW]
35:48-3-19 [NEW]

AUTHORITY:
OKLA. CONST., Article 6, Section 31; 2 O.S. § 2-4; 29 O.S. § 4-107.2; and SB 919, approved by the Governor on May 13, 2013; Oklahoma State Board of Agriculture

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 3, 2014

PUBLIC HEARING:
January 3, 2014

ADOPTION:
January 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 3. Aerial Hunting
35:48-3-1 [REVOKED]
35:48-3-2 [REVOKED]
35:48-3-3 [REVOKED]
35:48-3-4 [REVOKED]
35:48-3-5 [REVOKED]
35:48-3-6 [NEW]
35:48-3-7 [NEW]
35:48-3-8 [NEW]
35:48-3-9 [NEW]
35:48-3-10 [NEW]
35:48-3-11 [NEW]
35:48-3-12 [NEW]
35:48-3-13 [NEW]
35:48-3-14 [NEW]
35:48-3-15 [NEW]
35:48-3-16 [NEW]
35:48-3-17 [NEW]
35:48-3-18 [NEW]
35:48-3-19 [NEW]

Gubernatorial approval:
October 29, 2013

Register publication:
31 Ok Reg 143

Docket number:
13-1280

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed rules implement the provisions of Senate Bill 919 of the 2013 legislative session that direct the State Board of Agriculture to regulate the management of depredating animals by use of aircraft. These rules contain provisions related to licensing requirements, application contents, inspections, fees for licenses, annual reports, renewals, complaints, recordkeeping, and operations of permit holders authorized to engage in the management of depredating animals by use of aircraft. All fees and charges contained within the proposed rules are prescribed by SB 919. The rule changes also add general provisions describing the Wildlife Services Division to a section reserved for that purpose.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

35:48-1-1. Purpose

(a) This Chapter relates to the Wildlife Services Division of the Oklahoma Department of Agriculture, Food, and Forestry.

(b) The Wildlife Services Division protects the public health, safety, economy, and environment in Oklahoma by managing wildlife that would otherwise damage human or livestock health and safety, public and private property, agriculture, forestry, and other natural resources.

(c) The Wildlife Services Division provides assistance to Oklahoma citizens by managing potentially harmful wildlife in both urban and rural locations statewide, including but not limited to, predatory animals, rodents, birds, and invasive species.

(d) The Wildlife Services Division may cooperate with other federal, state, or local agencies and programs to obtain funding necessary to provide wildlife management services in Oklahoma. If funding from other federal, state, or local agencies and programs becomes unavailable, the Wildlife Services Division may continue to provide wildlife management services in Oklahoma to the extent that funding from the Oklahoma Department of Agriculture or other sources are available.

SUBCHAPTER 3. AERIAL ~~HUNTING~~MANAGEMENT OF DEPREDATING ANIMALS

35:48-3-1. Definitions [REVOKED]

~~The following terms as used in this subchapter shall mean:~~

~~(1) **"Depredating animal"** means feral hogs, coyotes, and crossbreeds between coyotes and dogs;~~

~~(2) **"Management of depredating animals"** means to manage by counting, photographing, relocating, capturing, or hunting by the use of aircraft; and~~

~~(3) **"Aircraft"** means non-fixed-wing rotary aircraft only, so that lifting surfaces rotate on a vertical axis to generate lift and does not have a rear propeller that generates forward thrust. All aircraft shall be registered with the Federal Aviation Administration and shall be rated at a minimum of 200 horsepower with dual controls removed.~~

35:48-3-2. Permit required [REVOKED]

~~(a) The Oklahoma Department of Agriculture, Food, and Forestry is may issue an aerial hunting permit to any person who holds a big game commercial hunting area license issued pursuant to Section 4-106 of Title 29 of the Oklahoma Statutes to engage in the management of depredating animals by use of aircraft only on land listed in the commercial hunting area license.~~

~~(b) The aerial hunting permit may be issued without limitation by statewide season regulations or bag limits.~~

~~(c) The aerial hunting permit shall be carried in the aircraft when performing management of depredating animals by the use of aircraft.~~

35:48-3-3. Application requirements [REVOKED]

~~(a) Applications for an aerial hunting permit shall be submitted to the Department.~~

~~(b) The Department may issue an aerial hunting permit if it finds that it will aid in the management of depredating animals.~~

~~(c) The Department may deny an aerial hunting permit if it finds that it will have a deleterious effect on indigenous species.~~

~~(d) The aerial hunting permit shall include, but is not limited to, the following information:~~

~~(1) The name and address of each authorized person;~~

~~(2) A description of the animals and number of animals authorized to be taken;~~

~~(3) A description of the area from which the animals are authorized to be taken; and~~

~~(4) The issue date and expiration date of the aerial hunting permit.~~

~~(e) An aerial hunting permit to manage depredating animals issued pursuant to this section shall be valid for a period of one (1) year from the date of issuance.~~

~~(f) An aerial hunting permit shall not be bartered or transferred to any other person.~~

~~(g) Aerial hunting permits may be renewed by filing an application for renewal with the Department at least thirty (30) days prior to the expiration date.~~

~~(h) The permittee shall carry a minimum of $300,000 in liability insurance and shall provide proof of liability insurance at the time of application and renewal.~~

~~(i) The only firearm designated for aerial hunting is a shotgun firing pellet ammunition.~~

~~(j) Aerial hunting shall occur during daylight hours only.~~

35:48-3-4. Reporting requirements [REVOKED]

~~(a) The pilot of an aircraft used for the management of depredating animals shall:~~

~~(1) Maintain a daily flight log and report.~~

~~(2) Make the daily flight log current and available for inspection by authorized agents of the Oklahoma Department of Agriculture, Food, and Forestry employees at reasonable times.~~

~~(3) Comply with all Federal Aviation Administration (FAA) regulations for the specific type of aircraft.~~

~~(4) Hold a current pilot's certificate from the FAA.~~

~~(5) Maintain a minimum current FAA class II medical.~~

~~(6) Complete a minimum of 250 hours low level time for the aircraft type.~~

~~(b) The permit application and any required reporting may be transmitted to the Department by email with supporting written documentation.~~

~~(c) Copies of the required flight log and report shall be sent to the Department within thirty (30) days of flight activity.~~

~~(d) A permit holder shall notify the Department in writing of the date, time, and area where management of depredating animals by use of an aircraft will occur no less than twenty-four (24) hours prior to the flight.~~

~~(e) The holder of a permit to manage depredating animals shall, within thirty (30) days following the end of a calendar quarter or upon termination of a permit, file with the Department a report showing:~~

~~(1) The name, address, and permit number of the permit holder;~~

~~(2) The name and address of the pilot and any other person participating in the flights;~~

~~(3) The number and description of the depredating animals managed under the permit;~~

~~(4) The types of depredating animals authorized to be managed under the permit;~~

~~(5) Dates and times of authorized flights; and~~

~~(6) Any other information requested by the Department.~~

35:48-3-5. Indigenous species [REVOKED]

~~The Commissioner of Agriculture shall appoint a Department representative to meet annually with representatives designated by the Director of the Oklahoma Department of Wildlife Conservation to determine if private aircraft activities have a "deleterious effect on indigenous species."~~

35:48-3-6. Purpose

These rules establish regulation and permitting requirements for aerial hunting for the management of depredating animals in Oklahoma pursuant to 29 O.S. § 4-107.2. The Oklahoma Department of Agriculture, Food, and Forestry shall administer the provisions of 29 O.S. § 4-107.2 in accordance with the Oklahoma Agricultural Code, 2 O.S. §§ 1-1 et seq., the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq., and the procedural rules promulgated by the State Board of Agriculture found in Title 35 of the Oklahoma Administrative Code.

35:48-3-7. Definitions

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

"Aircraft" means non-experimental manned fixed wing and non-fixed wing aircraft registered with the Federal Aviation Administration (FAA), suitable for safe aerial management operations, with dual controls removed.

"Department" means the Oklahoma Department of Agriculture, Food, and Forestry.

"Depredating animal" means feral hogs, coyotes, and crossbreeds between coyotes and dogs.

"Management by use of aircraft" or **"aerial management"** means to manage depredating animals by counting, photographing, relocating, capturing, or hunting by the use of aircraft.

35:48-3-8. Permit required

(a) No person shall engage in aerial management with the aid of an aircraft unless an aerial management permit has been obtained the Department.

(b) The aerial management permit shall be carried in the aircraft when performing management by the use of aircraft.

35:48-3-9. Application requirements

(a) Applications for an aerial management permit shall be submitted to the Department using the form prescribed by the Department.

(b) A person seeking an aerial management permit shall submit an application containing the following information:

(1) The name of the person seeking an aerial management permit;

(2) The address, telephone number, and other relevant contact information for the person seeking an aerial management permit;

(3) If the person seeking the aerial permit is a corporation or other legal entity, the address of the entity's registered service agent;

(4) The address, telephone number, and other relevant contact information for the pilot of the aircraft used for management by the use of aircraft;

(5) The address, telephone number, and other relevant contact information for the person or persons authorized to use a firearm on the aircraft;

(6) The address, telephone number, and other relevant contact information for the landowner for the area from which animals will be taken;

(7) A description of the animals and number of animals to be taken;

(8) A description of the area from which the animals will be taken;

(9) Proof of ownership or proof of the landowner's or lessee's permission to conduct aerial management on the area from which the animals will be taken;

(10) A description of the aircraft that will be used for management by the use of aircraft;

(11) If applicable, a description of the firearm and ammunition that will be used for management by the use of aircraft; and

(12) Proof of liability insurance with a minimum coverage of $300,000.

(c) A permit holder shall be required to advise the Department of any changes in information submitted with the application no less than twenty-four (24) hours prior to engaging in management by the use of aircraft.

(d) If the applicant submits an incomplete application or the Department requests additional information, the Department shall notify the applicant that the application is incomplete and identify the information on the application that is incomplete or needs additional information. The applicant may submit additional information within twenty (20) working days to supplement and complete the application. If the applicant does not respond to the request for additional information in a timely manner, the application shall be denied.

(e) The applicant may withdraw its application from consideration at any time.

(f) An applicant whose application is denied due to insufficient information provided by the applicant or the withdrawal of the application may submit a new application. Any fees and charges paid by the applicant in connection with the denied or withdrawn application shall not be applied to the processing of a new application.

(g) Aerial management permits may be renewed by filing an application for renewal with the Department at least thirty (30) days prior to the expiration date.

(h) Applications and renewals for aerial management permits shall be accompanied by the payment of any required fee.

35:48-3-10. Permit issuance

(a) The Department may issue an aerial management permit if it finds that it will aid in the management of depredating animals.

(b) The Department may deny an aerial management permit if it finds that it will have a deleterious effect on indigenous species.

(c) The Department may authorize the permit holder to advertise and collect payment from other individuals when the activity will aid in the management of depredating animals.

(d) The Department may issue an aerial management permit to any person to engage in the management by use of aircraft without limitation by statewide season regulations or bag limits.

(e) The Department may place reasonable restrictions on the permit holder, including limitations on the type of aircraft, firearm, and ammunition used for aerial hunting or the management by use of aircraft, the number of animals to be taken, and such other limitations necessary for safety and for the effect on indigenous species.

(f) The aerial management permit shall include, but is not limited to, the following information:

(1) The name and address of the pilot authorized to operate the aircraft under the permit;

(2) The name and address of the person authorized to use firearms on the aircraft or otherwise engage in the management by use of aircraft;
(3) A description of the animals and number of animals authorized to be taken;
(4) A description of the area from which the animals are authorized to be taken;
(5) The issue and expiration date of the aerial management permit; and
(6) Any limitations placed on the permit holder by the Department.
(g) An aerial management permit to manage depredating animals issued pursuant to this section shall be valid for a period of one (1) year from the date of issuance.
(h) An aerial management permit shall not be bartered or transferred to any other person.

35:48-3-11. Fees and charges

The Department shall charge the following nonrefundable aerial management permit fees:
(1) Fee for an initial application: $200.00 and
(2) Fee for a renewal application: $200.00.

35:48-3-12. Twenty-four hour notice

(a) A permit holder shall notify the Department of the date, time, and area on which the management by use of aircraft will occur not less than twenty-four (24) hours prior to the activity.
(b) Twenty-four (24) hour notification shall be made by telephone, fax, or electronic means.
(c) Twenty-four (24) hour notification shall include a confirmation by the permit holder that all the information contained in the aerial management permit application is current and correct or shall provide new information and documentation if necessary.
(d) Twenty-four hour notification shall include the name and address of the pilot authorized to operate the aircraft under the permit and the name and address of the person authorized to use firearms on the aircraft or otherwise engage in the management by use of aircraft.
(e) A single twenty-four (24) hour notification may describe up to seven (7) days upon which aerial management may occur.

35:48-3-13. Quarterly reports

A permit holder shall file a quarterly report with the Department within thirty (30) days of each calendar quarter or on the termination of the permit, whichever occurs first, that includes the following information:
(1) The name, address, and permit number of the permit holder;
(2) The name and address of the pilot and any other person participating in the flights;
(3) The number and description of the depredating animals managed under the permit;
(4) The types of depredating animals authorized to be managed under the permit;
(5) Dates and times of authorized flights; and
(6) Any other information required by the Department.

35:48-3-14. Prohibited activities

(a) A permit holder or pilot shall not:
(1) Hunt, shoot, shoot at, kill, or attempt to kill any wildlife, domesticated animal, or livestock from an aircraft other than the animals authorized by the aerial management permit;
(2) Intentionally disturb, haze, or buzz any wildlife, domesticated animal, or livestock from an aircraft other than the animals authorized by the aerial management permit;
(3) Take or attempt to take any depredating animal for any purpose other than is necessary for the protection of land, water, wildlife, livestock, domesticated animals, human life, or crops;
(4) Manage depredating animals from an unsuitable aircraft;
(5) Manage depredating animals from an unmanned aerial vehicle;
(6) Manage depredating animals with a firearm other than a shotgun using pellet ammunition;
(7) Manage depredating animals during hazardous weather, low visibility or nighttime hours;
(8) Manage depredating animals during designated deer hunting seasons from the dates of October 1 through January 15 without first obtaining a special permit from the local game warden or other authorized employee of the Department of Wildlife Conservation; or
(9) Herd animals from one property to another without the permission of all landowners or lessees affected.
(b) A permit holder may engage in trial flights allowing pilots and passengers to practice the aerial management activity, however, trial flights shall be subject to all the restrictions and notification requirements as an actual aerial management flight.

35:48-3-15. Complaints

(a) On receipt of a valid written complaint alleging a violation of the statutes or rules relating to the management of depredating animals by use of aircraft, an authorized agent of the Department, a local law enforcement authority, or an inspector designated by the Department may investigate the alleged violation.
(b) Any person may submit a written and signed complaint to the Department alleging a violation of the statutes or rules relating to the management of depredating animals by use of aircraft.
(c) The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, and legal remedies appropriate to the circumstances.

35:48-3-16. Inspections

The Department may inspect any daily flight logs and other relevant books and records of the permit holder or pilot engaged in management by use of aircraft.

35:48-3-17. Grounds for denial, suspension, or revocation of a license

The Department may deny, suspend, cancel, revoke, or refuse reissuance of a license of any applicant or permit who:

(1) Violates statutes or rules relating to the management of depredating animals by use of aircraft;

(2) Engages in fraud or deceit in obtaining or renewing a permit;

(3) Engages in management by use of aircraft in this state without a valid permit;

(4) Aids or abets another person in engaging in management by use of aircraft without a valid permit.

35:48-3-18. Sanctions for misconduct

If the Department determines that a permit holder has violated the statutes relating to the management of depredating animals by use of aircraft, Department rules, or other applicable legal authorities, the Department may:

(1) Refer the matter to the appropriate law enforcement authority for criminal prosecution; and/or

(2) Deny, suspend, cancel, revoke, or refuse reissuance of a permit after an administrative hearing conducted in a manner consistent with OAC 35:1-9-1 et seq.;

(3) Assess an administrative penalty of not more than Ten Thousand Dollars ($10,000) per day of noncompliance; and

(4) Bring an action for injunctive relief in District Court.

35:48-3-19. Pilot and aircraft requirements

(a) Pilots shall possess a commercial license from the FAA.

(b) Pilots shall possess a Class II medical certificate.

(c) Pilots shall have documented experience of no less than 250 low-level flying hours in an agricultural environment or some equivalent.

(d) Only passengers on an aircraft shall be permitted to use firearms.

(e) Suitable aircraft eligible for aerial management activities shall be registered with the Federal Aviation Administration, and shall be:

(1) powered rotor aircraft, or

(2) a fixed, high wing aircraft with tandem seating with a rated stall speed of 50 mph or less.

[OAR Docket #14-476; filed 6-20-14]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS

[OAR Docket #14-478]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Licensing
35:55-1-1 [AMENDED]
35:55-1-2 [AMENDED]
35:55-1-3 [AMENDED]
35:55-1-4 [AMENDED]
35:55-1-5 [AMENDED]
35:55-1-6 [AMENDED]
35:55-1-7 [AMENDED]
35:55-1-8 [AMENDED]
35:55-1-10 [AMENDED]
35:55-1-11 [AMENDED]
35:55-1-12 [AMENDED]
35:55-1-13 [AMENDED]
Subchapter 3. Standards of Care
35:55-3-1 [AMENDED]
35:55-3-3 [AMENDED]
35:55-3-4 [AMENDED]
35:55-3-5 [AMENDED]
35:55-3-6 [AMENDED]
35:55-3-7 [AMENDED]
35:55-3-8 [AMENDED]
35:55-3-9 [AMENDED]
35:55-3-10 [AMENDED]
35:55-3-11 [AMENDED]
Subchapter 5. Transportation [REVOKED]
35:55-5-1 [REVOKED]
35:55-5-2 [REVOKED]
35:55-5-3 [REVOKED]
35:55-5-4 [REVOKED]
35:55-5-5 [REVOKED]
Subchapter 7. Recordkeeping and Sales
35:55-7-1 [AMENDED]
35:55-7-2 [AMENDED]
35:55-7-3 [AMENDED]
35:55-7-4 [AMENDED]
35:55-7-5 [AMENDED]
35:55-7-6 [AMENDED]

AUTHORITY:
OKLA. CONST., Art. 6, § 31; 2 O.S. §§ 2-4; 4 O.S. §30.1; Oklahoma State Board of Agriculture

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 3, 2014

PUBLIC HEARING:
January 3, 2014

ADOPTION:
January 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 7, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The rule changes implement the provisions of House Bill 1359 of the 2013 Legislative session adding regulation of animal shelters to the previously existing commercial pet breeders program.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. LICENSING

35:55-1-1. Purpose

~~(a)~~ These rules regulate commercial pet breeders and animal shelters pursuant to Section 30.1 et seq. of Title 4 of the Oklahoma Statutes known as the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~. The administration of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~ shall be performed by the Oklahoma Department of Agriculture, Food, and Forestry and the State Board of Agriculture. Administration of the Act shall conform to the Administrative Procedures Act, Title 2 of the Oklahoma Statutes, and procedural rules found in Title 35 of the Oklahoma Administrative Code as promulgated by the State Board of Agriculture.

~~(b) It shall be the policy and recommendation of the State Board of Agriculture that no commercial pet breeder shall breed a female animal unless she is healthy and has reached her second estrus cycle.~~

35:55-1-2. Definitions

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

"Adult animal" means an intact female animal twelve (12) months of age or older;

"Animal" means a dog or a cat;

"Animal shelter" means any facility that maintains ten or more dogs and cats operated by or under contract for the state, a county, a municipal corporation, or any other political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs or cats; and any facility that maintains ten or more dogs and cats operated, owned, or maintained by any person or organization for such purpose, but not including any facility that does not house or harbor dogs or cats on the premises and only operates through a system of fostering in private homes;

"Animal shelter license" means a license issued to any applicant that qualifies and is licensed as an animal shelter operator;

"Animal shelter operator" means any individual, entity, association, trust, or corporation that operates a facility that maintains ten or more dogs and cats for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted dogs or cats, but not including any facility that does not house or harbor dogs or cats on the premises and only operates through a system of fostering in private homes;

"Board" means the State Board of Agriculture;

"Cat" means a mammal that is wholly or partly of the species Felis domesticus;

"Commercial breeder" and **"commercial pet breeder"** mean any individual, entity, association, trust, or corporation who possesses eleven or more intact female animals for the use of breeding or dealing in animals for direct or indirect sale or for exchange in return for consideration;

"Commercial pet breeder license" means a license issued to any person that qualifies and is licensed as a commercial pet breeder;

"Department" means the Oklahoma Department of Agriculture, Food, and Forestry;

"Dog" means a mammal that is wholly or partly of the species Canis familiaris;

"Facility" means the premises used by one or more animal shelter operators or commercial breeders ~~for keeping, housing, or breeding animals~~. The term includes all buildings, property, and confinement areas in a single location used to conduct the animal shelter commercial breeding business;

"Family member" means the parent, spouse, child, or sibling of an individual;

"Humane society" means a nonprofit organization exempt from federal income taxation as an organization described in Section 501(c)(3), Internal Revenue Code of 1986, as amended, that has as a principal purpose the prevention of animal cruelty or the sheltering of, caring for, and providing of homes for lost, stray, and abandoned animals;

"Inspector" means an authorized agent of the Board or any other qualified person authorized by the Department to conduct inspections;

"Intact female animal" means a female animal, nine (9) months of age or older, and not spayed;

"Kitten" means a cat less than twelve (12) months old;

"Local animal control authority" means a municipal or county animal control office with authority over the premises in which an animal is kept or, in an area that does not have an animal control office, the county sheriff;

"Marketing" means the solicitation for sale of animals;

"Necessary veterinary care" means at least one personal visual inspection annually by a veterinarian licensed in Oklahoma, guidance from a licensed veterinarian on preventative care, an exercise plan is approved by a licensed veterinarian, normal and prudent attention to skin, coat, and nails, prompt treatment of any illness or injury, and where needed, humane euthanasia by a licensed veterinarian using lawful techniques deemed acceptable by the American Veterinary Medical Association. If, during the course of a routine personal visual inspection, the licensed veterinarian detects signs of disease or injury in an animal, then a physical examination of the animal shall be conducted by the licensed veterinarian.

"Noncommercial breeder" means any individual, entity, association, trust, or corporation who possesses ten or fewer intact female animals for the use of breeding or dealing in animals for direct or indirect sale or for exchange in return for consideration;

"Owner" means a person who owns ten percent (10%) or more of the ownership interest in a commercial pet breeder facility, directly or indirectly, in an entity.

"Person" means any individual, association, trust, corporation, limited liability company, partnership, or other entity;

"Pet" means a dog or cat, including a puppy or kitten;

"Possess" means to have custody of or control over, but shall not include custody or control over an animal by a person who is not a resident of Oklahoma and is in Oklahoma for the sole purpose of attending a competitive show or event held in Oklahoma;

"Puppy" means a dog less than twelve (12) months old; ~~and~~

"Recipient" means a purchaser, adopter, or any other person who receives a pet.

"Veterinarian" means a person currently licensed to practice veterinary medicine in Oklahoma.

35:55-1-3. License required

(a) A person shall not act, offer to act, or hold himself or herself out as a commercial pet breeder or operate an animal shelter in this state unless the person holds a ~~commercial pet breeder~~ license obtained pursuant to the Commercial Pet Breeders Act of 2012 for each facility that the person owns or operates in this state.

(b) It shall be unlawful for any person to act as a commercial pet breeder licensee, or to hold himself or herself out as such, unless the person shall have been licensed to do so under the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~.

(c) The commercial pet breeder license shall begin on July 1 and expire on June 30 of each calendar year; each commercial pet breeder shall renew the license prior to June 30 of each calendar year.

(d) ~~Each commercial pet breeder~~ The animal shelter license shall begin on July 1 and expire on June 30 of each calendar year; each animal shelter operator shall renew the license prior to June 30 of each calendar year.

(e) Any person who intends to become a commercial pet breeder or intends to operate an animal shelter shall obtain a ~~commercial pet breeder~~ license prior to operation.

(f) Any person who does not meet the definition of a commercial pet breeder or animal shelter but chooses to voluntarily obtain a ~~commercial pet breeder~~ license shall comply with all rules as though they do meet the definition of a commercial pet breeder or animal shelter.

(g) Each commercial pet breeder and animal shelter shall have a fixed place of business with a specific physical location and shall conform to local zoning ordinances authorizing the occupancy of a commercial pet breeder or animal shelter at that location.

35:55-1-4. License application

(a) The Oklahoma Department of Agriculture, Food, and Forestry shall issue a ~~commercial pet breeder~~ license to each commercial pet breeder or animal shelter operator who:

(1) Meets the requirements of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~;

(2) Applies to the Department on the form prescribed by the Department; and

(3) Pays the required fee.

(b) A commercial pet breeder or animal shelter operator shall obtain a separate license for each facility where breeding or shelter animals are kept. A separate license shall be issued for each facility of the commercial pet breeder or animal shelter operator, whether or not the ~~breeder~~facility has ~~eleven or more intact female~~the requisite number of animals at each facility.

(c) If a single facility is shared by more than one person, each person shall be required to become individually licensed if ~~eleven or more intact females used for breeding~~the requisite number of animals are housed at the facility, unless all animals are combined on a single license.

(d) An applicant applying for a ~~commercial pet breeder's~~ license shall submit a completed license application signed under oath containing the following information:

(1) Name, mailing address, telephone number, and email address, if any, of the applicant;

(2) Name, if different, physical address and telephone number of the facility, including driving directions from the nearest municipality~~, and legal description of the facility location~~;

(3) Name, address, telephone number, and email address, if any, of the operator of the facility, if different from the owner;

(4) If the applicant is an entity, association, trust, or corporation, the name and address of each member with an ownership of ten percent (10%) or more in the facility;

(5) If the applicant is an entity, the name, address, telephone number, and email address, if any, of the Oklahoma registered agent;

(6) The sales tax identification number of the commercial pet breeder, unless the commercial pet breeder only sells animals wholesale or the tax exempt identification number of the animal shelter;

(7) A list of the date, subject matter, and court or government entity for any individual required to be disclosed by this section for each of the following:

(A) Has ever been convicted of, or entered a plea of guilty or no contest, to any felony, or any crime involving animal cruelty, abuse, or neglect;

(B) Has ever received any adverse ruling from any court of competent jurisdiction or any administrative tribunal involving honesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence in a matter related to commercial pet breeding, or cruelty to animals;

(C) Has ever had an application for a license, registration, certificate, or endorsement related to pet breeding or animal care denied or rejected by any state or federal licensing authority in Oklahoma or another state;

(D) Whether any commercial pet breeder licensing board, kennel regulation board, animal shelter licensing authority, or similar agency or organization has ever revoked or suspended a license, registration, certificate, or endorsement;

(E) Has ever surrendered a license, registration, certificate, or endorsement to the Board or any state

or federal commercial pet breeder or kennel licensing authority or animal shelter licensing authority, whether located in Oklahoma or elsewhere;

(8) Affidavit of Lawful Presence in the United States of America, as provided under 56 O.S. § 71;

(9) A notarized statement swearing that the information submitted on the application is true and correct;

(10) State the total number of animals owned by the commercial pet breeder on the date of application and identify how many of the animals are intact female animals, males, and juveniles or state the capacity of the animal shelter;

(11) The date of commencement of operations at that location; and

(12) Any other relevant information required by the Board.

(e) If an applicant submits an incomplete application or the Department requests additional information, the Department shall notify the applicant that the application is incomplete and identify the information on the application that is incomplete or needs additional information. The applicant may submit additional information within twenty (20) working days to supplement and complete the application. If the applicant does not respond to the request for additional information in a timely manner, the application shall be denied.

(f) An application may be withdrawn from consideration by the applicant at any time.

(g) Any commercial pet breeder or animal shelter operator whose application is denied due to failure to submit information in a timely manner or who withdrew the application may submit a new application and appropriate fees.

35:55-1-5. Grounds for denial, suspension, or revocation of a license

The Oklahoma Department of Agriculture, Food, and Forestry may deny a license, or renewal thereof, or revoke a license of any applicant, ~~or~~ commercial pet breeder, or animal shelter operator who fails to meet the standards of animal care or fails to follow the application process adopted by the Department, or if the person:

(1) Is convicted of a crime involving animal cruelty;

(2) Is convicted of violating the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~ more than three times;

(3) Is convicted of a type of felony specified by subparagraphs a through pp of paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes;

(4) Is convicted of a felony punishable under the Oklahoma Racketeer-Influenced and Corrupt Organizations Act; or

(5) Has held or applied for a United States Department of Agriculture license pursuant to the Animal Welfare Act and whose license was suspended or revoked, or whose application was refused due to the improper care of animals.

35:55-1-6. Inspections

(a) The Oklahoma Department of Agriculture, Food, and Forestry may contract with a local veterinarian licensed by the state, other state agency or any other qualified person to conduct or assist in an initial prelicense inspection and annual inspections.

(b) The Department shall arrange for an inspection at a facility prior to issuance of an initial ~~commercial pet breeder~~ license for that facility.

(1) The Department shall not issue a ~~commercial pet breeder~~ license to any person until the Department receives an initial prelicense inspection report from the inspector in a format approved by the Department certifying that the facility meets the requirements of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~.

(2) Prior to the initial prelicense inspection, each applicant shall pay to the Department a nonrefundable inspection fee.

(c) The Department, at least annually, shall arrange for the inspection of each licensed facility ~~of a licensed commercial pet breeder~~. The inspection shall be conducted during normal business hours and the commercial pet breeder, animal shelter operator, or a representative ~~of the commercial pet breeder~~ shall be present during the inspection.

(d) The inspector shall submit an inspection report to the Department not later than ten (10) days after the date of the inspection on a form prescribed by the Department and provide a copy of the report to the commercial breeder, animal shelter operator, or the representative.

(1) The inspection report shall include an itemized list of violations, if any, and may include recommendations for correction.

(2) A copy of the inspection report shall be sent to the commercial pet breeder or animal shelter operator who shall have thirty (30) calendar days to correct any deficiencies.

35:55-1-7. Changes of information

A commercial pet breeder or animal shelter operator shall notify the Oklahoma Department of Agriculture, Food, and Forestry in writing not later than ten (10) days after the date any change occurs in the address, name, management, substantial control, or ownership of the business or operation.

35:55-1-8. Fees

The Board shall charge the following nonrefundable license or renewal fees:

(1) One (1) to ten (10) intact female animals: $125.00

(2) Eleven (11) to twenty (20) intact female animals: $200.00

(3) Twenty one (21) to fifty (50) intact female animals: $350.00

(4) Fifty one (51) to one hundred (100) intact female animals: $500.00

(5) One hundred and one (101) or more intact female animals: $650.00

(6) ~~If the commercial pet breeder submits a renewal application and fee after the expiration date, the commercial pet breeder shall pay double the renewal fee as a late charge and the filing of a late application shall also be deemed a violation.~~ Animal shelter: $200.00

(7) If the commercial pet breeder or animal shelter operator submits a renewal application and fee after the expiration date, the commercial pet breeder or animal shelter operator shall pay double the renewal fee as a late charge and the filing of a late application shall be deemed a violation.

35:55-1-10. Renewals

(a) A commercial pet breeder or animal shelter operator who is not in violation of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~ or any rule adopted under the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~ may renew the license by:

(1) Submitting a renewal application to the Oklahoma Department of Agriculture, Food, and Forestry on the form prescribed by the Department containing any changes to the information provided in the initial application.

(2) Complying with any other renewal requirements adopted by the Department; and

(3) Paying the required fee.

(b) Any person who fails to apply for a renewal in a manner prescribed by the Department, and whose license has expired, may not engage in activities that require a license until the license has been renewed.

(c) Not later than sixty (60) days before the expiration of the license, the Department shall send written notice of the impending license expiration to the commercial pet breeder or animal shelter operator at the last known address according to the records of the Department.

35:55-1-11. Complaints

(a) On receipt of a valid written complaint alleging a violation of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~, an authorized agent of the State Board of Agriculture, a local animal control authority, or an inspector designated by the Department may investigate the alleged violation.

(b) Any person may submit a written and signed complaint to the Department alleging a violation of the Commercial Pet Breeders and Animal Shelter Licensing Act ~~of 2012~~ or rules promulgated thereunder.

(c) Upon receipt of a written complaint, the Department notifies the person filing the complaint in writing of its receipt and status within five (5) working days.

(d) The party whom the complaint is filed against, if known, is notified within five (5) working days.

(e) The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, and legal remedies appropriate to the circumstances.

(f) The complainant and commercial pet breeder or animal shelter operator shall be notified in writing within seven (7) working days after the resolution of the complaint.

5:55-1-12. Display of license

A commercial pet breeder or animal shelter operator shall:

(1) Prominently display a copy of the ~~commercial pet breeder~~ license at the facility ~~of the commercial pet breeder~~;

(2) Include the ~~commercial pet breeder~~ license number in each advertisement for the sale or transfer of an animal by the commercial pet breeder or animal shelter operator; and

(3) Include the license number in each contract for the sale or transfer of an animal ~~by the commercial pet breeder the commercial pet breeder license number~~.

35:55-1-13. Exemption for training animals

(a) Intact female animals held solely for the purpose of training ~~and~~which are not bred shall be exempt from the licensing requirements of these rules.

(b) Any person who holds intact female animals solely for the purpose of training shall provide documentation to the Department showing the training of the animal. Documentation may include, but not be limited to the following:

(1) Sales records showing the animals were trained and sold as trained;

(2) Training records and certifications provided with the animals or provided to purchasers of the trained animals; and

(3) Any other documentation that substantiates that the animals were held solely for training purposes and were not bred.

SUBCHAPTER 3. STANDARDS OF CARE

35:55-3-1. Incorporation by reference

(a) The following provisions of Title 9 of the Code of Federal Regulations and the requirements contained therein pertaining to Animal Welfare, Part 3 (Standards) are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) 3.1 (housing facilities, general)

(2) 3.2 (indoor housing facilities)

(3) 3.3 (sheltered housing facilities)

(4) 3.4 (outdoor housing facilities)

(5) 3.5 (mobile or traveling housing facilities)

(6) 3.6 (primary enclosures), except for 3.6 (c)(1)(ii) and (c)(2)

(7) 3.7 (compatible grouping)

(8) 3.8 (exercise for dogs)

(9) 3.9 (feeding)

(10) 3.11 (cleaning, sanitization, housekeeping, and pest control)

(11) 3.12 (employees)

(12) 3.13 (consignments to carriers and intermediate handlers)

(13) 3.14 (primary enclosures used to transport live dogs and cats)

(14) 3.15 (primary conveyances [motor vehicle, rail, air, and marine])
(15) 3.16 (food and water requirements)
(16) 3.17 (care in transit)
(17) 3.18 (terminal facilities)
(18) 3.19 (handling)

(b) When reference is made to a federal entity, it shall mean the state counterpart.

(c) When reference is made to 9 C.F.R. it means, unless otherwise specified, the volume of 9 C.F.R. as published on July 1, ~~2011~~ 2013.

35:55-3-3. Compatibility

(a) A commercial pet breeder or animal shelter operator shall place only compatible animals in the same primary enclosure and at a minimum shall not place the following animals together in the same primary enclosure:

(1) Breeding female animals in heat in the same enclosure at the same time with sexually mature male animal, except for breeding purposes;

(2) Breeding females and their litters in the same enclosure at the same time with other adult dogs;

(3) Puppies or kittens under four (4) months of age with other adult animals other than their dam or foster dam, unless maintained in breeding colonies; or

(4) Animals exhibiting vicious or an aggressive disposition with any other animal.

(b) A commercial pet breeder or animal shelter operator shall not place more than six (6) adult animals simultaneously in any enclosure.

35:55-3-4. Primary enclosures

(a) Any commercial pet breeder or animal shelter operator that applies for a ~~commercial pet breeder~~ license no later than September 1, ~~2012~~2013, shall not be required to meet any cage size requirement more stringent than United States Department of Agriculture standards. Regardless of license application date, any commercial pet breeder or animal shelter operator replacing or adding cages after September 1, ~~2012~~ 2013, shall meet the cage size requirements as of the date of replacement or addition.

(b) ~~Any new commercial pet breeder or any commercial pet breeder replacing or adding~~After September 1, 2013, any new facility or any replacement or additions of cages ~~after September 1, 2012~~for a previously licensed facility shall meet the following primary enclosure size requirements for dogs.

(1) Commercial pet breeders and animal shelter operators may house up to six (6) dogs removed from their whelping box in the same primary enclosure, but the primary enclosure shall provide at least the following amount of square feet of floor space:

(A) For an enclosure containing one dog, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 2. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 2 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(B) For an enclosure containing two dogs, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 3. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 3 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(C) For an enclosure containing three dogs, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 4. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 4 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(D) For an enclosure containing four dogs, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 5. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 5 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(E) For an enclosure containing five dogs, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 6. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 6 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(F) For an enclosure containing six dogs, the mathematical square of the sum of the length of the dog in inches (measured from the tip of its nose to the base of its tail) plus 6 inches; divided the product by 144, times 7. Mathematically, the space the commercial pet breeder shall provide for the first dog equals 7 x [(length of dog in inches + 6) x (length of dog in inches + 6)/144].

(2) Commercial pet breeders or animal shelter operators shall provide each female dog with nursing puppies the amount of floor space calculated pursuant to (b)(1) of this section plus sufficient floor space to allow for a whelping box and the litter, based on the intact female's breed and behavioral characteristics, and in accordance with generally accepted husbandry practices as determined by the attending veterinarian but at a minimum large enough to allow the mother to stretch out on her side, permitting all the puppies to nurse.

(A) If the additional amount of floor space for each nursing puppy is less than five percent (5%) of the minimum requirement for the female dog, the commercial pet breeder or animal shelter operator shall obtain approval by the attending veterinarian.

(B) As soon as the puppies are able to leave the whelping box, the calculations for additional dogs as specified in (b)(1) of this section shall apply.

(C) Any whelping box or enclosure shall provide for enough room to allow the female dog to separate from the pups in the box or enclosure.

(D) Minimum floor space required by this section shall be calculated excluding floor space taken up of by food pans, water pans, and litter boxes.

(E) Nothing in this section shall require separation of litter mates.

(c) If the floor of a primary enclosure is composed of wire, the commercial pet breeder or animal shelter operator shall provide temporary or permanent covers or inserts creating a solid surface within the primary enclosure equal to twenty five percent (25%) of the minimum size of the enclosure, as calculated under (b)(1) of this section.

35:55-3-5. Waste management

(a) A commercial pet breeder or animal shelter operator shall remove all animals from enclosures during cleaning and sanitization and shall hold them in an enclosure satisfying the minimum space requirements in this subchapter or in an exercise area.

(b) A commercial pet breeder or animal shelter operator shall comply with all waste disposal practices required by the Oklahoma Department of Agriculture, Food, and Forestry and other applicable municipal ordinances, state statutes, and federal codes for disposal of pet waste.

(c) A commercial pet breeder or animal shelter operator shall conduct regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids, wastes, and dead pets, in a manner that minimizes contamination and disease risks.

(d) A commercial pet breeder or animal shelter operator shall equip housing facilities and primary enclosures with disposal facilities and drainage systems that rapidly eliminate pet waste and allow animals to remain clean and dry at all times.

(1) A commercial pet breeder or animal shelter operator shall properly construct, install, and maintain all drains.

(2) If a commercial pet breeder or animal shelter operator uses a closed drainage system, the drains shall be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor or any surface that animals might touch.

(3) If a commercial pet breeder or animal shelter operator uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system shall be located far enough away from the pet area of the housing facility holding pets to prevent odors, diseases, pests, and vermin infestation.

(e) Trash containers in housing facilities and in food storage and food preparation areas shall be leak proof and have tightly fitted lids on them at all times.

(f) A commercial pet breeder or animal shelter operator shall ensure carcass disposal meets all state and local requirements.

(g) A commercial pet breeder or animal shelter operator shall not keep or allow to be kept animal carcasses or animal waste in food storage or preparation areas, food freezers, food refrigerators, or areas that animals may touch or reach.

(h) Cleaning and treatment of all waste including water shall be done in such a manner that there shall be no adverse effect on any animal in the area.

(i) A commercial pet breeder or animal shelter operator may stack primary enclosures containing animals over other primary enclosures containing animals so long as there is a barrier or drainage system between the upper and lower enclosures that prevents all waste and debris from falling into the lower enclosures.

(j) A commercial pet breeder or animal shelter operator shall maintain ammonia levels at all locations in housing facilities at a level that does not interfere with human or animal health or wellbeing.

35:55-3-6. Veterinary care

(a) A commercial pet breeder or animal shelter operator shall provide animals with necessary veterinary care to ensure animals' wellbeing.

(b) A commercial pet breeder or animal shelter operator shall provide a sick or injured animal appropriate veterinary care within twenty four (24) hours, unless on weekends, in which case a commercial pet breeder or animal shelter operator shall provide a sick or injured animal veterinary care on the next business day.

(c) A commercial pet breeder or animal shelter operator shall follow the directives of the veterinary doctor for care of the animal, including that a commercial pet breeder or animal shelter operator shall provide to the animals any medications prescribed by the veterinarian and additional food, water, exercise, or any other direction of the veterinarian.

(d) Rabies vaccine may only be administered by or under the supervision of an Oklahoma licensed veterinarian and shall be administered in compliance with rules of the Oklahoma Department of Health.

35:55-3-7. Grooming

(a) Commercial pet breeders or animal shelter operators shall provide grooming to all dogs, including brushing, tangle removal, nail trims, and hair trimming, and bathing frequently enough to maintain good skin health and odor control, and no signs of long standing dirt and grime.

(b) The dog's coat shall not be matted to the point that it impedes normal bodily functions, including but not limited to breeding, seeing, eating, drinking, standing, sitting, laying, and waste excretion.

35:55-3-8. Quarantine

In order to minimize the dissemination of disease, commercial pet breeders or animal shelter operators shall separate from other animals those animals that are under quarantine or receiving treatment for a suspected communicable disease.

35:55-3-9. Animal identification

(a) A commercial pet breeder shall identify each animal two (2) months of age or older and each pet prior to sale or transfer of ownership, if before two (2) months of age, with a form of permanent identification, including but not limited to an implanted permanent pet identification number microchip, tattoo, or other similar mechanism, mark, or devise approved by the Department.

(b) A commercial pet breeder may tattoo in accordance with a registering organization or Federal USDA licensing guidelines.

(c) A commercial pet breeder shall insure that the permanent identification that is placed on the animal matches their sales and breeding records.

(d) A commercial pet breeder that chooses to tattoo, but is not tattooing according to any national guidelines or regulations from a registration agency or other licensing agency shall tattoo in accordance with the following method: OK"License Number"-"Pet Tracking Number". Example: OK123-12.

(e) A commercial pet breeder may request an exception from permanent identification from the Department. The Department shall review the request and determine on a case by case basis if the commercial pet breeder may use another form of identification on the animals.

35:55-3-10. Euthanasia procedures

Animals owned or housed by a commercial pet breeder or animal shelter operator may only be euthanized by a veterinarian licensed in Oklahoma or an Oklahoma Registered Veterinary Technician under the order of an Oklahoma licensed Veterinarian following the Oklahoma Veterinary Practice Act pursuant to accepted euthanasia protocol.

35:55-3-11. Breeding

(a) A commercial pet breeder shall not breed a female animal unless she is healthy and has reached her second estrus cycle.

(b) An animal shelter operator shall not breed pets under any circumstances.

(c) An animal shelter operator shall comply with the provisions of the Dog and Cat Sterilization Act at Title 4 of the Oklahoma Statutes, section 4-499 et seq. and the provisions are hereby incorporated by reference.

SUBCHAPTER 5. TRANSPORTATION [REVOKED]

35:55-5-1. General transportation requirements [REVOKED]

~~When a commercial pet breeder removes animals from housing facilities for transportation, including delivery to purchasers and transportation to auctions or sale locations, they shall transport and care for the pets in a manner that ensures the pets' safety, access to food and water, continued enclosure ventilation and sanitation, adequate space, and protection from the elements and extreme temperatures in a reasonably similar manner to that required by these Rules.~~

35:55-5-2. General travel requirements [REVOKED]

~~(a) A commercial pet breeder shall provide food and water to animals scheduled to be transported during the four (4) hours before travel or before the commercial pet breeder delivers the pet to the carrier. Commercial pet breeders shall provide a small amount of food of the type the pet is regularly fed in a dry storage bag to accompany the animal during transport.~~

~~(b) When transporting pets, a commercial pet breeder shall maintain the temperature in pet holding, transportation, or cargo areas above 45 °F (7.2 °C) and below 85 °F (29.5 °C) while pets are present, except for temporary variations in temperature which in no event shall last more than four (4) consecutive hours when animals are present inside a holding, transportation or cargo area or forty five (45) minutes while animals are being transported between holding areas. A commercial pet breeder shall adequately ventilate pet holding areas through windows, doors, vents, fans, blowers, or air conditioning at all times that pets are present, and shall use auxiliary ventilation, such as exhaust fans, vents, fans, blowers, or air conditioning when the ambient temperature is 85 °F (29.5 °C) or higher.~~

~~(c) During travel, commercial pet breeders shall remove pets from their primary enclosures every twenty four (24) hours to allow the animal to urinate, defecate, and obtain exercise.~~

~~(d) Commercial pet breeders shall not sell or transfer ownership, ship, directly or indirectly, animals less than eight (8) weeks of age.~~

35:55-5-3. Consignments to carriers [REVOKED]

~~(a) A commercial pet breeder shall not deliver an animal for transport in commerce more than four (4) hours before the scheduled departure time of the car, truck, train, aircraft, or other vehicle or transport on which the pet is to be transported.~~

~~(b) Commercial pet breeders shall obtain the name, address, and telephone number of the recipient before delivering a pet for transport by a carrier, and shall provide the address to the carrier.~~

~~(c) The commercial pet breeder shall prepare a written statement of each traveling pet's condition and shall attach the certification to the outside of each traveling pet's primary enclosure in an easily visible location that allows persons looking at the primary enclosure to read the certification. The certification shall provide the following:~~

~~(1) The commercial pet breeder shall certify that it provided food and water to the pet during the four (4) hours before the pet was delivered for transport and state the time the feeding and watering occurred;~~

~~(2) Instructions for feeding or watering the animal for a twenty-four (24) hour period that in no event instructs that the pet be provided no food or water, unless directed by a veterinarian;~~

~~(3) The commercial pet breeder's name, address, and license number;~~

~~(4) The recipient's name, address, and telephone number;~~

~~(5) A description of the pet;~~

~~(6) A brief summary of the pet's immunization record; and~~

~~(7) The commercial pet breeder's signature and the date and time the certification was signed.~~

~~(d) The commercial pet breeder shall instruct the carrier that when a primary enclosure containing a pet has arrived at the animal holding area at a terminal facility after transport, the carrier shall attempt to notify the intended recipient upon arrival and at least once in every 6 hour period thereafter.~~

~~(1) The time, date, and method of all attempted notifications and the actual notification of the consignee, and the name of the person who notifies or attempts to notify the consignee shall be written either on the carrier's or intermediate handler's copy of the shipping document or on the copy that accompanies the primary enclosure.~~

~~(2) The commercial pet breeder shall instruct the carrier that if the intended recipient cannot be notified within twenty-four (24) hours after the pet has arrived at the terminal facility, the carrier shall return the pet to the commercial pet breeder or to a person that the commercial pet breeder shall designate, and the commercial pet breeder shall pay the carrier additional fees or costs associated with the re-delivery.~~

~~(3) The commercial pet breeder shall instruct the carrier that if the intended recipient is notified of the arrival of the pet and does not accept delivery of the pet within forty-eight (48) hours after arrival of the animal, the carrier shall return the pet to the commercial pet breeder or to a person the commercial pet breeder designates, and the commercial pet breeder shall pay the carrier or intermediate handler additional fees or costs associated with the redelivery.~~

~~(4) The commercial pet breeder shall contract with the carrier or intermediate handler for the carrier or intermediate handler to continue to provide proper care, feeding, and housing to the pet and maintain the pet in accordance with generally accepted professional and husbandry practices while in transportation and until the intended recipient accepts delivery of the animal or until the carrier returns the pet to the commercial pet breeder or a person the commercial pet breeder designates.~~

35:55-5-4. Primary enclosures used to transport live pets [REVOKED]

~~(a) Each pet shall be contained in a primary enclosure such as a compartment, transport cage, or crate while being transported. Primary enclosures used to transport pet shall be constructed so that:~~

~~(1) The primary enclosure is strong enough to contain the pet securely and comfortably and to withstand the normal rigors of transportation;~~

~~(2) The interior of the primary enclosure has no sharp points or edges and no protrusions that could injure the pet contained in it;~~

~~(3) The pet is at all times securely contained within the enclosure and cannot put any part of its body outside the enclosure in a way that could result in injury to itself, to handlers, or to persons or animal nearby;~~

~~(4) The pet can be easily and quickly removed from the enclosure in an emergency;~~

~~(5) Unless the enclosure is permanently affixed to the conveyance, the enclosure shall have devices such as handles or handholds on its exterior that enable persons to lift, manipulate, and move the enclosure without tilting it, and ensure that persons handling the enclosure will not come into physical contact with the pet contained inside;~~

~~(6) Unless the enclosure is permanently affixed to the conveyance, the commercial pet breeder shall clearly mark the primary enclosure on top and on one or more sides with the words "Live Animals," in letters at least one (1) inch (2.5 cm.) high, and with arrows or other markings to indicate the correct upright position of the primary enclosure;~~

~~(7) Any material, treatment, paint, preservative, or other chemical used in or on the enclosure shall be nontoxic to the pet and not harmful to the health or well-being of the pet;~~

~~(8) The pet contained inside receives proper ventilation;~~

~~(9) The primary enclosure has a solid, leak-proof bottom or a removable, leak-proof collection tray under a slatted or mesh floor that prevents seepage of waste products, such as excreta and body fluids, outside of the enclosure. If a slatted or mesh floor is used in the enclosure, it shall be designed and constructed so that the pet cannot fit or place any part of its body between the slats or through the holes in the mesh. Unless the pets are on raised slatted floors or raised floors made of mesh, the primary enclosure shall contain enough previously unused litter to absorb and cover excreta. The litter shall be of a suitably absorbent material that is safe and nontoxic to pets;~~

~~(10) The primary enclosure shall not allow for excreta or other wastes to fall on other pets, including that enclosures may not be stacked if the enclosures permit wastes or excreta to fall through the enclosure.~~

~~(b) Primary enclosures used to transport live pets shall be large enough to ensure that each pet contained in the primary enclosure has enough space to turn about normally while standing, to stand and sit erect, and to lie in a natural position.~~

~~(c) A primary enclosure used to hold or transport pets in commerce shall be cleaned and sanitized before each use. If the dogs or cats are in transit for more than twenty-four (24) hours, the commercial pet breeder shall clean the primary enclosure, replace all litters, and use other methods, such as moving the pets to another enclosure, to prevent the soiling of the pets by body wastes. If it becomes necessary to remove the pet from the enclosure in order to clean, or to move the pet to another enclosure, this procedure shall be completed in a way that safeguards the pet from injury and prevents escape.~~

~~(d) Ventilation methods shall meet the following:~~

~~(1) Unless the primary enclosure is permanently affixed to the conveyance, the primary enclosure shall have:~~

~~(A) At least one-third of the ventilation area located on the upper half of the primary enclosure; and~~

~~(B) At least one of the following:~~

~~(i) Ventilation openings located on two opposing walls of the primary enclosure and the openings shall be at least sixteen percent (16%) of the surface area of each such wall, and the total combined surface area of the ventilation openings shall be at least fourteen percent (14%) of the total combined surface area of all the walls of the primary enclosure; or~~

~~(ii) Ventilation openings on three walls of the primary enclosure, and the openings on each of the two opposing walls shall be at least eight percent (8%) of the total surface area of the two walls, and the ventilation openings on the third wall of the primary enclosure shall be at least fifty percent (50%) of the total surface area of that wall, and the total combined surface area of the ventilation openings shall be at least fourteen percent (14%) of the total combined surface area of all the walls of the primary enclosure; or~~

~~(iii) Ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each of the four walls shall be at least eight percent (8%) of the total surface area of each such wall, and the total combined surface area of the openings shall be at least fourteen percent (14%) of total combined surface area of all the walls of the primary enclosure.~~

~~(2) If a primary enclosure is permanently affixed to the primary conveyance so that there is only a front ventilation opening for the enclosure, the primary enclosure shall be affixed to the primary conveyance in such a way that the front ventilation opening cannot be blocked, and the front ventilation opening shall open directly to an unobstructed aisle or passageway inside the conveyance. The ventilation opening shall be at least ninety percent (90%) of the total area of the front wall of the enclosure, and shall be covered with bars, wire mesh, or smooth expanded metal having air spaces.~~

~~(e) Commercial pet breeders shall transport in the same primary enclosure no more than one animal six (6) months of age or older; one live puppy, eight (8) weeks to six (6) months of age, and weighing over twenty pounds (20 lbs.); or two live puppies or kittens up to six (6) months of age, that are of comparable size, and weighing twenty pounds (20 lbs.) or less each. Commercial pet breeders shall not transport puppies or kittens four (4) months of age or less in the same primary enclosure with adult animals other than their dams. Commercial pet breeders may only transport in the same primary enclosure compatible pets of the same species.~~

~~(f) Primary enclosures used to transport pets shall be positioned in the primary conveyance so as to allow an animal access to sufficient air for normal breathing at all times, and provide protection from the elements, including that pets shall not be wetted by precipitation when windows, doors, or other openings of animal holding or transportation areas are open. The openings of primary enclosures shall be accessible at all times for emergency removal of the pets.~~

~~(g) Shipping documents that shall accompany shipments of pets shall either be held by the operator of the primary conveyance, for surface transportation only, or shall be securely attached in a readily accessible manner to the outside of any primary enclosure that is part of the shipment, in a manner that allows them to be detached for examination and securely reattached, such as in a pocket or sleeve. Instructions for administration of drugs, medication, and other special care shall be attached to each primary enclosure in a manner that makes them easy to notice, to detach for examination, and to reattach securely. The certification of pet condition shall be affixed to the primary enclosure. Shipping documents shall state the number and species of animals being transported.~~

~~(h) If the trip is six (6) hours or more in length, a litter box shall be provided within each crate for cats. The litter box shall not cover more than fifty percent (50%) of the crate floor, and the remaining space shall be large enough for the cat to stand, lie down, and turn around.~~

35:55-5-5. Food and water during transportation [REVOKED]

~~Commercial pet breeders shall provide food at least once every twenty four (24) hours to each animal that is sixteen (16) weeks of age and at least once every twelve (12) hours to puppies and kittens less than sixteen (16) weeks of age. Commercial pet breeders shall provide potable water to each animal at least once every twelve (12) hours.~~

SUBCHAPTER 7. RECORDKEEPING AND SALES

35:55-7-1. Records

(a) A commercial pet breeder or animal shelter operator shall maintain a separate health record for each animal in the facility ~~of the commercial breeder~~ documenting the healthcare of the animal that shall include:

(1) The breed, sex, color, and identifying marks of the animal; and

(2) A record of all inoculations, medications, and other veterinary medical treatment received by the animal while in the possession of the commercial pet breeder or animal shelter operator.

(b) The commercial pet breeder or animal shelter operator shall make the health records available on request to the Oklahoma Department of Agriculture, Food, and Forestry, an authorized agent of the Board, a local animal control authority, or any other inspector designated by the Department.

(c) Commercial pet breeders or animal shelter operators shall create, maintain, and keep records of operations consisting of a list describing all pets that have been born, housed or kept in the facility at any time, and stating the disposition of all pets listed. In describing the disposition of any pet, the commercial pet breeder and animal shelter operator shall record the following:

(1) If the animal was sold or otherwise transferred, the manner and location of the sale, transfer, or other disposition, and the ~~purchaser's~~recipient's name and address, if the commercial pet breeder or animal shelter operator shipped or otherwise transported the animal to the ~~purchaser~~ recipient;

(2) That the pet is still on the premises, or

(3) If the pet died while at the facility, the date of death and cause of the death.

(d) Commercial pet breeders and animal shelter operators shall keep the following records of all sales or disposition of ~~pet the commercial pet breeder has~~pets owned or has housed at the licensed facility:

(1) A description of each sold or disposed pet; and

(2) With respect to each pet list the date of transaction, the location of the transaction, whether the commercial pet breeder or animal shelter operator transported or shipped the pet for delivery, including the location of the recipient, the age of the pet, and the name and address of the ~~purchaser~~ recipient.

(e) Commercial pet breeders and animal shelter operators shall keep at their facility records of all pets ~~the commercial pet breeder has~~ purchased or otherwise acquired at any time during the preceding two (2) years, which record shall include the date of the transaction, the name and address of the seller, and a description of each pet received, including the age of each pet at the time it was acquired by the commercial pet breeder or animal shelter operator.

(f) Commercial pet breeders and animal shelter operators, if applicable, shall keep at their facility breeding records, which, for each adult female animal shall list the dates she was bred, the dates on which her puppies or kittens were born, and the number of puppies or kittens in each litter.

(g) For each pet, commercial pet breeders and animal shelter operators shall keep copies of documents evidencing the information that shall be contained in the pet breeder's records, including veterinary reports, sales receipts, and shipping invoices.

(h) A commercial pet breeder and animal shelter operator shall maintain all records for a minimum of two (2) years.

35:55-7-2. Pet health history provided to ~~purchaser~~ recipient; sale of unhealthy pets

(a) At the time of the sale or other transfer, commercial pet breeders and animal shelter operators shall provide to ~~purchasers~~recipients of pets a written disclosure of all treatments involving immunizations, medications, anthelmintics (dewormers) and all other treatments for parasites, administered to the purchased pet thirty (30) days prior to the sale. The disclosure shall describe the pet and describe the product used, the dosage, and the medication or product administered to the animal.

(b) Commercial pet breeders and animal shelter operators shall not knowingly sell a diseased or sick pet without fully disclosing the pet's condition to the ~~purchaser~~ recipient. ~~At the time they offer a pet for sale, commercial pet breeders shall disclose to the purchaser whether the offered animal has any known diseases, defects, or health conditions.~~

(c) At the time they offer a pet for sale, commercial pet breeders shall disclose to the purchaser whether the offered animal has any known diseases, defects, or health conditions.

(1) If, within ten (10) days after receipt of a pet by the purchaser, a veterinarian states, in writing, that the pet has an undisclosed health problem or disease which existed in the animal at the time of delivery, or if within one year after receipt of the animal by the purchaser, a veterinarian states, in writing, that the pet has died or is ill due to an undisclosed hereditary or congenital defect, or is not of the breed type represented, the pet shall be considered to have been unfit for sale at the time of sale.

(A) If the animal died, the purchaser shall provide necropsy and lab results to the commercial pet breeder.

(B) If the animal is ill, the commercial pet breeder may request an additional veterinary examination by a veterinarian in the vicinity of the purchaser selected by the commercial pet breeder.

(C) If the animal is not of the breed type represented, the purchaser shall provide DNA analysis verifying the determination.

(2) A purchaser shall be entitled to return to the commercial pet breeder a pet that was unfit for sale and obtain full reimbursement of the purchase price, except that if the unfit pet has died within one year of delivery the purchaser may obtain a reimbursement of the purchase price without returning the pet upon providing proof that the pet has died.

(3) For purposes of cost reimbursement under this subsection, purchaser shall also include the consumer who ultimately purchases the pet if the commercial pet breeder sells the pet to an intermediary or retailer if consumer obtains a veterinary statement indicating that the pet had pre-existing health problems, as described in subsection (c), and if the commercial pet breeder failed to disclose the pre-existing health problems to the intermediary that purchased the pet from the commercial pet breeder. In such case, recovery would be limited to the price paid to the commercial pet breeder. Commercial pet breeders shall not be liable to consumers if they disclose pre-existing health problems to the intermediary or retailer that ultimately sells the pet to the consumer.

~~(c) For purposes of cost reimbursement under this section, purchaser, as defined in subsection (b) of this section, shall include the consumer who ultimately purchases the pet if the commercial pet breeder sells the pet to an intermediary or retailer if consumer obtains a veterinary statement indicating that the pet had pre-existing health problems, as described in subsection (b), and if the commercial pet breeder failed to disclose the pre-existing health problems to the intermediary that purchased the pet from the commercial pet breeder. In such case, recovery would be limited to the price paid to the commercial pet breeder. Commercial pet breeders shall not be liable to consumers if they disclose pre-existing health problems to the intermediary or retailer that ultimately sells the pet to the consumer.~~

35:55-7-3. Sales invoice or statement

At the time of the sale, the commercial pet breeder or animal shelter operator shall provide the ~~purchaser~~recipient a sales statement in which the commercial pet breeder or animal shelter operator shall describe the pet, list the date of the transaction, the sales price, the name of the ~~purchaser~~ recipient, the location of the sale and the method of delivery, the commercial pet breeder's license number where applicable, and list any health problem disclosures made to the ~~purchaser~~ recipient. If the commercial pet breeder or animal health operator transports or otherwise ships the pet to the ~~purchaser~~ recipient, the commercial pet breeder or animal shelter operator shall list the ~~purchaser's~~recipient's address on the sales statement.

35:55-7-4. Location of sales

(a) Commercial pet breeders or animal shelter operators shall not market or sell or offer to sell any pets in retail parking lots or public parking lots, from the side of any road, or from any location that the person does not own if the person has not obtained the proper permit or credentials to sell from the location.

(b) Notwithstanding the foregoing, if while located at a location from which the commercial pet breeder or animal shelter operator may legally sell ~~products~~pets the commercial pet breeder or animal shelter operator communicates with a ~~purchaser~~ recipient, through phone, fax, email, or other form of communication, and agrees to sell and deliver a pet to a ~~purchaser~~ recipient, the commercial pet breeder or animal shelter operator may deliver the sold pet to the ~~purchaser~~recipient to any location upon which the commercial pet breeder or animal shelter operator and ~~purchaser~~recipient agree.

35:55-7-5. Prohibition on the purchase, sale, or transportation of stolen pets

No commercial pet breeder or animal shelter operator shall buy, sell, or transport any stolen pet.

35:55-7-6. Other requirements or acts prohibited

Commercial pet breeders or animal shelter operators shall comply with all applicable state and federal laws, municipal ordinances, and reasonable requirements of the Board.

[OAR Docket #14-478; filed 6-20-14]

TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS
CHAPTER 1. ADMINISTRATION

[OAR Docket #14-722]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Individual Proceedings
38:1-1-5 [AMENDED]

AUTHORITY:
Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., § 43B-1875-1
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2013
COMMENT PERIOD:
December 17, 2013 through January 16, 2014
PUBLIC HEARING:
January 17, 2014
ADOPTION:
January 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 21, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
38:1-1-5 was amended to change the composition of the Complaint Review Committee to include a Board member. It also clarifies the review process to determine probable cause, investigations, and informal process against candidates.
CONTACT PERSON:
Richard D. Pierson, Executive Director, Oklahoma Board of Licensed Alcohol and Drug Counselors, 5104 N. Francis, Suite C, Oklahoma City, OK 73118, 405-840-8908

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 21, 2014:

SUBCHAPTER 1. INDIVIDUAL PROCEEDINGS

38:1-1-5. ~~Receiving~~Complaints

(a) Any person may file a complaint against an LADC or CADC or a person practicing alcohol and drug counseling. A person wishing to register a complaint or alleged violation against LADC or CADC or person practicing alcohol and drug counseling may notify the Board in writing, by telephone, or by a personal visit. The Board will determine whether the complaint alleges a possible violation of the Act or this chapter.

(b) The complaint and the identity of the complainant shall be confidential and shall not be available for public inspection. Upon receipt of the complaint, the Board staff shall:

(1) stamp all pages with a Board stamp which indicates the date of receipt;

(2) review the complaint to determine if the person against whom the complaint is registered is a current licensee or certified person;

(3) log the complaint, assigning a number consisting of the year and sequence number in which it was received; further, recording the date received, name of complainant, if provided, and the name and license or certification number or the licensee or certified person;

(4) generate a letter to the complainant indicating receipt and review of the complaint, if applicable;

(5) notify the Board chair and Complaint Review Committee.

(c) The Complaint Review Committee is comprised of one member of the Board, the Board Executive Director, the Board's legal counsel and up to four additional persons as the Board Chair may appoint. The Board member who serves on the committee shall be recused from participating in an individual proceeding or the Board's consideration of any other manner of disposition of the complaint.

(d) The Complaint Review Committee may cause the complaint to be investigated to gather sufficient information to determine whether probable cause exists that a violation of the Licensed Alcohol and Drug Counselors Act or rules has occurred. The Complaint Review Committee will make a recommendation to the Board to resolve the complaint through an informal process, file a petition and notice, or dismiss the complaint.

(e) The Complaint Review Committee may conduct the investigation or refer the matter to an individual investigator.

(f) The Complaint Review Committee may recommend that the matter be resolved without filing a formal petition and notice by issuing a Letter of Concern, conducting an informal conference with the Respondent, or negotiating an informal disposition agreement.

(~~c~~g) ~~**Petition Notice.** In the event the Board chair or Complaint Review Committee determines action should be taken, a~~ An individual proceeding may be initiated by filing a petition and notice with the hearing clerk for the Board, who shall be designated by the Board chair, and by serving the petition on all respondents. The petition and notice shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference.

[OAR Docket #14-722; filed 7-15-14]

TITLE 38. OKLAHOMA BOARD OF LICENSED ALCOHOL AND DRUG COUNSELORS
CHAPTER 10. LICENSURE AND CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

[OAR Docket #14-723]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Rules of Professional Conduct
38:10-3-2 [AMENDED]
38:10-3-3 [AMENDED]
38:10-3-4 [AMENDED]
38:10-3-5 [AMENDED]
Subchapter 7. Requirements for licensure or certification
38:10-7-2 [AMENDED]
38:10-7-3 [AMENDED]
38:10-7-5 [AMENDED]
38:10-7-6 [AMENDED]
38:10-7-7 [AMENDED]
38:10-7-9 [AMENDED]
38:10-7-10 [AMENDED]
Subchapter 9. Supervision of Work Experience
38:10-9-2 [AMENDED]
38:10-9-4 [AMENDED]
38:10-9-5 [AMENDED]
Subchapter 13. Continuing Education Standards
38:10-13-2 [AMENDED]

AUTHORITY:
Oklahoma Board of Licensed Alcohol and Drug Counselors; 59 O.S., § 43B-1875-1

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2013

COMMENT PERIOD:
December 17, 2013 through January 16, 2014

PUBLIC HEARING:
January 17, 2014

ADOPTION:
January 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 5, 2014

APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 21, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Subchapter 3 amends the code of ethics to include co-occurring disorders, requires records be retained for seven years, requires updating changes of address, phone numbers and employment within 14 days and requires candidates to use their credential acronym followed by the word candidate in identifying their status as a candidate.

Subchapter 7 removes language that is no longer necessary, adds language to the requirements for LADCs, adds time limits on completion of licensure and certification requirements, includes language and requirements for the new LADC/MH credential, add provisions for military personnel exceptions. LADC candidates, who hold another mental health license, may be in private or independent practice. Reciprocity provisions added for military spouses. The co-occurring credential for LADCs will be renamed LADC/MH.

Subchapter 9. Subchapter 9 adds requirements for direct observation by the supervisor of candidates providing community or home-based services. Termination of supervision must be reported to the Board office within 3 business days. Supervision logs must be submitted every three months. A supervisor may not supervise more than 20 candidates or CADCs in private or independent practice at any one time. Supervision of more than 20 candidates must be approved by the Board for each supervisee over 20.

Subchapter 13 clarifies the number and type of continuing education hours required for license or certification renewal.

CONTACT PERSON:
Richard D. Pierson, Executive Director, Oklahoma Board of Licensed Alcohol and Drug Counselors, 5104 N. Francis, Suite C, Oklahoma City, OK 73118, 405-840-8908

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 21, 2014:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

38:10-3-2. Code of ethics

(a) It shall be the responsibility of Licensed and Certified Alcohol and Drug Counselors to value objectivity and integrity, and in providing services, to strive to maintain the highest standards of their profession.

(b) LADCs and CADCs shall accept responsibility for the consequences of their work and make every effort to ensure their services are used appropriately.

(c) LADCs and CADCs shall be alert to personal, social, organizational, financial, and political situations or pressures that might lead to the misuse of their influence.

(d) LADCs and CADCs shall not participate in, condone, or be associated with dishonesty, fraud, sexual harassment, deceit or misrepresentation.

(e) LADCs and CADCs shall not exploit their relationships with current or former clients, supervisees, students, employees, or research participants, sexually or otherwise, for personal advantage, profit, satisfaction, or interest.

(f) LADCs and CADCs shall not solicit the clients of one's employing agency for private practice.

(g) LADCs and CADCs shall terminate service to clients, and professional relationships with them when such service and relationships are no longer required or in which a conflict of interest arises.

(h) LADCs and CADCs shall not engage in any sexual act with a client or with a person who has been a client.

(i) The LADC or CADC/client relationship shall be presumed to exist for a period of six months after the termination of services except where circumstances such as, but not limited to, selection of a new therapist shows otherwise.

(j) The LADC and CADC shall give precedence to his or her professional responsibility over personal interests.

(k) The LADC and CADC shall not represent that he or she performed services which he or she did not perform.

(l) LADCs and CADCs shall not divide a fee or accept or give anything of value for receiving or making a referral.

(m) LADCs and CADCs shall provide clients at the beginning of service written, accurate and complete information regarding the extent and nature of the services available to them, to include fees and manner of payment.

(n) In addition to the above stated provisions each LADC and CADC shall sign and adhere to the written code of ethics as set forth in Appendix A of this Chapter.

(o) LADC/MH applicants will need to sign the Code of Ethics for Co-Occurring Disorders as found in Appendix B.

38:10-3-3. Client welfare

(a) **Titles 42 and 45 CFR.** All drug or alcohol abuse treatment information, whether recorded or not, and all communications between a LADC or CADC and his or her client are both privileged and confidential. In addition, the identity of all clients who have received or are receiving drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the client unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the client shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release.

(b) **Discrimination.** LADCs and CADCs shall not participate in, condone or promote discrimination on the basis of race, color, age, gender, religion, sexual orientation, or national origin.

(c) **Credentials.** LADCs and CADCs shall not misrepresent professional qualifications, education, affiliations, or services performed.

(d) **Records.**

(1) **Retention.** LADCs and CADCs shall maintain verifiable records necessary for rendering professional services to their clients for at least ~~five (5)~~seven (7) years beyond termination of services, or in compliance with the employing agency's records disposition schedule.

(2) **Confidentiality.** LADCs and CADCs shall be responsible for securing the safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(3) **Client access.** LADCs and CADCs shall provide the client with a copy of the client's record in accordance with state and federal law. In situations involving multiple clients, access to records is limited to those parts of the record that do not include confidential information related to another client.

(e) **Dual relationships.** LADCs and CADCs shall be aware of their influential positions with respect to clients, and shall not exploit the trust and dependency of clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, professional or close personal relationships with clients. When the possibility that a dual relationship exists, the LADC and CADC shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure judgment is not impaired and no exploitation occurs.

(f) **Privacy.**

(1) LADCs and CADCs shall not make inquiry into persons or situations not directly associated with the client's treatment.

(2) LADCs and CADCs shall respect the privacy of clients and hold in confidence all information obtained in the course of professional service except for the client's voluntary consent for release of information; in case of death or disability, with the written consent of a personal representative, other person authorized to sue, or the beneficiary of an insurance policy on the person's life, health or physical condition; when the person waives the privilege by bringing any public charges against the licensee; and for compelling reasons, which include, but are not necessarily limited to:

(i) consultation with another professional on behalf of the client;

(ii) duty to warn;
(iii) child abuse and sexual molestation; or,
(iv) any other situation in accordance with statutory requirements.

(g) **Referral.** The LADC or CADC shall not enter into a counseling relationship if he or she determines that he or she is unable to be of professional assistance to a client . LADCs and CADCs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LADC or CADC shall terminate the relationship.

(h) **Confidentiality.** LADCs and CADCs shall obtain informed consent of clients before audio or video taping, or recording or permitting third party observation of their activities.

(i) **Sanctions.** Any LADC or CADC who violates any provision of this subchapter shall be subject to sanction(s) as provided in the Licensed Alcohol and Drug Counselors Act.

38:10-3-4. Professional standards

(a) **Violations of other laws.** It shall be professional misconduct for an LADC or CADC to violate a state or federal statute if the violation directly relates to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

(b) **Drug or alcohol use.** LADCs and CADCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Sexual contact.**

(1) **Current clients.** LADCs and CADCs shall not have any type of sexual contact with clients and shall not counsel persons with whom they have had a sexual relationship.

(2) **Former clients.** LADCs and CADCs shall not engage in sexual contact with former clients.

(d) **Updating.** LADCs and CADCs shall notify the Board of any change in address, telephone number, and employment within fourteen (14) days of the change.

38:10-3-5. Relations with the public and other professions

(a) **Misrepresentation.** LADCs and CADCs shall not misrepresent nor allow the misrepresentation by others of the efficacy of the LADCs and CADCs professional services.

(b) **Credentials claimed.** LADCs and CADCs shall claim ~~or imply~~ only the professional credentials possessed and shall be responsible for correcting any known misrepresentations of their credentials by others. Candidates under supervision for licensure or certification shall use "LADC candidate" or "CADC candidate" to identify their status as candidates for licensure or certification. A LADC who is under supervision for their LADC/MH shall use LADC#/MH Candidate to identify their status as a candidate for LADC/MH.

(c) **Advertisement.** When an LADC or CADC announces services or advertises, he or she shall represent services to the public by identifying credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent. An LADC or CADC may only advertise the highest degree earned from a regionally accredited college or university recognized by the US Department of Education. All advertisements or announcements of counseling services including telephone directory or internet listings by an LADC or CADC shall clearly state his or her licensure or certification status by the use of "LADC" or "CADC" or a statement such as "licensed by the Oklahoma Board of Licensed Alcohol and Drug Counselors" or "certified by the Oklahoma Board of Licensed Alcohol and Drug Counselors."

(d) **License.** Each LADC or CADC must display the original, current license or certificate, in a prominent place in the primary location of practice.

(e) **Public statements.** When an LADC or CADC provides advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, he or she shall take reasonable precautions to ensure that:

(1) The statements are based on appropriate professional literature and practice.

(2) The statements are otherwise consistent with the mandates of the Rules of Professional Conduct.

(3) There is no implication that a professional counseling relationship has been established.

(f) **Rebates.** An LADC or CADC shall not give or accept a commission, rebate, or other form of remuneration for referral of clients for professional services.

(g) **Accepting fees from agency clients.** An LADC or CADC shall refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the employer of the LADC or CADC

SUBCHAPTER 7. APPLICATION

38:10-7-2. Requirements for licensure or certification

(a) **Licensed Alcohol and Drug Counselor.**

(1) ~~Prior to January 1, 2010, a~~An application for a license to practice as a LADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant ~~for a licensure~~shall:

(A) Be ~~possessed~~ of good moral character;

(B) Pass an oral and written examination;

(C) Be at least twenty-one (21) years of age;

(D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;

(E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.

~~(F) At a minimum, hold a master's degree in a behavioral science field that is recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors as appropriate to practice as a licensed alcohol and drug counselor;~~

~~(G) Successfully completed at least one (1) year of full-time supervised work experience. For the purpose of the Act, "one (1) year full-time work experience" shall be defined as two thousand (2,000) hours of work experience, of which at least one thousand (1,000) hours shall consist of providing alcohol and drug counseling services to an individual and/or the individual's family;~~

~~(H) Successfully completed at least one hundred eighty (180) clock hours of education related to alcohol and drug counseling subjects, theory, practice or research; and,~~

~~(I) Successfully completed at least three hundred (300) hours of supervised practicum experience in the field of drug and alcohol counseling.~~

(3) In addition to the requirements in subsection (a) (2), each applicant shall:

(A) Have at least a master's degree in alcohol and substance abuse counseling or other clinical counseling field recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors from a college or university accredited by an accrediting body recognized by the U.S. Department of Education. The degree program must include, at a minimum, the courses and the practicum/internship listed in 59 O.S. § 1876 (D) (1) and;

(B) Have successfully completed at least one (1) year of full-time supervised work experience. For the purpose of the Act, "one (1) year of full-time work experience" shall be defined as two thousand (2,000) hours of work experience, of which at least one thousand (1,000) hours shall consist of direct client contact providing behavioral health services to an individual and/or the individual's family. At least five hundred (500) hours of the one thousand (1,000) direct client contact hours must be the provision of alcohol and drug counseling services; or

(C) Be a licensed mental health professional as defined in Section 1-103 of Title 43A of the Oklahoma Statutes and have completed a minimum of fifteen (15) hours of master's level substance abuse specific coursework, including, but not limited to, chemical addiction, counseling, alcohol/drug counseling theory, pharmacology of drugs and abuse, assessment and treatment of alcohol and drug problems, theories in family addiction and family addiction counseling. An applicant who qualifies under this subsection is not required to complete the supervised work experience.

(D) An applicant must complete all requirements for licensure, including passing the exams, within three (3) years of the date the application was accepted.

(E) Persons who meet the requirements in subsection (a) may include the assessment, diagnosis, and treatment of mental health disorders within the LADC scope of practice. The designation LADC/MH (licensed alcohol and drug counselor/mental health) shall be noted on their license and wallet card.

(F) Persons who were licensed as LADC or made application prior to January 1, 2012 and who meet the requirements in subsection (a) may make application for the LADC/MH designation. Applicants must submit a completed application on the form prescribed by the Board and pay a fee of one hundred forty dollars ($140) which shall be retained by the Board and not returned to the applicant. The application must include:

(i) An official transcript in a sealed envelope showing that the applicant has obtained the educational requirements;

(ii) Proof that the applicant holds a valid license in good standing in one of the behavioral health professions listed in 59 O.S. § 1876 (F)(1);

(iii) For applicants who do not meet the requirements in (a) (3) (A) or (a) (3)(B), proof that the applicant has a valid co-occurring disorders certification from a certification entity approved by the Board.

(b) **Certified Alcohol and Drug Counselor.**

(1) An application for certification as a CADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the Act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant for certification shall:

(A) Be of good moral character;

(B) Pass an oral and written examination;

(C) Be at least twenty-one (21) years of age;

(D) Not have engaged in, nor be engaged in, any practice or conduct which would be grounds for denying, revoking or suspending a license pursuant to the provisions of the Act;

(E) Otherwise comply with the rules promulgated by the Board pursuant to the provisions of the Act.

(F) At a minimum, a bachelor's degree in a behavioral science field that is recognized by the Oklahoma Board of Licensed Alcohol and Drug Counselors as appropriate to practice as a certified drug and alcohol counselor in this state;

(G) Have successfully completed at least two (2) years of full-time supervised work experience. For the purpose of the Act, "two years of full-time work experience" shall be defined as four thousand (4,000) hours of work experience of which at least two thousand (2,000) hours shall consist of providing alcohol and drug counseling services to an individual and/or the individual's family;

(H) Have successfully completed at least two hundred seventy (270) clock hours of education related to alcohol and drug counseling subjects, theory, practice or research;

(I) Successfully completed, as a part of or in addition to the education requirements established in paragraph three of this subsection, a minimum of forty-five (45) clock hours of specialized training approved by the Board in identifying co-occurring disorders and making appropriate referrals for treatment of co-occurring disorders; and

(J) Successfully completed at least three hundred (300) hours of supervised practicum experience in the field of drug and alcohol counseling.

(K) complete all requirements for certification, including passing the examinations, within five (5) years of the date the application was accepted.

(c) **Post-Military Service Applicants.** The Board shall consider the equivalent education, training and experience completed by an applicant for certification or licensure while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for certification or licensure. To determine whether education, training and experience completed by an applicant for certification or licensure while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

38:10-7-3. Private or independent practice

No person may engage in the private or independent practice of alcohol and drug counseling work unless:

(1) licensed under the Act as a Licensed Alcohol and Drug Counselor; and,

(2) has had no less than two (2) years of full-time or the equivalent thereto of part-time experience, a total of 4,000 hours, supervised work experience, in the alcohol and drug counseling field, and shall continue to meet continuing education requirements set by the Board; or,

(3) is certified under the Act as a certified alcohol and drug counselor; and

(4) has had no less than three years of full-time or the equivalent thereto of part-time experience, a total of 6,000 hours of supervised work experience in the alcohol and drug counseling field, and shall continue to meet continuing education requirements set by the Board; and,

(5) is supervised by a licensed alcohol and drug counselor

(6) This section shall not be construed to prevent an LADC applicant who holds an Oklahoma license in good standing in another behavioral health profession from engaging in independent or private practice under the other license.

38:10-7-5. Issuance of License, ~~or~~ Certification, or LADC/MH.

The Board shall issue an appropriate license or certification to all applicants who meet the requirements for licensure or certification in order to identify the alcohol and drug counselor to the public as an LADC, ~~or~~ CADC, or LADC/MH.

38:10-7-6. Application

(a) Applicants for licensure or certification shall timely submit a completed application on the form prescribed by the Board, as well as the required fee(s) and documentation. The application includes:

(1) Application fee;

(2) Application form completed, signed, dated and notarized;

(3) A full-face photograph, at least two inch by three inches, taken within the last 12 months, or a photocopy of a current driver's license;

(4) Official transcript in sealed envelope;

(5) Signed consent authorizing the Board to conduct a criminal background check and collect any additional information or references necessary;

(6) Signed code of ethics;

(7) Personal philosophy;

(8) Three professional references; and,

(9) Supervision contract;

(b) An applicant shall:

(1) Read and be familiar with the rules for the licensed alcohol and drug counselors act;

(2) Follow all laws and rules, including the ethical standards;

(3) Notify the Board in writing within ~~30~~14 (fourteen) days of a change in address or employment;

(c) All application materials become the property of the Board.

(d) An application packet will not be accepted unless it is complete.

(e) The use of false or fraudulent information by an applicant may be grounds for denial of a license.

(f) Incomplete documents will be returned to the sender. The Board will hold the remaining documents, but will not accept the application until all outstanding documents have been completed and approved.

(g) The application fee is not refundable and will not be returned. When resubmitting documents that were returned to the sender as incomplete, a second application fee is not required.

(h) A document may be considered incomplete if it does not conform to the following standards:

(1) All blanks must be completed and questions answered, the forms signed and dated. If the documentation relates to past activity, the date of the activity shall also be recorded;

(2) Documentation shall be permanent and legible (e.g., typed or printed in black ink); and,

(3) When it is necessary to correct a document, the error shall be marked through with a single line, dated, and initialed by the writer. Correction fluid shall not be used.

(i) An applicant may not provide counseling services or begin accumulating supervised work experience until the applicant~~must~~receives written notice ~~of receipt of his or her application~~ from the Board.~~before accumulating any supervised work experience or taking the examination or providing substance abuse services.~~ The notice shall include the date on which the application will become void.

(j) Within 45 days of receipt of the completed application, the Board shall notify the applicant that the application is complete or specify the additional information required.

(k) By signing the application, the applicant accepts responsibility for remaining knowledgeable of licensure rules.

(l) An application for licensure is valid for three years from the date of acceptance, and shall be deemed void upon expiration of the three-year period. Applicants who have not completed the requirements, including passing the exams, within the three year period may petition the Board for an extension of the application. The Board may grant up to a two-year extension upon satisfactory proof from the applicant of good cause for failure to timely complete the requirements. The petition must be filed with the Board at least ninety (90) days prior to the expiration of the application. A person whose application is void is no longer authorized to practice under supervision as a candidate for licensure.

(m) An application for certification is valid for five years from the date of acceptance, and shall be deemed void upon expiration of the five-year period. Applicants who have not completed the requirements, including passing the exams, within the five year period may petition the Board for an extension of the application. The board may grant up to a two-year extension upon satisfactory proof by the application of good cause for the failure to timely complete the requirements. The petition must be filed with the Board at least ninety (90) days prior to the expiration of the application. A person whose application is void is no longer authorized to practice under supervision as a candidate for certification.

(n) Persons whose applications for licensure or certification have become void must submit a new application, including application fee, and shall be subject to the licensure and certification requirements currently in effect. Supervised work experience hours, practicum, and continuing education completed within 2 years prior to the application becoming void, may carry over to a new application. Applicants may be required to retake the oral and written examinations.

(o) The running of the three or five year application period may be suspended for applicants who are members of the military called to active duty before they completed the requirements for licensure. Upon receipt of proof of assignment to active duty, the Board may suspend the application completion time period for the period of active duty. The applicant shall make a written request for suspension on a form prescribed by the Board.

38:10-7-7. Examinations

(a) **Eligibility.** An LADC or CADC applicant is eligible to take the licensing or certification examination ~~once his or her application documentation is deemed complete and applicable fee(s) are received~~ upon completion of the supervised work experience requirement.

(b) **Examination.** Each applicant shall take and pass written and oral examinations.

(c) **Administration.** The Board shall administer the licensure examinations at least one (1) time each year or as often as deemed necessary.

(d) **Application.**

(1) The Board shall mail notification of eligibility to sit for examination to the last known address of applicant ~~at least (60) days prior to the date of the next scheduled examination~~.

(2) An applicant who wishes to take a scheduled examination shall complete an examination registration form, and ~~return it to the Board~~ pay the required fee ~~at least thirty (30) days prior to the date of the examination~~ before the applicant will be scheduled to test.

~~(3) The applicant has one year from the date of receipt of his or her written notification, which shall be mailed to the last known address to register for the test. If applicant fails to register in writing for the test, eligibility for examination and his or her application will be voided.~~

(e) **Grading.** Licensure examinations shall be graded by the Board or its designee.

(f) **Notice of results.**

(1) The Board shall notify the applicant of the examination results within sixty (60) days of the date of the examination.

(2) Examination results shall be in writing and shall specify "pass" or "fail."

(g) **Failure to appear.** If the applicant for licensure or certification fails to appear for examination for reasons other than documented illness or other cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant shall reapply and pay another examination fee before being admitted to a subsequent examination.

~~(h) **Failure to apply.** If an applicant fails to timely register for and take the applicable examination pursuant to section (d)(3) of this section, his or her application shall be voided, and the applicant will be so notified in writing.~~

(~~i~~h) **Failure to pass.** In the event of failure to pass the examination, the applicant may retake the examination on the next available testing date

38:10-7-8. Renewal of license or certification

(a) **Renewal timeline.** All licenses or certifications shall expire at the end of each fiscal year (June 30th) and shall be subject to renewal on the first day of the next fiscal year (July 1st).

(b) **Renewal package.** All licensed or certified persons must submit a complete renewal package, including fee, postmarked by June 30th of the fiscal year. Only renewals submitted on the most current forms provided by the Board will be accepted.

(c) **Individual responsibility.** Each LADC or CADC is responsible for renewing the license or certification and specialty designation before the expiration date.

(d) **Renewal notification.** The Board shall mail a written notice of expiration to LADC or CADC at least forty-five (45) days prior to the expiration date of the license or certification.

(e) **Failure to renew.** If the licensee or certified person fails to timely renew his or her license or certification by the expiration date, the Board shall notify him or her in writing that:

(1) suspension of the license and or certification, and forfeiture of rights and privileges granted by the license or certification;

(2) the LADC or CADC has the right to renew the license by payment of the renewal fee and the late renewal fee and fulfillment of all other renewal requirements for up to one (1) year following the suspension of the license; and

(3) Licenses or certifications not renewed within the one (1) year renewal period shall not be reinstated and the license or certification shall be returned to the Board.

(f) Any LADC or CADC whose license or certification is active and in good standing is a member of the Armed Forces of the United States and is on active duty at the time of renewal is exempt from payment of the renewal fee. Upon receipt of notice of assignment to active duty from the LADC or CADC, the Board shall automatically renew the license without fee each year thereafter of active duty military service, and for up to one year after the date of discharge from active duty.

38:10-7-9. Reciprocity

(a) Any person who becomes a resident of Oklahoma and who is or has been, immediately preceding his residency in this state, licensed or certified in good standing to practice alcohol and drug counseling by another state and who meets the testing, educational, and work experience qualifications for licensure or certification in Oklahoma may, upon payment of the necessary fee and submission of documentation as required by the Board, be licensed or certified under these provisions.

(b) Reciprocity shall be based upon an evaluation of the licensing or certification criteria of the other state to determine if criteria are equal to or more stringent than Oklahoma licensing or certification requirements.

(c) The Board shall expedite the process of licensure by reciprocity for applicants whose spouse is an active duty member of the armed forces of the United States if:

(1) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of active duty and;

(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.

(d) The Board may authorize an applicant whose spouse is an active duty military service member as described in subsection (c) of this Section to practice under supervision while completing Oklahoma exam requirements for licensure that were not required in the state in which the applicant is licensed or certified. The applicant is subject to the rules governing supervision of applicants who are not seeking licensure or certification by reciprocity.

38:10-7-10. Co-occurring Disorders Credential Rules

(a) **Definitions.**

(1) Bachelor of Co-occurring Disorders Certification (BCDC) is a bachelor's degree level credential which shall be achieved by certified alcohol and drug counselors (CADC), or certified alcohol and drug counselors candidates that seek to be certified in co-occurring disorders (COD). This credential is required for CADCs to recognize co-occurring disorders and integrate that into substance abuse treatment.

(2) ~~Master's of Co-occurring Disorders Certification(MCDC)~~ LADC/MH is a master's degree level credential which shall be achieved by licensed alcohol and drug counselors (LADC), licensed alcohol and drug counselor candidates, or other Master's level candidates that seek to be certified in co-occurring disorders (COD). LADCs may treat co-occurring disorder within their scope of practice.

(b) **Qualifications.** To be eligible for Board approval as a Bachelors of Co-occurring Disorders Certification, a CADC or CADC candidate must be in good standing and:

(1) Have a minimum education of a bachelor's degree in co-occurring disorders or a behavioral science field with a clinical application from a college or university that is accredited by the United States Department of Education or the Council on Higher Education Accreditation or an international equivalent if the degree is from an international institution.

(2) 200 clock hours of continuing education units. Most of these should be covered by the appropriate degree in a behavioral science field. This includes a minimum of 140 hours of COD specific training, 30 hours of addiction specific training and 30 hours of mental health specific training to equal 200 hours.

(3) Have completed 4000 hours of COD specific supervised work experience AND 2000 hours of documented work experience in counseling in the last 10 years (6000 hours total).

(4) The two years (4000 hours) of supervised experience requirements for certification as a BCDC must be under the supervision of a Board approved co-occurring disorders supervisor.

(5) 200 Hour Practicum with a minimum of 20 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.

(6) Successfully pass the written exam for BCDC.

(7) Employed in a nationally accredited or Oklahoma Department of Mental Health and Substance Abuse Services certified agency, unless exempt from such certification.

(8) CADCs shall not provide private or independent practice for co-occurring disorders

(9) This is not a freestanding credential.

(10) This credential is required for CADCs to recognize co-occurring disorders and integrate that into substance abuse treatment.

(c) **Qualifications.** To be eligible for Board approval as a LADC/MH, a LADC, LADC candidate, or other Master's level candidate must be in good standing and:

(1) Have a minimum education of a Master's degree in co-occurring disorders or behavioral science field with a clinical application from a college or university that is accredited by the United States Department of Education or the Council on Higher Education Accreditation or an international equivalent if degree is from an international institution.

(2) Complete 140 hours of COD specific training.

(3) Complete 2000 hours (one year) of supervised work experience in COD specific work.

(4) Complete a Practicum of 100 hours with a minimum of 10 hours in each of the domains. The domains include (A) Screening and Assessment, (B) Crisis Prevention and Management, (C) Treatment and Recovery Planning, (D) Counseling and Interventions, (E) Recovery Support and Coordination of Care, (F) Psychopathology and Etiology, (G) Psychopharmacology, and (H) Ethics.

(5) Successfully pass the written exam for ~~MCDC~~.(LADC/MH).

(6) This is not a freestanding credential.

(7) LADCs may treat co-occurring disorders within the scope of their practice.

(d) **Application.**

(1) Complete an application form provided by the Board

(2) Submit two letters of reference

(3) Sign a supervision contract and submit to the Board for approval.

(4) Sign a COD code of ethics.

(5) Pay application fee of $140.00

(6) The BCDC must be completed within five (5) years from the original date of application.

(7) The ~~MCDC~~(LADC/MH) must be completed within three (3) years from the original date of application.

(e) **Supervision.** To be a Board approved supervisor for co-occurring disorders certification, you must:

(1) Be in good standing as a licensed alcohol and drug counselor and a state mental health professional; or

(2) A licensed mental health professional whose license is in good standing, and whose scope of practice includes treatment of alcohol and drug abuse or dependency; or

(3) A LADC whose license is in good standing and whose scope of practice includes co-occurring disorders; and

(4) Be approved by the Board to supervise CADCs, CADC candidates, or LADC candidates or other Master's level candidates for co-occurring disorders.

(f) **Renewal of BCDC or ~~MCDC~~ (LADC/MH) credential.** To maintain the BCDC or ~~MCDC~~ (LADC/MH) credential, the certified person shall complete, prior to June 30:

(1) The requirements for renewal of CADC/LADC.

(2) Pay a co-occurring disorders credential renewal fee of $50.00

SUBCHAPTER 9. SUPERVISION

38:10-9-2. ~~Supervision of~~Supervised work experience requirement

(a) **Licensed alcohol and drug counselor.** The one year supervised experience requirement for licensure as an LADC must be under the supervision of an alcohol and drug counselor holding the LADC license.

(b) **Certified alcohol and drug counselor.** The two year supervised experience requirement for certification as a CADC must be under the supervision of an alcohol and drug counselor holding an LADC license.

(c) **Practicum.** Practicum supervision may be signed off by anyone who is in a supervisory or educational role and has firsthand knowledge that the candidate did complete the requirement for the practicum. 300 Practicum hours must be documented before a supervision contract will be approved.

(d) Supervision hours acquired outside the State of Oklahoma, whether completed or in the process, may be approved by the Board on a case-by-case basis.

(e) The required supervision for an applicant who provides community or home-based services shall include, in addition to other supervision requirements, at least six (6) direct observations by the supervisor of the supervisee conducting counseling sessions in the client's home, school or other remote location outside of the applicant's employer's office. The observations must be made periodically throughout the applicant's supervised work experience at least once every other month, and documented in a form prescribed by the Board. Direct observations may be conducted via interactive live audio/video conferencing, and shall be documented in a form approved by the Board. No more than three (3) of the direct observations per year may be conducted via interactive live audio/video conferencing.

(f) An applicant for LADC who holds a current, valid Oklahoma license in another behavioral health profession may count alcohol and drug counseling services provided in the applicant's private or independent practice under the other license toward the supervised work experience. All other licensure supervision requirements apply.

(g) Supervisors and supervisees shall maintain records of supervision, including supervision logs and evaluation form, and may include other supporting documents relevant to supervision such as a sign-in sheet for supervisory sessions, electronic and paper calendar entries noting dates of supervision, written summaries and/or reports of topics discussed at supervision sessions, etc. The documentation shall be submitted to the Board upon request.

(h) The supervisor and the supervisee must each submit supervision logs to the Board every three months until the license is granted.

(i) Failure to comply with the rules for supervision is grounds for disciplinary action, which may include denial of the application.

38:10-9-4. ~~Supervised Work Experience~~Supervisee Responsibilities

(a) A candidate for licensure or certification must obtain an average of one hour per week of live, interactive, and visual supervision from a Board approved supervisor until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period.

(b) The ~~supervisor and~~ supervisee must ~~negotiate~~obtain a supervision contract and ~~furnish~~submit a copy to the Board for approval prior to beginning ~~the~~practice under supervision. Any supervision completed prior to approval of the supervision contract will not be accepted. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the completion of the minimum number of required hours of supervised work experience. The contract must include the name, address, phone number, and e-mail of the clinical supervisor for the supervisee's place of employment. ~~When supervision is terminated, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision.~~

(c) Within three business days of the date of termination of supervision by either the supervisor or supervisee, ~~If supervision is terminated by either party,~~ the supervisee must notify the Board in writing in a format prescribed by the Board. The supervisee must submit supervision logs within 10 days of the date of termination.~~in writing in a format prescribed by the Board.~~ The application of a supervisee who does not have a Board approved supervision contract or whose supervision contract has been terminated is inactive. A supervisee with an inactive application cannot provide counseling services until the supervisee receives written notice from the Board that a new supervision contract has been approved and the application has been returned to active status.

(d) When requested, the supervisee must provide a sample of work to his or her supervisor. Disclosure of work samples shall be in accordance with state and federal rules and statutes governing confidentiality of patient records.

38:10-9-5. Supervisor Requirements ~~for Supervision Status~~

(a) **Qualifications.** To be eligible for Board approval to supervise LADC and CADC candidates for licensure, a Licensed Alcohol and Drug Counselor must be licensed and in good standing and:

(1) if originally licensed in Oklahoma, must have practiced alcohol and drug counseling for at least two years after licensure; or

(2) if licensed by endorsement from another state, must have practiced alcohol and drug counseling for at least one year beyond Oklahoma licensure; or

(3) also hold a license in good standing with supervision privileges in another behavioral health field as determined by the Board; or

(4) hold a current valid IC&RC Certified Clinical supervisor credential, and

(5) successfully complete the Board approved alcohol and drug counselor supervision training course, and

(6) pass the Oklahoma LADC Supervisor Examination(s)

(A) Examination Part A shall consist of ~~clinical supervision skills and knowledge~~ a NAADAC clinical supervision exam, or the IC&RC ~~CCS~~Certified Clinical Supervisor~~course and~~ exam, or other clinical supervision exam approved by the Board.

(B) Examination Part B shall consist of Oklahoma State Laws, Rules, and procedures.

(b) **Application Process.**

(1) Complete an application form provided by the Board.

(2) Submit two letters of reference. At least one letter must be from a current Board approved LADC supervisor. The other shall be from another professional holding a current Oklahoma behavioral health license.

(3) Sign a supervision agreement and supervisor code of ethics.

(4) Pay an application processing fee.

(c) **Supervision Training Course and Supervisor Examination.**

(1) The Supervision course shall consist of a fifteen hour Board approved workshop on counseling supervision in combination with thirty hours of directed individual study of Board approved counseling supervision literature for a total of forty-five contact hours. The workshop or class must have a minimum of four enrolled supervisor candidates.

(2) For persons who meet the qualifications in subsection (a)(3) or (4), or ~~were Board approved supervisors prior to the effective date of this rule,~~ the supervision course shall consist of a seven and one-half hour Board approved advanced LADC supervisor training workshop and exam Part B - Oklahoma State Laws, Rules and procedures only.

(d) ~~**LADCs with Prior Supervisor Status.** LADCs who were approved by the Board as supervisors prior to the effective date of this rule must complete the 7 $\frac{1}{2}$ hour advanced supervision training course and pass the Oklahoma LADC Supervisor Examination Part B within eighteen months of the effective date of this rule to retain their Board approved supervision status. Such persons who fail to complete the supervision training course and pass the exam within this time period shall lose their supervision privileges and must reapply.~~

Renewal of Supervisor Status. To maintain Board approved supervisor status, LADC supervisors must complete, prior to June 30 of each year.

(1) Three (3) clock hours of continuing education in counseling supervision, and

(2) These hours are included in the twenty (20) continuing education hours required for Licensure renewal.

(3) With the exception of the twenty hour requirements in 38:10-13-2(a), the Rules in subchapter 13 regarding continuing education requirements for licensure renewal shall also apply to continuing education requirements for supervision status.

(4) Approved supervisor designation will not be renewed until renewal fee has been paid and

(5) Continuing education requirements have been met.

(e) **Supervisor Responsibilities.**

(1) The supervisor is responsible for having and maintaining knowledge about the supervisee's practice whether in a private or agency setting.

(2) The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.

(3) The supervisor must provide an average of one hour per week of live, interactive and visual supervision until the candidate becomes licensed or certified. Group supervision is acceptable if such supervision does not exceed at least one half of the total supervisory time per evaluation period. Group size is limited to a maximum of six (6) supervisees.

(A) The phrase 'an average of one hour per week of live, interactive and visual supervision' means one continuous hour in one day of each week of face-to-face or interactive video supervision relating to the supervisee's skills, knowledge, and practices in providing alcohol and drug counseling to clients. (Video supervision shall not exceed 1/8 of the total supervision time. 6 sessions for LADC or 12 sessions for CADC). Video supervision must meet all Federal and State Laws of confidentiality.

(B) The Supervisor must provide four hours of face-to-face supervision per calendar month, at the rate of one hour per week, or two hours per week, every other week.

(C) When unforeseen circumstances arise that result in a supervisor providing less than four hours per month, or less than two hours every other week of face-to-face contact, the Supervisor and supervisee shall provide notice of such circumstances to the Board, and shall submit a plan to make up the missed hours to the Board for approval. The plan may include designation of a back-up or alternate supervisor, providing that the supervisee has entered into a supervision contract with the alternate supervisor and such contract has been approved by the Board.

(D) Clinical staff meetings attended by supervisees or meetings with supervisees that consist of discussion of issues other than supervisee's skills, knowledge, and practices in providing alcohol and drug counseling to clients shall not be counted as group supervision.

(4) When the ~~proposed~~licensure supervisor is not a staff member of the supervisee's ~~agency~~ employer, the ~~proposed~~licensure supervisor will ensure that the ~~agency administration~~ employer, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(5) The Supervisor must be available to the supervisee for consultation 'on call' 24 hours a day, seven days a week, and arrange for alternate 'on call' supervisor to provide consultation when the primary supervisor is unavailable.

(6) The supervisor must immediately notify the Board of any ethical or professional violations by supervisee.

(7) A supervisor for an applicant who provides community or home-based services shall, in addition to other supervision requirements, conduct at least six (6) direct observations of the supervisee conducting counseling sessions in the client's home, school, or other remote location outside of the applicant's employer's office. The observations must be made periodically throughout the applicant's supervised work experience at least once every other month. Direct observation may be conducted via interactive live audio/video conferencing and shall be documented in a form approved by the Board. No more than three (3) of the direct observations per year may be conducted via interactive live audio/video conferencing. Both the supervisor and the supervisee are responsible for ensuring that the interactive live audio-video conferencing complies with all applicable federal and state confidentiality laws and regulations.

(8) The supervisor must notify the Board in writing within ~~14~~ three (3) business days of the date supervision is terminated. The supervisor must submit an evaluation of the supervisee within ten business days of the date of termination.

(9) A supervisor may not supervise more than a total of twenty (20) persons, including candidates and CADCs who are engaging in private or independent practice. A supervisor who wants to supervise more than twenty (20) persons must petition the Board for approval for each person above the maximum number. The petitions will be determined on a case-by-case basis depending on the circumstances of the request.

SUBCHAPTER 13. CONTINUING EDUCATION REQIREMENTS

38:10-13-2. Continuing education standards

(a) **Continuing education hours required.** As a requirement for license or certification renewal, twenty (20) clock hours of continuing education units shall be required for each license or certification held. These hours must have been obtained during the previous renewal period July through June)

and approved by the Board. At least three (3) hours must be categorized as ethics training as defined by the Board. At least ten (10) hours must be alcohol and drug specific as defined by the Board and only half or 10 hours can be done through online sources. For LADC/MH, the twenty (20) hours of continuing education hours must be on topics categorized by the Board as Co-Occurring, or consist of (10) hours on Mental Health topics and ten (10) hours on alcohol and drug specific topics as defined by the Board.

(b) **Continuing education approval.** Approval of continuing education shall be at the discretion of the Oklahoma Board of Licensed Alcohol and Drug Counselors and shall be in accordance with standards acceptable to the profession of alcohol and drug counseling.

(c) **Armed services.** A licensed or certified person called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.

(d) **Exemption.** A licensed or certified person experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee or certified person shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(e) **Prorating.** Licensees or certified persons upon initial certification will have their CEU hours prorated according to the date of their initial certification.

[OAR Docket #14-723; filed 7-15-14]

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

[OAR Docket #14-794]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:1-1-3 [AMENDED]
40:1-1-6 [NEW]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 9, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014.
PUBLIC HEARING:
March 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

40:1-1-3. General course and method of operation

(a) **Office(s) of the board.** The principal Administrative Office of the Board shall be located in Oklahoma City, Oklahoma, at a site designated by the Board.~~within the Oklahoma Department of Public Safety complex at N. Martin Luther King Avenue and N.E. 36th Street, or at such other location(s) as the Board may from time to time establish and promulgate. The office location(s) of the State Director of Tests for Alcohol and Drug Influence and of the Administrative Assistant to the Board, if different from the principal Administrative Office of the Board, shall also be deemed office(s) of the Board.~~

(b) **Transaction of business with the board by the public.** Members of the public and others desiring to contact or make inquiries and submissions to the Board may do so in person at the principal Administrative Office of the Board, during normal and usual business hours for State of Oklahoma agencies, or by mail addressed to: State Director of Tests for Alcohol and Drug Influence, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307 Oklahoma City, Oklahoma 73136, or through the Board's website at www.ok.gov/bot.

(c) **Access to records.**

(1) Copies of all Rules and Regulations adopted by the Board, and of all other written statements of policy or interpretations of general applicability by the Board, and of all final orders, decisions, and opinions of general applicability may be inspected, unless otherwise provided by law, for proper purposes and in a proper manner, at the principal Administrative Office of the Board during its normal business hours. Such records shall not be removed from the Board's office or the Board's custody and control for the purpose of inspection.

(2) Copies of Rules and Regulations adopted by the Board are also on file and available for public inspection in the Office of Administrative Rules, Office of the Secretary of State~~, 220 Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Certified copies of the Rules adopted by the Board are available to the public from the Office of Administrative Rules, Office of the Secretary of State, P. O. Box 53390, Oklahoma City, Oklahoma 73152-3390~~.

(d) **Meetings.** Meetings of the Board are conducted, in compliance with the Oklahoma Administrative Procedures

Act, the Oklahoma Open Meeting Act and other applicable statues, as follows:

(1) Regularly scheduled meetings of the Board will be held at least twice yearly~~, usually in Oklahoma City in February and August, or as otherwise fixed,~~ with proper public notice.

(2) Special meetings of the Board may be called at any time by the Chairman, or upon written request of any four members of the Board, with proper public notice.

(3) Emergency meetings of the Board may be called by the Chairman or by any four members of the Board, whenever required and statutorily permitted, and without prior public notice if so required by exigent circumstances.

(4) Continued or reconvened meetings of the Board may be called by the Chairman, or upon written request of any four members of the Board, as required to complete business of a prior meeting.

(5) All meetings of the Board shall be open to the public and other properly interested parties, except as otherwise provided by law.

(6) Meetings of the Board shall be presided over by the Chairman of the Board. In the event that the Chairman is not present at a meeting, the Board may elect from its members a chairman pro-tempore who shall preside at that meeting. All meetings of the Board shall be governed by applicable Oklahoma statutes; and ROBERT'S RULES OF ORDER, latest available edition, shall serve as the parliamentary authority for meetings of the Board unless otherwise required by law or otherwise voted. An affirmative vote by a simple majority of the members present at a meeting, at which a quorum exists, shall be necessary to adopt any motion presented before the meeting.

(7) Minutes or proceedings of all meetings of the Board shall be timely prepared and kept by the Administrative Assistant to the Board, under the direction of the ~~Chairman of the Board~~ State Director of Tests for Alcohol and Drug Influence. They shall consist of a summary of the proceedings of each meeting showing:

(A) Members of the Board present or absent

(B) All matters considered by the Board

(C) All actions taken by the Board

(D) The vote of each member of the Board on any motion or other action taken by vote

(E) Manner and time of public notice of the meeting

(F) Other items as required.

(e) **Administration.**

(1) The general conduct and administration of the affairs and functions of the Board, between meetings thereof, shall be vested in the State Director of Tests for Alcohol and Drug Influence, with the assistance of the Administrative Assistant to the Board and functioning under the direction and guidance of the Chairman of the Board. The Chairman of the Board, the State Director of Tests for Alcohol and Drug Influence, and the Administrative Assistant to the Board shall each have authority to act appropriately on behalf and as agents of the Board, as permitted or required by law, on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(2) The State Director of Tests for Alcohol and Drug Influence shall have the following duties, responsibilities, and authority:

(A) Under the overall guidance of the Chairman of the Board, and with the assistance of the Administrative Assistant to the Board, to conduct and administer the affairs and functions of the Board between meetings thereof.

(B) As permitted or required by law, to act appropriately on behalf and as agent of the Board on all matters within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(C) To function as the technical and administrative director of the State's program of testing for alcohol and drug influence in connection with traffic law enforcement, and of pertinent educational and training activities; and to provide direction, ~~super vision~~ supervision, consultation, advice, and assistance as required on the technical and administrative aspects of such program and activities to all State and local agencies and officials.

(D) To administer, implement, enforce, and carry out the provisions of the Rules and the policies and procedures adopted by the Board, with the assistance of the Administrative Assistant to the Board when appropriate.

(E) To attend meetings of the Board and render reports at such meetings, and otherwise when requested by the Board or its Chairman.

(F) To carry on correspondence and other communications on behalf and as an agent of the Board.

(G) To perform other duties and functions as directed from time to time by the Board, or as required by law, or as required properly to effectuate the provisions of the Chemical Tests Act (47 O.S., Sections 751-761) and other statutes within the purview of the Board.

(3) The Administrative Assistant to the Board shall have the following duties, responsibilities, and authority:

(A) To act as Records Officer of the Board, to keep and maintain the official files and records of the Board, and to perform other duties as required by law.

(B) To attend meetings of the Board and render reports at such meetings, and otherwise when requested by the Board or its Chairman, or the State Director of Tests for Alcohol and Drug Influence.

(C) To prepare timely minutes of meetings of the Board and maintain a file of such official meeting minutes or proceedings.

(D) To assist the State Director of Tests for Alcohol and Drug Influence in the general conduct and administration of the affairs of the Board between meetings thereof.

(E) As required or permitted by law, to act appropriately on behalf of the Board as its agent on matters

within the Rules adopted by the Board or within existing Board policy, or as otherwise directed by the Board.

(F) To assist the State Director of Tests for Alcohol and Drug Influence with correspondence and other communications, on behalf and as an agent of the Board and in cooperation with the State Director of Tests for Alcohol and Drug Influence and the Chairman of the Board.

(G) To perform other duties and functions as directed from time to time by the Board, or as requested by the Chairman of the Board or by the State Director of Tests for Alcohol and Drug Influence in order properly to effectuate the provisions of the Chemical Tests Act (47 O.S., Sections 751-761) and other statutes within the purview of the Board.

(f) **Seal.** The official seal of the Board shall consist of the words "Board of Tests for Alcohol and Drug Influence-State of Oklahoma" in a circular band surrounding the official Star of the Great Seal of the State of Oklahoma.

40:1-1-6. Fees

Fee Schedule. The following is the schedule of fees for the Board of Tests for Alcohol and Drug Influence:

(1) Initial Breath Test Operator Training (including $2.00 portal fee) - $62.00

(2) Renewal Breath Test Operator Permit (including $2.00 portal fee) - $12.00

(3) Nitrogen/Ethanol Canister Exchange (non-BOT owned instrument) - $130.00

(4) Certified Copies - $1.00 per page

(5) Non-certified copies - .25 per page

(6) Electronic copies of records - $15.00 per CD

(7) Ignition Interlock Device Certification (including $2.00 portal fee)- $1,002.00 per device

(8) Ignition Interlock Service Center License (including $2.00 portal fee)- $102.00

(9) Initial Ignition Interlock Technician License (including $2.00 portal fee) - $37.00

(10) Ignition Interlock Technician License Renewal (including $2.00 portal fee) - $27.00

(11) Ignition Interlock Verification Form (including $2.00 portal fee) - $12.00

[OAR Docket #14-794; filed 7-18-14]

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

[OAR Docket #14-795]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Breath Alcohol Analysts
40:10-3-1 [AMENDED]
40:10-3-2 [AMENDED]
40:10-3-3 [AMENDED]
40:10-3-4 [AMENDED]
40:10-3-6 [AMENDED]
40:10-3-7 [AMENDED]
40:10-3-8 [AMENDED]
Subchapter 9. Blood Specimen Collectors
40:10-9-1 [AMENDED]

AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 9, 2014

COMMENT PERIOD:
February 3, 2014 through March 5, 2014.

PUBLIC HEARING:
March 6, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

CONTACT PERSON:
Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136, 405-425-2460, kbehrens@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. BREATH-ALCOHOL ANALYSTS

40:10-3-1. Qualifications and requirements for breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol operators (initial permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, ~~whose duties include performance or training of Breath Alcohol Analysis Testing and/or attending a CLEET certified academy~~or the Board of Tests for Alcohol and Drug Influence.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(5) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence ~~and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs~~.

(6) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to ~~perform chemical analysis of breath for alcohol~~operate Board approved breath test instrument(s).

40:10-3-2. Qualifications and requirements for breath-alcohol specialist (initial permit)

Qualifications and requirements for breath-alcohol specialist (initial permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, ~~whose duties include performance or training of Breath Alcohol Analysis Testing~~ or the Board of Tests for Alcohol and Drug Influence.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(5) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence ~~or establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, or equivalent qualifications in breath alcohol analysis~~.

(6) Satisfactory completion, within 1-year prior to application for a Specialist permit, of a course of instruction in breath-alcohol analysis specialist acceptable to the Board of Tests for Alcohol and Drug Influence~~ and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs~~.

(7) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform ~~and to the performance of~~ administrative maintenance on breath testing equipment.

40:10-3-3. Qualifications and requirements for breath-alcohol operators (renewal permits)

Qualifications for breath-alcohol operators (renewal permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, ~~whose duties include performance or training of Breath Alcohol Analysis Testing~~or the Board of Tests for Alcohol and Drug Influence.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.

(5) Possession of a valid Breath-Alcohol Analysis Operator Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with

(A) Qualifications and Requirements for Initial Issuance of such Permits then in force, or

(B) Qualifications and Requirements for Renewal of such Permits then in force.

(6) Satisfactory completion, within one (1) year prior to renewal of the Operator Permit, a requalification or retraining course of instruction in breath alcohol analysis as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence~~ in consultation with other Board certified Instructors~~.

(7) Establishment within one (1) year prior to renewal of the Operator Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to ~~perform chemical analysis of breath for alcohol~~operate Board approved breath test instrument(s).

40:10-3-4. Qualifications and requirements for breath-alcohol specialist (renewal permits)

Qualifications and requirements for breath-alcohol specialist (renewal permits) are as follows:

(1) Must be a qualified employee of a recognized Oklahoma law enforcement agency, ~~whose duties include performance or training of Breath Alcohol Analysis Testing and/or attending a CLEET certified academy~~or the Board of Tests for Alcohol and Drug Influence.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test," or equivalent education background.

~~(5) Possession of a valid Breath-Alcohol Analysis Supervisor Permit issued by the Board of Tests for Alcohol and Drug Influence within the preceding year upon compliance with:~~

~~(A) the Qualifications and Requirements for Initial Issuance of such Permits then in force, or~~

~~(B) the Qualifications and Requirements for Renewal of such Permits then in force.~~

(~~6~~5) Satisfactory completion, within one (1) year prior to renewal of the Specialist Permit, a requalification or retraining course of instruction in breath alcohol analysis and breath alcohol analysis operation and administrative maintenance as applicable, consisting of such instruction as deemed applicable and necessary by the State Director of Tests for Alcohol and Drug Influence ~~in consultation with other Board certified Instructors~~.

(7) Establishment, within one (1) year prior to renewal of the Specialist Permit, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform ~~and to the performance of~~ administrative maintenance on breath testing equipment.

40:10-3-6. Initial training of breath alcohol operators

(a) **Policies pertaining to initial training of breath-alcohol operators.** Initial training of breath-alcohol operators in the State of Oklahoma shall be conducted in accordance with the following policies:

(1) ~~All such~~ The training shall be conducted by or under the authority of the Board of Tests for Alcohol and Drug Influence.

(2) ~~All such~~The training shall ~~fully~~ comply with all applicable and current rules of the Board of Tests for Alcohol and Drug Influence ~~and with the other conditions for the conduct of such training set forth herein;~~ and shall be conducted in accordance with such pertinent practices, procedures, and directives as are established or set forth~~, from time to time,~~ by the State Director of Tests for Alcohol and Drug Influence.

~~(3) All training programs shall adhere to uniform Statewide standards for the conduct of and satisfactory completion of such training, as established by or under the authority of the Board of Tests for Alcohol and Drug Influence.~~

(b) **Authorized training entities and sites.**

(1) Initial training of breath-alcohol operators may be conducted in the State of Oklahoma by~~:~~ employees of the Board or other suitable entities or individuals as determined by the State Director of Tests for Alcohol and Drug Influence. Other entities or individuals conducting Breath Alcohol Operator training shall comply with the rules, policies and procedures of the Board regarding such training as well as the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence.

~~(A) The Office of the State Director of Tests for Alcohol and Drug Influence.~~

~~(B) The Oklahoma Department of Public Safety.~~

~~(C) Other law enforcement agencies in the State of Oklahoma operating police training academies or training centers approved by the Council on Law Enforcement Education and Training, and as designated, from time to time, by the Board of Tests for Alcohol and Drug Influence.~~

~~(D) Other qualified law enforcement agencies approved by the Board of Tests for Alcohol and Drug Influence, and as designated, from time to time, by the Board of Tests for Alcohol and Drug Influence.~~

(2) Authorized training sites ~~are~~: Breath Alcohol Operator training may be conducted at any site, location, or facility that is suitable to provide the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence.

~~(A) The respective training facilities or centers operated by or available to the foregoing entities.~~

~~(B) Such other suitable sites, locations, and facilities as are approved by the State Director of Tests for Alcohol and Drug Influence for initial training of breath alcohol operators.~~

~~(c) **Agreements with agency heads.** The administrative head of any law enforcement agency delineated in (b)(1)(C) above which elects to conduct such training, or that person's authorized representative, shall execute a written agreement with the Board of Tests for Alcohol and Drug Influence for conduct of Board approved initial training of breath alcohol operators, and shall in such agreement assure compliance by that agency with this Board's rules and the policies, practices, procedures and directives for such training established by authority of this Board, and with the other conditions for the conduct of such training set forth herein.~~

(~~d~~c) **Instructors.** All initial training of breath-alcohol operators shall be conducted by ~~the State Director of Tests for Alcohol and Drug Influence, or by other~~ instructors ~~possessing the qualifications set forth in OAC 40:10-3-7 or any successor rule thereto and~~ holding a valid Instructor Permit ~~for such category of training~~ issued by authority of the Board of Tests for Alcohol and Drug Influence.

(~~d~~e) **Instruction, curriculum, and training materials.**

(1) The course of instruction for initial training of breath-alcohol operators shall consist of appropriate theoretical and practical subject matter, practice in breath-alcohol testing and related activities, question-and-answer sessions, and written ~~and practical~~ examinations and practical exercises.

(2) Such course of instruction shall be acceptable to the Board of Tests for Alcohol and Drug Influence, as determined by the State Director of Tests for Alcohol and Drug Influence.

(3) The foregoing training shall employ and utilize such information, texts, training materials, equipment, supplies, and procedures as are designated and approved therefor by the State Director of Tests for Alcohol and Drug Influence.

(~~e~~f) **Examinations, and records.** To be eligible for an initial Breath Alcohol Operator Permit, Trainees must pass a written examination or examinations and satisfactorily complete practical exercises in accordance with the course of instruction approved by the State Director of Tests for Alcohol and Drug Influence, including:

~~(1) All training programs for breath alcohol operators shall administer examinations prepared by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s) which shall include~~

(1~~A~~) One or more written examinations which shall cover the subject matter presented in the course of instruction.

(2~~B~~) One or more ~~laboratory or~~ practical examinations utilizing the equipment and apparatus covered in the course of instruction and demonstrating the trainee's ability properly to operate such apparatus and equipment ~~and properly to perform breath alcohol analysis and its associated functions~~.

~~(2) Trainees must satisfactorily complete and pass the foregoing examinations in order to be eligible to receive initial Breath Alcohol Operator Permits issued by the Board of Tests for Alcohol and Drug Influence.~~

~~(3) Agencies and entities conducting the foregoing training of breath alcohol operators shall utilize and maintain such records, forms, and reports as designated and required by the State Director of Tests for Alcohol and Drug Influence. Agencies and entities conducting such training shall, upon the completion of every such course of instruction, promptly submit copies of such records and reports to the Administrative Office of the Board of Tests for Alcohol and Drug Influence or as~~

~~otherwise directed by the State Director of Tests for Alcohol and Drug Influence.~~

~~(g) **Inspection of training sites and training activities.** Board-authorized training programs, training sites and facilities, and training activities shall be subject to announced or unannounced inspections by the State Director of Tests for Alcohol and Drug Influence or the State Director's designated representative(s) to obtain relevant information and to ensure compliance with all applicable rules, policies, procedures, practices, and directives. Agencies and entities conducting such training shall cooperate with and facilitate such inspections.~~

40:10-3-8. Qualifications and requirements for Independent breath-alcohol operators (initial permits)

Qualifications and requirements for breath-alcohol Independent operators (initial permits) are as follows:

(1) Residence within State of Oklahoma at time of application.

(2) Minimum age of 21 years.

(3) Good moral character.

(4) Graduation from a state-accredited high school, or satisfactory passing of the "General Education Development Test", or equivalent educational background.

(5) Satisfactory completion, within 1 year prior to application for an Operator permit, of a course of instruction in breath-alcohol analysis acceptable to the Board of Tests for Alcohol and Drug Influence~~ and meeting the recommendations of the National Safety Council's Committee on Alcohol and Other Drugs~~.

(6) Establishment, to the satisfaction of the Board of Tests for Alcohol and Drug Influence, of the applicant's competence to perform independent chemical analysis of ~~Independent~~ breath for alcohol.

SUBCHAPTER 9. BLOOD SPECIMEN COLLECTORS

40:10-9-1. Persons authorized to withdraw blood

(a) **Authority to withdraw blood.** Licensed medical doctors, licensed osteopathic physicians, registered nurses, licensed practical nurses, personnel licensed in accordance with 63 O.S. §1-2505 as Intermediate Emergency Medical Technician, Advanced Emergency Medical Technician, or Paramedic, and other persons designated by law (47 O.S., Section 752) are authorized to withdraw blood for the purpose of determining the concentration of alcohol or other intoxicating substance therein, when acting at the request of a law enforcement officer or of an arrested person under the provisions of Title 47, Oklahoma Statutes.

(b) **Permits.** The current and valid license, registration, practice certificate or other official document entitling its holder to engage in the practice of the respective profession and issued by the respective Oklahoma healing arts licensing body to any qualified practitioner enumerated above is deemed by the Board of Tests for Alcohol and Drug Influence to be a valid Permit to Withdraw Blood under the provisions of Title 47, Oklahoma Statutes.

[OAR Docket #14-795; filed 7-18-14]

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

[OAR Docket #14-796]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
40:20-1-3 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 9, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014.
PUBLIC HEARING:
March 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

40:20-1-3. Collection, transfers, and retention of specimens of blood

(a) **Withdrawal and collection of blood.** Withdrawal and collection of specimens of blood obtained from living human subjects under the provisions of Title 47 and Title 3 and Title 63, Oklahoma Statutes shall be performed as set forth in this Section. The entire process shall be carried out with full regard for the health and safety of the tested persons, and so as to maintain properly the identity, integrity, and composition of such blood specimens.

(1) **Collection of blood specimens - general conditions.**

(A) Blood shall be withdrawn in accordance with accepted medical practices, in an appropriate hospital

or medical or clinical environment, including the interior of an ambulance, and by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.

(B) No blood shall be knowingly withdrawn from any person with hemophilia or from any person who is taking anticoagulant medication(s) under the direction of a licensed healing arts practitioner.

(2) **Procedures and techniques, precautions.**

(A) Blood shall be withdrawn by venipuncture, after appropriate preparation of the puncture site(s), and with necessary precautions to maintain asepsis and avoid contamination of the specimens. Puncture site preparation and skin cleansing shall be performed without the use of alcohol or other volatile organic disinfectant.

(B) All blood specimens shall be collected directly in or immediately deposited into suitable clean, sterile, dry containers with inert closures, which contain adequate and appropriate anticoagulant(s) and preservative(s) in accordance with recognized procedural standards.

(C) All disposable materials, supplies, and paraphernalia shall not be reused for the withdrawal and collection or storage of blood specimens. All such materials, supplies, and paraphernalia other than required records or those required to be stored or retained or forwarded for evidentiary or other reasonable purposes shall be safely disposed of as soon as practicable after use. All materials, supplies, and paraphernalia with which the tested subject will or may come into physical contact shall be stored, handled, and used in a properly safe and sanitary manner.

(D) Each tube or other vessel containing a blood specimen shall be placed into a sealed envelope or other suitable sealed container or enclosure, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Legible signature and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's blood specimen," shall be handled and processed as set forth hereinafter.

(1) Each State's blood specimen, in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic laboratory of the Oklahoma State Bureau of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the presence and/or concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The choice of approved Laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may accomplish the dispatch or forwarding of the State's blood specimen to the approved Laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(3) The storage and dispatch or forwarding of the State's blood specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) **Collection, transfers, and retention of retained blood specimens.** Whenever a State's blood specimen is collected under the provisions of Title 47, Oklahoma Statutes, at the direction of a law enforcement officer and for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) **Collection of retained blood specimens.**

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be withdrawn and collected in a manner identical to the State's blood specimen and as set forth heretofore in this Section.

(C) The tube or other vessel containing the Retained Blood Specimen shall be placed into a sealed envelope or other suitable sealed container or enclosure, approved by the State Director of Tests for Alcohol and Drug Influence, and bearing or containing at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Legible signature and title of the qualified person who withdrew the blood specimen.

(2) **Transfer of retained blood specimens to an approved retention laboratory.**

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

(i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen

(ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory

(iii) Full name of the subject from whom the blood specimen was obtained

(iv) Date, time and location of blood specimen collection

(v) Case or identification number assigned to the case or subject by the law enforcement agency

(vi) Legible signature, name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may accomplish the transfer or forwarding of the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) **Retention and storage of retained blood specimens.**

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens, other than those transferred to an approved Laboratory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) **Transfer of retained blood specimens to a forensic alcohol laboratory or forensic drug laboratory.**

(A) Upon proper direction by the tested person or such person's agent to the Approved Retention Laboratory which has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, which is approved by the Board of Tests for Alcohol and Drug Influence and was selected by such person or such person's agent.

(B) The Approved Retention Laboratory may accomplish the transfer of the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[OAR Docket #14-796; filed 7-18-14]

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

[OAR Docket #14-797]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
40:30-1-3 [AMENDED]
AUTHORITY:
Board of Tests for Alcohol and Drug Influence; 47 O.S. §759
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 9, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014.
PUBLIC HEARING:
March 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
CONTACT PERSON:
Kevin Behrens, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136, 405-425-2460, kbehrens@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

40:30-1-3. Breath-alcohol analysis with Board approved devices

(a) **Approved method.** ~~Analysis of breath specimens for the determination of the alcohol content therein by means of the Model 5000-D (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby approved as a method or technique for analysis of breath specimens for alcohol.~~ Analysis of breath specimens for the determination of the alcohol content therein may be accomplished by any method, technique, or instrument approved by the Board in accordance with OAC 40: 25-1-2.

(b) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.

(c) **Analysis.** Each such analysis shall include the following steps:

(1) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath-alcohol analysis Operator or Specialist or by any other qualified person.

(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(3) A blank analysis preceding analysis of each breath specimen.

(4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by the Board in accordance with OAC 40:25-1-3, or a nitrogen-ethanol dry gas reference method approved by the Board in accordance with OAC 40:25-1-3. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210L).

(5) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.

(d) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol ~~and~~ in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(e) ~~**Maintenance.** Maintenance shall be performed as follows on the above listed equipment at least once during each thirty (30) day period and not later than thirty (30) days since the last prior such maintenance, or after the testing of twenty five (25) subjects, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis (Specialist) permit issued by the Board:~~

~~(1) A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.~~

~~(2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed with the new solution. Each verification analysis shall be performed in accordance with the Operating Procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence. The result of each such verification analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one hundredths gram per two hundred and ten liters (± 0.01g/210 L).~~

~~(3) The administrative maintenance performed, shall include; results of said verification analyses, date of inspection, and a record of the inspection will be documented on the log of tests and maintenance record retained by the breath analysis instrument in digital form as prescribed and designated by the State Director of Tests for Alcohol and Drug Influence.~~

~~(f) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein by means of the CMI Model Intoxilyzer 8000 (manufactured by CMI, Inc., Owensboro, Kentucky 42301 or its successors), is hereby approved as a method or technique for analysis of breath specimens for alcohol.~~

~~(g) **Operating procedure(s).** Each such analysis shall be performed in compliance with Operating Procedure(s) prescribed and approved by the State Director of Tests for Alcohol and Drug Influence.~~

~~(h) **Analysis.** Each such analysis shall include the following steps:~~

~~(1) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath alcohol analysis Operator or Specialist or by any other qualified person.~~

~~(2) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.~~

~~(3) A blank analysis preceding analysis of each breath specimen.~~

~~(4) Analysis for alcohol of at least one suitable reference or control sample of a known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content in an alcoholic breath simulator device approved by the Board or a Board approved nitrogen ethanol dry gas reference method. The results of each such control analysis must coincide with the corresponding vapor alcohol concentration target value within plus or minus one hundredths gram per two hundred and ten liters (± 0.01g/210L).~~

~~(5) The operator performing each such analysis shall properly complete a Breath Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the Oklahoma Department of Public Safety, and to other agencies and persons listed on the form.~~

~~(i) **Reporting results.** The results of each such breath alcohol analysis shall be reported in terms of the concentration of alcohol and in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three hundredths grams per two hundred and ten liters of breath (± 0.03g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantiative. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.~~

~~(j)~~ **Maintenance.** Maintenance shall be performed on the CMI 8000 Intoxilyzer, equipped with nitrogen-ethanol dry gas mixture, at such time as the regulator of the nitrogen-ethanol pressurized dry gas cannister fails to provide a gas sample for analysis or by the manufacturers stated expiration date, whichever occurs first. Such maintenance shall be performed by Board personnel, according to the procedure(s) prescribed by the State Director of Tests for Alcohol and Drug Influence.

[OAR Docket #14-797; filed 7-18-14]

TITLE 50. ANATOMICAL BOARD OF THE STATE OF OKLAHOMA
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-647]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Purpose and Membership
50:1-1-2. Statutory members [AMENDED]
Subchapter 3. Meetings
50:1-3-1. Frequency [AMENDED]
50:1-3-2. Agenda [AMENDED]
50:1-3-3. Conducting meetings [AMENDED]
Subchapter 5. Officers
50:1-5-1. Chairperson [AMENDED]
50:1-5-2. Executive Director [AMENDED]
Subchapter 7. Power and Authority
50:1-7-1. Duties [AMENDED]
50:1-7-4. Jurisdiction [NEW]
Subchapter 9. Hearing Practices and Procedures
50:1-9-1. Setting hearings [AMENDED]
50:1-9-2. Notice of hearing [AMENDED]
50:1-9-3. Witnesses and right to counsel [AMENDED]
50:1-9-6. Findings of fact [AMENDED]
50:1-9-8. Appeals [AMENDED]
AUTHORITY:
Anatomical Board of the State of Oklahoma; 63 O.S., SECTIONS 91-109
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 3, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

In 2006, the statute authorizing the State Anatomical Board (Board) to operate an anatomical donor program was amended designating the Board to become an "Oversight Board" and allows the Board to designate agents to receive and issue cadavers to programs approved by the Board; appoint an Executive Director to manage affairs of the Board; added "cremation" as method of disposition; removed requirement that unclaimed bodies be offered to the Board; added Chief Medical Examiner as one who may request an autopsy; added Board's agent to handle financial affairs; and repealed the Anatomical Board Fund (63 O.S., Section 98.1).

In 2012, the Anatomical Donor Program Registration Act was created (SB 1580). This requires all eligible anatomical donor programs and non-transplant tissue banks in Oklahoma to register with the Board before receiving donations from inside or outside the state. Donor programs and non-transplant tissue banks must be non-profit organizations. The measure authorizes the Board to prescribe rules of conduct governing the practice of donation, deny, suspend, revoke or reinstate registration of programs, establish fines, initiate disciplinary proceedings and report violations to the appropriate authorities (63 O.S., Section 109).

The proposed amendments will allow the Board to perform its duties as required or authorized by state law.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. PURPOSE AND MEMBERSHIP

50:1-1-2. Statutory members

The State Anatomical Board, hereinafter called the Board, is composed of the following members: The deans or their designee of each accredited medical school and osteopathic medical school within the State of Oklahoma, the persons heading the Department of Anatomy, **or comparable department**, in the medical and osteopathic medical schools or their designee;~~and~~ two (2) persons appointed jointly by the presidents of institutions of higher education within the state which have educational programs other than medical, and which require on a regular basis human Anatomical materials, provided that these programs have been approved by the State Regents for Higher Education; and one at-large member appointed by the Governor to represent the interests of the citizens of this state.

SUBCHAPTER 3. MEETINGS

50:1-3-1. Frequency

The Board shall meet at least twice each year. The Board may call other meetings when deemed necessary. ~~All Board meetings shall be held in compliance with the 1977 open meeting law set forth in Title 25, Sections 301-314 of Oklahoma statutes known as the Oklahoma Open Meeting Act. Notice of all meetings will be published according to State law.~~

50:1-3-2. Agenda

The executive~~Director~~director of the Board, in conjunction with the Chairperson, shall prepare the agenda for meetings of the Board; any member may introduce items of business at any meeting of the Board.

50:1-3-3. Conducting meetings

~~Meetings shall be conducted according to the latest edition of Robert's Rules of Order.~~All Board meetings shall be held in compliance with the Oklahoma Open Meeting Act. Notice of all meetings will be published according to State law. An affirmative vote by a simple majority of the members in attendance shall be necessary to pass all motions presented before the Board meeting. At all meetings of the Anatomical Board, ~~2/3~~a simple majority of the membership shall constitute a quorum. Minutes of all meetings shall be kept in accordance with the State law in the office of the executive~~Director~~director and shall be open for inspection.

SUBCHAPTER 5. OFFICERS

50:1-5-1. Chairperson

The Board shall elect from its membership a chairperson who will serve for a two (2) year term of office, and may be reelected for more than one term. The Chairperson of the Board shall preside at all meetings of said Board. In the absence of the Chairperson, it shall be the duty of the executive~~Director~~director to perform the duties and functions of the Chairperson.

50:1-5-2. Executive Director

The Chairperson, subject to approval by members of the Board, shall appoint the ~~Executive Director~~executivedirector. The ~~Executive Director~~executivedirector shall manage the day to day activities of the Board, work ~~Closely~~closely with the Board to establish and carry out Board Policy, prepare and submit the annual budget, prepare and submit contracts for services, prepare and submit claims for payment, attend meetings as a representative of the Board, and any other appropriate duties as requested by the Board.

SUBCHAPTER 7. POWER AND AUTHORITY

50:1-7-1. Duties

It shall be the duty of the Board to~~, approve donation programs,~~ register all donor programs and non-transplant tissue banks as well as approve programs, institutions, and individuals using anatomical specimen and oversee the collection, preservation, storage, distribution, delivery, recovery

from users, cremation and final disposition of all dead human bodies used for health sciences education and research.

50:1-7-4. Jurisdiction

(a) The Board exercises jurisdiction over bodies willed or donated to the Board or the Board's Agent, medical, dental or chiropractic schools, or other donees authorized by the Oklahoma Uniform Anatomical Gift Act. The Board also exercises jurisdiction over individuals, corporations, associations, institutions, research organizations, or other legal entities authorized by the Oklahoma Uniform Anatomical Gift Act to receive whole bodies or body parts.

(b) The Board lacks jurisdiction over:

(1) parts of human bodies used for transplantation or other direct medical therapy;

(2) skeletal material or other prepared specimens obtained from commercial sources; and

(3) individuals in possession of parts or skeletal material or specimens described in subparagraphs (A) and (B) of this paragraph.

SUBCHAPTER 9. HEARING PRACTICES AND PROCEDURES

50:1-9-1. Setting hearings

(a) The Board may hold hearings on any matters within its jurisdiction~~, either upon its own motion or upon written demand therefore by any person aggrieved by any act, threatened act, or failure to act of the Board or by any report, regulation, rule or order of the Board~~. ~~The written demand for hearing should specify the grounds to be relied upon as a basis for relief demanded at the hearing. Upon receipt of a written demand for a hearing, the Board shall either set down the matter for hearing within thirty days from the receipt of the demand thereof or shall issue a written order denying hearing~~. The Board shall not suspend, revoke, non-renew or otherwise sanction a registered donor program or non-transplant tissue bank until after a hearing before the Board. Such hearings shall be conducted as an individual proceeding in accordance with the provisions of the Oklahoma Administrative Procedures Act and the rules and statutes of the Board.

(b) An individual proceeding shall not be required for the issuance or denial of a new registration.

(c) The Board may dispose of any individual proceeding by stipulation, agreed settlement, consent order or default.

50:1-9-2. Notice of hearing

Notice of all hearings shall be given by the Board not less than ten days in advance thereof to all parties~~persons directly affected by such hearing~~. All hearings~~,~~ shall be open to the public. The notice of hearing shall contain the following information:

(1) The time and place of hearing;

(2) A statement of the matters to be considered threat;

(3) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(4) A short plain statement of the matters asserted. If such statement of the issues is not sufficient, upon application a more definite and detailed statement will be furnished;

(5) A reference to the particular sections of the statutes and/or Rules involved.

50:1-9-3. Witnesses and right to counsel

The Board shall have the power to subpoena witnesses and administer oaths, or to subpoena documentary evidence in any cause before it. All subpoenas shall be served in the manner as if issued from district court. Any ~~person or~~ party to a hearing before the Board ~~who may be adversely affected by the order of the Board~~ shall have the right to have subpoenas issued to any witnesses in its behalf. Any party~~person affected by the hearing~~ shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party~~,~~ must be duly licensed to practice law by the Supreme Court of Oklahoma and may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses, and present evidence in his own behalf.

50:1-9-6. Findings of fact

All findings of fact shall be based exclusively on the evidence presented and on matters officially noticed. A final order adverse to a party in an individual proceeding shall be in writing ~~or stated in the record. A final order~~and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of facts, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

50:1-9-8. Appeals

Appeals shall be taken from orders of the Anatomical Board. Any order made pursuant to a hearing shall be made within thirty days after the termination of the hearing or any rehearing thereof. Such time may be extended by stipulation. ~~The order shall contain a concise statement of the facts as found by the Board, and a concise statement of its conclusions therefrom and the effective date of the order.~~

[OAR Docket #14-647; filed 7-2-14]

TITLE 50. ANATOMICAL BOARD OF THE STATE OF OKLAHOMA
CHAPTER 10. ANATOMICAL SPECIMENS

[OAR Docket #14-648]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
50:10-1-2. ~~Jurisdiction of Board~~Application of rules [AMENDED]
50:10-1-3. Documents for receiving anatomical specimens [AMENDED]
50:10-1-4. Documents for issuing anatomical specimens [AMENDED]
50:10-1-5. Cremation and disposition [AMENDED]
50:10-1-7. Persons who may donate [AMENDED]
50:10-1-8. The right to accept or reject a body [AMENDED]
50:10-1-10. Death of a registered donor outside of Oklahoma [AMENDED]
50:10-1-11. No funeral or service or viewing [AMENDED]
50:10-1-12. Programs or individuals receiving anatomical specimen [AMENDED]
50:10-1-12.1 Institutions eligible for registration or who may request bodies for use [NEW]
50:10-1-13. Cadaver use fee [AMENDED]
50:10-1-14. Board forms [NEW]
50:10-1-15. Desecration of a human corpse [NEW]
Subchapter 3. Requirements for Recipients of Anatomical Specimens [NEW]
50:10-3-1. General requirements [NEW]
50:10-3-2. Requirements for registered anatomical donor programs and non-transplant tissue bank [NEW]
50:10-3-3. Distribution priorities [NEW]
50:10-3-4. Transfer of bodies [NEW]
50:10-3-5. Transport, importation and exportation of bodies [NEW]
50:10-3-6. Application and inspection of facilities [NEW]
50:10-3-7. Standards for facilities [NEW]
50:10-3-8. Audit procedures [NEW]
AUTHORITY:
Anatomical Board of the State of Oklahoma; 63 O.S., SECTIONS 91-109
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 3, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

In 2006, the statute authorizing the State Anatomical Board (Board) to operate an anatomical donor program was amended designating the Board to become an "Oversight Board" and allows the Board to designate agents to receive and issue cadavers to programs approved by the Board; appoint an Executive Director to manage affairs of the Board; added "cremation" as method of disposition; removed requirement that unclaimed bodies be offered to the Board; added Chief Medical Examiner as one who may request an autopsy; added Board's agent to handle financial affairs; and repealed the Anatomical Board Fund (63 O.S., Section 98.1).

In 2012, the Anatomical Donor Program Registration Act was created (SB 1580). This requires all eligible anatomical donor programs and non-transplant tissue banks in Oklahoma to register with the Board before receiving donations from inside or outside the state. Donor programs and non-transplant tissue banks must be non-profit organizations. The measure authorizes the Board to prescribe rules of conduct governing the practice of donation, deny, suspend, revoke or reinstate registration of programs, establish fines, initiate disciplinary proceedings and report violations to the appropriate authorities (63 O.S., Section 109).

The proposed amendments will allow the Board to perform its duties as required or authorized by state law.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

50:10-1-2. ~~Jurisdiction of Board~~Application of rules

The rules of this Chapter apply to all dead human bodies (anatomical specimens) or parts ~~there of~~thereof, received and approved by the Board or the Board's Agent to be used for ~~Health Science Education~~ health science education, ~~and/or~~ research, or surgical studies in the State of Oklahoma. The anatomical specimens shall come under complete jurisdiction of the Board.

50:10-1-3. Documents for receiving anatomical specimens

The following documents, or information enabling the Board or the Board's Agent to obtain documents, shall be provided to the Board or the Board's Agent with each anatomical specimen:

(1) Death certificate
(2) Copy of body donation form (if applicable)
(3) Cremation permits

50:10-1-4. Documents for issuing anatomical specimens

Anatomical specimens distributed to authorized institutions are to be accompanied by a Document of Issuance. This document is to be kept at the institution on file until the specimen is returned to the Board or the Board's Agent.

50:10-1-5. Cremation and disposition

~~Following research and/or educational studies, all anatomical specimens shall be cremated in facilities and methods approved by the Board. The cremains shall be interred or scattered in a manner approved by the Board. Cremains may be returned to next of kin for private disposition if so requested at the time of body donation or prior to cremation. Disposition of cremains is determined by the donor on the donation form~~

~~unless the next of kin requests a change in disposition. Priority to change disposition is given first to the spouse, then as follows: the adult children, either parent, an adult brother or sister. All individuals of a class must agree with the change in disposition.~~

(a) Following research, educational, or surgical studies, all anatomical specimens shall be cremated in facilities and methods approved by the Board. The cremains shall be interred or scattered in a manner approved by the Board.

(b) Cremains may be returned to next of kin for private disposition if so requested in writing at the time of body donation or prior to cremation. Disposition of cremains is determined by the donor on the donation form unless the next of kin requests a change in disposition. Priority to change disposition is given first to the spouse, then as follows: the adult children, either parent, an adult brother or sister. All individuals of a class must agree with the change in disposition.

(c) In no event may cremated remains be disposed in or as general institutional wastes.

(d) **Cremation.** Cremation shall occur at a professional crematorium or at the Board-member institution in its own crematory.

(1) **Cremation at a professional crematorium.** If a professional crematorium is utilized, the crematory must be licensed by the Oklahoma Funeral Board or relevant state licensing board.

(2) **Cremation at a Board-member institution.** An institution may operate its own crematory. The crematory shall be under the direct control of the Department of Anatomy or the institution's department to which the anatomical program is attached and may be used for no purpose other than the cremation of human remains.

(e) **Return of Cremated Remains.** If cremated remains are to be returned to family members, the crematory must be completely cleaned before cremation, and the body must be cremated alone.

50:10-1-7. Persons who may donate

~~(a) Anyone of sound mind and legal age (18) may sign to donate his/her body at death for medical education or research. Any of the following persons, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of contrary indications by the decedent or actual notice of opposition by a member of the same or prior class, may give all or part of the decedent's body:~~

~~(1) the spouse~~

~~(2) an adult son or daughter~~

~~(3) either parent~~

~~(4) an adult brother or sister~~

~~(5) a guardian of the person of the decedent at the time of his death, or~~

~~(6) any other person authorized or under obligation to dispose of the body.~~

~~(b) If the Board has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or prior class, the Board shall not accept the body.~~

The persons who may donate and the procedures for making, amending or revoking an anatomical gift are set forth in the Oklahoma Uniform Anatomical Gift Act.

50:10-1-8. The right to accept or reject a body

The Board or the Board's Agent may accept or reject a body, either donated or unclaimed, if it is not suitable for anatomical study or if there is not a need. The Board or the Board's Agent may reject a body if any of the following apply:

(1) ~~Contagious disease~~certain contagious diseases;

(2) prior autopsy;

(3) decomposition and/or bed sores;

(4) obesity;

(5) skin and/or bone are donated to another program;

(6) amputation;

(7) recent unhealed surgeries and/or open wounds; or

(8) aspirated by a funeral home prior to embalming.

50:10-1-10. Death of a registered donor outside of Oklahoma

If an individual who has registered as a donor with the Board or the Board's Agent~~,~~ should die in another State, the donation shall be considered null and void unless the Board or the Board's Agent determines there is a need for the body. In such instances, the survivors must pay all costs related to embalming and transporting the body to the facility designated by the Board.

50:10-1-11. No funeral or service or viewing

Neither the Board nor the Board's Agent~~The board~~ shall ~~not~~ pay any charges associated with a funeral service or viewing, and shall not provide viewing facilities. Should survivors request a funeral service or viewing, survivors must obtain approval from the Board, make all arrangements, and pay all costs associated with said service or viewing.

50:10-1-12. Programs or individuals receiving anatomical specimen

The Board must approve all programs or individuals that wish to receive or use anatomical specimens for research, teaching or clinical skills training. This includes donation programs as well as institutions or individuals using full bodies or body parts as anatomical specimens. Initial requests to use cadavers must be submitted in writing and contain all documents and information required by the Board. After approval by the Board, the requesting institution or individual must submit their requests at least one week prior to the date the specimen is required.

50:10-1-12.1. Institutions eligible for registration or who may request bodies for use

Institutions or organizations that may be authorized by the Board to receive and hold bodies or parts thereof include, but is not limited to, accredited medical schools or colleges, dental schools or colleges, health science centers, hospitals, schools

of mortuary science, chiropractic schools or colleges, osteopathic medical schools or colleges. Transplant tissue banks receiving donations may only transfer those donations to institutions in approved categories. Anatomical donor programs and/or non-transplant tissue banks may be considered for approval on an individual basis and must be justified by a compelling need to increase the number of such entities within the state.

50:10-1-13. Cadaver use fee

(a) The ~~Board~~ Board's Agent will charge the institution or individual requesting anatomical specimens~~,~~ a Cadaver Use Fee~~,~~approved by the Board, which shall be based upon the average cost, per specimen~~,~~ of operating the ~~Board~~Agent including, but not limited to, supplies, embalming, transportation, cremation and utilities.

(b) **Penalty for failure to remit fees.** The authority to receive and hold bodies may be revoked upon failure to transmit such fees. Revocation is automatic if the institution fails to pay the fees under protest after the determination by the executive director that no fee has been received within 30 days after final warning to the delinquent organization, institution, or individual. Fees paid under protest may be contested by a hearing.

50:10-1-14. Board forms

(a) **Yearly cadaver procurement and use report.** The Agent(s) of the Board which has received, directly or by transfer, and/or used a body during the prior year shall complete, sign and file with the executive director the yearly cadaver procurement and use report prescribed by the Board due by August 1 of each year for the prior academic year period of July 1 through June 30.

(b) **Obtaining forms.** Copies of the State Anatomical Board forms, and yearly cadaver procurement and use report, may be obtained from the executive director and are available for public inspection at the office of the State Anatomical Board.

(c) Registrants must provide annual statistical reports due by February 1 of each year for the prior annual period of January 1 through December 31. The reports shall include:

(1) number of pre-registered self-consent donors on file;

(2) total number of donations received broken down by number of self-consent donations and next-of-kin donations made after death;

(3) number of donations by referral source;

(4) number of specimens distributed by:

(A) type of recipient;

(B) type of use (education or research); and

(C) location of recipient (in-state, national, international).

(5) number of cremations processed; and

(6) number of cremated remains returned to family and number of cremated remains scattered.

50:10-1-15. Desecration of a human corpse

(a) Dissection in an authorized institution by authorized persons is specifically exempted from the Oklahoma criminal statute prohibiting desecration of a corpse. The Board has determined:

(1) dissection of human cadaveric materials in health science, and related, education and research, and activities found by the Board to be related to dissection (see paragraph (2) of this subsection) are a special privilege and are authorized for members and students of the health, and related, professions for the purpose of the advancement of knowledge in these fields. Exercise of this authority is accompanied by solemn obligations to conduct all activities related to such dissection with respect and dignity. Authorized dissection shall take place under supervision of trained and qualified persons, and only in specified locations that have been approved by the Board and which meet the standards set forth in this title (relating to Standards for Facilities);

(2) the following activities are integrally related to dissection:

(A) **procurement of bodies**:

(i) removal from the place of death, hospital, morgue, medical examiner's office, or mortuary; and transfer to a proper site for storage or embalming;

(ii) transfer to storage site or dissecting facility approved by the Board.

(B) **distribution of bodies**: removal from one storage site and transfer to another approved facility designated by the Board.

(C) **handling of bodies**:

(i) embalming;

(ii) placement in storage;

(iii) removal from storage;

(iv) placement on dissecting table in a designated facility approved by the Board.

(D) **dissection**: cutting or otherwise separating body components for the purpose of demonstrating or investigating structural relationships of tissues, organs, or systems.

(E) use of bodies in biomedical research: removal of body parts or constituents and subjection thereof to further manipulation for the purpose of advancing scientific knowledge.

(F) **disposal of remains**:

(i) removal from the dissecting table;

(ii) transfer to crematory or burial site;

(iii) cremation or burial;

(iv) final disposition of cremains.

(b) Whenever a person or institution becomes aware of a possible desecration of corpse, the person or institution shall report the facts, as known, to the executive director of the Board. The Board shall give the person or institution the opportunity to document that no violation occurred or that proper remedial safeguards have been implemented to render the likelihood of reoccurrence unlikely. If the Board has cause to believe that a person or institution has failed to report as

required by this subsection or that desecration of a corpse has occurred and may reoccur, the Board shall recommend an appropriate sanction up to suspending the privilege for that person or institution's to receive, hold, and dissect bodies be revoked. No privilege to receive and hold bodies shall be revoked, in the absence of the person or institution's consent, without the opportunity for a hearing.

SUBCHAPTER 3. REQUIREMENTS FOR RECIPIENTS OF ANATOMICAL SPECIMENS

50:10-3-1. General requirements

(a) **Institutions.** Institutions, including Donor programs and non-transplant tissue banks applying to be authorized to receive and hold bodies, or parts thereof must show evidence of accreditation by an accrediting body or evidence of meeting a national standard recognized by the Board for the particular institution.

(b) **Approved facilities.** Institutions or individuals applying to be authorized to receive and hold bodies, or parts thereof, must have and maintain appropriate facilities for receiving, holding, and proper methods for the disposal of bodies, or parts thereof, as are prescribed by the Board.

(c) **Identified individuals.** Institutions or individuals authorized to receive, hold, and dispose of bodies, or parts thereof, must provide to the Board the name(s) and credentials of the person(s) responsible for the cadaver program.

50:10-3-2. Requirements for registered anatomical donor programs and non-transplant tissue bank

(a) Institutions that can be Registered ("Registrant"). The Board has discretion to approve or deny registration for Donor Programs and Non-Transplant Tissue Banks.

(b) Registrant's procedures for obtaining donors must comply with the Uniform Anatomical Gift Act of the state in which the anatomical gift originates.

(c) Registrant must have policies and procedures to insure that anatomical specimens are treated with dignity and respect.

(d) Registrant must have policies and procedures to insure that persons/entities to whom Registrant distributes anatomical specimens are authorized by law to receive and use the specimens. In the absence of applicable state or federal law, the registrant distributes anatomical specimens to persons/entities that meet standards established by private accrediting organizations approved by the Anatomical Board, or set forth in rules or policies promulgated by the Anatomical Board.

(e) Registrant must maintain a record-keeping system to track and document the location of anatomical specimens from initial receipt to final disposition.

(f) Only non-profit organizations shall be eligible for registration. The fees charged by registrant for anatomical specimens must be limited to the amount reasonable to cover the costs of dissection and related activities integral to dissection as defined in OAC 50:10-1-14.

(g) Registrants receiving cadavers must have appropriate background and experience in funeral services or anatomy, which includes but not limited to the successful completion of a cadaver-based anatomy course at the university level involving hands-on dissection, or have taught a human anatomy course with cadaver dissection at the university level under the direction of a qualified individual. Individuals qualified to direct the dissection of cadavers would have a graduate-level degree (M.S. or Ph.D.) in the Biological Sciences, and have successfully completed a graduate-level human anatomy course with cadaver dissection.

50:10-3-3. Distribution priorities

If necessary to insure an adequate supply of anatomical specimens for Oklahoma educational and research institutions, the Board may require registered anatomical donor programs and non-transplant tissue banks to give first priority to Oklahoma institutions when distributing specimens.

50:10-3-4. Transfer of bodies

(a) **Application for transfer.** Institutions desiring the transfer of a body to their institution must make written request to the executive director of the Board. Reasons for the need for a body must be stated.

(b) **Approval of transfer.** The executive director is authorized to approve transfers. Although the law provides for private physicians to be authorized to receive bodies, it is the belief of the Board that, in general, a physician should arrange to do anatomical work at a medical or dental school or at an institution recognized or registered by the Board.

(c) **Availability.** While the executive director of the Board shall make diligent efforts to locate a source of bodies for transfer, final authorization for such transfer shall be dependent on the willingness of a member institution to provide the required body or bodies. Costs of the body and for transportation shall be borne by the institution receiving the transferred body.

(d) **Disposal of transferred bodies.** Unless other suitable arrangements have been made and approved by the executive director or the Board in advance, transferred bodies on which dissection has been completed shall be returned to the institution originally providing the body for final disposition.

50:10-3-5. Transport, importation and exportation of bodies

(a) **Transport of Bodies.** The transfer and transport of bodies from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed funeral establishment, ambulance service, institution, public carrier, or other means approved by the Board. The registrant has policies and procedures to insure that all relevant transport permits required by law have been obtained.

(b) **Importation.** Notification of the intent to import a body or bodies from outside of the State of Oklahoma shall be given to the Board in writing. Such bodies shall fall under the jurisdiction of the Board upon entering the State of Oklahoma, and all rules regulating such material shall apply.

(c) **Exportation.** No body under the jurisdiction of the Board, including donations to non-transplant tissue banks shall be shipped out of the State of Oklahoma unless permission in writing for such shipment has been granted by the Board acting through its executive director. If the executive director is an employee of the institution that is to make the shipment, secondary approval must be given by the chair.

(1) The Board may grant approval of exportation of a body if it or its executive director or chair determines that:

(A) a written request has been received from a registered institution;

(B) the supply of bodies exceeds the needs of the institutions in this state; and

(C) the donor authorized out-of-state shipment.

(2) If, in the opinion of the appropriate official of the holding institution or the executive director, a site visit to the requesting institution is desirable or necessary, such a visit shall be made and a report made to the executive director before approving the transfer. The expenses incurred by such a site visit shall be reimbursed by the potential receiving institution before application is considered.

(d) **Proscription of local removal.** Bodies shall not be removed or relocated from the designated premises of the institution or individual which have been authorized by this Board to receive, hold, or dispose of bodies without the written permission of the executive director.

(e) **Violation of this rule.** Should it appear that an organization, institution, or individual may be in violation of any section regarding the transportation of a body the Board shall proceed as required Subchapter 9.

50:10-3-6. Application and inspection of facilities

(a) **Application.** Qualifying institution applying for authorization to receive and hold bodies or parts thereof must apply in writing to the executive director of the Board. Such application must contain a description of the facilities to be utilized. The application should suggest suitable dates for a site visit by designated members of the Board. All authorized institutions planning significant alterations of their facilities should advise the Board early in the process of changes proposed.

(b) **Inspection.**

(1) **The inspection team.**

(A) **New facilities.** An inspection subcommittee of the Board, composed of at least two members of the Board, or the executive director and another member shall visit all new facilities, including any existing facilities that have undergone major renovation. Such inspections shall be made within 60 days of the receipt of a request for inspection.

(B) **Inspection. Approved facilities.** All approved facilities shall be re-inspected from time to time on a periodic basis not less than every five years by at least one member of the Board from an institution other than the facility being inspected. Advance notice of such re-inspections shall be given.

(C) **Facilities where deficiencies have been cited.** All facilities which have been disapproved, or where a deficiency has been cited on inspection or re-inspection, may be visited by a re-inspection subcommittee composed of at least one member of the Board from an institution other than the facility being re-inspected. This re-inspection, when deemed necessary, shall be made within 60 days of notice to the executive director that the corrections have been accomplished. Advance notice of such re-inspections shall be given.

(2) **Reports of inspection and re-inspection.**

(A) **Approved facilities.** Where the inspection subcommittee finds no reason to deny approval of the inspected facilities, they will make such a report in writing to the executive director. Upon acceptance of the report, the executive director shall notify the institution concerned of such approval of its facilities and authorize it to receive and hold bodies or body parts.

(B) **Disapproved facilities.**

(i) **Needed corrections cited in writing.** When the inspection subcommittee notes deficiencies which require remedy before approval can be granted, they shall so report, in detail, in writing to the executive director of the Board, who shall notify the institution promptly of these deficiencies. The inspection subcommittee will discuss deficiencies found with the concerned institution personnel before departing from the site.

(ii) **Requirement for immediate action.** When an institution is advised of deficiencies uncovered by an inspection subcommittee, it is obligated to effect immediate correction of the deficiency or deficiencies. Delay in effecting the required corrections will delay granting approval of new facilities and may threaten continued approval of existing facilities.

(iii) **Suspension of authorization.** Unnecessary delay in making required correction(s) of deficiencies uncovered by inspection or reinspection may, by majority vote of the Board, result in denial or withdrawal of approval of the facility and withholding or suspension of authorization to receive and hold bodies or body parts. Shall an organization, institution, or individual object to such determination by the Board, it may request a hearing.

50:10-3-7. Standards for facilities

(a) **Health standards.**

(1) **Dissection facilities.** Dissection areas must be clean, well ventilated, and well lighted. The floor should be of a composition that can be easily cleaned and non-skid. Tables and tanks must be conducive to easy cleaning and to the long-term preservation of cadavers.

(2) **Storage facilities.** Storage facilities must be conducive to long-term storage of bodies and conducive to the health of personnel who must work in the area. It should

be of sufficient size to handle, without undue crowding, the total being used at any one time.

(3) **Preparation area.** The preparation area must be clean, well ventilated, and well lighted. It must be fully equipped with table and drain of approved type and the equipment necessary for satisfactory embalming. All construction must be of a type conducive to easy cleaning.

(4) **Embalming.** The embalming formula shall be appropriate to the long-term preservation of cadavers and will not present a health hazard to persons dissecting. Embalming services must be performed by an entity authorized by the law of the state in which the services occur, and in accordance with the standards required by the law.

(5) Unfixed specimens are preserved in accordance with applicable state and federal requirements, including the standards set forth in the Oklahoma Funeral Services Licensing Act and rules.

(6) Unfixed anatomical specimens are tested for infectious and contagious diseases in accordance with applicable state and federal law, including testing by persons and in facilities using methods which meet FDA and CLIA requirements.

(7) The registrant has policies and procedures to prevent the transmission of infectious and contagious diseases in the collection, storage, preservation, and distribution of anatomical specimens.

(b) **Safety standards.**

(1) **Air exchange.** All dissecting and preparation areas must have sufficient air-handling machinery to provide for not less than 15-20 full changes of air per hour.

(2) **Storage of hazardous chemicals.** All hazardous chemicals shall be stored in a separate and approved facility or area. Explosive or flammable chemicals must be properly stored.

(3) **Dangerous fumes.** Particular attention must be given to holding the concentrations of all dangerous or hazardous fumes to an absolute minimum. Suitable air-handling equipment, appropriate storage, and careful handling are essential.

(c) **Public welfare.**

(1) **Visibility.** All areas where human bodies are handled must not be visible from the outside of the building or so located that the public has ready visibility of transport, preparation, or dissection in progress.

(2) **Accessibility.** All areas used for receipt and preparation, storage, or dissection of human bodies must be unaccessible and inadmissible to the general public and all unauthorized personnel. All areas must have appropriate locks. Only personnel concerned with the preparation of cadavers should have access to storage, handling, and preparation areas. Storage areas should be securely locked at all times when bodies are not being placed in or removed from storage.

(d) Facility must be OSHA compliant.

50:10-3-8. Audit procedures

Each Anatomical Donor Program and Non-transplant tissue bank shall conduct an audit of its procedures and methods for receiving, storing, using, and transporting bodies or anatomical specimens and disposing of remains. This audit must be conducted at an interval of 5 years, coincidental with regularly scheduled Board inspections. The audit shall be performed by the institution's audit department or a professional audit firm according to an audit template prescribed by the Board. The results of the audit shall be filed with the executive director within 30 days of its completion. A follow-up report shall be filed with the executive director no more than 1 year later.

[OAR Docket #14-648; filed 7-2-14]

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

[OAR Docket #14-727]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Administrative Operation. [AMENDED]
Subchapter 5. Application and Eligibility for Licensing or Registration [AMENDED]
Subchapter 7. Examination [AMENDED]
Subchapter 9. Licensing and Registration [AMENDED]
Subchapter 11. Rules of Professional Conduct [AMENDED]
Subchapter 13. Organizational Practice [AMENDED]
Subchapter 15. Violations [AMENDED]
AUTHORITY:
Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma; 59 O.S., Sections 46.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 9, 2014
COMMENT PERIOD:
January 17, 2014 through March 5, 2014
PUBLIC HEARING:
March 12, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a

ANALYSIS:

In accordance with the Oklahoma State Architectural and Registered Interior Designers Act codified at 59 O.S § 46.1 et. seq., the revisions Subchapter 1 are expanding definitions and clean-up. The definition of Direct Supervision is being deleted throughout the Rules and replaced with Responsible Control. CIDQ replaces NCIDQ throughout the Rules due to a national name change of the organization. Changes to Subchapter 3 are clean-up. Changes to Subchapter 5 are to incorporate Board Policy on Equivalent Education into these Rules, as well as some clean up. Changes to Subchapter 7 through Subchapter 15 are minor clean-up items.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3 (5) AND 308 (E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

55:10-1-1. Purpose

The Rules of this Chapter are set forth for the purpose of interpreting and implementing the Act, establishing the Board and conferring upon it responsibility for licensing Architects, Landscape Architects and registering Registered Interior Designers. The Act and Rules also requires regulating the practice of architecture and landscape architecture and enforcement of the Act. The Rules of this Chapter are known and cited as OAC 55:10.

55:10-1-3. Definitions

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

"Act" means the currently enacted and effective legislation codified at 59 O.S., Section 46.1, et seq.

"Applicant" means an individual who has submitted an application for a License or Registration to the Board.

"Architect" means an individual who engages in the practice of architecture and, for the purpose of these Chapter 10 Rules, holds a License issued by the Board.

"Architect(s) of Record" means a Licensee currently licensed as an Architect or Landscape Architect and in good standing with this Board, that has met statutory and OAC 55:10 requirements, who is directly responsible to the Board for the firm practice, filings, paying all fees, penalties and submitting all documents.

"Architectural Intern" shall have the same meaning as "Intern Architect".

"ARE" means the current architect registration examination~~,~~ prepared by NCARB and adopted by the Board as the examination to be used in determining a Candidate's qualifications to practice architecture.

"Board" means the Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma.

"Broadly Experienced" means a person who can demonstrate that the Board's equivalent education, training and examination standards have been met through a combination of education and comprehensive practice in responsible control in architectural, landscape architecture or as a Registered Interior Designer~~interior design experience~~. This person is currently licensed or registered in the same profession in another jurisdiction and is in good standing. The person seeking licensure or ~~registration~~Registration may be required to have a personal interview by the Board and the Board may, at ~~the~~ its sole discretion~~ of the Board~~, issue a License~~licensure~~ or ~~registration~~Registration.

"Building types" means the types of buildings found in O.S. 59, Section 46.21b of the Act.

"Candidate" means an individual who has been approved to sit for the examinations given by the Board, or who has passed said examinations, but has not been issued a License or Certificate of Registration.

"CE" means continuing education.

"Certificate of Authority" means the authorization granted by the Board for individuals to practice or offer to practice architecture or landscape architecture in the state through an Entity.

"Certificate of Registration" means the authority granted by the Board to an individual Registrant to~~offer services as interior design and~~ represent the individual as a Registered Interior Designer in the state.

"Certificate of Title" means the authorization granted by the Board to an Entity to use the title Registered Interior Designer ~~or offer services as registered interior design~~.

"CEU" means a continuing education unit of one Contact Hour.

"CIDA" means Council of Interior Design Accreditation or its successor.

~~**"NCIDQ"**~~**"CIDQ"** means ~~National~~ Council for Interior Designers Qualification, the organization administering examinations and setting model practice standards for the Registration of Interior Designers, or its successor.

"CLARB" means Council of Landscape Architectural Registration Boards or its successor.

"Contact Hour" as used in the continuing education requirements means one clock hour of not less than 50 minutes.

~~**"Direct supervision"** means working conditions where a licensed Architect, Landscape Architect or Registered Interior Designer is in each office and is a resident Licensee or Registrant regularly employed in that office, supervising the intern or employees and is directly responsible for all tactical and technical decisions on projects.~~

"Entity" means any group of individuals joined together to offer or contract for services to practice architecture, landscape architecture or use the ~~term registered interior design or the~~ title ~~of~~ Registered Interior Designer. Entity shall include individuals, partnerships, firms, associations, corporations, limited liability companies and limited liability partnership and any other business or professional group recognized under the Act and approved by the Board.

"Examination" means the current licensing and registration examinations administered by this Board, or its designee,

for Architects, Landscape Architects or Registered Interior Designers.

"Fiscal Year" means July 1 though June 30.

"IDP" means Intern Development Program.

"IDEP" means the Interior Design Experience Program.

~~**"Interior Designer Intern"** shall have the same meaning as **"Intern Interior Designer".**~~

"Intern Architect" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to ~~pursuing~~pursue licensure.

~~**"Intern Interior Designer"** means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursue Registration as a Registered Interior Designer.~~

"Intern Landscape Architect" means an individual in the process of obtaining credits acceptable to the Board in order to complete requirements and is currently testing to pursue licensing as a Landscape Architect.

"LAAB" means Landscape Architectural Accrediting Board or its successor.

"LARE" means the current Landscape Architect ~~registration~~Registration ~~examination~~ Examination prepared by CLARB or its successor and adopted by the Board as the licensing examination to be used in determining a Candidate's qualifications to practice landscape architecture.

"Landscape Architect" means an individual licensed to practice landscape architecture in Oklahoma.

"Landscape Architectural Intern" shall have the same meaning as "Intern Landscape Architect".

"License" means License to practice architecture or landscape architecture issued by the Board and permission to use the title Architect or Landscape Architect.

"Licensee" means a licensed Architect or Landscape Architect that practices architecture or landscape architecture.

"NAAB" means the National Architectural Accrediting Board or its successor.

"NASAD" means the National Association of the Schools of Art and Design or its successor.

"NCARB" means National Council of Architectural Registration Boards or its successor.

"Prototypical Plans" are technical submissions for prototypical buildings that are prepared by and under the responsible control of an architect licensed in any jurisdiction in the United States for use in the state of Oklahoma.

"Reciprocal License" means a License granted by the Board to an individual to practice architecture or landscape architecture and granting use of the term Architect or Landscape Architect or any derivation of the word based on a current License in good standing in another jurisdiction meeting the requirements for licensing in this State.

"Reciprocal Registration" means a registration granted by the Board to an individual to use the title Registered Interior Designer or any derivation of the word based on the License or Registration in good standing in another jurisdiction meeting the requirements for Registration in this state.

"Registered Interior Designer" means an individual registered by the Board to use the title.

"Registered Interior Designer Intern" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursue Registration as a Registered Interior Designer.

"Registered Interior Designer of Record" means a Registered Interior Designer in good standing with this Board, that has met statutory and OAC 55:10 requirements, and who is directly responsible to the Board for the activities, filings, paying all fees, penalties and submitting all documents for the Entity having been issued the Certificate of Title.

"Registrant" means an individual registered by the Board to use the title Registered Interior Designer, as a designation of the individual's profession.

"Registration" means the authority granted by this Board to a qualified individual to use the term Registered Interior Designer unless exempt by the Act from Registration.

"Resident State" means the state where the Applicant, Candidate, Licensee or Registrant legally resides.

"Responsible Control" shall have the same meaning as the Act.

"Rules" means this Oklahoma Administrative Code, Title 55, Chapter 10 Rules.

"Sole proprietorship" means the only owner of a firm, licensed or registered as an individual by the Board.

"Sponsor" means an individual, organization, association, institution or other entity that provides an educational activity for the purpose of fulfilling the continuing educational requirements of the Board.

"Technical submissions"has the same meaning as in the Act.~~means designs, drawings, specifications, studies and other technical reports prepared in the course of the practice of architecture or landscape architecture.~~

"UNE" means the former Landscape Architect licensing examination, prepared by CLARB and adopted by the Board as the licensing examination.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

55:10-3-3. Duties of the Executive Director

The Board shall designate an Executive Director who shall have possession, on behalf of the Board, of all the official records of the Board and who shall, under the supervision of the Board, perform such duties as the Board authorizes. The Executive Director shall keep updated information on the examinations and policies of NCARB, CLARB or ~~NCIDQ~~ CIDQ or their successors and report any and all other important information to the Board for consideration, review and action.

55:10-3-11. NCARB, CLARB and ~~NCIDQ~~ CIDQ memberships and programs

The Board may maintain membership in NCARB, CLARB and~~or NCIDQ~~ CIDQ or their successors and their regional conferences. It is the intention of the Board, to the extent permitted under Oklahoma law, to support NCARB, CLARB and~~orNCIDQ~~ CIDQor their successors programs.

This Board will cooperate with NCARB, CLARB and~~or NCIDQ~~ CIDQ in furnishing transcripts of records, administering examinations and rendering assistance in establishing uniform standards of professional qualification.

SUBCHAPTER 5. APPLICATION AND ELIGIBILITY FOR LICENSING OR REGISTRATION

55:10-5-1. Availability of forms and Board records

All forms required for submission to the Board are available from the Board office or on the Board's website~~ at www.ok.gov/architects~~. When received complete, they will be entered into the Board records.

55:10-5-2. Documents required for a License or Registration by exam

Every individual applying for an initial License or Registration by examination shall submit (i) an original application to the Board, accompanied by the applicable fees in 55:10-3-13, a 2" x 3" passport quality photograph, original college transcript and the required reference forms verifying all training experience, or (ii) through NCARB, CLARB or ~~NCIDQ~~ CIDQ or their successors, copies of these documents and an original Oklahoma application. Information submitted will be verified and evaluated and subsequent submissions may be required of the Applicant. The forms must be complete and properly executed over the signature of the Applicant.

55:10-5-4. Evaluation criteria

(a) In the Board's evaluation of education and experience credits required, the application shall be subject to the following education and training requirement standards for the applicable profession:

(1) for Architects, as established by this Board based upon the current "NCARB Handbook for Interns and Architects," "NCARB Education Standard" and "Intern Development Program Guidelines", the Act, these Rules,~~and/or~~ equivalent standards determined by the Board~~;~~in the standards and requirements for Architects set forth in OAC 55:10-5-4.1 and/or in compliance with O.S. 59, Section 4100 et seq;

(2) for Landscape Architects, as established by current CLARB standards, the Act, these Rules and or equivalent standards determined by the Board, as set forth in OAC 55:10-5-4.2;

(3) for Registered Interior Designers, as established by current ~~NCIDQ~~ CIDQ standards, the Act, these Rules and/or equivalent standards determined by the Board. See OAC 55:10-5-10.

(b) Rejection of application will include evaluation reports and instructions for completing requirements.

(c) The order upon which a Candidate completes education and/or training may, at the sole discretion of the Board, be considered to have met or not met their requirements.

55:10-5-4.1. Equivalent education and training standards for Architects

(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing and acceptable training standards through equivalent and/or alternative standards and methods. The requirements set out in this paragraph for education and training along with the Board's current Rules will be used to meet these goals. The standard is a five (5) year professional education from an NAAB accredited degree in architecture and completion of the NCARB Intern Development Program (IDP) plus the passage of the NCARB examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and explain those education and training equivalents and alternatives. A person seeking licensure is required to have five (5) years of education credits established below or an NAAB accredited degree in architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an NAAB accredited degree in architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five (5) years of education credits in accordance with these standards.

(1) **Education and training equivalents and alternatives.**

(A) Education credits allowed toward the first professional degree in architecture, or credits toward the first professional degree, where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two (2) years after termination of enrollment:

(i) 75% credit allowed first two (2) years
(ii) 100% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed

(B) Education credits allowed toward the first professional degree in architecture, or credits toward that degree, where the degree program has not been accredited by NAAB within two (2) years of graduation:

(i) 75% credit allowed first two (2) years
(ii) 75% credit allowed succeeding years
(iii) Four (4) years maximum credit allowed

(C) Education credits allowed toward a foreign bachelor degree in architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptableto the Board as equivalent to (a)(1)(A) of this section, in its sole discretion:

(i) 75% credit allowed first two (2) years
(ii) 100% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed

(D) Education credits allowed toward any other pre-professional related bachelor degree:

(i) Three (3) years maximum credit allowed

(E) Education credits allowed for diversified experience directly related to architectural work as an employee in the office of a licensed architect:
(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit
(F) Education credits allowed for diversified experience, practicing as a principal, with verified record of substantial practice, directly related to architectural work:
(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit
(G) Education credits allowed for diversified experience as an employee of an organization (other than offices of licensed architects) when the experience is related to architectural work and is under the personal supervision of a licensed architect:
(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Four (4) years maximum credit allowed
(iv) 100% training credits allowed; two (2) year maximum limit
(H) Education credits allowed for experience as an employee of an organization (other than offices of licensed architects) when the experience is in a foreign country or on a military installation and directly related to architectural work but is not under direct supervision of a licensed architect in good standing in the United States or Canada, but rather a foreign credential entity or the military. And equates to (a)(1)(E) of this section by the Board in its sole discretion:
(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit
(I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction operation or experience involving physical analyses of existing buildings:
(i) No education credits allowed
(ii) 50% training credits allowed; six (6) month maximum limit
(J) Education credits allowed for non-diversified experience in architecture under the direct supervision of a licensed architect or engineer:
(i) No education credits allowed
(ii) 50% training credits allowed; six (6) month maximum limit
(K) Education credits allowed for a Master or Doctoral degree in architecture (except where the degree is the first professional degree) where it is a second accredited professional degree:
(i) No education credits allowed
(ii) 100% training credits allowed; one (1) year maximum limit
(L) Education credits allowed full time teaching or research in an NAAB accredited architectural program:
(i) No education credits allowed
(ii) 100% training credits allowed; one (1) year maximum limit
(M) Education credits allowed other education or training experience. See (b)(5)(B) of this section.)

(b) **Explanation of requirements.**

(1) **Licensing standards.**

(A) To be granted licensure, an applicant must:
(i) Be at least twenty-one (21) years of age;
(ii) Hold a high school diploma or equivalent;
(iii) Be of good character as verified by employers, architects, NCARB member boards or foreign accrediting entities;
(iv) Hold an NAAB accredited degree in architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;
(v) Have at least three (3) years of diversified acceptable training credits;
(xi) Hold a current registration to practice architecture issued by an NCARB member board or foreign accrediting entity;
(vii) Have passed the NCARB Architect Registration Examination (ARE), the NCARB Professional Examination (and the Qualifying Test or the Equivalency Examination when applicable by NCARB standards) or the NCARB 7-part, 36-hour Examination; provided such examinations and the grading procedures applied were in accordance with NCARB standards current at the time the applicant sat for the examinations or
(viii) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board.

(B) Licensing standard deficiencies.
(i) Applicants meeting all the requirements of (b)(1)(A)(i-vi, viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits (earned as described in (b)(2)(A) of this section) and has passed an examination given by the Board at their discretion.

(2) **Examination deficiencies.**

(A) Prior to July, 1973, the NCARB written examination was a 7-part examination of thirty-six (36) hour duration, but some NCARB member boards administered examinations of a shorter duration. Compensation for each one-hour deficiency in duration in the 7-part examination may be achieved by one (1) year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten (10) or more years of excess training credit (in the manner described in

the preceding sentence) and have received their initial license by written examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any NCARB examinations will be followed by this Board.

(3) **Education credits.** Education credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school.

(B) Applicants with the degree specified in (a)(1)(A-D) of this section will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A-B) of this section may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) Thirty-two (32) Semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the NAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits

(ii) Every applicant must earn at least one (1) year of training credit under (a)(1)(E-G) of this section, and must earn it after earning five (5) years of education credits

(iii) To earn credit under (a)(1)(K) or (L) of this section, an applicant's credit hours must be in subjects evaluated by the Board as directly related to architecture. Twenty (20) semester credit hours or thirty (30) quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit

(v) Organizations will be considered to be "offices of licensed architects" if: (a) the architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed architect; and (b) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities: (a) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or (b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being (a) a licensed architect and (b) the person in charge of the organization's architectural practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluation training credits the Board prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) **General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least thirty-two (32) hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(1)(E) of this section for work of a least fifteen (15) hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

55:10-5-4.2. Equivalent education and training standards for Landscape Architects

(a) **Education and training equivalent requirements for licensing.** This is a State of Oklahoma program to lead national and/or international applicants into meeting licensing and training standards through equivalent and/or alternative standards and methods. These paragraphs for education and training will be used to meet these goals. The standard is a five year professional education from an LAAB accredited degree program in landscape architecture and completion of the Board's training standards along with passage of the CLARB examinations or equivalent examinations and examinations required by the Board. Education and training may be gained in a variety of ways. The following paragraphs identify and

explains those education and training equivalents and alternatives. A person seeking licensure is required to have five years of professional education credits established below or an LAAB accredited degree in landscape architecture and complete a national and/or international diverse training program or equivalent practical training acceptable to the Board in its sole discretion. Education and training may be gained in a variety of ways. A candidate for licensure must hold an LAAB accredited degree in landscape architecture or meet the alternate education criteria adopted here, unless the candidate had been licensed by a member board or had accumulated at least five years of education credits in accordance with these standards.

(1) **Experience description and education credits.**

(A) Education credits allowed toward first professional degree in landscape architecture, or credits toward the first professional degree, where the degree program has been accredited by the Landscape Architectural Accrediting Board (LAAB) not later than two years after termination of enrollment:

(i) 75% credit allowed first two (2) years
(ii) 100% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed

(B) Education credits allowed toward first professional degree in landscape architecture, or credits accredited by LAAB within two (2) years of graduation:

(i) 75% credit allowed first two (2) years
(ii) 75% credit allowed succeeding years
(iii) Four (4) years maximum credit allowed

(C) Education credits allowed toward a foreign bachelor degree in landscape architecture or credits toward that degree accredited by a national or internationally recognized accrediting council or entity acceptable to the Board as equivalent to (a)(1)(A) of this section, in its sole discretion:

(i) 75% credit allowed first two (2) years
(ii) 100% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed

(D) Education credits allowed toward any other pre-professional related bachelor degree or credits toward that degree:

(i) Three (3) years maximum credit allowed

(E) Education credits allowed for diversified experience directly related to landscape architecture as an employee in the offices of a licensed or credentialed landscape architect:

(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit

(F) Education credits allowed for diversified experience, practicing as a principal, with a verified record of substantial practice, directly related to landscape architecture work:

(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit

(G) Education credits allowed for diversified experience as an employee of an organization (other than offices of a licensed landscape architect)when the experience is related to landscape architecturework and is under the personal supervision of a licensed landscape architect, architect, civil engineer or credentialed planner in goodstanding:

(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Four (4) years maximum credit allowed
(iv) 100% training credits allowed; two (2) year maximum limit

(H) Education credits allowed for experience as an employee of an organization (other than offices of licensed landscape architects) when the experience is in a foreign country or on a military installation and directly related to landscape architectural work but is not under direct supervision of a licensed engineer, architect, landscape architect or credentialed planner in good standing in the United States or Canada, but rather a foreign credential entity or the military and equates to (a)(1)(E) of this section, by the Board in its sole discretion:

(i) 50% credit allowed first two (2) years
(ii) 50% credit allowed succeeding years
(iii) Five (5) years maximum credit allowed
(iv) 100% training credits allowed; no limit.

(I) Education credits allowed for experience, other than (a)(1)(E-H) of this section, directly related to on-site building construction, maintenance, or installation operations:

(i) No education credits allowed
(ii) 50% training credits allowed; one (1) year maximum limit

(J) Education credits allowed for non-diversified experience in landscape architecture under the personal supervision of a licensed landscape architect, architect, engineer or credentialed planner in good standing:

(i) No education credits allowed
(ii) 50% training credits allowed; one (1) year maximum limit

(K) Education credits allowed for a Master or Doctoral degree in landscape architecture (except where the degree is the first professional degree) where it is a second accredited professional degree:

(i) No education credits allowed
(ii) 100% training credits allowed; one (1) year maximum limit

(L) Education credits allowed for full time teaching or research in an LAAB accredited landscape architect program:

(i) No education credits allowed
(ii) 100% training credits allowed; one (1) year maximum limit

(M) Education credits allowed for other education and experience. See (b)(5)(B) of this section.

(b) **Explanation of requirements.**

(1) **Licensing standards.**

(A) To be granted licensure, an applicant must:

(i) Be at least twenty-one (21) years of age;

(ii) Hold a high school diploma or equivalent;

(iii) Be of good character as verified by employers, landscape architects, CLARB member oards or foreign accrediting entities;

(iv) Hold an LAAB accredited degree in landscape architecture or have at least five (5) years of education credits using these standards and the Board's current Rules;

(v) Have at least three (3) years of diversified acceptable training credits;

(vi) Hold a current registration to practice landscape architecture issued by a CLARB member board or foreign accrediting entity;

(vii) Have passed the CLARB Landscape Architect Registration Examination (LARE), the CLARB Uniform National Examination (UNE) or a state administered examination prior to national testing methods; provided such examinations and the grading procedures applied were in accordance with CLARB standards and/or this state's standards current at the time the applicant sat for the examinations.

(viii) Have passed an acceptable foreign examination comparable to the United States examinations at the sole discretion of the Board.

(B) Licensing standard deficiencies.

(i) Applicants meeting all the requirements of (b)(1)(A)(i-vi, viii) of this section may nonetheless be granted licensure if the applicant has accumulated ten or more years of excess training credits, earned as described in (b)(2)(A) of this section and has passed an examination given by the Board at their discretion.

(2) **Examination deficiencies.**

(A) Some CLARB member boards administered examinations of a shorter duration. Compensation for each one-hour deficiency in duration of an examination may be achieved by one year of excess training credits. Excess training credits may be earned only after initial licensing by accumulating training credits in excess of those required for initial licensing. Applicants who have earned, under (a)(1)(F) of this section, ten or more years of excess training credit (in the manner described in the preceding sentence) and have received their initial license by written examination, regardless of hour duration, are eligible for licensure.

(B) The Board may waive deficiencies in the applicant's examination procedure arising from examination transitions, if, in its judgment, such deficiencies are minor in nature or, if substantial, have been adequately compensated for by some equivalent proof of the applicant's competency.

(C) The transition rules relating to the implementation of any CLARB examinations will be followed by this Board.

(3) **Education credits.** Education Credits shall be subject to the following conditions:

(A) No education credits may be earned prior to graduation from high school

(B) Applicants with the degree specified in (a)(1)(A-D) of this section, will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in (a)(1)(A) or (B) of this section, may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(C) 32 Semester credit hours or 48 quarter credit hours are considered to be one (1) year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.

(D) Foreign education credits will be granted only under classifications in (a)(1)(C-D) of this section, unless the Board determines the degree is equivalent to the LAAB educational requirements. Any cost of translation and evaluation will be borne by the applicant.

(4) **Training credits.**

(A) Training credits shall be subjected to the following conditions:

(i) No training credits may be earned prior to accumulating three (3) education credits.

(ii) Every applicant must earn at least one year of training credit under (a)(1)(E-G) of this section, and must earn it after earning five (5) years of education credits.

(iii) To earn credit under (a)(1)(K) or (L) of this section an applicant's credit hours must be in subjects evaluated by the Board as directly related to landscape architecture. 20 semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(iv) No credit used as an education credit may be used as a training credit.

(v) Organizations will be considered to be "offices of licensed landscape architects" if:

(I) the landscape architectural practice of the organization in which the applicant works is in the charge of a licensed person practicing as a principal and the applicant works under the personal supervision of a licensed landscape architect, architect or engineer; and

(II) the organization may engage in construction.

(vi) An organization (or affiliate) is engaging in construction if it customarily engages in either of the following activities:

(I) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation, or

(II) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(vii) A person practices as a "principal" by being:

(I) a licensed landscape architect, and

(II) the person in charge of the organization's landscape architectural, architectural or engineering practice, either alone or with other licensed architects, landscape architects and/or engineers.

(viii) In evaluating training credits prior to licensing, the Board requires the applicant to substantiate training experience by comparing this experience to the training requirements as indicated in these standards and the Board's current Rules.

(5) **General evaluation criteria.**

(A) To earn full education and/or training credits under (a)(1)(E-J) of this section, an applicant must work at least 32 hours per week for a minimum period of six (6) consecutive weeks. An applicant may earn one-half the credit specified under (a)(1)(E) of this section, for work of a least 15 hours per week in periods of six (6) or more consecutive weeks; no credit will be given for part-time work in any category other than (a)(1)(E-G) of this section.

(B) Other education and training may be substituted for the requirements outlined above, only insofar as the Board considers them to be equivalent to the required qualifications.

(C) In evaluation credits, the Board may, prior to licensure, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

55:10-5-6. Active and inactive applications

Applications for examination for current Landscape Architect Candidates testing on the five (5)~~six (6)~~ year time period shall remain active for the five (5)~~six (6)~~ years examination period only. At the end of the five (5)~~six (6)~~ year period, these Candidates shall reapply as a new Candidate and begin testing under the current and changing provisions of CLARB or as modified by this Board in its sole discretion. Candidates testing on the five (5) year rolling clock shall remain active for one (1) year after the last examination section was passed. Beginning July 1, 2012, new Candidates and those with expired rolling clock authorizations shall begin testing by CLARB's current and changing provisions or as modified by this Board in ~~it's~~its sole discretion. Registered Interior Designer Candidates shall remain active for one (1)~~two (2)~~ year~~s~~ after the last examination was taken and must reapply. Any Candidate experiencing physical disability, illness or other extenuating circumstances may request exemption or extension from the examination retention requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis. Incomplete applications are withdrawn after one (1) year and the Applicant will be required to reapply. Applicants and Candidates called to active military duty in the armed forces of the United States and deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment under Section 55:10-7-1. Beginning July 1, 2009, all Architect Candidates shall test under the current and changing provisions set out by NCARB or its successor or modified by this Board in ~~it's~~ its sole discretion.

55:10-5-8. Qualifications for a Landscape Architect License

(a) **General requirements.** An Applicant for an initial License to practice landscape architecture shall be an individual of good moral character and not less than 21 years of age.

(b) **Education and training requirements.** Applicants shall have a professional degree from a LAAB accredited program in a school of landscape architecture or an equivalent educational program and provide evidence of three (3) years of acceptable training credits as provided in Section 55:10-5-4 or as established by CLARB. The Board may accept a Landscape Architect who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and licensed in good standing in another jurisdiction or country who has passed the CLARB examinations or its equivalent, as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(c) **Training credits.**

(1) Training credits may not be counted prior to completion of the third year of college or a pre-professional degree. Thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of one-half or greater will be considered one-half year and smaller fractions will not be counted. To earn full training credits, an Applicant must work at least (32) to (35) hours per week for a minimum of two consecutive months. A Candidate may earn one-half the credit specified for work of at least fifteen (15) hours per week for a minimum of four consecutive months. Training credits may also be earned by any person who works outside the U.S. or Canada if the person is under the ~~Direct Supervision~~ Responsible Control of a person credentialed to practice landscape architecture, architecture, engineering or planner and the supervision person is not registered in a U.S. or Canadian jurisdiction.

(2) Training credits are defined as follows:

(A) Diversified landscape architectural experience under the ~~Direct Supervision and~~ Responsible Control of a licensed Landscape Architect.

(i) 100% credit

(ii) No limit to credit

(iii) Practicing as a principal in good standing as a landscape architecture for six (6) years full

time, shall be deemed to have satisfied the training requirement.

(B) Diversified landscape architectural experience under the ~~Direct Supervision~~ Responsible Control of a licensed Architect, engineer or credentialed planner in good standing.

(i) 100% credit

(ii) Two (2) years maximum credit

(C) Landscape architectural experience directly related to on site construction, maintenance, or installation operations.

(i) 50% credit

(ii) 1 year maximum credit

(D) Non-diversified experience in landscape architecture under the ~~Direct Supervision~~ Responsible Control of a licensed Landscape Architect, engineer, Architect or credentialed planner in good standing.

(i) 50% credit

(ii) One (1) year maximum credit

(d) **State exams required.** All Applicants shall take and pass an examination on the Act and these Rules as well as an examination on Oklahoma plant materials and CLARB's examination or its equivalent prior to receiving a License in the State.

55:10-5-10. Qualifications for Registration as an Interior Designer

(a) **General requirements.** All individuals applying for Registration as a Registered Interior Designer shall:

(1) Obtain all required education and training prior to Registration.

(2) Hold an accredited professional degree in interior design accredited by the Council of Interior Design Accreditation or its successor, obtain two (2) years or 3,520 hours of acceptable training as defined by this Subsection and pass the examinations for Registration as a Registered Interior Designer administered by ~~NCIDQ~~ CIDQ or its successor; or

(3) Obtain an equivalent education to an accredited professional degree in interior design, as determined by the Board, obtain two (2) years or 3,520 hours of acceptable training and experience hours as defined by this Subsection and pass the examinations for Registration as an Interior Designer administered by ~~NCIDQ~~ CIDQ or its successor; or

(4) Have been issued a valid Registration from another state, jurisdiction or foreign country provided the requirements for Registration are equivalent to the requirements of this state as determined by the Board; or

(5) Have a degree from a program accredited by CIDA or its successor. An applicant, who has completed the program within two (2) years of the program acquiring this accreditation, shall be considered to have obtained an accredited education program in interior design.

(b) **Equivalent education and defining training requirements.** The following education, training and experience may be considered to be equivalent to the requirements of OAC 55:10-5-10(a) as determined by the Board in its sole discretion:

(1) A baccalaureate degree in programs of no less than 120 semester or 180 quarter passing credit hours of which 60 semester or 90 quarter hours, respectively, are interior design-related; and a total of no less than 3,520 hours of interior design acceptable training as defined herein;

(2) Certificate, degree or diploma with a minimum passing credit of 60 semester hours or 90 quarter passing credit hours respectively in interior design related coursework and obtain 5,280 hours of acceptable training; or

(3) Meet the educational standards set forth by the National Association of the Schools of Art and Design and other similar institutions provided the educational program has a minimum of 40 semester passing credit hours or 60 passing quarter credit hours in interior design~~Interior Design~~ related coursework and 7,040 hours of acceptable training.

(4) Thirty (30) passing semester hours from a Board approved program shall equal one (1) year of education towards the first accredited professional degree in interior design or its equivalent program.

(5) One (1) year of education credit hours from a Board approved program earned in an interior design program or its equivalent degree program shall equal two (2) years of acceptable training and experience.

(6) Four (4) years from a Board approved program shall be an equivalent standard for the first professional degree in interior design or its equivalent when computing the fifteen (15) years experience and training to equate towards the training and experience requirement in O.S. 59, Sections 46.39 through 46.40 of the Act.

(7) A second accredited professional degree in interior design or its equivalent shall count as one year of education for two (2) years of training and experience.

(8) The Board may accept a~~an~~Registered Interior Designer who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and Registration ~~registration~~ who has passed the ~~NCIDQ~~ CIDQ examinations or an equivalent examination as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(c) **Education content requirements.** Educational instruction shall include, but is not limited to, the following:

(1) Building and Interior Systems

(2) Business and Professional Practices, Management and Ethics

(3) Codes and Ordinances

(4) Basic and Creative Arts

(5) Color Theory

(6) Interior Design

(7) Technical Knowledge

(8) History and theory of Art, Architecture and Design

(9) Human Factors

(10) Lighting

(11) Materials and Finishes

(12) Communication Skills

(13) Furnishings

(d) **Training and experience categories.** Training and experience credits shall be awarded for work performed in the following areas:

(1) Programming
(2) Schematic Design
(3) Design Development
(4) Contract Documents
(5) Contract Administration
(6) Professional Practice

(e) **Training and experience requirements.** The Board may accept as evidence of diversified training and experience for registering a Registered Interior Designer~~in interior design~~ as stated in this Subsection:

(1) Applicants having obtained the first CIDA professional accredited degree in interior design or its equivalent shall have 2 years of acceptable training and experience hours, as determined by the Board in ~~it's~~its sole discretion. One year shall equal 1760 hours of training and experience.

(2) Applicants may earn one (1) year of training and experience hours after completing 96 semester passing credit hours toward the first professional degree in interior design.

(3) On January 1, 2007, all individuals beginning their training and experience shall obtain credits after all educational requirements have been met for those individuals with equivalent education equating to the first accredited professional degree in interior design.

(4) Applicants with acceptable education and experience may take the examination to become a Registered Interior Designer, regardless of the order in which each was obtained when training and experience requirements are met and if training began prior to January 1, 2007.

(5) Training and experience hours shall be awarded based on working full time for at least two (2) consecutive months with thirty-two (32) hours per week or more in interior design or architecture. Part time training and experience hours shall be calculated at the rate of fifty percent (50%) for less than thirty-two (32) hours per week and more than fifteen (15) hours per week working for a least (4) consecutive months. Working less than fifteen (15) hours per week will not qualify for training and experience hours. Two (2) years of full time acceptable training and experience under a Registered Interior Designer or Architect ~~offering services~~ as a Registered Interior Designer~~registered interior design~~ shall equal one (1) year of equivalent education in interior design.

(6) Applicants beginning their training and experience after January 1, 2008, shall be under the ~~Direct Supervision~~Responsible Control of a Registered ~~or licensed~~ Interior Designer~~or a licensed Architect offering service as registered interior design~~. If the individual~~Interior Designer~~ is not registered or licensed in a jurisdiction, then all work shall be under the ~~Direct Supervision~~Responsible Control of a~~n NCIDQ~~ CIDQ certificate holder.

(7) The Board, in its sole discretion, shall determine whether all education, training and experience for Applicants are acceptable or not and whether or not it satisfies the requirements for Registration.

(8) If the individual~~Registered Interior Designer~~ is not registered or licensed in a jurisdiction then all work shall be under the ~~Direct Supervision~~ Responsible Control of a~~n NCIDQ~~ CIDQ certificate holder.

(9) Training and experience hours shall be submitted on the Board's forms or equivalent. It is the responsibility of the Applicant to obtain all required signatures. All Board forms are to be returned directly to the Board office by the employer, as they are confidential records.

(10) Training ~~in a firm engaged in registered interior design~~ outside the U.S. or Canada under the ~~Direct Supervision~~ Responsible Control of an individual~~person~~credentialed by entities similar to CIDQ or NCARB or their successors~~in registered interior design or architecture,~~ in a foreign jurisdiction or country.

(f) **Grandfather requirements.** Any Applicant who submits a properly completed and acceptable application for Registration and pays all applicable fees shall be issued a Certificate of Registration provided the requirements below have been met:

(1) An Applicant has submitted evidence of education and training the Board deems equivalent to an accredited professional degree in interior design, satisfied training requirements, if applicable and has passed the examinations administered by ~~NCIDQ~~ CIDQ or its successor; or

(2) Without limitation to application deadlines, an Applicant may apply who has obtained fifteen (15) years of diversified and acceptable training and experience ~~in the practice of interior design~~as defined in OAC 55:10-5-10(c)(d) or equivalents as determined by the Board prior to July 1, 2007, and the Applicant is not registered under this Act and not exempt from the requirements for Registration in order to use the title "Registered Interior Designer~~" and provide services as registered interior design~~. The Applicant shall be exempt from passing the ~~NCIDQ~~ CIDQ examinations and fulfilling any additional education or training requirements as determined by the Board. The Applicant may use any combination of education, training and experience as acceptable and determined by the Board to equate to the fifteen (15) years of experience. Thirty (30) passing education hours equals one (1) education credit year used toward obtaining the first accredited professional degree in interior design or an equivalent degree as determined by the Board or may equal two (2) years of diversified and appropriate experience when calculating the required fifteen (15) years of experience. Additionally, the Applicant obtaining a second accredited professional degree in interior design or an equivalent degree as determined by the Board may use this education in addition to other education or training.

(g) **Exemption from Registration.** An individual holding a current Architect License is exempt from Registration ~~to offer services as registered interior design, describe services~~ and ~~has~~ does not have the right to use the term ~~registered interior~~

~~design~~Registered Interior Designer unless the individual is registered.

55:10-5-11. Changing resident state and applying for a Reciprocal License or Registration

(a) All individuals applying for a reciprocal License or Registration shall satisfy the requirements contained in the Act and these Rules and submit an acceptable and complete application for the License or Registration requested and enclose the necessary fees payable by check, cashier's check, money order, credit card, if applicable or certified funds when submitted. Prior to being issued a License or Registration, all Applicants shall take and pass an examination on the Act and these Rules. The Secretary-Treasurer shall have the power at his/her discretion, to approve all reciprocal applications that meet the statutory requirements of the Act and Rules in this Chapter without full Board action. The License or Certificate of Registration will follow at a later date.

(b) A License certificate shall be issued and will authorize the individual to engage in the practice of architecture or landscape architecture and use the title Architect or Landscape Architect in this state until the 30th day of June of the biennial License period. A Certificate of Registration shall be issued and will authorize the individual to use the title Registered Interior Designer ~~or offer services as registered interior design~~ until the 30th day of June of the biennial Registration period. No License or Certificate of Registration shall be issued for longer than two (2) years.

(c) Any reciprocal License or Registration which is denied, suspended, revoked or refused to be renewed, by any state in which the Licensee or Registrant has obtained a License or Registration, or in which a certification is withdrawn by NCARB, CLARB or ~~NCIDQ~~ CIDQ or their successors shall be cause to suspend, revoke or refuse to renew the License or Registration by this Board.

(d) The Licensee or Registrant may change the resident state to Oklahoma by qualifying and applying for a transfer of the individual's official records to this Board and paying all applicable fees in 55:10-3-13.

(e) Applications for an architectural License by reciprocity shall comply with (a) of this Section and be through NCARB or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this state's Applicants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(f) Applications for a Landscape Architect License by reciprocity will be through submission of a CLARB record or its successor or directly through the Board, complying with (a) of this Section and showing licensure by the UNE, the LARE or its successor in any other state, jurisdiction, country or territory whose requirements for licensing are at least equivalent to the requirements of this state and extend the same privilege of reciprocity to Landscape Architects licensed in this state. The Applicant shall be required to pass an examination on Oklahoma plant material. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(g) Applications for a Registered Interior Designer ~~an Interior Design Registration~~ by reciprocity shall comply with (a) of this section through submission of an ~~NCIDQ~~ CIDQ record or its successor or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this state's Registrants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a Registration number.

(h) Rejections of applications for a License or Registration by reciprocity will be by letter explaining the reasons, and outlining procedures under which reconsideration may be possible.

SUBCHAPTER 7. EXAMINATION

55:10-7-1. Examination required for Candidates

(a) Approved Candidates for initial Landscape Architect licensing shall individually appear and pass the required examinations. Candidates may take any section of the examinations that has not been previously passed. After June 30, 1999, current Candidates shall have a six (6) year time frame to pass all sections of the examination. Any Candidate failing to obtain a passing score on all sections of the examinations within the six (6) year period, shall forfeit all credits for section(s) of the examinations previously passed. These Candidates shall re-apply as a new Candidate after their six (6) year testing period ends and begin testing under the new five (5) year rolling clock.

(b) Beginning July 1, 2007, all new Candidates for licensing as Landscape Architects shall begin on a five (5) year rolling clock. The clock begins from the date the Candidate passes the first section. The passing grade for any section shall be valid for five (5) years only, after which time the section shall be retaken if the remaining sections have not been passed within the five (5) year period. If a Candidate fails to pass all remaining sections within the initial five (5) year period, the Candidate is given a new five (5) year period from the date of the second oldest passed section and so on. After passage of all sections of the examinations within five (5) years, and prior to licensing, all Candidates shall take and pass an examination on the Act and these Rules. In addition, Landscape Architect Candidates shall take and pass an examination on Oklahoma plant materials prior to licensing. Beginning July 1, 2012, all new Candidates and those with expired rolling clock authorizations shall begin taking and passing the CLARB examinations on their current and changing provisions.

(c) Beginning July 1, 2009, all Architect Candidates shall individually appear and pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by NCARB and this Board.

(d) Candidates for Registration as Registered Interior Designers shall be required to take and pass the ~~NCIDQ~~ CIDQ examination ~~on interior design~~, unless exempt by the Act. Candidates shall submit a properly completed and acceptable

application, documentation and applicable fees to the Board. Evaluation and determination of qualifications prior to beginning testing shall be determined by the Board in its discretion according to current ~~NCIDQ~~ CIDQ standards, the Act and these Rules. Upon approval by the Secretary-Treasurer of the Board or by the Board, ~~NCIDQ~~ CIDQ and the Candidate shall be notified of the Board's decision for entrance into the examination. Upon completing the examination, the Candidate shall contact ~~NCIDQ~~ CIDQ and have them send a letter to the Board indicating the Candidate has passed the entire examination. Prior to Registration, the Candidate shall take and pass an examination on the Act and these Rules. Upon payment of the Registration fee and properly completed and acceptable updating of the application, the Board may issue the Registration.

(e) Any Candidate on active military duty deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment and is allowed to carry forward all passing scores into the individual's current examination cycle, as if the person had not been deployed. In order to qualify for this exemption, the Candidate shall submit military documentation of the deployment to the Board office and the staff shall place the Candidate on military active status. Upon return from the temporary military deployment, the Candidate shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The Candidate shall then be returned to regular active status for examination without losing any credits for sections passed in the current examination cycle.

(f) A Candidate shall not forfeit any examination time or passing score in the current testing cycle if the Board has granted an extension of time to take the examinations due to a hardship. All current passing scores in the current testing cycle will be carried into the extended time.

(g) All Candidates failing to appear to examination one year after being approved to start testing are required to reapply for admission to the examinations, except for those Candidates on temporary military deployment, who are exempt under 55:10-7-1 or those persons granted a hardship by the Board.

55:10-7-2. Examination notifications

Examination information, formats, dates, times and places will be announced in notices mailed to Landscape Architect Candidates, at their last known address. NCARB, CLARB or ~~NCIDQ~~ CIDQ will notify all Candidates of all pertinent examination information at the Candidate's last known address.

55:10-7-3. Examination

Examinations offered may be developed by NCARB, CLARB or ~~NCIDQ~~ CIDQ, ~~developed~~ and approved for administration on specified dates. Landscape Architect Candidates and reciprocal Applicants shall, in addition to other CLARB testing materials, be tested upon their knowledge of Oklahoma plant material. All Applicants shall take and pass an examination on the Act and these Rules prior to being licensed or registered in the state.

55:10-7-6. Grading

Exams will be graded and scored generally in accordance with NCARB, CLARB or ~~NCIDQ~~ CIDQ procedures except as directed by the Board. Minimum passing scores are adopted as recommended by NCARB, CLARB or ~~NCIDQ~~ CIDQ. Minimum passing scores on the landscape architectural plant material and the Act and Rules examinations shall be 75%. Examination Candidates will pass or fail in accordance with the current NCARB, CLARB or ~~NCIDQ~~ CIDQ grading procedures.

55:10-7-7. Reexamination

(a) Candidates shall reapply to continue testing if their application was placed on inactive status except for those Candidates on temporary military deployment or the Board has granted an extension of their time to take the examinations due to a hardship. This consists of filing a new updated application and paying the fees which may be processed by the Board's staff without Board approval.

(b) Beginning July 1, 2007, all new Candidates for licensing as Landscape Architects shall begin on the five (5) year rolling clock, as described in 55:10-7-1 and shall continue to retest under those provisions until the entire sections of the examinations have been passed within the five (5) year period. If a Candidate fails to pass all remaining sections within the initial five (5) year period, the Candidate is given a new five (5) year period from the date of the second oldest passed section and so on. No passing score is valid for longer than five (5) years.

(c) Registered Interior ~~Design~~Designer Candidates shall be permitted to retest according to the guidelines of ~~NCIDQ~~ CIDQ.

55:10-7-9. Transfers of examination grades prior to licensing

(a) **Outgoing transfers.** The Board staff, upon written request by the Candidate and payment of the file transfer fee, will transfer the Board's jurisdiction file to any other duly constituted Architect, Landscape Architect or interior design boards and to NCARB, CLARB or ~~NCIDQ~~ CIDQ for use in evaluating such Applicant's eligibility for licensing or Registration, as applicable. A transfer to another board shall immediately terminate the Applicant's application with this Board.

(b) **Incoming transfers.** The Board, in its sole discretion, may or may not accept, toward obtaining an initial License or Registration, scores on separate test sections taken in other states by Candidates who did not meet Oklahoma requirements for admission to the exams at the time the exams were taken.

SUBCHAPTER 9. LICENSING AND REGISTRATION

55:10-9-5. Suspension, revocation, or refused renewal of a License or Registration

(a) **Surrender of License or Registration.** Upon notice of the Board, Licenses or Registrations suspended, revoked or refused by the Board to be renewed for cause, as defined in (b)

of this Section, shall be surrendered immediately in the manner prescribed by that notice.

(b) **Cause defined.** Cause shall be defined as any violation of the Act and the Board's current Rules in this Chapter. Cause shall also be defined as another state refusing to renew the Architect's, Landscape Architect's License or Registered Interior Designer's Registration, not meeting continuing education requirements, if applicable, suspension or revocation of a License or Registration or NCARB, CLARB or ~~NCIDQ~~ CIDQ withdrawing the certification of the individual Licensee or Registrant.

55:10-9-10. Reinstatement of canceled License or Registration

(a) **Reinstatement of any License or Registration within three (3) years.** Licenses or Registrations canceled for non-payment of fees and/or failure to comply with continuing education requirements if applicable, may be renewed at any time within three (3) years, from the date of the cancellation, upon compliance with the Act and the Board's current Rules and upon paying the Board all fees which shall have been accrued at the time of the cancellation and which would have been paid at the time of reinstatement had not the License or Registration been suspended and revoked, together with the amount of penalties prescribed in 55:10-3-13. Additionally, no License or Registration shall be reinstated unless the individual has completed all past continuing education requirements, where applicable for the three (3) years and paid to the Board the penalties for reinstatement set forth in OAC 55:10-3-13. These Licenses and Registrations may be reinstated by the Board's staff upon compliance with the Act and Rules of the Board without Board action.

(b) **Reinstatement of initial License or Registration after three (3) years.** For those Architects, Landscape Architects or Registered Interior Designers licensed or registered initially in Oklahoma that allow their License or Registration to remain cancelled for a period exceeding three (3) consecutive years, such former Licensee or Registrant may have the License or Registration reinstated in a manner as determined by the Board consistent with the Act and these Rules, after reapplying and paying a readmission application fee. Additionally, the Licensee or Registrant shall meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.

(c) Reinstatement of Reciprocal Licenses or Registrations after three (3) years. Any Architect or Landscape Architect licensed to practice in Oklahoma by reciprocity must, after his/her reciprocal License has been canceled for more than three (3) years, re-apply through the means of which the initial License was granted or demonstrate a current License in another jurisdiction, meet all continuing education where applicable that would have been required, and pay a readmission application fee and all back fees and penalties. Registered Interior Designers must re-apply and prove a current Registration in another jurisdiction or through ~~NCIDQ~~ CIDQ, pay a readmission application fee and pay all back fees and penalties.

(d) **Returning from temporary military deployment.** Licensees or Registrants returning from temporary military deployment shall notify the Board office consistent with OAC 55:10-3-13(b).

SUBCHAPTER 11. RULES OF PROFESSIONAL CONDUCT

55:10-11-7. Professional conduct

An Architect, Landscape Architect or Entity shall preserve the confidences of the client or employer. A Licensee or Entity may make contributions of service or anything of value to those endeavors which he/she/it deems worthy. A Licensee or Entity has the right to participate in the political process and to contribute time and money to political campaigns. In making political contributions, the Licensee or Entity shall do so publicly.

(1) Each office maintained for the preparation of drawings, specification, reports or other professional work shall have a Licensee in that office having ~~Direct Supervision~~Responsible Control of the work.

(2) A Licensee shall not sign or seal drawings, specifications, reports or other professional work for which he/she does not have Responsible Control. Provided, however, that in the case of the portions of such professional work prepared by the Licensee's licensed consultants, licensed under this or another professional license in Oklahoma, the Licensee may dually sign and seal that portion of the professional work if the licensed Architect or Landscape Architect has additionally coordinated its preparation and intends to be responsible for its adequacy. Prototypical submissions are an exception to the rule as noted in OAC 55: 10-11-9(e) (f) if they are not complete for construction when leaving the original architect's office.

(3) A Licensee or Entity shall neither offer nor make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the Licensee or Entity is interested. Intent of influence means influence, direct or indirect, which induces or tends to induce consideration or action with respect to any prospective work on any basis other than the merits of the matter.

(4) A Licensee or Entity shall not engage directly or indirectly an agent or representative to solicit work on his/her/its behalf whose compensation is contingent, in whole or in part, upon obtaining professional work for the Entity, Architect or Landscape Architect.

(5) A Licensee or Entity shall not make false statements about the professional work, or maliciously injure or attempt to injure the prospects, practice or employment position of others.

(6) A Licensee or Entity shall not furnish limited services in such a manner as to enable owners, draftsen, or others to evade public health and safety requirements.

(7) A Licensee or Entity provides a service to the client, as well as a product and as such is only responsible for the

design of the facility represented by the drawings he or she signed, sealed and dated for a specific client and location. Should the client or any other individual modify or change locations of the facility or make changes to the design without the authorization of the Licensee, the Licensee is only responsible and liable for the project as he/she signed, sealed and dated it and the site at the original location. A Licensee is allowed to review and adapt documents already sealed by the original Licensee when modifying the plan and/or bringing the plan up to the current code requirements at the same location as the original site. In this case, the Licensee is required to sign, seal and date only the modifications to the original documents and shall only be responsible for his/her new modifications.

(8) Nothing contained in 55:10-11-7-(7) shall apply to prototype plans, where the Licensee is allowed to review and adapt a prototypical technical submission, making changes to adapt in whole or in part to a different location and/or bring the plan up to the current code requirements. In this case, the Licensee is required to sign, seal and date the adapted, integrated documents and the licensee assumes full responsibility for the documents, in their entirety, as if fully prepared by or under the licensed architect's responsible control.

55:10-11-9. Authorized use of seal

(a) Seal declares authorship. The seal appearing on any technical submission shall be a prima facie evidence in 55:10-15-1 that said technical submission was prepared by or under the individual named on said seal. Changes made to a signed, sealed and dated end of point product or service that are not designed by the original Licensee and that are not authorized or indicated by the seal of another Licensee on the changes, exempts the original Licensee from any authorship or liability concerning any changes made, including making site changes without the knowledge of the Licensee.

(b) Location of seal, signature and date. The seal impression or image shall be across the signature that may be generated electronically ~~of~~by the Licensee responsible to this Board for authorship of the documents thus identified. The handwritten or electronically generated date the signature is affixed shall accompany the signature.

(c) Use of seal is individual act. Authorized use of the prescribed seal is an individual act. The Licensee is responsible for its security when not in use.

(d) Use or attempted use of seal by unauthorized individuals. No individual, other than the Licensee represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal, except as described in (c) above. Use, reproduction distribution or attempted use of the seal shall include using a set of construction documents to construct a structure on another site without the permission of the original Licensee or making unauthorized copies, modifications or incorporating any portion of the specifications into another work without the use of a Licensee's seal, signature and date authorizing such modifications. Prototype building plans are not required to carry the seal, signature and date of the original Licensee if they are not complete, but must prior to their issue in Oklahoma be marked and qualified by a written statement to the effect of: "Prototypical design submissions not for regulatory approval or construction." These submissions do not comprise a final, comprehensive set of design and construction documents and are not intended for use on any specific project without the appropriate review, modifications and integration into the work of a licensed architect ~~work~~ engaged to provide professional architectural services for the specific project."

(e) Entire Contract. Any licensed Architect or Landscape Architect preparing documents that would be considered to fulfill an entire contract with a client being the end point of service, whether or not the plans are complete, shall sign, seal and date those documents. The Licensee may add any words on the documents that he/she/it chooses to indicate an incomplete document and not for construction notice.

(f) Technical submissions. Architects and Landscape Architects are permitted to review and adapt portions of technical submissions if:

(1) the seal of the original Architect or Landscape Architect appears on the submissions to authenticate authorship.

(2) the succeeding Architect or Landscape Architect clearly identifies all modifications to the submissions.

(3) the succeeding Architect or Landscape Architect assumes responsibility and liability for the adequacy of the design on the modifications.

(4) the documents are prototypical technical submissions. An architect may sign and seal technical submissions prepared by another architect licensed in any state, jurisdiction, country or territory if the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and the other architect's technical submissions are prototypical building documents. Any licensed architect signing or sealing technical submissions integrating the work of another architect into the licensed architect's own work as permitted above shall maintain and make available to the Board upon request for at least ten (10) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the licensed architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care. In applying his or her seal, the Oklahoma licensed architect assumes full responsibility in it's entirety for the documents as if fully prepared by or under the Oklahoma licensed architect's responsible control.

55:10-11-12. Prohibited use of seal

(a) Prohibition on sealing documents. No Licensee shall affix or attempt to affix the seal, signature or dates to sketches, working drawings, specifications or other documents developed by unlicensed persons that are not employees in their offices or professional consultants except as stated in OAC 55:10-11-9(e) (f).

(b) Prohibited acts using seal. No Licensee shall affix the seal, signature or date to documents unless:

(1) such documents were developed and prepared under a Licensee's ~~Direct Supervision or~~ Responsible Control;

(2) the Licensee had full authority to determine their development; and

(3) the Licensee has reviewed and adopted, in whole or in part, architectural or landscape architectural portions and has either coordinated their preparation and integrated them into the work.

SUBCHAPTER 13. ORGANIZATIONAL PRACTICE

55:10-13-2. Licensee required in each office

Each Entity where architectural or landscape architectural services are offered or performed for execution in Oklahoma shall have a current Oklahoma licensed Architect or Landscape Architect in ~~Direct Supervision~~ Responsible Control who is listed on the Certificate of Authority as an Architect of Record.

55:10-13-5. Establishing criteria for issuance of Certificate of Authority or Certificate of Title

The Board may grant a Certificate of Authority to practice architecture or landscape architecture through individual Licensees or a Certificate of Title to represent the person as a Registered Interior Designer ~~or to offer services of registered interior design through Registrants~~ to those firms meeting the following criteria:

(1) An application is filed and approved by the Secretary-Treasurer of the Board or the Board.

(2) At least one general partner, or director, officer, shareholder, manager, member or principal is a licensed Architect or Landscape Architect and designated as being responsible for the practice of the profession in the State of Oklahoma or is registered as a Registered Interior Designer ~~offering services of registered interior design~~ and responsible for the Entity. If a firm is offering multiple professions, the firm shall have at least one general partner, director, officer, shareholder, principal or for a limited liability company, a manager or member who is licensed or registered in each profession and is designated as being responsible for the activities of each profession.

(3) The firm's practice of architecture or landscape architecture in any office (e.g. branch office) is under the ~~Direct Supervision~~ Responsible Control of a resident licensed Architect or Landscape Architect and such individual supervises its activities and is listed in the Certificate of Authority as an Architect of Record. The branch office is required to obtain its own Certificate of Authority.

(4) All technical submissions, original working drawings, original cover sheet and the page identifying all specification pages covered, all addenda and field changes shall be signed, sealed and dated by an Architect of Record defined in 55:10-1-3. Prototypical technical submissions refer to 55:10-11-7(8) and 55:10-11-9(d)(f)(4).

(5) The Certificate of Authority or the Certificate of Title shall identify the individual(s) Oklahoma licensed Architect(s) or Landscape Architect(s) or Registered Interior Designer(s), who shall be an Architect of Record or a Registered Interior Designer of Record and in responsible charge of the professional activities of the Entity; and

(6) Compliance with the Board's Rules in this Chapter and the Act shall not alleviate other members, officers, shareholders, managers, principals, directors, partners or employees from direct responsibility and liability by reason of employment or relationship with the Entity to the Board.

(7) The Certificate of Authority or Certificate of Title issued by the Board is subject to powers of renewal, suspension, revocation, denial, refusal to renew, levying criminal or civil penalties, vested in the Board by the Act and does not preclude the Board from using any other legal procedures necessary to carry out its powers and duties.

(8) A duplicate Certificate of Authority or Certificate of Title may be issued to an Entity provided:

(A) the current License or Registration renewal of the Architect(s) of Record or the Registered Interior Designer(s) of Record is current and in good standing and the Certificate of Authority or Certificate of Title is current and in good standing;

(B) a written request for a replacement or duplicate Certificate of Authority or Certificate of Title is received; and

(C) the fee is paid as prescribed in 55:10-3-13.

55:10-13-20. Use of fictitious name in title of firm name

Fictitious names of firms are permissible so long as at least one Architect of Record or Registered Interior Designer of Record as defined in 55:10-1-3, has ~~Direct Supervision~~Responsible Control for the activities of the firm and the individual's name appears on all stationary, business cards and similar items. Example:

The Gold Star Group
Architects & Engineers
John Brown, Architect

SUBCHAPTER 15. VIOLATIONS

55:10-15-2. Grounds for violations and penalties

Grounds for probation, denial, revocation, suspension, refusal to renew, orders, injunctions, civil and/or criminal penalties are as follows:

(1) Fraud, deception or misrepresentation in applying for a License, Registration, Certificate of Authority, Certificate of Title or in taking the examinations (see 55:10-15-4);

(2) Noncompliance with statutory requirements or Rules in this Chapter for qualifying for a License or Registration;
(3) Violating the Act or any Rule in this Chapter, regulation or order issued by the Board;
(4) Conviction of a felony;
(5) Violating any other jurisdiction's registration or licensing laws, requirements or rules and regulations;
(6) Mental impairment;
(7) Gross incompetence (see 55:10-15-5);
(8) Recklessness on the part of the Licensee in designing, planning or observing the construction or alteration of a project or building (see 55:10-15-6);
(9) Dishonest practice (see 55:10-15-7);
(10) Failure to maintain a License or Registration in good standing in one additional jurisdiction for reciprocal Licensees or Registrants;
(11) Loss of NCARB, CLARB or ~~NCIDQ~~ CIDQ certification for reciprocal Licensees or Registrants based on cause;
(12) Nonpayment of fees, penalties, failure to complete continuing education requirements, when applicable, or failure to file acceptable and properly completed required documents with the Board will result in automatic revocation;
(13) Unauthorized or misuse of seal which shall include sealing, dating and signing any or all documents not prepared under a Licensee. Prototype plans are an exception to this rule as noted in OAC 55:10-11-9 (e) (f).
(14) Aiding and/or abetting unlicensed practice of architecture or landscape architecture.
(15) Sealing, signing and/or dating plans and/or specifications not prepared in accordance with the Act and/or these Rules.
(16) Giving false or forged evidence or documents submitted to the Board or generated in the practice of architecture or landscape architecture.
(17) Presenting the License or Registration of another as the individual's or Entity's own.
(18) Concealing information relative to any violation of the Act or the Board's Rules.

55:10-15-13. Investigator

Investigations may, at the discretion of the Secretary-Treasurer, be assigned to individual investigators who are employed or retained on a full or part-time basis by the Board for such purpose. Such investigators may make use of the investigative committee but shall be in full charge of any investigation so assigned subject ~~only~~ to direction by the Secretary-Treasurer, ~~or~~ the Board, Executive Director and/or counsel to the Board.

[OAR Docket #14-727; filed 7-16-14]

TITLE 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #14-816]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
75:15-1-2. Definitions [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault Programs
75:15-2-1. Service programs core services [AMENDED]
75:15-2-2. Shelter program [AMENDED]
75:15-2-5. Crisis intervention services [AMENDED]
75:15-2-6. Sexual assault services [AMENDED]
75:15-2-7. Children services [AMENDED]
Subchapter 5. Client Records and Confidentiality
75:15-5-3.1. Record content - service specific [AMENDED]
75:15-5-4. Client confidentiality [AMENDED]
75:15-5-4.1. Waiver of Confidential Information [AMENDED]
75:15-5-7. Shelter Policy on Medications [AMENDED]
Subchapter 13. Personnel and Volunteers
Part 1. Personnel
75:15-13-1. Personnel policies and procedures [AMENDED]
Part 3. Training
75:15-13-20.1. Orientation - general, personnel and volunteers [AMENDED]
75:15-13-20.2. In-service and ongoing training for personnel and volunteers [AMENDED]
75:15-13-26. Personnel training, transitional living services [AMENDED]
Subchapter 17. Clients Rights
75:15-17-3. Client rights [AMENDED]
75:15-17-4. Client grievance policy and procedures [AMENDED]
AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 15, 2014 through March 21, 2014
PUBLIC HEARING:
March 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

Pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic violence, sexual assault and stalking services in this state. These rules set forth the requirements which are necessary to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement, and auditing of domestic violence and sexual assault services. Amendments are necessary to clarify the requirement for programs to provide victims with access to emergency transportation twenty-four (24) hours a day. Children's core services require amendments to include danger assessment and safety planning. Several sections in the standards did not include guidelines for determining compliance; amendments will correct this. Amendments are also necessary to include "electronic" in

the definition of "signature," correct grammatical errors, require new program directors to attend domestic violence training within the first six months of employment, and revoke excessive personnel training for transitional living program staff.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

75:15-1-2. Definitions

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

"Admission" means to accept a client for services or treatment.

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links clients and their dependents with the appropriate service components to encourage self-determination, autonomy, physical and emotional safety, and to offer information that will enable independence. This can be viewed as a combination of active listening and facilitating personal problem solving along with researching options of action, safety planning, community outreach and education and include medical, dental, financial, employment, legal and housing assistance.

"Advocate" means a person who offers clients appropriate services.

"Assessment" means an appropriate course of assistance based on a face-to-face formal screening.

"Behavioral Health Professional" means either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents.

"Business day" shall mean a calendar day other than a Saturday, Sunday, or state holiday. In computing any period of time where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until 5:00 o'clock p.m. of the next business day.

"Case consultation" means review of a client's case by the primary service provider and other program personnel, consultants or both.

"Case management" means the process of supporting and helping victims/survivors and their dependents as they cope with and overcome the effects of domestic violence, sexual assault and stalking. Actions may include activities such as 1)developing, reviewing, and updating the service plan that is designed to solve specific problems in the current life situation; 2) supporting adult/child survivor's skills in making their desired life changes through activities such as introducing new skills, modifying previous ways of coping with their situation and linking to resources to address immediate needs and secondary issues, and/or 3) exit planning as part of the individual supportive services. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified Domestic and Sexual Violence Response Professional" means a professional certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified domestic violence and sexual assault program" or **"Certified DV / SA program"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to offer domestic violence, sexual assault and stalking services pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Child" or **"Children"** means any unmarried individual from birth to eighteen years of age.

"Children's Activities" means direct child contact that is temporary in nature and is not intended to address the effects of domestic violence, sexual assault/abuse and trauma on children i.e., child care, special events such as Christmas parties, Easter egg hunts, that is supervised by program personnel or volunteers.

"Children's Services" means direct child contact that is intended to address the effects of domestic violence, sexual assault/abuse and trauma on children including but not limited to intake, needs assessment, groups, advocacy and any other service related to domestic violence, sexual assault/abuse and trauma.

"Client" means an individual, adult or child, who has applied for, is receiving or has received assistance or services of a DV/SA or batterer's program.

"Client record" includes but is not limited to, all communication, records and information on an individual client.

"Community" mean people, groups, agencies or other facilities within the locality served by the program.

"Contract" means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

"Counseling" means a face-to-face therapeutic session with one-on-one interaction between a behavioral health professional and an individual to promote emotional and/or behavioral change focused on victim safety and perpetrator accountability. Those individuals providing professional therapy to adult/child victims/survivors of domestic violence/sexual assault and stalking must be prepared to offer education and information about:

(A) Physical and emotional safety;

(B) How perpetrators maintain control and dominance over their victims;

(C) The need to hold perpetrators accountable for their actions;

(D) The recognition that individuals victimized are not responsible for a perpetrator's violent behavior, and the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion and national origin.

"Court advocate" means a qualified, trained staff or volunteer whose duties are to offer assistance to victims and any dependents in legal matters relevant to their situation. A Court Advocate provides court advocacy through support, information, assistance, safety planning, accompaniment and intervention with any aspect of the civil or criminal legal system on behalf of a victim of domestic violence, sexual assault or stalking.

"Crisis intervention" means short-term, immediate assistance and advocacy given by phone or in person to victims of domestic violence, sexual assault or stalking. Crisis intervention services include but are not limited to assessing dangerousness, safety planning, information about available legal remedies, establishing rapport and communication, identifying major problems, exploring feelings and providing support, exploring possible alternatives, and/or formulating an action plan and follow-up measures.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a client. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to clients, personnel, volunteers and visitors; incidents involving medication; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural diversity" means the spectrum of differences that exists among groups of people with definable and unique cultural backgrounds.

"Direct services" means services delivered by a qualified staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"DV/SA" means domestic violence and sexual assault.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, announcements, correspondence, and photographs.

"Domestic violence" means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for danger assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention.

"Emergency transportation" means transportation for a victim of DV/SA to a secured identified location at which emergency services or crisis services can be offered.

"Executive director" means the person in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title 75.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA program, or shelter, in and of all geographical locations and administrative divisions.

"Group counseling" means a face-to face therapeutic session with a group of adult/child victims/survivors to promote emotional or behavioral change. Those individuals providing professional therapy to victims/survivors of domestic violence must be prepared to provide education and information about:

(A) Physical and emotional safety;

(B) How perpetrators maintain control and dominance over their victims;

(C) The need to hold perpetrators accountable for their actions;

(D) The recognition that individuals victimized are not responsible for a perpetrator's violent behavior, and the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion or national origin.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Indirect services" means services delivered by a staff member or volunteer, that does not involve direct services with a client or client's child.

"Initial contact" means a person's first contact with the program or facility requesting information or service by telephone or in person.

"Intake" means an interaction intended to discover what has happened, determine what the crisis is, assess dangerousness indicators, do safety planning, and/or establish the immediate needs of domestic violence/sexual assault & stalking victims and any dependents to determine appropriate services and referrals. This includes interaction with an individual determined to be appropriate for ongoing service in order to obtain basic demographic information, gather vital information on the adult and the children, orient the victim/survivor to the program, program rules, and if applicable, the facilities. Cultural needs should also be identified at this time.

"Language Interpretation" means activities that involve a client who is deaf or hearing impaired or has limited English proficiency requiring an interpreter for a staff member or volunteer to offer services.

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Medical care" means those diagnostic and treatment services which can only be provided or supervised by a licensed physician.

"Medication" means any drug that is legally in the possession of the client, her/his children, or a person seeking admittance to the shelter or her/his children; this definition includes prescription medications and medications available for legal purchase without a prescription.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders.

"Neglect" means failing to offer adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"OAG" means the Office of the Attorney General.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256 (A)(1)(a) and maintained in the Office of Administrative Rules.

"Operation" means that clients are receiving services offered by the program.

"Personnel record" means a file containing the employment history and actions relevant to individual personnel and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf and hard of hearing, blind, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

"Primary Victim" means a client who has experienced domestic violence, sexual assault, stalking or the consequences of these crimes first hand.

"Procedures" means the standard methods by which policies are implemented.

"Program" means a set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Program evaluation" means the documented assessment activities, performed internally or externally, of a program or a service and its staff, volunteers, activities and planning process to determine whether program goals are met, staff, volunteers and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent.

"Qualified staff" means someone who has met the criteria for provision of direct services as defined in 75:15-13-20.

"Rape crisis response services" means "sexual assault services" as defined in this section.

"Release" or **"Waiver"** means consent that is informed, written and reasonably time-limited. The terms may be used interchangeably to mean the same thing. "Release" implies that confidential information is released (despite confidentiality or privilege protection), and "Waiver" implies waiving the right (to maintain privilege). If release of information is compelled by statutory or court mandate, the program shall make reasonable attempts to provide notice to victims affected by the disclosure of information and take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

"Referral" means information disseminated and/or coordinated access to agency and community services to meet victims'/survivors' and their dependents' identified needs.

"Safe Home" means private dwellings available for the temporary housing of victims of domestic violence, sexual assault and stalking to ensure safety of victims and any dependents until other housing arrangements can be made.

"Safe Home Provider" means an individual or family providing Safe Home services through a formal agreement with a Certified DV/SA Program.

"Safety Planning" means the process of working with the adult/child victim/survivor to develop tools in advance of potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents.

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to establish the service needs of an individual. At a minimum, a screening shall include a brief personal history related to abuse, a review of the individual's strengths and resources, risk factors and referral needs.

"Secondary Victim" means a person with a relationship with the primary victim.

"Self Determination" means the right to make one's own choices.

"Service agreement" means a written agreement between two or more service agencies, or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"**Service note"** means the documentation of the time, date, location and description of services offered or provided, and signature, including electronic signature, of staff or volunteer offering or providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual Assault" means a range of behaviors, including but not limited to rape, attempted rape, sexual battery, sex trafficking, sexual abuse of children, sodomy and sexual harassment.

"Sexual assault services" means personal advocacy and support services provided to primary and secondary victims of rape and sexual assault in settings such as law enforcement, medical settings or program offices.

"Shelter services" means a certified residential living arrangement in a secure setting with support and advocacy services provided by qualified staff, for victims of domestic violence, sexual assault and stalking and their dependents.

"Staff" means personnel that function with a defined role within the program whether full-time, part-time or contracted.

"Stalking" means a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

"Substance Abuse services" means the assessment and treatment of diagnosable substance abuse and dependence disorders, as defined by current DSM criteria, by qualified alcohol and drug treatment professionals.

"Support" or **"Supportive Services"** means the provision of direct services to victims and their dependents for the purposes of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence.

"Transitional living services" means temporary, independent living programs with support services provided by the staff or volunteers of the sponsoring domestic violence, sexual assault and stalking program. These services are extensions of domestic violence shelter services to victims of domestic violence, sexual assault and/or stalking and their dependents. These services permit victims to develop their financial capacity and other means to live independently.

"Trauma-informed services" means a service approach that recognizes the impact of trauma and acknowledges the role of trauma in the lives of victims/survivors and their dependents.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Voluntary Services" means a program shall not mandate participation in supportive services as a condition of shelter residency or emergency services (Family Violence Prevention and Services Act (426 U.S.C. 10401 et seq.)

"Volunteer" means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 2. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

75:15-2-1. Service programs core services

(a) All certified programs shall serve residential and non-residential victims of domestic violence, sexual assault and stalking and their dependents or family members.

(b) All certified programs shall provide safe, accessible, and trauma-informed services for survivors of domestic violence, sexual assault and stalking and their dependents or family members.

(c) The program shall develop a philosophy of service provision based upon voluntary services and individual self-determination. The written statement of the philosophy of services shall be approved by the governing authority and made available to the community, staff, volunteers and clients.

(d) The program shall have policy and procedures to maintain facilities, staffing, and operational methods, including a policy on the recruitment of board members, staff and volunteers who are representative of the diversity in the local community and the diversity of their clients.

(e) All certified programs shall provide sexual assault services.

(f) All certified programs shall offer crisis intervention services.

(g) All certified programs shall offer danger assessment, safety planning, counseling or support, support groups, and advocacy in a trauma-informed environment.

(h) All certified programs shall offer services that are free from all forms of unlawful discrimination based on race, gender, religion, color, age, national origin, and/or disability (i.e., physical, mental illness, and substance abuse), including a policy that services to immigrant women will not be denied or diminished on the basis of immigration status.

(i) All certified programs shall provide public education to increase the community's awareness and understanding of domestic violence, sexual assault and stalking, available and needed resources, and identify the role community can play in eliminating domestic violence, sexual assault, and stalking.

(j) Compliance with 75:15-2-1 shall be determined by a review of the program's policy and procedures, service agreements, on site observation, client and staff or volunteer interviews and/or other supporting documentation.

75:15-2-2. Shelter program

(a) All shelter programs shall comply with section 75:15-2-1 and each shelter program shall provide long-term (thirty [30] days or more) shelter services and staffing to offer services twenty-four (24) hours per day, seven (7) days per week and offer the following:

(1) Shelter~~ program~~programs shall provide room, food, bathing and laundry facilities, necessary clothing and toiletries for victims and their children free of charge. Programs shall not ask clients to use their nutrition assistance benefits supplement food for the facility.

(2) Shelters shall be staffed at all times when clients are in residence. When there are no clients in residence, each shelter program must assure availability for immediate contact or services.

(3) The shelter's policy shall have written procedures regarding the supervision of children.

(4) In the event the shelter does not offer services to clients with dependent boys over the age of twelve, the shelter shall have written policies regarding linkage to alternative provision of services including emergency shelter.

(5) Shelter programs shall offer screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making initial contact.

(6) The shelter program shall maintain cooperation/liaison with the local school system.

(7) Each shelter program must ensure to the best of its ability the physical and emotional safety, security, and confidentiality of clients and the location of the shelter.

(8) The shelter shall maintain a written policy for involuntary exit criteria.

(b) Compliance with 75:15-2-2 shall be determined by a review of policy and procedures, service agreements, on site observation, and/or other supporting documentation.

75:15-2-5. Crisis intervention services

(a) All certified ~~dvsa~~DVSA programs shall offer crisis intervention services which include:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services that do not offer immediate access to a crisis advocate shall not be sufficient to meet this requirement.

(2) Emergency housing such as hotel or motel available for victims and their dependent(s).

(3) Arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents.

(4) The~~ crisis intervention~~ program shall~~ Provide~~providetwenty-four (24) hour ~~Emergency~~emergency transportation or access to shelter or other emergency services. Additionally transportation shall be offered for necessary services. This shall not require service providers to be placed in a situation that could result in injury.

(5) Cooperation with law enforcement to offer assistance to the victim and accompanying dependent(s). Programs should ensure victims are educated about participating in the legal prosecution of their offender and that an appropriate release or waiver may be necessary.

(6) Provision of advocacy and referral to assist the victims in obtaining needed services or resources.

(7) Foreign language interpretation.

(8) Follow-up services shall be offered to all victims if victim safety is not compromised.

(b) Group and/or individual counseling or support services shall be made available before or after normal business hours (8 am to 5 pm), if needed by clients. These services shall minimally offer the following:

(1) A facility with offices, individual and group counseling space to offer services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to offer access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(6) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.

(c) Compliance with 75:15-2-5 shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

75:15-2-6. Sexual assault services

(a) All certified programs shall be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place. The program shall collaborate with other certified DV/SA providers in their service area. When appropriate staff or volunteers are available, the program shall assist the Council on Law Enforcement Education and Training (CLEET) by providing appropriate staff or volunteers to assist in sexual assault and sexual violence training to law enforcement. The program shall offer at a minimum the following services:

(1) Counseling or advocacy and support services shall be offered in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.

(2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.

(3) A twenty-four (24) hour hotline, crisis intervention, in- person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of sexual assault, rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(4) Needed clothing for the sexual assault victim.

(5) Follow-up contact that does not compromise privacy and safety needs of the victim shall be offered to all sexual assault clients seen in the medical setting. If written permission is granted by the client for follow-up contact, it shall be done no later than fourteen (14) business days after face-to-face crisis intervention. Follow-up will offer the client agency services or other available resources needed by the client.

(b) When appropriate staff or volunteers are available, the program shall assist the Council on Law Enforcement Education and Training (CLEET) by providing appropriate staff or volunteers to assist in sexual assault and sexual violence training to law enforcement.

(c) For agencies that do not have a behavioral health professional on staff, the agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with sexual assault related trauma who need additional mental health or substance abuse services.

(d) Compliance with 75:15-2-6 shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

75:15-2-7. Children services

(a) Client records for both residential and non-residential children shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Age

(C) Pertinent medical information,

(D) Mothers name;

(E) Biological father's name:

(F) Mother's abuser (if different from child's biological father)

(2) Custody

(A) Legal custody of the child;

(B) Physical custody of the child;

(C) Does the child have contact with his or her biological father;

(D) Is visitation court ordered with the perpetrator;

(3) Safety, including but not limited to:

(A) History of child abuse or neglect;

(B) Exposure or witnessing violence;

(C) Child's response to witnessing violence;

(D) History of involvement in the child welfare system; including the presence of current child welfare involvement;

(4) Service notes, which shall minimally include:

(A) The date, location, start time, duration and description of services provided delineated by time spent and service code, if applicable, or documentation of referral to other services or case management;

(~~a~~b) Within five (5) business days of entry into residential services (excluding advocacy or children's activities or crisis intervention), all certified programs shall offer to assess the risk and needs of the children accompanying primary victims and offer children's services to address the impact of violence and trauma in their lives and to facilitate healing. A risk and needs screening and assessment on each child, when accepted, shall minimally include information on his or her:

(1) Brief trauma screening to assess the impact of trauma;

(2) Developmental history to include speech and language, hearing and visual;

(3) Medical or physical health history;

(4) Social history to include interactions with peers;

(5) History of use of tobacco, alcohol or other drugs;

(6) Parent/guardian custodial status;

(7) Community referral needs.

(~~b~~c) Services provided to each child shall be culturally sensitive while addressing identified risks and needs and shall minimally include:

(1) safety planning that is appropriate with respect to the child or adolescent's age, development, and education;

(2) a specific safe, protected play area for children;

(3) advocacy with community systems;

(4) referral to community resources for needed services;

(5) linkage and advocacy with the local school system to provide for ongoing educational needs;

(6) parenting support for clients, if applicable; and

(7) children's groups using age appropriate topics and based on established best practices.

(~~c~~d) Pursuant to Title 10A O.S. § 1-2-101, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.

(e) Compliance with 75:15-2-7 shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

75:15-5-3.1. Record content - service specific

(a) Client records for specific services shall conform to the following:

(1) **Shelter Services:**

(A) On a client's entry to the shelter, staff or volunteer shall record the client's name, emergency contact person(s) and any referral for medical or emergency services. This information may be a part of the full intake interview if the full intake is done on entering

the shelter. An evidence-based, dangerousness assessment and safety planning shall also be done at this time.

(B) Shelter clients shall have the full intake interview and screening completed within forty-eight (48) hours of entry into the shelter.

(C) Service plans shall be completed within five (5) business days of the shelter client's entry to the shelter.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The client's service plan shall include components which address the needs of each child accompanying the client.

(F) The service plan shall include safety issues for client and children.

(G) A daily note.

(2) **Crisis Intervention Services:**

(A) All face-to-face contacts with clients are documented and contacts with persons not receiving additional services shall be offered and documented. Documentation shall minimally include the following:

(i) Staff/Volunteer Name and signature;

(ii) Date, time, length, and location of intervention;

(iii) Safety planning based on risk.

(iv) Client's name, age, race, county of residence, and contact number if given.

(v) Protective order information if applicable;

(vi) Personnel involved such as police, hospital, etc.

(vii) Summary of contact including visible injuries, treatment and services requested;

(viii) Outcome;

(B) All telephone contacts shall be documented. Documentation shall minimally include the following:

(i) Staff/Volunteer name;

(ii) Date, time and length of call;

(iii) Safety planning based on risk.

(iv) Caller's name and contact number, if given; However, no caller shall be required to give a name, phone number or any other identifying information as a condition to receive information or domestic violence, sexual assault or stalking services;

(v) Summary of the call including services needed;

(vi) Outcome; and

(vii) Follow-up services offered if victim safety is not compromised.

(C) Contact information is kept by the program.

(D) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) **Counseling, Support and Advocacy Services:**

(A) An assessment of the client's needs shall be completed by the third (3rd) counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy or counseling session.

(C) A service plan review and update shall be completed at ~~least~~a minimum of once every six (6) months.

(4) **Sexual Assault Services:**

(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.

(B) Service plans shall be reviewed and updated at ~~least~~a minimum of once every ninety (90) days.

(5) **Transitional Living Services:**

(A) A service plan including safety issues for the client and dependents shall be developed within five (5) business days of the client moving in.

(B) The service plan shall be reviewed and updated at least every ninety (90) days.

(6) **Safe Home Services:**

(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the Safe Home, the safe home provider shall record the client's name, emergency contact information, and pertinent medical information.

(B) Safe Home clients shall receive a full intake interview and screening by program staff or volunteer within twenty- four (24) hours of admission or by the first business day following admission.

(C) A service plan shall be developed within five (5) business days of the client's entry to the Safe Home.

(D) All records regarding the client shall be retained in the client's record at the sponsoring program.

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this 75:15-5-3.1 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

75:15-5-4. Client confidentiality

(a) The DVSA program must ~~know~~comply with both~~the~~ state and federal laws ~~that governs~~ governing confidentiality and any exceptions to those laws.

(1) State Law: Case or client records, files or notes, of a DV/SA program shall be confidential and shall only be released under certain prescribed conditions (74 O.S. § 18p-3).

(A) The case records, case files, case notes, client records, or similar records of a domestic violence or sexual assault program certified by the Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or

has resided in such program or who has otherwise utilized or is utilizing the services of any domestic violence or sexual assault program or counselor shall be confidential and shall not be disclosed.

(B) For purposes of this subsection, the term "client records" shall include, but not be limited to, all communications, records, and information regarding clients of domestic violence and sexual assault programs.

(C) The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf or by court order for good cause shown by the judge in camera.

(2) Federal Law:

(A) VAWA- 42 U.S.C. § 13925 (b)(2).Federally, the U.S. Violence Against Women Act January, 2006 and mandates that programs that receive VAWA funds may not reveal personally identifying information about victims without "reasonably time-limited," written, and informed consent. Under this provision, VAWA-funded programs are prohibited from disclosing personally identifying victim information to any third party, including to any database operated by any party outside of the domestic violence program. "Reasonably time-limited" is not defined in the statute, but it is determined by the circumstances and the purposes for which the client is requesting the release of information. It could be a few minutes, a few hours, and a few days. In no event should it be for more than 15 days, or ~~30~~60 at the outside.

(B) FVPSA U.S. Family Violence Prevention and Services Act (FVPSA)each have specific confidentiality protections that apply to many domestic violence and sexual assault programs. (42 U.S.C. 10402(a)(2)(E)). Grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services. subgrantees shall not -

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) Housing Assistance Emergency Shelter Grants 42 U.S.C. § 11375(c)(5).Grant recipients are required to implement procedures to ensure confidentiality of records pertaining to any individual who is provided family violence prevention or treatment services. All grant recipients must also certify that the address of the family violence shelter will not be made public without permission of the agency.

(D) Stewart B. McKinney Homeless Assistance Act 42 U.S.C.§ 11301. The Violence Against Women Act also specifically added a provision that specifies that a domestic violence program provider shall not disclose any personally identifying information about any client to the Homeless Management Information System (HMIS).

(b) Compliance with 75:15-5-4 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.

75:15-5-4.1. Waiver of Confidential Information

(a) For a waiver of confidentiality to be valid, it must:

(1) Be voluntary;

(2) Relate only to the participant or the participant's dependents;

(3) Clearly describe the scope and any limitations of the information to be released;

(4) Include an expiration date; and

(5) Inform the participant that consent can be withdrawn at any time, orally or in writing.

(6) Programs may only share the specific information the client allows in the release. The client gets to choose when, how and what personal information will be shared, or not shared, and with whom.

(7) Even when a court mandate requires the program to disclose or release information about the client, the program may only share the minimum information necessary to meet the statutory or court mandate.

(8) The program/agency shall notify the victim of any disclosure and to continue taking steps to protect the victim's safety and privacy.

(b) A valid written release form for disclosure of client information shall have, at a minimum, the following elements:

(1) the specific name or general designation of the program or person permitted to make the disclosure,

(2) the name and title of the individual within the organization to which disclosure is to be made,

(3) the name of the client whose records are to be released,

(4) the purpose of the disclosure,

(5) a description of the information to be disclosed,

(6) the dated signature of the client or authorized representative or both when required,

(7) a statement of the right of the client to revoke the release in writing and a description of how the client may do so,

(8) an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer

than 90 days reasonably necessary to serve the purpose for which it is given.

(c) "In the event of my death" clause: Some programs have chosen to talk with clients about the lethality of domestic violence and ask if they would like the program to share information with police, prosecutors, the Oklahoma Fatality Review Board, or others the client may indicate in the event that the client dies (due or not due to DV). Because clients may have to sign multiple releases, programs shall have the "in the event of my death" exception on a different form.

(d) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records. When a client record is established, the program shall discuss the confidentiality requirements with each client and maintain documentation in the client record that they have reviewed the circumstances under which confidential information may be revealed.

(e) Compliance with 75:15-5-4.1 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.

75:15-5-7. Shelter Policy on Medications

(a) The shelter shall seek to afford shelter residents with the greatest possible privacy and autonomy in regard to their medication, while also providing a safe shelter environment.

(1) Staff and volunteers will not dispense medication.

(2) The shelter will provide every resident with an individual locking box, locker, or locking cabinet ("locked space") for storage of medications and valuables or lock the clients' medication in a safe but accessible location.

(3) The shelter will not limit or monitor the survivor's access to her medication.

(4) If a client indicates that she needs access to refrigerated storage space, the shelter will provide refrigerated storage space in the manner that provides the greatest possible privacy and autonomy.

(5) The shelter shall have a policy for the disposal of unused or abandoned medication or other substances.

(b) Safety Agreement-During a resident's stay at shelter, the client shall be asked to make sure that any medications she/he has are ~~safety~~safely secured.

(1) The shelter will ask every resident to sign an agreement that she/he will store any medications in her/his individual locking box, locker, or locking cabinet provided, or if it is one requiring refrigeration, as otherwise provided. The agreement will provide that residents who have medications that must be taken in the event of a medical emergency may carry them on their person (e.g., in a fanny pack).

(c) Compliance with 75:15-5-7 shall be determined by a review of the program's policy and procedures, and on-site observation.

SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

PART 1. PERSONNEL

75:15-13-1. Personnel policies and procedures

(a) The program shall have written policies and procedures governing the conditions of agency employment to include appropriate screening and background inquiries to ensure client safety and confidentiality. Prior to employment and at least annually, all certified programs are required to conduct a name search of employees against the registries maintained pursuant to the Oklahoma Sex Offenders Registration Act and the Mary Rippy Violence Crime Offenders Registration Act while such persons are working with or serving children.

(b) The agency's policy and procedures shall be accessible to all personnel and each shall be informed of personnel policies and procedures, and any other materials regulating or governing the conditions of their employment.

(c) Written policies and procedures shall ensure personnel are informed of any changes to these ~~a fore~~afore stated materials.

(d) Compliance with 75:15-13-1 shall be determined by a review of the program's personnel policies and procedures, interviews with staff and volunteers, review of staff meeting minutes and/or other supporting documentation.

PART 3. TRAINING

75:15-13-20.1. Orientation - general, personnel and volunteers

(a) A certified program shall provide a minimum of 16 hours orientation training that incorporates the use of adult learning techniques (i.e., scenarios, role playing)to familiarize new personnel and volunteers providing direct services with the program which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) Stalking;

(14) Victim advocacy;

(15) Parenting and disciplinary techniques~~;~~ for children who have been exposed to domestic violence and trauma;

(16) Active and empathetic listening techniques including hotline skills;

(17) Accessing resources needed by victims and their families including how to ensure services and access resources for persons with special needs including cognitive disabilities or who are deaf or hard of hearing non-English speaking persons, or undocumented immigrants to include basic information on U visas and T visas;
(18) Safety planning for adults and age appropriate safety planning for children;
(19) Basic child development;
(20) Legal and ethical issues;
(21) Cultural Sensitivity~~, and~~;
(22) Effects of trauma including post-traumatic stress disorder, and
(23) Documentation of services.

(b) ~~Volunteers~~Staff and volunteers providing indirect services and children's activities are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.

(c) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.

(d) Program directors shall attend New Director Orientation and training offered by the Oklahoma Office of the Attorney General, within the first six months of employment.

(~~d~~e) Compliance with 75:15-13-20.1 shall be determined by a review of the written policies and procedures, and personnel and volunteer training manuals and records.

75:15-13-20.2. In-service and ongoing training for personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, sixteen (16) hours of annual training of all staff which shall include:
(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;
(2) Facility safety and disaster plans;
(3) First aid kits and fire extinguishers, their location, contents and use;
(4) Universal precautions
(5) Client rights, and
(6) Legal and ethical issues.
(7) The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking, batterers intervention and administration as prescribed and approved by the Executive Director.

(b) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director.

(c) ~~Individuals that volunteer~~Staff and volunteers who provide indirect services and do not meet the requirements for ~~a volunteer~~staff and volunteers providing direct services as defined in OAC 75:15-1-2 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.

(d) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(e) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements upon completion of required annual training set forth in subsection (a) above. A copy of the current certification card issued by the OCADVSA shall be evidence of good standing.

(f) Compliance with 75:15-13-20.2 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

75:15-13-26. Personnel training, transitional living services

(a) Prior to providing any direct services, all transitional living services personnel shall receive the prescribed orientation in 75: 15-13-20.1. ~~training and minimally have at least six (6) months experience working or volunteer experience in a certified domestic violence/sexual assault program, or related service. When there are staffing shortage situations, staff in training or volunteer may be utilized if under the direct supervision of trained, experienced staff or volunteer.~~

(b) Compliance with 75:15-13-26 shall be determined by:
(1) Review of program's policy and procedures.
(2) Review of program's training records and other provided documentation of staff or volunteer training.
(3) Review of personnel records.

SUBCHAPTER 17. CLIENTS RIGHTS

75:15-17-3. Client rights

(a) Each client shall be afforded all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:
(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.
(2) Each client has the right to a safe, sanitary, and humane living environment.
(3) Each client has the right to a humane psychological environment protecting him or her from harm, abuse, and neglect.
(4) Each client has the right to an environment that provides reasonable privacy, promotes personal dignity, and provides physical and emotional safety.

(5) Each client has the right to receive services suited to her or his needs without regard to his or her race, religion, gender, ethnic origin, age, degree of disability~~,~~ or legal status~~, or ability to pay for the services~~.

(6) Each client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.

(7) Each client shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.

(9) No client shall be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each client shall have the right to practice his or her own religious beliefs, and be afforded the opportunity for religious worship that does not infringe on the health or safety of others. No client shall be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(11) Each client has the right to be offered prompt, competent, appropriate services and an individualized service plan.

(A) The client shall be afforded the opportunity to participate in her or his service plan.

(B) The client may consent, or refuse to consent, to the proposed services.

(12) The records of each client shall be confidential. This confidentiality remains intact even after the client's death.

(13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(14) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(15) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(16) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply. Each client also has the right that all information and records regarding him or her shall be treated as confidential.

(17) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(18) Each client has the right to ~~self-determination~~voluntary and self-determined services.

(19) Each client has the right to decide whether or not to participate in supportive services offered by the program.

(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.

(c) Programs shall have written policy and a procedure to ensure each client is afforded, and has explained to him or her, these rights; and these rights are visibly posted in client areas of the facility.

(d) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff or volunteers.

(e) Compliance with 75:15-17-3 and applicable federal laws and regulations shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

75:15-17-4. Client grievance policy and procedures

(a) Each program shall have a written client grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client; and, if involved with the client, to family members or significant others;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;

(A) Transitional living, shelter services, and Safe Home timeframes for resolution of grievances by program staff or volunteers shall be seven (7) days unless appealed;

(B) Non-transitional living and non-shelter services' timeframes for resolution of grievances by program staff or volunteers shall be fourteen (14) days unless appealed;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he or she has a right to make a complaint to the OAG Victims Services Unit.

(5) Clients shall be given a copy of the grievance policy including the right to make a complaint to the OAG and the provision of such shall be documented in the client record including the phone number, mailing address, and email address of the Victims Services Unit of the Office of the Attorney General.

(6) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(7) Annual review of the grievance policy and procedures, with revisions as needed.

(b) Compliance with 75:15-17-4 shall be determined by a review of program policy and procedures, client records, on site

observation, written agreements, and/or other program documentation.

[OAR Docket #14-816; filed 7-21-14]

TITLE 75. ATTORNEY GENERAL CHAPTER 25. STANDARDS AND CRITERIA FOR BATTERERS INTERVENTION PROGRAMS

[OAR Docket #14-817]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Batterers Intervention
75:25-3-3. Client records [AMENDED]
75:25-3-4. Record content [AMENDED]
75:25-3-15. Client rights [AMENDED]
75:25-3-16. Client grievance policy and procedures [AMENDED]
Subchapter 5. Personnel and Volunteers
Part 5. Training
75:25-5-19. Orientation - general, personnel and volunteers [AMENDED]
75:25-5-20. In-service and ongoing training for personnel and volunteers [AMENDED]
75:25-5-21. Personnel training, batterers intervention services [AMENDED]
AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 15, 2014 through March 21, 2014
PUBLIC HEARING:
March 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Office of Attorney General certifies batterers intervention programs (BIP) along with all domestic violence and sexual assault programs. Amendments are necessary to include a Probable Cause Affadavit, police reports and Department of Human Services Individual Services Plans, if applicable, as part of program Intake information in client files. Amendments are necessary to remove topics from personnel orientation training that are duplicated in 75:25-5-21. Amendments are also necessary to decrease the hours of annual personnel training from sixteen (16) to twelve (12), and require licensed professionals who supervise batterers intervention programs to attend facilitator training provided by the Oklahoma Office of the Attorney General.
CONTACT PERSON:
Lesley Smith March (405) 522-0042

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. BATTERERS INTERVENTION

75:25-3-3. Client records

(a) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Copies of all service documentation including assessments, exit interviews and reports shall be kept in the batterer's file.

(d) Compliance with ~~75:15-4-4~~75:25-3-3shall be determined by on-site observation, client records, policy and procedures and any other supporting program documentation.

75:25-3-4. Record content

(a) Client records shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse and incidents of traumatic brain injuries;

(D) Emergency contact information (not the abused ~~partner, and~~)

(E) Court Order~~, or police report, if applicable.~~

(F) Probable Cause Affidavit or police report, if applicable

(G) Department of Human Services Individual Service Plan, if applicable

(2) An assessment of the batterer shall be made prior to acceptance into the program. The assessment shall at a minimum include:

(A) current and past history of violence;

(B) lethality risk indicators risk instrument must be evidence-based and developed specifically for batterers intervention;

(C) drug and alcohol use/abuse history and screening;

(D) mental health history and screening;

(E) criminal history and a report of the incident that generated the referral; and

(F) current or past history with child protective or adult protective services. If currently involved with Child Protective Services, the assessment shall include a review of the Individualized Service Plan.

(3) Service notes shall be completed for each batterer after every session which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A service note for each contact for services that shall include:

(i) personal responsibility and accountability;

(ii) level of participation in services;

(iii) change(s) in family, social, personal, legal or work environment(s);

(iv) inference of use or increased use of drugs/alcohol;

(v) whether or not facilitator observed sufficient indications of risk requiring notification of victim or others, and

(vi) referrals for supplemental services.

(D) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence as set forth in 75:25-3-1(b).

(4) An individualized written contract shall be completed upon acceptance into the program prior to the first (1st) group session; signed by the batterer; and shall include, but not be limited to:

(A) Notice that the batterer is joining an educational program, not a therapeutic program, and will not have the same level of confidentiality afforded by mental health services The program will not assure confidentiality with respect to:

(i) Judge, District Attorney or referring agent

(ii) current partner

(iii) the victim(s)

(iv) parent(s) of any of the batterers children

(v) probation and parole

(vi) law enforcement

(vii) individuals toward whom there is a risk of imminent harm by the batterer

(viii) Coordinated Community Response Team

(ix) the domestic violence victim services program serving the area where the batterer lives or where the current or ex-partner lives or with the domestic violence program where the batterer is currently residing

(x) the program will promise confidentiality with respect to: the general public, news media and anyone else not covered in the expectations set forth above.

(B) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions. Inability to pay shall not be considered an excused absence.

(C) The criteria for suspension and termination.

(D) The program's rules.

(E) A written notice in bold type which specifies **"Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."**

(F) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior or threats of harm or expressions of intent to do harm. This includes harm to current or past victims or partners. Such acts include but are not limited to child abduction, court actions for divorce or custody, underhanded economic maneuvers, substance use, and intentionally exposing the victim(s) or partner(s) to risk of sexually transmitted diseases.

(5) Reports. In the case of court-ordered or otherwise referred batterers, a written report to the court or referring agent, shall be submitted within seven (7) business days of the following events:

(A) Acceptance into or rejection from the program including but not limited to a summary of the results of the initial assessment or the reason for rejection;

(B) Reasonable knowledge or suspicion of illegal activities or bodily harm, or a threatof such, to the victim or to third persons, and;

(C) Exit from the program including but not limited to the service termination report.

(6) All reports shall include any perceived areas of concern which may include, but are not limited to, substance abuse or mental health issues that the court may want to seriously consider.

(7) Initial victim or partner contact shall be attempted when the batterer has been accepted or denied admission to the program. Efforts to notify the victim or the victim's advocate shall be documented in the batterer's file, which may include an electronic file, without including any confidential victim identification information. A victim questionnaire approved by OAG shall be completed by phone, face to face with the victim, or mailed to the victim. All victim information shall be confidential.

(8) Whenever possible, the batterers intervention program shall maintain contact with the victim or partner at the victim's discretion. If the victim or partner elects not to receive information, the program is still required to notify the individual in the case of imminent threat or danger to the victim's safety.

(9) If the victim or partner elects to receive information after initial contact by the program, at a minimum, partner or victim notification is required when:

(A) The batterer begins attending the intervention program;

(B) The batterer terminates the intervention program for noncompliance;

(C) There is an imminent threat or danger to the victim's safety.

(10) The efforts to find and notify the batterer's partner or victim shall be documented.

(11) Service termination reports shall be completed for all types of conditions under which services are ended and shall include, at a minimum, the reason for termination, summary of lethality risk indicators, and any concerns for

the safety of victims, children, and/or others. Types and reasons for terminating services include:

(A) **Rejection.** Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(B) **Involuntary termination.** Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in group sessions attended; attending a group session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the BIP contract.

(C) **Completion.** Upon completion of the program, an exit interview and service termination report shall be completed and documented in the client record. The service termination report shall include a disclosure stating that completion of batterers intervention does not indicate that the client will not re-offend; it is a report that the person has completed the necessary requirements of the certified program without any other known or reported re-offending during the time of enrollment in the program.

(12) Exit information, which shall minimally include:

(A) Documentation that the batterer participated in planning for his or her exit from the program;

(B) The reasons for the batterer's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this 75:25-3-4 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation

75:25-3-15. Client rights

(a) Each client shall be afforded all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:

(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each client has the right to receive services without regard to his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, or legal status.

(3) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(4) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(5) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted the rights as stated in this section.

(6) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.

(c) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.

(d) Compliance with 75:25-3-15 shall be determined by review of client files and client areas of the program.

75:25-3-16. Client grievance policy and procedures

(a) Each program shall have a written client grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he has a right to make a complaint to the OAG Victims Services Unit;

(5) Clients shall be given a copy of the grievance policy including the right to make a complaint to the OAG and the provision of such shall be documented in the client record;

(6) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(7) Annual review of the grievance policy and procedures, with revisions as needed.

(b) Compliance with 75-3-16 shall be determined by review of client files.

SUBCHAPTER 5. PERSONNEL AND VOLUNTEERS

PART 5. TRAINING

75:25-5-19. Orientation - general, personnel and volunteers

(a) A certified program shall provide a minimum of 8 hours orientation training to familiarize new personnel and volunteers providing direct services with the BIP which includes, but is not limited to:

(1) Standards for the BIP;

(2) Program policy and procedures;

(3) Confidentiality, in relation to the BIP;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

~~(8) Domestic violence and its effects on victims and children;~~

~~(9) Legal and ethical issues surrounding domestic violence including collusion with batterers;~~

~~(10) The remaining hours of orientation training shall be supplemented by reading materials as approved by OAG VSU regarding batterers behavior. Staff/volunteers shall sign that they have read the approved reading list.~~

~~(b) Volunteers providing indirect services are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.~~

(~~c~~b) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. ~~The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.~~

(~~d~~c) Compliance with 75:25-5-19 shall be determined by a review of the written policies and procedures, and personnel and volunteer training manuals and records.

75:25-5-20. In-service and ongoing training for personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, ~~sixteen (16)~~ twelve (12) hours of annual training of all staff which shall include:

(1) Confidentiality;

(2) Facility safety and disaster plans;

(3) First aid kits and fire extinguishers, their location, contents and use;

(4) Universal precautions, and

(5) Legal and ethical issues.

(b) The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking, and batterers intervention as prescribed and approved by the Executive Director as appropriate for the assigned staff duties.

(c) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director.

(d) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC 75:25-1-3 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.

(e) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(f) Compliance with 75:25-5-20 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

75:25-5-21. Personnel training, batterers intervention services

(a) Personnel facilitating batterers intervention groups shall minimally have a graduate degree in a behavioral health or criminal justice related field and one-year related work experience, have a Bachelor's degree in a behavioral health or criminal justice related field and two years related work experience, or have been employed as a facilitator in a certified batterers intervention program prior to July 1, 2008.

(b) A certified batterers intervention program shall contract with or employ a qualified licensed professional as defined in 75:25-1-3 under "Counseling" for purposes of providing case and programmatic consultation to personnel facilitating batterers intervention groups and for conducting individual client evaluations before and after attendance of the program. The licensed professional shall complete batterers intervention facilitator orientation training sponsored by the Oklahoma Office of the Attorney General.

(c) Prior to providing any direct services, personnel facilitating batterers intervention services shall observe a minimum of 12 batterers intervention group sessions from an OAG certified program, and must complete 16 hours training that includes, but is not limited to:

(1) Causes and dynamics of domestic violence;

(2) Identification of cultural and social influences that contribute to violence;

(3) Identification of coercive behavior and the development of cooperative skills;

(4) Coercive sexual behavior;

(5) Impact of domestic violence on children and the dynamics of the batterer as a parent;

(6) Lethality indicators and assessment procedures such as:

(A) perceived loss of control over the victim through separation, divorce, victim fleeing,

(B) extreme jealousy,

(C) escalation of abuse,

(D) acts of abuse,

(E) suicide/homicide threats, plan to carry out either of above,

(F) use of, or threat to use weapon (especially a gun),

(G) strangulation,

(H) stalking,
(I) history of mental health problems, substance abuse,
(J) history of sexual abuse of victim or children
(K) kidnapping of partner,
(L) unemployment;
(7) The effects of alcohol and drug use/abuse and domestic violence;
(8) Exploring myths and beliefs about domestic violence, including myths about provocation;
(9) Impact of domestic violence on victims;
(10) Batterers who re-offend;
(11) Group dynamics and group structure;
(12) Planning for non-violence and victim and dependent safety, and
(13) Power and control.
(14) Facilitator boundaries and collusion with the batterer.
(15) The remaining hours of orientation training shall be supplemented by reading materials as approved by OAG VSU regarding batterers behavior. Staff/volunteers shall sign that they have read the approved reading list.

(d) Personnel who provide batterers intervention service may not provide services for the victim that may result in a conflict of interest.

(e) Personnel who provide batterers intervention must declare in writing that they are:
(1) violence free in their own lives,
(2) not abusing drugs or alcohol, and
(3) seeking to rid themselves of sexist attitudes.

(f) Compliance with 75:25-3- 21 shall be determined by:
(1) Review of program's policy and procedures.
(2) Review of program's training records and other provided documentation of staff training.
(3) Review of personnel records.

[OAR Docket #14-817; filed 7-21-14]

TITLE 75. ATTORNEY GENERAL CHAPTER 30. STANDARDS AND CRITERIA FOR ADULT VICTIMS OF HUMAN SEX TRAFFICKING PROGRAMS

[OAR Docket #14-818]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 30. Standards and Criteria for Adult Victims of Human Sex Trafficking Programs [AMENDED]
AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 15, 2014 through March 21, 2014
PUBLIC HEARING:
March 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This chapter sets forth the rules, including standards and criteria, used in certifying sexual assault programs and shelters for adult victims/survivors of sexual violence as a result of human sex trafficking pursuant to 74 O.S. § 18p-6. Although similarities exist between services provided to victims of domestic or sexual violence and victims of sex trafficking, there are also important differences between the two groups of victims. Victims of human sex trafficking are often eligible for special benefits including housing, legal assistance and refugee services that differ from the types of services that are available to domestic violence or sexual violence victims. Because certification of services for human sex trafficking is relatively new to Oklahoma, this chapter requires many amendments. When the chapter was originally codified in 2011, it was based largely on the standards for sexual assault services in 75 OAC 15. After careful review, the Domestic Violence & Sexual Assault Advisory Council recommended that the Attorney General amend the current chapter to more specifically meet the needs of victims of human sex trafficking and their children. These amendments include: stressing the importance of client safety and confidentiality, reflecting the clients' right to self-determination, incorporating definitions that were unintentionally omitted from the chapter, redefining core services and orientation training to more accurately meet the needs of human sex trafficking survivors and requiring programs to conduct an annual employee name search against the Sex Offenders Registration Act and the Mary Rippy Violence Crime Offenders Registration Act.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

75:30-1-1. Purpose

This chapter sets forth the rules, including standards and criteria, used in certifying sexual assault programs and shelters for adult victims/survivors of sexual violence as a result of human sex trafficking pursuant to 74 O.S. § 18p-6. Human Sex trafficking occurs when a person uses force, fraud, or coercion to get a victim to perform sexual acts for commercial reasons. The victim is recruited, transferred, harbored, obtained or moved by a person. The person uses force, fraud, coercion, abduction, threat, deception or the abuse of power to gain control over the victim. The victim is exploited for forced labor, involuntary servitude, slavery, and/or debt bondage of commercial sex acts. Under state and federal law, the use of minors for commercial sexual activity is ~~always considered to be~~ a severe form of trafficking, even if there is no force, fraud or coercion. Minors are intended to be served under a different program~~,~~

~~the Unaccompanied Refugee Minor (URM) program~~. However, minors may still need immediate medical care, housing, food, ~~and~~ clothing and other services to assure safety until they can be transferred. Although similarities exist between services provided to victims of domestic or sexual violence and victims of human sex trafficking, there are also important differences between the two groups of victims. Victims of human sex trafficking are often eligible for special benefits including housing, legal assistance and refugee services that differ from the types of services that are available to domestic violence or sexual violence victims. These standards serve as guidance in understanding, providing and advocating for the needs of victims of human sex trafficking. The rules regarding factors relating to the process to determine status as a certified program including, but not necessarily limited to, applications, fees, requirements for and administrative sanctions, are found in OAC Title 75, Chapter 1.

75:30-1-1.1. Mission and underlying philosophy

(a) The mission of the standards and criteria for programs serving adult victims of sexual assault is to eliminate human sex trafficking in the State of Oklahoma.

(b) The philosophy underlying the standards and criteria for ~~domestic violence, sexual assault, and batterers intervention programs, including programs that serve~~ victims of human sex trafficking ~~and stalking,~~ is that:

(1) All persons have the right to live without fear, abuse, oppression and violence;

~~(2) There should be equality in relationships, and survivors of domestic violence, sexual assault and stalking should be helped to assume power over their own lives;~~

(~~3~~2) No one deserves to be victimized by assaultive or abusive behavior;

(~~4~~3) Survivors should be treated with dignity and respect;

(~~5~~4) All people involved in violent crimes are affected, including victims, children, families, partners, friends, the community, and perpetrators;

~~(6) Offending is a choice, and perpetrators of domestic violence, sexual assault, sex trafficking and stalking are solely responsible for their behavior;~~

~~(7) Thesep perpetrators~~(5) Perpetrators must be held accountable for their behavior;

(~~8~~6) A coordinated community response is the best approach to eliminating ~~domestic violence, sexual assault,~~human sex trafficking~~and stalking~~ in Oklahoma, and

(~~9~~7) Safety for the victims/survivors and their dependents is the primary focus of intervention and services.

(8) Intervention and services shall be based upon the safety and well-being of individuals and communities. Services to victims are provided in a non-judgmental, non-coercive, trauma-informed environment.

(9) Participation in victim/survivor services is voluntary and based on self-determined needs, preferences and values.

75:30-1-2. Definitions

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

"Admission" means to accept a client for services or treatment.

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links the client and their dependents with the appropriate service components to encourage self-determination, autonomy, physical and emotional safety, and to offer~~self-reliance and provide~~ information that will ~~enable~~support independence. This can be viewed as a combination of active listening and facilitating personal problem solving along with researching options of action, safety planning, community outreach and education and include medical, dental, financial, employment, legal and housing assistance.

"Advocate" means a person, ~~providing support to ensure~~ who offers clients ~~receive~~ appropriate services.

"Assessment" means an appropriate course of assistance based on a face-to-face formal screening.

"Behavioral Health Professional" means either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault, human sex trafficking or stalking and their dependents.

"Business day" shall mean a calendar day other than a Saturday, Sunday, or state holiday. In computing any period of time where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until 5:00 o'clock p.m. of the next business day.

"Case consultation" means review of a client's case by the primary service provider and other program personnel, consultants or both.

"Case management" means a professional practice in which the service recipient is a partner, to the greatest extent possible, in assessing needs, defining desired outcomes, obtaining services, treatments, and supports, and in preventing and managing crisis. Case management is a central service that includes: explanation of social services, service system advocacy, basic case coordination, assessments, and service plan development. It may also include transportation, translation, emotional support and counseling depending upon the training and resources of the case manager.

"Case manager" means someone with experience serving victims of crime, human sex trafficking victims, refugees, immigrants, crime victims or other related populations. Ideally, they will have received specific training to serve trafficking victims. The Case Manager will ensure that victims receive the services they need and ~~coordinate to transition them to as needed~~ facilitate access to community services.

"Certification" means a process that the Department of Health and Human Services, Office of Refugee Resettlement

(HHS or ORR) uses to officially say that a person is a victim of a severe form of human sex trafficking. Advocates assisting victims of human sex trafficking can assist in the certification process by informing victims of their rights generally, and working with law enforcement and attorneys to ensure that they understand and advocate for the victim's individual needs once certified.

"Certified Domestic and Sexual Violence Response Professional" means a professional certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified adult victims of human sex trafficking program" means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to offer~~provide~~ shelter and services pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Child" or **"Children"** means any unmarried individual from birth to eighteen years of age.

"Children's Activities" means direct child contact that is temporary in nature and is not intended to address the effects of domestic violence, sexual assault/abuse and trauma on children i.e., child care, special events such as Christmas parties, Easter egg hunts, that is supervised by program personnel or volunteers.

"Children's Services" means direct child contact that is intended to address the effects of domestic violence, sexual assault/abuse and trauma on children including but not limited to intake, needs assessment, groups, advocacy and any other service related to domestic violence, sexual assault/abuse and trauma.

"Client" means an adult individual who has applied for, is receiving or has received assistance or services of a certified sexual assault program for adult victims of human sex trafficking.

"Client record" includes, but is not limited to, all communication, records and information on an individual client.

"Commercial sex" means any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display.

"Community" means the people, groups, agencies or other facilities within the locality served by the program.

"Contract" means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

"Court advocate" means a qualified, trained staff or volunteer whose duties are to offer assistance to victims and any dependents in legal matters relevant to their situation. A Court Advocate provides court advocacy through support, information, assistance, safety planning, accompaniment and intervention with any aspect of the civil or criminal legal system on behalf of a victim of domestic violence, sexual assault or stalking.

"Counseling" means face-to-face therapeutic session with one-on-one interaction between a licensed behavioral health professional and an individual to promote emotional and/or behavioral change focused on victim safety and perpetrator accountability. Those individuals providing professional therapy to adult/child victims/survivors of human sex trafficking as a result of sexual violence understand that victims of trafficking may exhibit depression, post-traumatic stress disorder, memory problems, fear, suspicion, rape trauma syndrome and physical distress as a result of the psychological stress, such as headaches, stomachaches, chest pain and numbing of parts of the body. Interviews requiring them to recount their experiences can trigger these behaviors. Initially, many victims may be more comfortable with less formal, supportive counseling or "conversations" (not counseling) geared toward immediate problem solving, adjusting to life at the center and coping with loneliness and isolation from their communities.

"Crisis intervention" means short-term, immediate assistance and advocacy given by phone or in person to adult victims of ~~services based upon a problem solving model to provide information and referrals that assist an individual domestic violence, sexual assault or stalking victim/survivor in crisis.~~human sex trafficking. Crisis intervention services include but are not limited to assessing dangerousness, safety planning, information about available legal remedies, establishing rapport and communication, identifying major problems, exploring feelings and providing support, exploring possible alternatives, and/or formulating an action plan and follow-up measures.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a client. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to clients, personnel, volunteers and visitors; incidents involving medication; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural diversity"~~"~~ ~~means the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation and/or social group.~~means the spectrum of differences that exists among groups of people with definable and unique cultural backgrounds.

"Direct services" means services delivered by a qualified staff member or volunteer, in direct contact with a client including telephone or other electronic contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, announcements, correspondence, services, and photographs.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of human sex trafficking problems and services and may include a systematic presentation of selected information to impart knowledge or

instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for danger assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention.

"Emergency transportation" means transportation for a victim of human sex trafficking to a secured identified location at which emergency services or crisis services can be ~~provided.~~ offered.

"Executive director" means the person in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title 75.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire certified adult victims of human sex trafficking program, or shelter, in and of all geographical locations and administrative divisions.

"Group counseling" means a face-to face therapeutic session with a group of adult/child victims/survivors to promote emotional or behavioral change. Those individuals providing professional therapy to victims/survivors of domestic violence must be prepared to provide education and information about:

(A) Physical and emotional safety;

(B) How perpetrators maintain control and dominance over their victims;

(C) The need to hold perpetrators accountable for their actions;

(D) The recognition that individuals victimized are not (D) The recognition that individuals victimized are not responsible for a perpetrator's violent behavior, and the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion or national origin.of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on race, color, gender, sexual orientation, age, disabilities, economic or educational status, religion or national origin.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

~~**"Human trafficking"** or **"Victims of trafficking"** means modern day slavery that includes, but is not limited to, extreme exploitation and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor.~~

"Indirect services" means services delivered by a staff member or volunteer, that does not involve direct services with a client.

"Initial contact" means a person's first contact with the program or facility requesting information or service by telephone or in person.

"Intake" means an interaction intended to discover what has happened, determine what the crisis is, assess dangerousness indicators, do safety planning, and/or establish the immediate needs of adult victims of human sex trafficking to determine appropriate services and referrals. Includes interaction with an individual determined to be appropriate for ongoing service in order to obtain basic demographic information, gather vital information on the client, orient the victim/survivor to the program, program rules, and, if applicable, the facilities. Cultural needs should also be identified at this time.

"Language Interpretation" means activities that involve a client who is deaf or hearing impaired or has limited English proficiency requiring an interpreter for a staff member or volunteer to offer services.

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Medical care" means those diagnostic and treatment services which can only be provided or supervised by a licensed physician.

"Medication" ~~means any prescription or over-the-counter drug, that is taken as prescribed or directed.~~means any drug that is legally in the possession of the client, his/her children, or a person seeking admittance to the shelter or his/her children; this definition includes prescription medications and medications available for legal purchase without a prescription.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

"Neglect" means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"OAG" means the Office of the Oklahoma Attorney General.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Operation" means that clients are receiving services ~~provided~~ offered by the program.

"Personnel record" means a file containing the employment history and actions relevant to individual personnel and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf and hard of hearing, blind, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

"Primary Victim" means a client who has experienced human sex trafficking.

"Procedures" means the standard methods by which policies are implemented.

"Program" means a set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Program evaluation" means the documented assessment activities, performed internally or externally, of a program or a service and its governing authority, staff, volunteers, activities and planning process to determine whether program goals are met, staff, volunteers, and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent.

"Qualified staff" means someone who has met the criteria for provision of direct services as defined in 75:30-~~6-20~~-11-12.

"Release" or **"Waiver"** means consent that is informed, written and reasonably time-limited. The terms may be used interchangeably to mean the same thing. 'Release' implies that confidential information is released (despite confidentiality or privilege protection), and 'Waiver' implies waiving the right (to maintain privilege). If release of information is compelled by statutory or court mandate, the program shall make reasonable attempts to provide notice to victims affected by the disclosure of information and take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

"Referral" means information disseminated and/or coordinated access to agency and community services to meet victim/survivor's and their dependents identified needs.

~~**"Safe Home"** means private dwellings available for the temporary housing of adult victims of sex trafficking to ensure safety of victims until other housing arrangements can be made.~~

~~**"Safe Home Provider"** means an individual or family providing Safe Home services through a formal agreement with a certified human trafficking program.~~

"Safety Planning" means the process of working with the victim/survivor to develop tools in advance of potential abuse or violence for the immediate and long term safety of the victim/survivor. The plans should be based on the individual's dangerousness indicators and should include the safety needs of dependents. ~~Trafficked persons~~Human sex trafficking victims face danger from organized crime, and the levels of danger depend on a host of factors including how much a victim's testimony can harm the perpetrators and how violent and extensive a human sex trafficking organization may be. Additional risks may include isolation due to inability to speak English and distrust of law enforcement and the criminal justice system and unfamiliarity with ways to seek help and safety.

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to establish the service needs of an individual. At a minimum, a screening shall include a brief personal history related to abuse, a review of the individual's strengths and resources, risk factors and referral needs.

"Self Determination" means the right to make one's own choices.

"Service agreement" means a written agreement between two or more service agencies~~ or service agencies~~ and individual service providers defining the roles and responsibilities of each party. The purpose of service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"Service note" means the documentation of the time, date, location and description of services offered or provided, and signature, including electronic signature, of staff or volunteer offering or providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual Assault" means a range of behaviors, including but not limited to rape, attempted rape, sexual battery, human sex trafficking, sexual abuse of children, sodomy and sexual harassment.

"Sexual assault services" means personal advocacy and support services provided to adult victims of human sex trafficking in settings such as law enforcement, medical settings or program offices.

"Sex trafficking" also known as **"Human sex Trafficking for Commercial Sex"** means recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion for purposes of engaging the person in a commercial sex act, or benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of human sex trafficking for commercial sex;

"Shelter services" means a certified residential living arrangement in a secure setting with support and advocacy services provided by qualified staff, for adult victims of sexual assault as a result of ~~human~~human sex trafficking.

"Staff" means personnel that function with a defined role within the program whether full-time, part-time or contracted.

"Support" or **"Supportive Services"**~~means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan.~~ means the provision of direct services to victims and their dependents for the purposes of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the

interest of safety, and assisting such victims in healing from the effects of human sex trafficking.

"Transitional living services" means temporary, independent living programs with support services provided by the staff or volunteers of the sponsoring domestic violence, sexual assault and stalking program. These services are extensions of domestic violence shelter services to victims of domestic violence, sexual assault and/or stalking and their dependents. These services permit victims to develop their financial capacity and other means to live independently.

"Trauma-informed services" means a service approach that recognizes the impact of trauma and acknowledges the role of trauma in the lives of victims/survivors and their dependents.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

~~**"Victim recovery services"** mean a face-to-face service, provided one-on-one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life. This service includes educational and supportive services regarding independent living, self-care, social skills, development and lifestyle changes.~~

"Voluntary Services" means a program shall not mandate participation in supportive services as a condition of shelter residency or emergency services (Family Violence Prevention and Services Act (426 U.S.C. 10401 et seq.)

"Volunteer" means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 3. SEXUAL ASSAULT PROGRAMS FOR ADULT VICTIMS/SURVIVORS OF SEXUAL VIOLENCE AS A RESULT OF HUMAN SEX TRAFFICKING

75:30-3-1. Service programs core services

(a) Programs serving victims of sexual violence as a result of human sex trafficking and their dependents or family members should consider special service needs when developing a plan to offer services. ~~Victims of human trafficking may exhibit depression, post-traumatic stress disorder, memory problems, fear, suspicion, rape trauma syndrome and physical distress as a result of the psychological stress, such as headaches, stomachaches, chest pain, and numbing of parts of the body. These symptoms may be exhibited at different times and in varying degrees. Interviews requiring victims to recount their experiences can trigger these symptoms. Symptoms of trauma may include avoidance of activities, places, people, thoughts and conversations that arouse recollections. Initially, many victims may be more comfortable with less formal, supportive counseling or "conversations" geared toward immediate problem-solving, adjusting to life at the shelter and coping with loneliness and isolation from their communities.~~

(b) Programs shall serve residential and non-residential victims of human sex trafficking.

(~~b~~c) All certified programs shall provide ~~a~~ safe, accessible, and trauma-informed services for victims of human sex trafficking and their dependents or non-offending family members.

(~~c~~d) The program shall develop a philosophy of service provision based upon voluntary, trauma-informed services and individual self-determination. The written statement of the philosophy of services shall be approved by the governing authority and made available to the community, staff, volunteers and clients.

(e) The program shall have policy and protocols for accepting victims of human sex trafficking and develop procedures to maintain facilities, staffing, and operational methods, including a policy on the recruitment of board members, staff and volunteers who are representative of the diversity in the local community and the diversity of their clients.

(~~c~~f) All certified programs shall ensure shelter is provided and be able to respond to special needs which may include:

(1) ~~Length of stay: Shelter and housing may be needed for much longer lengths of time. than is typical for non-trafficked victims.~~Length of stay shall be determined by staff based on the needs of the client.

(2) Safety planning: Safety planning should be designed to meet individual, unique needs. Safety planning can be complex due to danger created by an extensive human sex trafficking organization. Perpetrators often threaten the trafficked person's family in the country of origin as well, and such threats impact decisions made by a ~~trafficked person~~human sex trafficking victim.

~~(3) Mental health/trauma: Victims of human trafficking have issues that are more akin to victims of torture. They may not want to receive mental health services immediately, and it is important that they not be pushed into receiving them. Cultural issues may also come into play and there may be greater stigmas to receiving these services.~~

(~~4~~3) ~~Participation in activities: Trafficking~~Human sex trafficking victims may never have assimilated into the local community or U.S. culture. Such lack of assimilation, in addition to language barriers and lack of family or community support may make it difficult to meet shelter requirements such as communal meals, support groups and roommates of different ethnic, cultural or religious backgrounds.

(~~5~~4) ~~Unique~~ Human sex trafficking victims may havelanguage interpretation needs. The program shall~~accessing~~ provide access to an interpreter. ~~for particular dialects within a spoken language~~. ~~and~~It may be necessary for the program to~~obtaining~~provide translations of written consent forms and other documents. ~~may be necessary~~.

(~~6~~5) Intensive Case Management: ~~Trafficking~~Human sex trafficking victims often need intensive case management and advocacy for long periods of time. ~~Sexual~~

Human Sex trafficking victims may need to see a case manager daily. Because their goals are often obtained in incremental steps, human sex trafficking victims may need to be accompanied by staff or volunteers to access outside services.~~to assist them with immigration issues, federal prosecution of the perpetrator, accessing special benefits and other areas.~~

(6) Labor exploitation: A victim of human trafficking may feel that she has to babysit for free, cook meals or do more than her fair share of the chores. Programs should be aware of this dynamic and ensure that staff and other residents do not unwittingly allow this dynamic to occur.

(7) Cooperation with law enforcement: Programs should ensure victims are educated about the value of participating in the legal prosecution of offenders and that an appropriate release or waiver may be necessary. It is the human sex trafficking victim's choice to cooperate with law enforcement. Programs may have to educate law enforcement about certain policies, confidentiality and privilege laws, victim issues, including safety concerns, and whether or not law enforcement may enter the shelter. Programs shall also inform law enforcement that victims cannot be restricted from leaving the shelter. ~~When necessary, programs should offer~~ Programs shall provide alternate, secure locations for interviews.~~ It should also be decided whether or not the advocate may be present during interviews and court hearings.~~

(8) ~~Criminal culpability of victims of human sex trafficking:~~ Victims of human sex trafficking may ~~themselves~~ be charged with federal or state crimes. Shelters should develop relationships with qualified criminal defense lawyers, including the federal and state public defender offices that can assist them.

(9) Establishing networks with additional service providers: Because of the unique needs of human sex trafficking victims, shelters may have to identify and establish relationships with service providers such as those who do refugee settlement, with whom they have no previous relationship, and assess the providers as potential referral sources.

(g) All certified programs shall maintain an atmosphere and provide services that are free from all forms of unlawful discrimination based on race, color, gender, sexual orientation, age, disabilities, (i.e., physical, mental illness and substance abuse) economic or educational status, religion and national origin, including a policy that services to immigrant women will *not be denied or diminished on the basis of immigration status.*

(h) Compliance with 75:30-3-1 shall be determined by a review of the program's policy and procedures, service agreements, on site observation, client and staff interviews and/or other supporting documentation.

~~(d) All certified programs shall provide services including, but not limited to:~~

~~(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24 hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services that do not provide immediate access to a crisis advocate shall not be sufficient to meet this requirement.~~

~~(2) Emergency screenings for immediate needs including safety, flight risk, medical, mental health, substance abuse, and status including eligibility for other services and HHS or ORR certification.~~

~~(3) Emergency housing such as hotel or motel available for victim and any dependent(s).~~

~~(4) Arrangement for safe shelter, food, clothing, and incidentals needed by victim and any dependent(s) as soon as practicable.~~

~~(5) Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a perpetrator, including: taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.~~

~~(6) The program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.~~

~~(7) Assignment or referral to Case Manager.~~

~~(8) Provision of advocacy and referral to assist the victims in obtaining needed services or resources.~~

~~(9) Follow-up services shall be offered to all victims if victim safety is not compromised.~~

~~(10) Crisis intervention or support services, case management or referral for case management, advocacy, and victim recovery services. These programs shall minimally either directly provide or make provision for the following services:~~

~~(11) Life and job skills training.~~

~~(12) Establishment of contact with families of victims if appropriate and desired by the client.~~

~~(13) Advocacy services, both in person and by telephone or other electronic means, either in the locations of other community services and systems, or in the program's offices and assist with obtaining certification and public benefits.~~

~~(14) A resource document of local, area, or state resources to facilitate referrals for clients for longer term counseling and housing and legal services, particularly immediate legal assistance from an attorney.~~

~~(15) The agency shall maintain an updated list of identified behavioral health professionals in their community who treat clients with trauma related to sex trafficking victims who need additional mental health or substance abuse services.~~

~~(16) Provide access to legal assistance, information about their rights and translation services as necessary.~~

75:30-3-1.1. Crisis intervention services

(a) All certified human sex trafficking programs shall offer crisis intervention services including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services shall be staffed by trained staff or volunteers, and provide 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services that do not offer immediate access to a crisis advocate shall not be sufficient to meet this requirement.

(2) Screenings for immediate needs including safety; medical including screening for tuberculosis, sexually transmitted diseases, HIV, Hepatitis B and Hepatitis C, vaccinations/immunizations, medical treatment for physical injuries, and dental care; , mental health; substance abuse, and status including eligibility for other services and HHS or ORR certification.

(3) Emergency housing such as hotel or motel available for victim and any dependent(s).

(4) Arrangement for safe shelter, food, clothing, and incidentals needed by victim and any dependent(s) as soon as practical.

(5) Provide protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a perpetrator, including: taking measures to protect human sex trafficking victims and their family members from intimidation and threats of reprisals and ensuring that the names and identifying information of human sex trafficking victims and their family members are not disclosed to the public.

(6) The program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.

(7) Assignment or referral to Case Manager.

(8) Provision of advocacy and referral to assist the victims in obtaining needed services or resources.

(9) Follow-up services shall be offered to all victims if victim safety is not compromised.

(10) Crisis intervention or support services, case management or referral for case management, advocacy, and victim recovery services. These programs shall minimally either directly provide or make provision for the following services:

(11) Life and job skills training.

(12) Establishment of contact with families of victims if appropriate and desired by the client.

(13) Advocacy services, both in person and by telephone or other electronic means, either in the locations of other community services and systems, or in the program's offices to assist with obtaining certification and public benefits.

(14) A resource document of local, area, or state resources to facilitate referrals for clients for longer term counseling and housing and legal services, particularly immediate legal assistance from an attorney.

(15) The agency shall maintain an updated list of identified behavioral health professionals in the community who treat clients with trauma related to human sex trafficking as well as victims who need additional mental health or substance abuse services.

(16) Provide referral to legal assistance, information about their rights and translation services as necessary.

(b) All certified programs shall provide services free from all forms of unlawful discrimination based on race, color, gender, sexual orientation, age, disabilities (i.e., physical, mental illness and substance abuse), economic or educational status, religion and national origin, including a policy that services to immigrant women will not be denied or diminished on the basis of immigration status.

(c) Compliance with 75:30-3-2 shall be determined by a review of the program's policy and procedures, service agreements, on site observation, client and staff interviews and/or other supporting documentation.

75:30-3-1.2.. Court advocacy services

(a) All certified programs shall provide assistance to victims and their dependents in legal matters relevant to their situation. Court advocacy services include provision of information, support, assistance, safety planning, accompaniment and intervention with any aspect of the civil or criminal legal system on behalf of a victim of human sex trafficking. Court advocacy services must be provided by qualified, trained staff members or volunteers.

(b) Advocacy services must both in person or by telephone, either in the locations of other community locations and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(c) Compliance with 75:30-3-2.1 shall be determined by a review of policies and procedures, client files and personnel files.

75:30-3-2. Shelter

(a) All shelters shall comply with section 75:30-~~2~~3-1. ~~and each~~ Each shelter program shall provide long-term shelter services and staffing ~~to provide services~~ twenty-four (24) hours per day, seven (7) days per week and ~~provide~~offer the following services:

(1) ~~A group living~~Shelter~~program~~programsshall provide~~providing~~ room, ~~board~~food, bathing and laundry facilities, necessary clothing and toiletries for victims and their children free of charge. Programs shall not ask clients to use their nutrition assistance benefits to supplement food for the facility.

(2) Shelters shall be staffed at all times when clients are in residence. When there are no clients in residence, each shelter program must assure availability for immediate contact or services.

(3) Shelter programs shall ~~provide~~offer screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making initial contact.

(4) Each shelter program must ensure to the best of their ability the safety, security, and confidentiality of clients and the location of the shelter.

(5) The shelter shall ~~maintain~~ establish and maintain involuntary ~~discharge~~exit criteria.

(6) The shelter's policy shall have written procedures regarding the supervision of children.

(7) In the event the shelter does not offer services to clients with dependent boys over the age of twelve, the shelter shall have written policies regarding linkage to alternative provision of services including emergency shelter.

(8) Shelter programs shall offer screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making initial contact.

(9) The shelter program shall maintain cooperation/liaison with the local school system.

(10) Each shelter program must ensure to the best of its ability the physical and emotional safety, security, and confidentiality of clients and the location of the shelter.

(11) The shelter shall maintain a written policy for involuntary exit criteria.

(b) Compliance with 75:30-3-3 shall be determined by a review of policy and procedures, service agreements, on site observation, and/or other supporting documentation.

75:30-3-3. Safe Home for adult victims of sex trafficking [REVOKED]

~~(a) All Safe Home programs shall comply with section 75:30-2-1 and the following:~~

~~(1) The program shall provide confidential housing 24 hours a day, 365 days a year.~~

~~(2) Certified programs for victims of sexual violence as a result of human trafficking that have a formal agreement for a Safe Home shall:~~

~~(A) assure that each Safe Home provides residents with access to minimum necessities including bedding, clothing, articles for grooming and personal hygiene, and food;~~

~~(B) develop and disseminate to Safe Home providers and residents written rules, policies and procedures that include admission and exit criteria including security measures;~~

~~(C) have written procedures for monitoring Safe Homes to ensure that the homes meet standards for cleanliness and safety;~~

~~(D) provide orientation to all clients and require they sign a contract acknowledging they have read and understand the rules of their stay;~~

~~(E) assign an advocate or liaison for clients. This person, or a crisis line staff, shall be available for emergencies and support at all times; and~~

~~(F) provide at least one, 30 minute face to face service contact per week with each Safe Home resident.~~

~~(b) The program shall establish criteria to screen potential Safe Home providers. Screening will include an application with references, an interview, and a site visit. Each Safe Home will be reassessed annually.~~

~~(c) All Safe Homes must be supervised by the certified program who will conduct on site observations at least monthly when clients are in residence.~~

~~(d) The certified program shall have a written agreement with each Safe Home provider that outlines specific responsibilities of both the program and the provider to include expectations and limitations (e.g., no babysitting or individual advocacy) and compliance with confidentiality. The agreement shall clearly state that the program will not be held liable for damage incurred by the Safe Home provider. Both parties will sign the agreement.~~

~~(e) Compliance with 75:30-3-3 shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.~~

75:30-3-4. Transitional living program

(a) All transitional living programs shall comply with 75:30-3-3-1.1, 75:30-3-3.2 and the following:

(1) The program shall maintain homes, apartments, or other residential living environments suitable for survivors of domestic and sexual violence, stalking and their dependents, if applicable, and which provide the reasonable safety and privacy needed by this population. The program shall offer access to necessary furniture and equipment.

(2) The program shall include heating and refrigerated cooling systems to maintain a reasonable comfort level.

(3) Supportive services for residents are available through the twenty-four (24) hour program hotline by trained staff or volunteers.

(4) The program shall assign staff or a volunteer as the advocate or liaison for the clients residing in the transitional living program(s). This person, or a crisis line staff person or volunteer, shall be available for emergencies at all times.

(5) The program shall have a written agreement with each resident that outlines specific responsibilities of both the program and the resident to include expectations, responsibilities, and limitations. The agreement shall be signed by both parties.

(6) The program shall offer weekly support groups for transitional living residents and their children.

(7) The program shall offer at least one 30 minute face to face service contact per week with each transitional living residents and their children.

(b) Compliance with 75:30-3-5 shall be determined by a review of program policy and procedures, client records, onsite observation, written agreements and/or other supporting documentation.

75:30-3-5. Children services

(a) Client records for both residential and non-residential children shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Age

(D) Pertinent medical information,

(E) Mothers name;
(F) Biological father's name:
(G) Mother's abuser (if different from child's biological father)
(2) Custody
(A) Legal custody of the child;
(B) Physical custody of the child;
(C) Does the child have contact with his or her biological father;
(D) Is visitation court ordered with the perpetrator;
(3) Safety, including but not limited to:
(A) History of child abuse or neglect;
(B) Exposure or witnessing violence;
(C) Child's response to witnessing violence;
(D) History of involvement in the child welfare system; including the presence of current child welfare involvement;
(4) Service notes, which shall minimally include:
(A) The date, location, start time, duration and description of services provided delineated by time spent and service code, if applicable, or documentation of referral to other services or case management;

(b) Within five (5) business days of entry into residential services (excluding advocacy or children's activities or crisis intervention), all certified programs shall offer to assess the risk and needs, including culturally specific needs, of the children accompanying primary victims and offer children's services to address the impact of violence and trauma in their lives and to facilitate healing. A risk and needs screening and assessment on each child, when accepted, shall minimally include information on his or her:
(1) Brief trauma screening to assess the impact of trauma;
(2) Developmental history to include speech and language, hearing and visual;
(3) Medical or physical health history;
(4) Social history to include interactions with peers;
(5) History of use of tobacco, alcohol or other drugs;
(6) Parent/guardian custodial status;
(7) Community referral needs.

(c) Services provided to each child shall be culturally sensitive while addressing identified risks and needs and shall minimally include:
(1) safety planning that is appropriate with respect to the child or adolescent's agedevelopment, and education;
(2) a specific safe, protected play area for children;
(3) advocacy with community systems;
(4) referral to community resources for needed services;
(5) linkage and advocacy with the local school system to provide for ongoing educational needs;
(6) parenting support for clients, if applicable; and
(7) Children's groups using age appropriate topics and based on established best practices.

(d) Pursuant to Title 10A O.S. § 1-2-101, any person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the Department of Human Services.

(e) Compliance with this 75:30-3-7 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

75:30-5-2. Client records

(a) A certified program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. No identifying information such as initials, age, year of birth or gender shall be part of the client ~~id~~ ID. That same discreet identifier shall be the client ID that is entered into an OAG approved data base without further encryption.

(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(c) Compliance with ~~75:30-3-2~~75:30-5-2 shall be determined by on-site observation, client records and any other supporting program documentation.

75:30-5-3. Record content - general

(a) Client records for both residential and non-residential clients shall contain, at a minimum, the following information:
(1) Intake and screening information:
(A) Client's name;
(B) Date of initial contact/intake;
(C) Pertinent medical information, including substance abuse;
(D) Emergency contact information, if applicable, and
(E) History/nature of abuse including an evidence-based dangerousness assessment and safety planning, ~~flight risk,~~ screening for medical, mental health and substance abuse, status including eligibility for other services and HHS or ORR certification.
(F) Perpetrator(s) information, if known;
(2) Service notes, which shall minimally include:
(A) The date, location, start time, duration and description of services provided delineated by time spent and service code, if applicable, or documentation of referral to other services or case management;
(B) The signature of staff or volunteer providing the services or referral, and
(3) Service plan focusing on victim safety and, well-being which shall minimally include:
(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff or volunteer, and
(B) Service plans and their updates shall be signed and dated by the client and staff.
(4) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure, and

(C) Client and staff or volunteer dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Compliance with ~~75:30-3-3~~75:30-5-3 shall be determined by a review of program policy and procedures; review of the client records for content, and/or other supporting program documentation.

75:30-5-3.1. Record content - service specific

(a) Client records for specific services shall conform to the following:

(1) Shelter Services:

(A) On a client's entry to the shelter, staff or volunteers shall record the client's name, emergency contact person(s)~~,~~ if applicable, known allergies, and any ~~referral~~referrals for medical or emergency services. This information may be a part of the full intake interview if the full intake is done on entering the shelter. ~~An evidence-based, dangerousness assessment and~~Assessing client's lethality and danger risks and safety planning shall also be done at ~~this time~~the time of the full intake.

(B) Shelter clients shall have the full intake interview and screening completed ~~within days of forty eight (48) hours~~within fourteen (14) days of entry into the shelter.

(C) Service plans shall be ~~completed within five (5) business days of the shelter client's entry to the shelter~~ offered within 30 days of client's entry to the shelter and at the client's discretion.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The service plan shall include safety issues for the client and children.

(F) A daily note.

(2) Crisis Intervention Services:

(A) All face-to-face contacts with active clients are documented and contacts with persons not receiving additional services shall be offered and documented. Documentation shall minimally include the following:

(i) Staff/Volunteer Name and signature;

(ii) Date, time, length, and location of intervention;

(iii) Safety planning based on risk.

(~~iii~~iv) Client's name, age, race, county of residence and contact number if given.

(~~iv~~v) Protective order information, if applicable;

(~~v~~vi) Personnel involved such as police, hospital, etc.;

(~~vi~~vii) Summary of contact including visible injuries treatment and services requested;

(~~vii~~viii) Outcome;

(B) All telephone contacts shall be documented. Documentation shall minimally include the following:

(i) Staff/Volunteer name;

(ii) Date, time and length of call;

(iii) Safety planning based on risk.

(iv) Caller's name and contact number, if given; However, no caller shall be required to give a name, phone number or any other identifying information as a condition to receive information ~~or domestic violence, sexual assault or stalking services~~about human sex trafficking services;

(v) Summary of the call including services needed;

(vi) Outcome; and

(vii) Follow-up services offered if victim safety is not compromised.

(C) Contact information is kept by the ~~crisis intervention~~ program.

(D) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) Counseling, Support and Advocacy Services:

(A) An assessment of the client's needs, including culturally specific needs shall be completed by the third (3rd) counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy or counseling session.

(C) A service plan review and update shall be completed at least every six (6) months.

~~(4) Sexual Assault Services:~~

~~(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.~~

~~(B) Service plans shall be reviewed and updated at least every ninety (90) days.~~

(4) Transitional Living Services:

A service plan including safety issues for the client and dependents shall be developed within five (5) business days of the client moving in.

~~(5) Safe Home Services:~~

~~(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the Safe Home, the Safe Home provider shall record the client's name, emergency contact information, and pertinent medical information.~~

~~(B) Safe Home clients shall receive a full intakeinterview and screening by program staff within twenty four (24) hours of admission or by the first business day following admission.~~

~~(C) A service plan shall be developed within five (5) business days of the client's entry to the Safe Home.~~

~~(D) All records regarding the client shall be retained in the client's record at the sponsoring program.~~

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this ~~75:30-5-3.1~~75:30-5-3.1 shall be determined by a review of client records, policy and procedures, call logs, and/or other supporting documentation.

75:30-5-4. Client confidentiality

(a) Protecting the confidentiality of human sex trafficking victims is critical to protecting their safety and establishing trust. Case or client records, files or notes, of a certified sexual assault program for adult victims of human sex trafficking program shall be confidential and shall only be released under certain prescribed conditions pursuant to Oklahoma law (74 O.S. § 18p-3).

(b) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records. When a client record is established, the program shall discuss the confidentiality requirements and limitations with each client and maintain documentation in the client record that they have reviewed the circumstances under which confidential information may be revealed. Assisting human sex trafficking victims requires the release of confidential information more often, and to more organizations, than when assisting non-trafficked victims. This is particularly true if the victim is seeking certification from HHS or ORR. Staff or volunteers should always obtain the informed, written consent of the victim when relaying confidential information to any person, including law enforcement, federal prosecutors, state attorneys, victim advocates and social services agencies. The written consent forms must be translated into the victim's native language, state the name of the person or organization receiving the information, and contain an expiration date. ~~The person or agency receiving the information should be asked to complete a form that agrees to keep the information confidential, and should screen all referral sources for any potential conflict prior to release of information.~~

(c) The human sex trafficking program must comply with both the state and federal laws that govern confidentiality and any exceptions to those laws.

(1) **State Law.** Case or client records, files or notes, of a human sex trafficking program shall be confidential and shall only be released under certain prescribed conditions (74 O.S. § 18p-3).

(A) The case records, case files, case notes, client records, or similar records of a human sex trafficking program certified by the Attorney General or of any employee or trained volunteer of a program regarding an individual who is residing or has resided in such program or who has otherwise utilized or is utilizing the services of any human sex trafficking program or counselor shall be confidential and shall not be disclosed.

(B) For purposes of this subsection, the term "client records" shall include, but not be limited to, all communications, records, and information regarding clients of human sex trafficking programs.

(C) The case records, case files, or case notes of programs specified in paragraph 1 of this subsection shall be confidential and shall not be disclosed except with the written consent of the individual, or in the case of the individual's death or disability, of the individual's personal representative or other person authorized to sue on the individual's behalf or by court order for good cause shown by the judge in camera.

(2) **Federal Law.**

(A) VAWA- 42 U.S.C. § 13925 (b)(2).Federally, the U.S. Violence Against Women Act January, 2006 mandates that programs that receive VAWA funds may not reveal personally identifying information about victims without "reasonably time-limited," written, and informed consent. Under this provision, VAWA-funded programs are prohibited from disclosing personally identifying victim information to any third party, including to any database operated by any party outside of the domestic violence program. "Reasonably time-limited" is not defined in the statute, but it is determined by the circumstances and the purposes for which the client is requesting the release of information. It could be a few minutes, a few hours, and a few days. In no event should it be for more than 15 days, or 60 at the outside.

(B) FVPSA U.S. Family Violence Prevention and Services Act (FVPSA)each have specific confidentiality protections that apply to many domestic violence and sexual assault programs.(42 U.S.C. 10402(a)(2)(E)).Grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services. subgrantees shall not -

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person (or in the case of an unemancipated minor, the minor and the parent or guardian or in the case of persons with disabilities, the guardian) about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

(C) Housing Assistance Emergency Shelter Grants 42 U.S.C. § 11375 (c)(5).Grant recipients are required to implement procedures to ensure confidentiality of records pertaining to any individual who is provided family violence prevention or treatment services. All

grant recipients must also certify that the address of the family violence shelter will not be made public without permission of the agency.

(D) Stewart B. McKinney Homeless Assistance Act 42 U.S.C.§ 11301. The Violence Against Women Act also specifically added a provision that specifies that a domestic violence program provider shall not disclose any personally identifying information about any client to the Homeless Management Information System (HMIS).

(d) Compliance with ~~75:30-3-4~~75:30-5-4 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.

75:30-5-4.1. Waiver of Confidential Information

(a) For a waiver of confidentiality to be valid, it must:

(1) Be voluntary;

(2) Relate only to the participant or the participant's dependents;

(3) Clearly describe the scope and any limitations of the information to be released;

(4) Include an expiration date; and

(5) Inform the participant that consent can be withdrawn at any time, orally or in writing.

(6) Programs may only share the specific information the client allows in the release. The client gets to choose when, how and what personal information will be shared, or not shared, and with whom.

(7) Even when a court mandate requires the program to disclose or release information about the client, the program may only share the minimum information necessary to meet the statutory or court mandate.

(8) The program/agency shall notify the victim of any disclosure and to continue taking steps to protect the victim's safety and privacy.

(b) A valid written release form for disclosure of client information shall have, at a minimum, the following elements:

(1) the specific name or general designation of the program or person permitted to make the disclosure,

(2) the name and title of the individual within the organization to which disclosure is to be made,

(3) the name of the client whose records are to be released,

(4) the purpose of the disclosure,

(5) a description of the information to be disclosed,

(6) the dated signature of the client or authorized representative or both when required,

(7) a statement of the right of the client to revoke the release in writing and a description of how the client may do so,

(8) an expiration date, event or condition which, if not revoked before, shall ensure the release will last no longer than 90 days reasonably necessary to serve the purpose for which it is given.

(c) "In the event of my death" clause: Some programs have chosen to talk with clients about the lethality of domestic violence and ask if they would like the program to share information with police, prosecutors, the Oklahoma Fatality Review Board, or others the client may indicate in the event that the client dies (due or not due to DV). Because clients may have to sign multiple releases, programs shall have the "in the event of my death" exception on a different form.

(d) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records. When a client record is established, the program shall discuss the confidentiality requirements with each client and maintain documentation in the client record that they have reviewed the circumstances under which confidential information may be revealed.

(e) Compliance with 75:15-5-4.1 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling and review of client records.

75:30-5-5. Physical safety and integrity of client records

(a) Client records shall be maintained in a locked and secure manner. The program shall have written policies and procedures to safeguard the record and information contained in the record against loss, theft, defacement, tampering, or unauthorized access or use.

(b) Compliance with ~~75:30-3-5~~75:30-5-5 shall be determined by a review of the program policy and procedures; on-site review of locking mechanisms and procedures to assure security; and onsite observation of the handling of client records.

75:30-5-6. Client record, handling, retention, and disposal

(a) A program shall have written policy and procedures addressing the storage, retention period, and method of disposal of client records. This policy and procedures shall be compatible with protecting clients' rights against unauthorized confidential information disclosures.

(b) Client records shall be easily retrieved by staff as needed for providing and documenting services.

(c) Compliance with ~~75:30-3-6~~75:30-5-6 shall be determined by a review of the program's policy and procedures, and a review of office and files.

75:30-5-7. Shelter Policy on Medications

(a) The shelter shall seek to afford shelter residents with the greatest possible privacy and autonomy in regard to their medication, while also providing a safe shelter environment.

(1) Staff and volunteers will not store or dispense medication.

(2) The shelter will provide every resident with an individual locking box, locker, or locking cabinet ("locked space") for storage of medications and valuables or lock the clients' medication in a safe but accessible location.

(3) The shelter will not limit or monitor the survivor's access to her medication.

(4) If a client indicates that she needs access to refrigerated storage space, the shelter will provide refrigerated storage space in the manner that provides the greatest possible privacy and autonomy.

(5) The shelter shall have a policy for the disposal of unused or abandoned medication or other substances.

(b) Safety Agreement-During a resident's stay at shelter, the client shall be asked to make sure that any medications she has are safely secured.

(1) The shelter will ask every resident to sign an agreement that she will store any medications in her individual locking box, locker, or locking cabinet provided, or if it is one requiring refrigeration, as otherwise provided. The agreement will provide that residents who have medications that must be taken in the event of a medical emergency may carry them on their person (e.g., in a fanny pack).

(c) Compliance with 75:30-5-7 shall be determined by a review of the program's policy and procedures, and on-site observation.

SUBCHAPTER 7. PHYSICAL ENVIRONMENTS

75:30-7-1. Physical plant, primary role

(a) The primary role of programs is to provide safety; and to protect the confidentiality and privacy of victims of sexual violence as a result of human sex trafficking and their dependent family members. The physical plants of programs shall not be utilized in any manner which fails to guarantee the confidentiality, safety, and protection of the victims, their dependents and staff and volunteers.

~~(b) Facilities that serve both victims of sexual violence as a result of human trafficking as well as domestic victims of domestic violence, sexual assault, stalking and/or batterers in the same facility shall have written procedures to ensure that its services do not jeopardize the safety and psychological well being of sex trafficking victims.~~

(b) Facilities that serve both victims of human sex trafficking as well as domestic violence victims shall have written procedures to ensure that its services do not jeopardize the safety and psychological well-being of either victims.

~~(c) Programs shall obtain written permission from the Office of the Attorney General Victims Services Unit before using any shelter or housing option, for purposes other than housing for victims of sex trafficking.~~

(d) Compliance with 75:30-7-1 shall be determined by a review of program policies and procedures and a tour of the facility.

75:30-7-4. Disaster procedures

(a) There shall be written procedures describing the emergency plans in case of a disaster, whether internal or external, or in case of threat to the safety of any client ~~or staff person~~staff or volunteer. Evacuation routes, inside sheltering sites, and fire extinguisher locations shall be posted.

(b) Fire, tornado, bomb threat and intruder drills shall be conducted annually. The date, time, and type of the drill shall be documented.

(c) Compliance with ~~75-4-4~~75:30-7-4 shall be determined by on-site observation, a review of written procedures, staff interviews, and documentation of drills.

75:30-7-5. Persons with special needs

(a) Pursuant to the Americans with Disabilities Act of 1990, the program shall ensure that persons with disabilities are not excluded from services. Programs are required to integrate a person with a disability into agency services, unless providing separate services is the only way to provide equal opportunities for services. Referrals must be provided when necessary, and the program shall have written procedures for referrals of disabled persons who ~~can not~~cannot be served on-site. Service and companion animals should be allowed in facilities unless the animal poses a direct threat to the health/safety of others. Auxiliary aids/services should be ~~provided~~offered as necessary to ensure effective communication unless doing so would cause an undue burden (i.e., significant difficulty or expense) or fundamental alteration in services. Alterations to existing buildings must be accessible to the maximum extent feasible. All newly constructed facilities must be accessible to persons with disabilities unless it is structurally impractical. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.

(b) Compliance with ~~75:30-7-5~~75:30-7-5 shall be determined by a review of program policy and procedures.

75:30-7-6. Program environment

(a) The program environment shall meet the following conditions:

(1) The facility shall be accessible by an all-weather road.

(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.

(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by clients at between 65°F and 85°F.

(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the clients.

(5) The facility shall have water from an approved tested potable source.

(6) The facility shall have, at minimum, a commode and, lavatory facility. The privacy of individuals shall be assured while using these facilities.

(7) All doors, including those for each closet, bedroom, bathroom, and office, shall be easily opened from both sides.

(8) Smoking shall not be allowed in any indoor portion of any facility.

(9) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.

(10) All facilities shall have emergency back up lighting.

(11) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.

(12) There shall be written policy and procedures addressing the use of any outdoor recreational space including required supervision and child safety.

(13) Toxic materials and dangerous substances, such as toxic cleaners, insecticides, and matches shall be stored in a non-client area, locked space where they are not available to children.

(14) Combustible materials shall be stored in locked non-flammable containers.

(15) The Poison Control Center's toll-free telephone number shall be posted and visible to staff, volunteers and clients at all times.

(16) Baby beds and high chairs that ensure children's safety and comfort shall be available for infants and small children.

(b) Compliance with ~~75:30-4-6~~75:30-7-6 shall be determined by a review of program policy and procedures, staff and client interviews, and on-site observation.

75:30-7-7. Program environment, shelter

(a) All certified shelters shall comply with section 75:30-7-6 and the following:

(1) The facility shall have access to outdoor recreational space and playground equipment located, installed, and maintained as to ensure the safety of the clients and their children. The grounds and access thereto shall be maintained in a manner that shall ensure the area is free of any hazard to health or safety.

(2) Kitchens used for meal preparation in the residential facility shall be provided with the necessary equipment for the preparation, storage, serving, and clean-up of all meals. All equipment shall be maintained in working order.

(3) Provisions shall be made to assist or make food available for meal preparation that accommodates special diets.

(4) The facility shall have, at minimum, a commode, lavatory, and bathing facility at a ratio of one (1) to twelve (12) resident, including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(5) Residents' rooms shall be so arranged that the client has direct access to a hallway or common area without having to pass through other resident's rooms or areas.

(6) There shall be written policy and procedures for laundry and linens, addressing frequency of changing linens, and laundry arrangements within the facility.

(7) Laundry equipment shall be provided within the residential facility, and shall be kept clean, well-maintained, and properly ventilated.

(8) Reasonable space shall be provided for storage of clients' personal belongings.

(9) Written policy and procedures shall address secure storage of client valuables.

(10) Written policy and procedures shall address the secure handling and storage of client medications, including policy to document client access to medication.

(11) The facility shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor doors. However, documentation that the locking system meets state and local fire code inspection shall be accepted. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.

(12) All outdoor openings such as windows shall be covered for privacy.

(13) Provision shall be made for cleaning the facility minimally once per week. A written work schedule or other form of notification shall be posted, which clearly delineates each individual's responsibility for various tasks.

(14) Safe and adequate internal play space for children, including outlet protectors and gated stairwells.

(b) Compliance with ~~75:30-7-7~~75:30-7-7 shall be determined by a review of program policy and procedures; shelter rules, staff and client interviews where appropriate, and on-site observation.

75:30-7-8. Program environment, Safe Home services program [REVOKED]

~~(a) All Safe Home services programs shall comply with section 75:30-7-6(a)(1)-(11) and the following:~~

~~(1) The facility shall have, at minimum, a commode, lavatory, and bathing facility at a ratio of one (1) for every eight (8) persons. The privacy of individuals or families shall be assured while using these facilities.~~

~~(2) Written policy and procedures shall address the secure handling and storage of client medications, including policy to document client access to medication.~~

~~(3) The Safe Home shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor doors which meets state and local fire code inspection. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.~~

~~(4) All outdoor openings such as windows shall be covered for privacy.~~

~~(b) Compliance with 75:30-7-8 shall be determined by a review of program policy and procedures, provider and client interviews where appropriate, and on-site observation.~~

75:30-7-9. Program environment, transitional living services program

(a) All transitional living services programs shall comply with section 75:30-7-6 (a) (1)-(10) and the following:

(1) operable smoke detectors;

(2) 24-hour access to a telephone for emergencies;

(3) secured by double locks or locking devices such as chains, bolts, etc. which meets state and local fire code inspection; and

(4) outdoor openings such as windows shall be covered for privacy.

(5) the facility shall have, at minimum, a commode, lavatory and bathing facility at a ratio of one (1) for every eight (8) persons,including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(b) Compliance with 75:30-7-9 shall be determined by a review of program policy and procedures, provider and client interviews where appropriate, and on-site observation.

SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT

75:30-9-2. Program management, policy and procedures

(a) The agency shall maintain written policy and procedures which describe each program service component, the rules client's are expected to follow for each component, and staff duties. Policies shall include but are not limited to:

(1) Length of stay limitations, if any.

(2) Participation in housekeeping, food preparation or other activities, if applicable.

(3) (Physical punishment of children shall not be allowed.

(b) Clients shall be given a copy of program rules and the provision of such shall be documented in the client record.

(c) The program shall have a written policy of the intent to comply with the Americans with Disabilities Act of 1990.

(d) Compliance with 75:30-9-2 shall be determined by a review of the program's written policy and procedures; rules; client interviews and record documentation.

75:30-9-4. Annual program evaluation

(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan established in policy and procedures to include the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., governing body members, staff, or other persons. The evaluation shall include an assessment to identify special populations of victims of ~~sexual assault, domestic violence and stalking~~ human sex trafficking who are underserved or who have special needs, including culturally specific needs.

(b) Upon completion, this evaluation shall be submitted and reviewed by the governing body, and made available to personnel and volunteers.

(c) Compliance with ~~75:30-5-8~~75:30-9-4 shall be determined by a review of the program evaluation, policy and procedures, staff meeting minutes and/or any other supporting documentation.

75:30-9-5. Critical incidents

(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.

(b) Each critical incident shall be recorded and monitored as follows:

(1) agency name and name and signature of the person(s) reporting the critical incident;

(2) Client ID(s), staff member(s),volunteers and/or property, involved in the critical incident;

(3) the date, time and physical location of the critical incident, if known, and the name of the staff person or volunteer the incident was reported to;

(4) a description of the incident;

(5) severity of each injury, if applicable. Severity shall be indicated as follows:

(A) no off-site medical care required or first aid care administered on-site;

(B) medical care by a physician or nurse or follow-up attention required; or

(C) hospitalization or immediate off-site medical attention was required;

(6) resolution or action taken, date action taken and signature of the agency director or authorized designee;

(c) Critical incidents that shall be reported to the Office of the Attorney General are reported as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax,~~or mail~~mail, including electronic mail, to the Office of the Attorney General Victims Services Unit within forty-eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.

(2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail, including electronic mail to the Office of the Attorney General Victims Services Unit.

(d) Compliance with ~~75:30-5-9~~75:30-9-5 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

SUBCHAPTER 11. PERSONNEL AND VOLUNTEERS

PART 1. PERSONNEL

75:30-11-1. Personnel policies and procedures

(a) The program shall have written policies and procedures governing the conditions of agency employment to include appropriate screening and background inquiries to ensure client safety and confidentiality. Prior to employment and at

least annually, all certified programs are required to conduct a name search of employees against the registries maintained pursuant to the Oklahoma Sex Offenders Registration Act and the Mary Rippy Violent Crime Offenders Registration Act while such persons are working with or serving children.

(b) The agency's policy and procedures shall be accessible to all personnel and each shall be informed of personnel policies and procedures, and any other materials regulating or governing the conditions of their employment.

(c) Written policies and procedures shall ensure personnel are informed of any changes to these ~~a fore~~afore stated materials.

(d) Compliance with ~~75:30-11-1~~75:30-11-1 shall be determined by a review of the program's personnel policies and procedures, interviews with staff, review of staff meeting minutes and/or other supporting documentation.

PART 5. TRAINING

75:30-11-12. Orientation - general, personnel and volunteers

(a) Personnel and volunteers must receive specific training to understand the unique needs of human sex trafficking victims.

(b) A certified program shall provide a minimum of ~~16~~twenty-four (24) hours orientation training that incorporates the use of adult learning techniques (i.e., scenarios, role playing)to familiarize new personnel and volunteers providing direct services with the program which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

~~(7) Interviewing a person staff suspects is a victim of trafficking;~~

~~(8) Interviewing known victims of trafficking;~~

(7) Interviewing victims of human sex trafficking;

(~~9~~8) Hotline calls from trafficking victims and active and empathetic listening techniques;

~~(10) Use of interpreters, and related technology;~~

(~~11~~9) Safety planning for human sex trafficking victims;

~~(12) Relationships with victim's family;~~

(~~13~~10) Dynamics involved in the prosecution of persons who commit human sex trafficking;

~~(14) General familiarity with immigration issues;~~

~~(15) General familiarity with available benefits;~~

(~~16~~11) Staff trauma and self care;

(~~17~~12) Client rights;

(13) Power and control tactics of ~~abuse~~human sex trafficking;

~~(19) Crisis intervention techniques;~~

(~~20~~14) Dynamics and impact of Sexual assault;

(~~21~~15) Dynamics and impact of captivity and human sex trafficking;

~~(22) Parenting and disciplinary techniques;~~

~~(23) Accessing resources needed by victims and their families including how to ensure services and access resources for persons with disabilities;~~

(~~24~~16) Mental health issues related to human sex trafficking;

~~(25) Legal and ethical issues;~~

~~(26) Diversity and cultural sensitivity, and~~

(17) Cultural information about victims coming from the world of human sex trafficking to a "normal" world.

(~~27~~18) Effects of trauma, including ~~post traumatic stress disorder~~Post-traumatic Stress Disorder(PTSD).

(19) Trauma triggers

(20) Coping skills of human sex trafficking victims

(21) Ethical documentation

(22) Sexual abuse within the family (i.e., incest, sibling abuse, marital and domestic relationship rapes);

(23) Sexual assault outside the family (stranger, non-stranger, abuse by professionals, sexual harassment and bullying);

(24) Commercial sexual exploitation (i.e., prostitution, trafficking, pornography, escort services, massage parlors);

(25) Non-traditional client populations (i.e., males, victims of the same gender, bisexual or transgender, non-English speaking, undocumented immigrants, victims with cognitive disabilities, or who are deaf or hard of hearing) or other disability as defined by the Americans with Disabilities Act; and

(26) Other topics to increase skills such as Post-traumatic Stress Disorder (PTSD) as it related to rape trauma, rape trauma syndrome, self injury and alcohol and substance use.

(c) Volunteers providing indirect services are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.

(d) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.

(e) Compliance with ~~75:30-6-20.1~~75:30-11-12shall be determined by a review of the written policies and procedures, and personnel and volunteer training manuals and records.

75:30-11-12.1. In-service and ongoing training for personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, ~~sixteen (16)~~twenty-four (24) hours of annual training of all staff which shall include:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;
(3) First aid kits and fire extinguishers, their location, contents and use;
(4) Universal precautions,
(5) Client rights and;
(6) Legal and ethical issues.
(7) Trauma
(~~7~~8) The remaining hours of annual training shall be related to human sex trafficking and administration as prescribed and approved by the Executive Director.

(b) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to human sex trafficking as prescribed and approved by the Executive Director.

(c) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC 75:30-1-2 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.

(d) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(e) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements upon completion of required annual training set forth in subsection (a) above. A copy of the current certification card issued by the OCADVSA shall be evidence of good standing.

(~~e~~f) Compliance with ~~75:30-20.2~~75:30-11-12.1 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

75:30-11-13. Personnel training, sexual assault services [REVOKED]

~~(a) Prior to providing any direct services, all sexual assault services staff shall receive a minimum of six(6)hours classroom training in addition to basic orientation which shall include but not be limited to:~~

~~(1) Sexual abuse within the family (i.e., incest, sibling abuse, marital and domestic relationship rapes).~~
~~(2) Sexual assault outside the family (i.e., stranger, non stranger, abuse by professionals, sexual harassment and bullying).~~
~~(3) Sexual assault within institutions (i.e., nursing homes, residential facilities, prisons, military)~~
~~(4) Commercial sexual exploitation (i.e., prostitution, trafficking, pornography, escort services, massage parlors.~~
~~(5) Non traditional client populations (i.e., males, victims of same sex, bisexual or transgender, non English speaking,undocumented immigrants, victims with cognitive disabilities or who are deaf or hard of hearing).~~
~~(6) Other topics to increase skills such as post traumatic stress syndrome as it relates to rape trauma, rape trauma syndrome, self-injury and alcohol and drug use.~~

~~(b) Compliance with 75:30-11-13 shall be determined by:~~
~~(1) Review of program's policy and procedures.~~
~~(2) Review of program's training records and other provided documentation of staff training.~~
~~(3) Review of personnel or volunteer records.~~

75:30-11-14. Provider training, Safe Home services [REVOKED]

~~(a) Prior to providing any direct services, all Safe Home providers shall minimally receive ten (10) training hours provided by a staff member of a human trafficking program certified to provide Safe Home services, which shall minimally include:~~

~~(1) the nature and scope of domestic violence and and sex trafficking including its effects on victims and children;~~
~~(2) societal attitudes toward domestic violence and sexual assault;~~
~~(3) orientation in the services, structure, philosophy and history of the sponsoring agency;~~
~~(4) safety planning and disaster plans;~~
~~(5) first aid kit and fire extinguisher use;~~
~~(6) confidentiality, to include verbal confidentiality whether inside or outside the home;~~
~~(7) client rights; and~~
~~(8) universal precautions.~~

~~(b) The program shall have policy and procedures mandating a minimum of four (4) hours annual training for Safe Home providers.~~

~~(c) Compliance with 75:30-6-25 shall be determined by:~~
~~(1) Review of program's policy and procedures.~~
~~(2) Review of program's training records.~~

75:30-11-15. Personnel training, transitional living services

(a) Prior to providing any direct services, all transitional living services personnel shall receive the prescribed orientation in 75:30-11-12.

(b) Compliance with 75:30-11-15 shall be determined by:
(1) Review of program's policy and procedures.
(2) Review of program's training records and other provided documentation of staff or volunteer training.
(3) Review of personnel records.

75:30-11-16. Personnel training, Court Advocates

(a) Prior to providing services, Court Advocates shall receive the prescribed orientation training, and training in the following:
(1) protective orders (i.e., the requirements for obtaining an ex parte emergency protective order and permanent protective order and an understanding of what happens after a protective order is issued);
(2) full faith and credit;
(3) the court process including safety planning during this time; and,
(4) at least three (3) hours of accompanied court time with a trained court advocate that includes observation of

an ex parte emergency protective order hearing and a final protective order hearing.

(b) Compliance with 75:30-11-17 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff or volunteer training.

(3) Review of personnel records.

SUBCHAPTER 13. GOVERNING AUTHORITY

75:30-13-4. Governing authority, orientation

(a) A certified program shall provide a minimum of 2 hours orientation training to members of the governing authority which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Underlying philosophy [OAC 75:30-1-1.1];

(4) Confidentiality, to include verbal confidentiality whether inside or outside of the facility and client records;

(5) Client rights and grievance procedure;

(6) Legal and ethical issues;

(7) ~~Overview of domestic violence, sexual assault, including sexual violence as a result of human trafficking, and stalking~~sexual violence as a result of human sex trafficking;

(8) Open Meeting Act and recording of meeting minutes;

(9) Open Records Act;

(10) Rules, including standards and criteria to ensure multi-cultural needs of clients are met, used in certifying programs;

(11) Role and responsibility of the Executive Director; and

(12) Role and responsibility of the governing authority.

(b) Orientation training shall take place within 90 days of election to the governing authority.

(c) Members of the governing authority providing volunteer direct or indirect services to clients shall receive the prescribed orientation and training required for program personnel in addition to the orientation set forth in this Section.

(d) Compliance with ~~75:30-7-5~~75:30-13-4 shall be determined by a review of written policy and procedures, training materials, training records, and minutes of meetings.

SUBCHAPTER 15. CLIENT RIGHTS, FOR ADULT VICTIMS OF HUMAN SEX TRAFFICKING PROGRAMS

75:30-15-1. Applicability

This Part is applicable to those ~~domestic violence, and sexual assault programs and shelters~~human sex trafficking programs certified by the OAG pursuant to 74 O.S. § 18p-1 et seq.

75:30-15-2. Client rights

(a) Each client shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:

(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each client has the right to a safe, sanitary, and humane living environment.

(3) Each client has the right to a humane psychological environment protecting him or her from harm, abuse, and neglect.

(4) Each client has the right to an environment which provides reasonable privacy, promotes ~~and personal dignity, and provides opportunity for the client to improve her or his functioning~~personal dignity and provides physical and emotional safety.

(5) Each client has the right to receive services suited to her or his needs without regard to his or her race, religion, ~~sex~~ gender, ethnic origin, and age, degree of disability, handicappingcondition, legal status, or ability to pay for the services.

(6) Each client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.

(7) Each client shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.

(9) No client shall be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each client shall have the right to practice his or her own religious beliefs, and be afforded the opportunity for religious worship that does not infringe on the health or safety of others. No client shall be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(11) Each client has the right to be ~~provided with~~offered prompt, competent, appropriate services and an individualized service plan.

(A) The client shall be afforded the opportunity to participate in her or his service plan.

(B) The client may consent, or refuse to consent, to the proposed services.

(12) The records of each client shall be treated as confidential. This confidentiality remains intact even after the client's death.

(13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal

to participate shall not affect the services available to the client.

(14) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(15) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(16) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply. Each client also has the right that all information and records regarding him or her shall be treated as confidential.

(17) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(18) Each client has the right to self-determination and voluntary services.

(b) Each client shall be given a copy of these rights and the provision of such shall be documented in the client record.

(c) Programs shall have written policy and a procedure to ensure each client ~~enjoy~~is afforded, and has explained to him or her, these rights; and these rights shall be ~~are~~ visibly posted in client areas of the facility.

(d) The OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.

(e) Compliance with 75:30-15-2 and applicable federal laws and regulations shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

75:30-15-3. Client grievance policy and procedures

(a) Each program shall have a written client grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client; and, if involved with the client, to family members or significant others;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances shall be seven (7) days unless appealed;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he or she has a right to make a complaint to the OAG Victims Services Unit.

(5) Clients shall be given a copy of the grievance policy including the right to make a complaint to the OAG and the provision of such shall be documented in the client record including the phone number and mailing address of the OAG;

(6) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(7) Annual review of the grievance policy and procedures, with revisions as needed.

(b) Compliance with 75:30-15-3 shall be determined by a review of program policy and procedures, client records, on site observation, written agreements, and/or other program documentation.

[OAR Docket #14-818; filed 7-21-14]

TITLE 75. ATTORNEY GENERAL CHAPTER 35. OKLAHOMA WITNESS PROTECTION PROGRAM

[OAR Docket #14-819]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Oklahoma Witness Protection Program[NEW]
75:35-1-1. Purpose [NEW]
75:35-1-2. Definitions [NEW]
75:35-1-3. Applicability [NEW]
75:35-1-4. Scope of the Program [NEW]
75:35-1-5. Administration and Procedure [NEW]
75:35-1-6. Confidentiality of Program Records [NEW]
75:35-1-7. Required Forms [NEW]
Appendix A. Application [NEW]
Appendix B. Memeorandum of Understanding [NEW]
Appendix C. Receipt [NEW]

AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-10.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014

COMMENT PERIOD:
February 15, 2014 through March 21, 2014

PUBLIC HEARING:
March 21, 2014

ADOPTION:
March 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Title 74 O.S. § 18p-10 authorizes the Attorney General to create and promulgate rules necessary to implement the Oklahoma Witness Protection Program. The Witness Protection Program may be made available to witnesses who are actively aiding in the prosecution of dangerous perpetrators and who are in danger of bodily harm or death by participating in the prosecution. The Attorney General shall administer the Oklahoma Witness Protection Program.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. OKLAHOMA WITNESS PROTECTION PROGRAM

75:35-1-1. Purpose

The rules found in this Chapter are hereby adopted by the Attorney General of Oklahoma to implement the *Oklahoma Witness Protection Plan* pursuant to authority granted by Title 74 O.S. 2012, § 18p-10 (c).

75:35-1-2. Definitions

The following words shall be understood in these rules to have the following meanings:

"Case investigator" representative of the Oklahoma Office of Attorney General through whom contact is maintained with the witness and through whom delivery of Support to the witness is ordinarily made and documented.

"Criminal action"criminal proceedings initiated ursuant to the provisions of Title 22 of the Oklahoma Statutes.

"Dangerous perpetrator"a person who has committed or is committing, or who is alleged to have committed or is alleged to be committing, a criminal act, and who has by present or past conduct allegedly:

(A) killed any person,

(B) arranged with another to kill any person,

(C) expressed or shown a willingness to kill any person,

(D) expressed or shown a willingness to arrange a killing of any person,

(E) inflicted serious bodily harm upon any person,

(F) arranged the infliction of bodily harm upon any person,

(G) expressed or shown a willingness to inflict bodily harm upon any person,

(H) expressed or shown a willingness to inflict bodily harm upon any witness having evidence relevant to the prosecution of a criminal act,

(I) expressed or shown a willingness to inflict bodily harm upon any relative or significant other to any witness having evidence relevant to the prosecution of a criminal act,

(J) closely allied with or associated with a person who is a dangerous perpetrator.

"Government investigator"a duly commissioned Federal, State, County or Municipal law enforcement officer.

"Grand jury"includes both County and Multicounty grand juries empaneled pursuant to the *Oklahoma Constitution* and the Oklahoma Statutes.

"Immediate family"means a spouse, parent, child, stepchild, sibling, grandparent, household member, or legal representative of a witness, except when such person is in custody for an offense or is the dangerous perpetrator regarding whom the witness is actively assisting law enforcement.

"Investigation"the gathering of evidence of criminal activity by either a grand jury or governmental officers or by a combination thereof. Also included are investigative depositions pursuant to 22 O.S.2011, § 258(Second).

"Participant"Witnesses approved pursuant to these rules. Immediate family if approved for participation pursuant to these rules.

"Program"the Oklahoma Witness Protection Program.

"Prosecuting attorney"Either the District Attorney or Assistant District Attorney with venue jurisdiction for the offense under investigation, or a Unit Chief of jurisdiction for the offense under investigation, Office of Attorney General of Oklahoma.

"Prosecution"includes all phases of the investigation, charging, and litigation of a criminal act or acts.

"Support"provision of State funds for certain financial support of participants in the program, including but not limited to:

(A) Temporary living costs including lodging rent and per diem not to exceed the per diem authorized to State employees traveling on State business;

(B) Witness relocation (moving) expenses, including but not limited to the relocation of the person of program participants and the moving and/or storing of personal property of program participants;

(C) Security deposits for residential rental property used by relocated witnesses;

(D) Travel expenses to and from court not to exceed those authorized to State employees traveling on official business;

(E) Other necessary approved temporary expenses related to relocation or transition."

"VSU"the Victims Services Unit of the Oklahoma Office of Attorney General.

"Witness"any natural person having evidence relevant to the prosecution of a criminal act who is actively aiding the prosecution of a dangerous perpetrator by:

(A) providing truthful information regarding criminal activity to a government investigator; or,

(B) being subpoenaed to and/or testifying before a grand jury; or,

(C) being subpoenaed to and/or testifying in any investigative deposition admissible as evidence in a grand jury proceeding; or,

(D) being subpoenaed to and/or testifying in any phase of a criminal action, including all preliminary hearings, motion hearings, and trial proceedings.

"Witness"also includes any such person after the person has given truthful information to a government investigator and/or testified at grand jury, and/or testified in an investigative deposition, and/or testified in proceedings in any phase of a criminal action.

75:35-1-3. Applicability

The rules found in this Chapter shall govern the manner and procedure governing the making of all applications for *Support* by a witness seeking *Support* through the *Program*,

all decisions for granting or denying *Support* thereon, all payments of all *Support* upon approved applications, the duration of *Support* under the *Program* and grounds for termination of a *Participant* from the *Program*; whether initiated through a District Attorney of jurisdiction or through Unit Chief of jurisdiction in the Oklahoma Office of Attorney General.

75:35-1-4. Scope of the Program

The *Program* is only legally authorized to provide certain limited and temporary *Support* services to *Participants*. Physical protection of *Participants* accepted into the *Program* remains a function of local law enforcement.

75:35-1-5. Administration and Procedure

(a) The Programshall be administered pursuant to these Rules by the Victims Services Unit of the Oklahoma Office of Attorney General.

(b) A witness seeking *Support* under the *Program* shall complete an *Application for Support Services* using the approved form, *See* 75:35-1-7.

(c) A witness seeking *Support* under the *Program* shall also approve and attach to the *Application for Support Services* a *Memorandum of Understanding* using the approved form, *See* 75:35-1-7. In the event any immediate family members over the age of eighteen (18) years of age will also be seeking *Support* services in connection to the witness, such persons must also separately approve and sign a *Memorandum of Understanding* that must also be attached to the witness' *Application for Support Services*. All persons making application for Support services shall subscribe the following statement under penalty of perjury: "I am either a citizen of the United States or am a qualified alien under the federal Immigration and Nationality Act, and accordingly I am lawfully present in the United States."

(d) Copies of all approved program forms may be obtained by a witness:

(1) through the Victim Witness Coordinator of the local Office of District Attorney,

(2) through a posting on the website of the Office of Attorney General.

(3) An *Application for Support Services*, upon completion and together with all attachments, shall initially be submitted to and reviewed by the *Prosecuting Attorney* who shall either recommend approval or rejection of the application based upon the facts known to the *Prosecuting Attorney* that have been developed in the investigation for which the applicant is a witness and the suspect/defendant is shown to be a dangerous perpetrator. The *Prosecuting Attorney* shall attach either an investigation report(s) or witness summary factually showing the applicant to be a material witness to an offense involving a dangerous perpetrator. The *Prosecuting Attorney* shall also attach a Triple I criminal background check regarding the applicant witness and any other person seeking support services in connection to the witness.

(4) Upon completion and review by the *Prosecuting Attorney*, all *Applications for Support Services* shall be submitted to the Unit Chief for the *VSU* for processing pursuant to these Rules. The *VSU* shall prepare and attach to the *Application* an itemized calculation of *Support* needed by the witness and/or immediate family.

(5) The award of *Support* under the *Program* is not an entitlement, but may be approved at the discretion of the Attorney General of Oklahoma or the First Assistant Attorney General as based upon need demonstrated in the Application for Support Services together with its attachments and the actual availability of funds. An adult relocated program participant shall ordinarily be expected to promptly establish employment in the place of relocation. Except under extraordinary circumstances approved solely at the discretion of the Office of Attorney General, an adult program participant shall not receive *Support* in either per diem living expenses nor rent for any period more than six (6) months from the date of the approval of an *Application for Support Services*, or until the witness becomes locally employed and capable of self-support, whichever is shorter. Any extension of *Support* beyond this period shall require submission and approval of a new *Application for Support Services*.

(6) Any award of *Support* under the *Program* shall always be conditioned upon the strict compliance by the program participant to all of the requirements set forth in the *Memorandums of Understanding* attached to the participant's *Application for Support Services*, as determined by Office of Attorney General.

(7) All *Support* paid directly to a witness under the *Program* shall ordinarily be in the form of currency that shall ordinarily be delivered in person to the program participant by a case investigator. Alternatively, payments of currency made directly to a witness as *Support* may be delivered through a person approved by the Unit Chief of the *VSU*. Payment of *Support* may also be paid directly to a private provider of services when such payment is determined by the Office of Attorney General to be advisable. Documentation of the payment of *Support* to a program participant shall always be made in the form of a written receipt signed by the program participant in the presence of the case investigator or approved designee who shall also certify thereon the payment's date of delivery, *See* 75:35-1-7.

(8) Prior to trial in the case, and at such other times determined to be necessary, the case investigator shall prepare a report in writing disclosing all *Support* payments made by the Program to the witness by amount, date, and reason for the payment, shall transmit a copy of the report to the prosecuting attorney in the case, and provide a copy thereof to the Unit Chief of the *VSU* of the Office of Attorney General.

(9) Payment for all approved *Support* shall be from available funds deposited to the Attorney General's Evidence Fund, Title 74 O.S. 2012, § 19, or from funds received from any federal grants awarded for the operation

of the *Program*, *See* 74 O.S.Supp. 2012, §18p-10(A). Determination of the availability of funds shall be within the sole judgment of the Attorney General or the First Assistant Attorney General reviewing the application.

(10) In the administration of the *Program*, the Office of Attorney General will not unlawfully discriminate on the basis of race, sex, color, age, religion, creed, political affiliation, disability, or national origin.

75:35-1-6. Confidentiality of Program Records

The purpose of the *Program* is for the State of Oklahoma to provide witness protection services to persons who by reason of actively aiding the State of Oklahoma may be in danger of death or bodily harm, *See* 74 O.S.Supp. 2012, §18p-10(A). The Attorney General hereby finds that open access to records pertaining to the *Program* will defeat the legal purpose for the program by identifying *Program* applicants and/or participants and by providing past or current locations for such persons. Accordingly, all records pertaining to the *Program* including, but not limited to all applications for *Support* under the *Program*, together with all records of any and every kind related thereto, are hereby found and declared to be confidential and privileged from disclosure as trial preparation materials of the State of Oklahoma, *See* 12 O.S.2011, § 3226(B) and exempt from disclosure under the Oklahoma Open Records Act, *See* 51 O.S.2011, § 24a.5(1)(a). *See also*, 51 O.S.2011, § 24A.12, 22 O.S.2011, § 2510, 74 O.S.2011, § 19a, and *Merrill v. Oklahoma Tax Commission*, 831 P.2d 634, 639-640 [holding that State agencies shall make the initial determination whether its records are exempt from Open Records disclosure], and shall be disclosed only as provided in these rules. All *Program* records shall be subject to the regular audit of the State Auditor and Inspector and disclosed to that Office for such purposes as required for the performance of such audits, *See* 74 O.S.2011, § 212; provided auditors and audits shall keep confidential the actual and/or alias identities and locations of all persons applying for and/or receiving *Support* under the *Program*.

75:35-1-7. Required Forms

(a) The *Application for Support Services* shall be upon Form 1 consisting of three (3) pages, a copy of which is appended hereto.

(b) The *Memorandum of Understanding* with a witness or other program participant over the age of eighteen (18) years of age shall be upon Form 2 consisting of one (1) page, a copy of which is also appended hereto.

(c) Receipt for *Support* shall be documented upon Form 3, a copy of which is appended hereto.

APPENDIX A. APPLICATION [NEW]

The Attorney General of the State of Oklahoma
Witness Protection Program

Application for Support Services

(Form 1)

Name
First: _____ Middle Initial: _____ Last: _____

Current Address: _____

Names of all persons also living at the above address, together with relationship to you:

_____

_____

_____

I hereby make application for *Support* services due to my being a witness in an investigation of and/or criminal proceeding regarding _____, a person whom I believe is a dangerous person for one or more of the following reasons based upon my knowledge or belief (check all applicable):

This person:

I. has killed another person,

II. has arranged with another to kill another person,

III. has expressed or has shown a willingness to kill another person,

IV. has expressed or has shown a willingness to arrange a killing of any person,

V. has inflicted serious bodily harm upon another person,

VI. has arranged the infliction of bodily harm upon another person,

VII. has expressed or shown a willingness to inflict bodily harm upon another person,

VIII. has expressed or shown a willingness to inflict bodily harm upon me or my friends or family if I give truthful testimony about what I know about this person,

IX. is closely allied with or associated with another person who is also dangerous for one or more of the above reasons.

I need the following help: Amount

X. money to assist me to move from my current residence. $_____

XI. money to pay a rent deposit for another residence. $_____

XI. money to temporarily assist me to pay rent because I have become unemployed or temporarily cannot go to work at my present job. $_____

XII. money to temporarily assist me to purchase food because I have become unemployed or temporarily cannot go to work at my present job. $_____

XIII. money to temporarily assist me to travel to a new place of residence. $_____

XIV. other needs: (completely describe your other monetary needs caused by your need to relocate. Use reverse side of form as necessary): $_____

APPLICANT'S CERTIFICATION

I believe I am presently in physical danger because I am a witness and that I need to re-locate my residence. I understand that this *Application for Support Services* from the Oklahoma Attorney General Witness Protection Program is only for the purpose of receiving a grant of public money as temporary *Support* services in order to relocate where I presently live and that my physical protection remains a function of local law enforcement and is not guaranteed by acceptance into this assistance program. I understand and agree that if I am accepted as a participant in the Oklahoma Attorney General Witness Protection Program that I will be assigned a case investigator to whom I will always personally provide my current address. I also understand and agree that if I am approved as a *Program* participant, the assigned case investigator or another approved person will personally provide me *Support* payments for which I will always be required to sign written receipt(s). I further understand and agree to conform myself to all of the provisions of the attached *Memorandum of Understanding and Contract* and that immediate termination of all *Support* may occur upon the failure by me or by any of my protected family members to comply with any and all provisions of the *Memorandum of Understanding and Contract.* I also understand and agree that in the event termination of *Support* occurs due to non-compliance with the *Memorandum of Understanding and Contract*, I will return all monies paid to me for *Support* to the Oklahoma Attorney General Witness Protection Program. **I also understand and agree that I will need to promptly seek and obtain employment in my place of relocation because absent extraordinary circumstances all temporary *Support* in the form of per diem living expenses and residential rent will terminate no later than six (6) months from and after the date of my acceptance in the *Program*. I HEREBY MAKE THE FOLLOWING STATEMENTS UNDER PENALTY OF PERJURY: "All information given by me above in this application is true and based upon my personal knowledge, understanding, and belief. All information I have provided to law enforcement is true and based upon my personal knowledge and understanding. I am either a**

citizen of the United States or am a qualified alien under the federal Immigration and Nationality Act, and accordingly I am lawfully present in the United States."

_____ (Signature of Applicant)

Prosecuting Attorney's Review

I am the prosecuting attorney regarding the matter involving the following suspect/defendant _____. This is a person who, based on information available to me, (is / is not) a dangerous perpetrator due to one or more of the criteria set forth above on page 1 of this application. The within applicant has presented this application to me for review and based upon the facts that have been developed in the investigation reported to me as prosecuting attorney I (do / do not) believe this applicant to be a material witness to this matter as illustrated by the attached investigation report(s) or witness summary, and regarding this application for Support services needed for relocation of the witness' current residence:

XIII. I recommend that the witness be provided support services

XIV. I do not recommend that the witness be provided support services

_____
(Signature)

_____
(Title)

Attorney General Action

I hereby find, based up~~on~~ the information provided to me in the within *Application for Support Services*, together with all attachments thereto and public funds available for such purposes:

XV. That needed *Support* as further recommended by the OAG Victims Service Unit in the memorandum attached hereto, is approved.

XVI. That Support is denied.

_____
(Signature)

_____
(Title)

CONFIDENTIAL AND PRIVILEGED – NOT AN OPEN RECORD

APPENDIX B. MEMEORANDUM OF UNDERSTANDING [NEW]

The Attorney General of the State of Oklahoma
Witness Protection Program

Memorandum of Understanding and Contract

(Form 2)

I, _____, as a participant in the Oklahoma Witness Protection
(Print name)
Program, promise and agree to conform my actions according to the following requirements:

(1) I will provide complete and truthful information to all relevant law enforcement officials including but not limited to the staff of the Victim Services Unit of the Office of the Oklahoma Attorney General, as related to official investigations, and if called as a witness I will testify completely and truthfully in all proceedings.

(2) I will not commit any federal, state, or local crime.

(3) I will take all necessary precautions and steps to avoid making known to others my participation in the witness protection program including, but not limited to, immediately ceasing any and all electronic "blogging" together with all participation in any and all electronic social media including but not limited to FaceBook, Twitter, etc.

(4) I will promptly comply with any legal obligations or civil judgments.

(5) I will cooperate with all reasonable requests of officers and employees of the state who are providing protection services.

(6) I will designate another person to act as an agent for the service of process upon me.

(7) I will make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation, and child support.

(8) I will disclose any probation or parole conditions, obligations, or responsibilities to my assigned case investigator.

(9) I will regularly inform my case investigator of my activities and current address and will immediately report any change of address to my case investigator.

(10) I will promptly seek and obtain regular employment in my place of relocation and will promptly notify my assigned investigator concerning any change of status regarding such.

(11) I will comply with such other specific conditions as are appropriate, stated directly and without ambiguity to me, so as to be understandable to a reasonable person.

_____
(Signature)

CONFIDENTIAL AND PRIVILEGED – NOT AN OPEN RECORD

APPENDIX C. RECEIPT [NEW]

The Attorney General of the State of Oklahoma
Witness Protection Program

Receipt
(Form 3)

I, _____, a participant in the OAG Witness Protection Program, do
(print participant's name)
hereby acknowledge that on the ____ day of _____, 20__, I received good and lawful currency in the amount of _____ dollars and _____ cents ($_____) from the person whose name appears below as a grant of temporary Support under the program.

_____
(participant's signature)

I, _____, hereby certify that on the above-stated date I
(print case investigator's or approved designee's name)
provided Support funds pursuant to the OAG Witness Protection Program to the above-named participant in the form of currency in the above-stated amount that the participant counted in my presence and acknowledged was the amount delivered prior to the participant signing this receipt in my presence.

_____
(case investigator's or approved designee's signature)

[OAR Docket #14-819; filed 7-21-14]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 1. ADMINISTRATIVE OPERATIONS [REVOKED]

[OAR Docket #14-747]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 1. Administrative Operations [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1361 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 87, as the Oklahoma State Employees Benefits Council has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

87:1-1-1. Purpose [REVOKED]

~~(a) The purpose of this Chapter is to establish policies, procedures and standards that apply to the State Employees Benefits Council (Council).~~

~~(b) The State Employees Benefits Council is created to implement provisions of the Oklahoma State Employees Benefits Act. The Council is responsible for the general administration and for the proper design, selection and operation of the benefits offered under the Flexible Benefits Plan.~~

87:1-1-2. Authority [REVOKED]

~~The authority for the rules in this Title is the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq. The rules in this Chapter are promulgated by the Council to establish the Council's organization and its administration policies and procedures.~~

87:1-1-3.1. Definitions [REVOKED]

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

~~**"Act"** means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.~~

~~**"Board"** means the Oklahoma State and Education Employees Group Insurance Board.~~

~~**"Council"** means the Oklahoma State Employees Benefits Council.~~

~~**"Director"** means the Executive Director of the Council.~~

~~**"Flexible Benefits Plan"** means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.~~

~~**"Rules"** mean the Rules of the Council.~~

87:1-1-4. Computation of time [REVOKED]

~~To compute any period of time prescribed or allowed by this Chapter, the day of the act or event from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, legal holiday, or other day when the Council's offices are not open for business until 4:30 p.m. In such case the period shall run through the end of the next day the offices are open until at least 4:30 p.m.~~

SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION [REVOKED]

87:1-3-1. Organization and meetings [REVOKED]

~~(a) The Council consists of five (5) members. Section 1364 of Title 74 of the Oklahoma Statutes provides for their appointment and service.~~

~~(b) The officers of the Council are the Chairperson, the Vice-Chairperson and the Secretary. The Council shall elect officers each year at its July regular meeting. An officer shall serve until replaced.~~

~~(c) The Chairperson shall preside over meetings and perform other duties as required by the Council. In the Chairperson's absence, the Vice-Chairperson shall assume the Chairperson's duties. In the absence of the Chairperson and the Vice-Chairperson, the Secretary shall assume the Chairperson's duties.~~

~~(d) Upon written notice by the Chairperson or by agreement of three members, a special meeting may be called. Notice of special meetings shall be delivered to all members not less than seven days prior to the date of the meeting. Lack of this notice may be waived by each member.~~

~~(e) A quorum of the Council is three members. A quorum must be present for the Council to conduct any business. Any action or decision of the Council requires an affirmative vote by at least three members of the Council.~~

~~(f) All meetings of the Council shall be conducted in accordance with the Open Meetings Act, Sections 301 through 314 of Title 25 of the Oklahoma Statutes.~~

~~(g) The Executive Director shall preserve all records of the Council.~~

87:1-3-2. Subcommittees and committees [REVOKED]

~~The Chairperson may appoint subcommittees and committees to gather information for the Council and perform other tasks useful to the Council.~~

87:1-3-3. Cancellation of meetings [REVOKED]

~~The Chairperson shall have the power to cancel or reschedule any regular or special meeting of the Council due to anticipated lack of quorum, inclement weather or other emergency. The cancellation notice shall be posted as soon as reasonably possible and in the same manner as the agenda.~~

87:1-3-4. Minutes of the Council [REVOKED]

~~The Council shall cause a summary to be made of all proceedings. The summary shall be a record of members present and absent, all matters considered, all actions taken, and the vote of each member on every motion. The summary shall be a public record as prescribed in this chapter.~~

87:1-3-5. Executive Director [REVOKED]

~~The Executive Director is the chief administrative officer and appointing authority of the State Employees Benefits Council. The Council appoints the Executive Director. The Executive Director determines the internal organization of the State Employees Benefits Council and employs staff to assist in carrying out the duties of the Executive Director and the Council.~~

87:1-3-8. Requests for declaratory ruling [REVOKED]

~~(a) Any person may petition the Council for a declaratory ruling as to the applicability of any rule of this Chapter or any order of the Council. A request for a declaratory ruling must include the following information:~~

~~(1) Name and address of the person making the request;~~

~~(2) Name and address of the organization the person represents, if applicable;~~

~~(3) A description of the problem or issue which made it necessary to request a declaratory ruling; and~~

~~(4) The numbers and headings of the rule or the order on which the declaratory ruling is sought.~~

~~(b) The Council may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within fifteen (15) days.~~

~~(c) The Council shall consider each submitted petition, and the Council shall either deny the petition or issue a declaratory order on the issues contained in the petition within 60 days after receiving the petition. If the Council issues a denial of the petition, the denial shall state the Council's reasons for the denial.~~

87:1-3-9. Requests for rulemaking [REVOKED]

~~(a) Any person may petition the Council for adoption, amendment, or repeal of any rule of the Council. Such petition must be in writing and must include the following information:~~

~~(1) The name and address of the person requesting the adoption, amendment or repeal of the rule;~~

~~(2) Name and address of the organization the person represents, if applicable;~~

~~(3) Any numbers and headings of an existing rule if the request is to amend or repeal an existing rule;~~

~~(4) The proposed language if the request is to amend an existing rule or to adopt a new rule;~~

~~(5) The circumstances which created the need for action; and~~

~~(6) The intended effect of the action.~~

~~(b) If the Council does not begin rulemaking procedures within sixty (60) days after the date the Council receives a request, the request shall be considered denied.~~

87:1-3-10. Rulemaking [REVOKED]

~~The Council shall follow the rulemaking procedures and provisions of Article I of the Administrative Procedures Act, Sections 250.2 through 257 and 301 through 308.2 of Title 75 of the Oklahoma Statutes.~~

87:1-3-11. Administrative fees [REVOKED]

~~The Council shall assess and collect reasonable fees from the Board, contracted health maintenance organizations and insurance vendors to offset its costs of administration. The Council may determine administrative fees based upon its administrative costs, benefit type, activity volume, required supervision or other reasonable factors.~~

87:1-3-12. Location for information and for filing [REVOKED]

~~(a) Any person may obtain information from, make submission to, or make a request of the Employees Benefits Council by writing to: Employees Benefits Council, First National Center, 120 North Robinson Avenue, Suite 1100, Oklahoma City, Oklahoma 73102.~~

~~(b) Written submissions and requests may be submitted in person between the hours of 8:00 a.m. and 4:45 p.m., Monday through Friday.~~

~~(c) The date on which papers are actually received at the Council will be recorded as the date of filing.~~

87:1-3-13. Documents and records [REVOKED]

~~(a) Documents filed with or presented to the Council will be retained in the files of the Council for the length of time required by state laws. Documents will be disposed of in a manner consistent with the Records Management Act, Section 201 through 216 of Title 67 of the Oklahoma statutes, and Sections 564 through 576 of Title 74 of the Oklahoma Statutes, which pertain to archive and records. The records disposition schedule for Council will be available for public inspection.~~

~~(b) The Council shall act at all times in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S. 1991, §§ 24A.1, et seq., as amended.~~

~~(c) The public may obtain information relative to the operation of the Council by submitting a written request in the prescribed form to the Executive Director or his/her designee. All records shall be available for inspection and copying during normal business hours. The Executive Director, or his/her designee, shall be available during normal business hours to receive and, where appropriate, act upon requests for record review and copying.~~

~~(d) All records of Council shall be public unless protected by a mandatory or permissive privilege of confidentiality. In the event a request is made for the release of records subject to a permissive privilege of confidentiality, the Executive Director shall determine whether or not disclosure is made.~~

~~(e) Provisions for copying and search fees are contained in the statute, with these exceptions being noted: no copy fee is charged to other public entities, to applicants, state employees or their representatives, or former employees seeking information from their file or employment records; and no search fee is charged to news media, schools, authors, or "taxpayers seeking to determine whether those entrusted with the affairs of its government are honestly, faithfully, and competently performing their duties as public servants." The fees listed in (1) (4) of this Subsection may stand alone or be charged in combination. For example, a person may be charged a search fee in addition to a fee for photocopying.~~

~~(1) **Fees for photocopying.** The Council has established a fee schedule for photocopying documents having the dimension of 8.5 × 14.0 inches or smaller:~~

~~(A) 25 cents per page;~~

~~(B) One dollar ($1.00) per copied page for a certified copy.~~

~~(2) **Fees for search.** Requests that are for a commercial purpose or clearly would cause excessive disruption of office function will be charged a search fee equal to the hourly rate of the designated Document Manager for each hour of staff time spent in the search.~~

~~(3) **Fees for other types of reproduction.** Requests for computer runs, microfilming or reproduction other than photocopying, will be charged at cost to the Council of duplicating the information involved. Such requests are to be forwarded to the State Office where the fee will be developed with the appropriate division.~~

~~(4) **Payment of fees.** All fees are paid prior to delivering the copies, and if the request is for search only, the fee is paid before the person is allowed to review the material. All fees are paid by check or money order; cash is not accepted. The fee payment is transmitted to the Employees benefits Council, Attention Accounting Division. In addition, a receipt is to be given upon payment. A copy of the manual material is maintained to explain the fee schedule to interested persons.~~

87:1-3-14. Benefits Coordinators [REVOKED]

~~(a) Each participating employer shall designate at least one person as a Benefits Coordinator to serve as a representative between the Council and the participating employer. Each participating employer shall communicate its Benefits Coordinator designation to the Council in writing.~~

~~(b) A Benefits Coordinator shall be responsible for assisting the Council in handling employee enrollment and changes in the flexible benefits plans offered by the Council. A Benefits Coordinator shall be responsible for ensuring that each participant is notified of and has an opportunity to receive flexible benefit plan enrollment materials from the Council, materials from the vendors identified in Chapter 20 of this title, and other notifications from the Council.~~

~~(c) A Benefits Coordinator shall keep participant enrollment information confidential.~~

SUBCHAPTER 5. FORMAL AND INFORMAL PROCEDURES [REVOKED]

87:1-5-1. Purpose [REVOKED]

~~The rules in this Subchapter describe general formal procedures the Council uses to take action and make decisions.~~

87:1-5-2. Council may take action [REVOKED]

~~The Council may take any action which is consistent with the rules in this Title to carry out the duties of the Council and accomplish the objectives of any program within its authority.~~

87:1-5-5. General complaints [REVOKED]

~~(a) Anyone may complain to the Council about any matter under its authority. A complaint shall be in writing and shall include the following information:~~

~~(1) The name, address and telephone number of the person making the complaint;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person filingthe complaint;~~

~~(4) A brief, clear description of each charge, problem or issue that is the basis for the complaint including names, dates, places and actions;~~

~~(5) The numbers and headings of the laws and rules that may apply;~~

~~(6) The remedy, if any, the person making the complaint seeks;~~

~~(7) The signature of the person making the complaint; and~~

~~(8) The date.~~

~~(b) If the complaint concerns a matter that has already been resolved by the Council, the Council will notify the complainant of the resolution by including a copy of any document that demonstrates resolution of the matter. If the matter is outside the authority of the Council, the Council will notify the complainant in writing that the complaint is outside the scope of the Council's authority.~~

~~(c) The Council may provide others with written notice of the complaint and give them an opportunity to respond in writing within fifteen (15) days. The response must contain all of the following information:~~

~~(1) The name, address, and telephone number of the person responding;~~

~~(2) The name, address, and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person responding;~~

~~(4) A specific admission, denial or explanation of each charge;~~

~~(5) A brief, clear description of the facts including names, dates, places and actions;~~

~~(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;~~

~~(7) The numbers and headings of the laws and rules that may apply;~~

~~(8) The signature of the person responding; and~~

~~(9) The date.~~

~~(d) The Council or the Executive Director may refer complaints to informal procedures, such as telephone calls, letters, meeting, mediation, investigations or other appropriate procedures.~~

~~(e) Unless the Council or Executive Director determines individual proceedings are necessary, none shall be conducted.~~

~~(f) Unless the Council requires more time, the Council shall make a decision about a complaint within ninety (90) days after its receipt. If more than ninety (90) days is required to resolve a complaint, the Executive Director shall notify the person filing the complaint and persons filing any responses to the complaint.~~

87:1-5-9. Forms [REVOKED]

~~The Council shall create forms as necessary to implement the provisions of this subchapter. The Council shall accept written requests for hearings that are in substantial compliance with the forms.~~

87:1-5-10. Claims Procedure [REVOKED]

~~(a) The Board has written rules in Title 360 of the Oklahoma Administrative Code which define the Board's benefits and grievance procedure;~~

~~(1) OAC 360:10-1, Employees Health, Life, and Dental Plans;~~

~~(2) OAC 360:15-1, The Disability Program; and~~

~~(3) OAC 360:1-5, Hearings Procedures.~~

~~(b) Participants covered by the plans of the Board shall use the Board's grievance procedure.~~

~~(c) The Council may contract with one or more health maintenance organizations, insurance companies, or other agencies to provide benefits to a participant. If a benefit plan provides for a specific grievance process, the procedure for that benefit plan shall be used.~~

~~(d) The Council shall make the final determination as to whether provider plans are being administered consistently with the provisions of the Council's Basic Plan or as otherwise contracted. Upon its determination that any benefit provider is not satisfying the requirements of the Basic Plan or the terms of its contract, the Council may order corrective action as needed.~~

~~(e) The Council shall only have authority to determine the rights of any participant or beneficiary in a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option.~~

~~(f) If any claim for benefits under a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option is wholly or partially denied, the claimant shall be given notice in writing no later than forty-five (45) days after the claim is filed. The notice shall include the following information:~~

~~(1) The specific reason for the denial;~~

~~(2) Specific reference to the provisions used as the basis for the denial;~~

~~(3) A description of any additional materials or information necessary for the claimant to perfect the claim and an explanation why such material or information is necessary;~~

~~(4) An explanation that a full and fair review of the decision denying the claim may be requested in writing within ninety (90) days and with whom such request shall be filed; and~~

~~(5) If such request is filed, the claimant or authorized representative may review pertinent documents and submit issues and comments in writing anytime during the ninety (90) days after notice of denial but before filing the request for hearing.~~

~~(g) The request for a review of a denial of a claim for benefits under a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option shall be mailed or delivered to the Executive Director at the address given in subchapter 3 of this chapter.~~

~~(h) The Council may contract with a claims administrator to process participant claims against health care spending accounts and dependent care spending accounts. The Council and its claims administrator, if any, shall process claims according to subsection (f) of this section.~~

~~(i) All hearings for review of the Council or its hearing examiner conducted under this section shall be conducted no later than sixty (60) days after the Council receives a request for a hearing. Upon notice of special circumstances by any party, the Council may postpone the hearing but the hearing must be conducted within 120 days of the request for hearing.~~

87:1-5-12. Notice of hearing [REVOKED]

~~Upon the receipt of a Request for Hearing form, the Executive Director shall assign a case number and the Executive Director shall notify the claims administrator by mail. The employee shall be notified of the hearing date by first class mail. A copy of all rules pertinent to the hearing shall be forwarded with the notice along with a statement of claimant's rights and the basis for denial.~~

87:1-5-13. Individual proceedings [REVOKED]

~~(a) The Council follows the provisions of Article II of the Administrative Procedures Act, Sections 309 through 323 of Title 75 of the Oklahoma Statutes, and this Chapter. The Council or a person named as the Hearing Examiner shall conduct hearings. This section does not apply to public hearings to receive comments on proposed rules or to the Council's selection of contractors or benefit providers.~~

~~(b) The Executive Director shall set the date for the hearing and shall send notice of the hearing to all parties.~~

~~(c) All hearings shall be held before the Council or a Hearing Examiner designated by the Executive Director. The Executive Director may set cases for original hearing by the Council upon his determination of special policy considerations for the Council. The Council may agree to hear any part or all of the matter or direct any part or all of the matter to the Hearing Examiner for a hearing.~~

~~(d) Rulings on admissibility of evidence shall be made by the Council Chairperson or Hearing Examiner. The remaining quorum of the Council may overrule the Chairperson's decision on their own motion or upon motion of any party to the hearing. Formal rules of evidence shall not be used. The agency may admit and give effect to documents, testimony, and other evidence which tend to prove or disprove facts as commonly accepted.~~

~~(e) The Chairperson or Hearing Examiner shall have the authority to administer oaths; and the Executive Director or designated Hearing Examiner for the Council shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects. These subpoenas may be served by any duly qualified officer of the law, any employee of the Council, or other person in any manner prescribed for the service of a subpoena in a civil action.~~

~~(f) All hearings shall be electronically recorded by the presiding officer. Any party may obtain a copy of the recording under OAC 87:1-3-7.~~

~~(g) Any party may request a full stenographic record of the proceedings be made by a certified court reporter. The party requesting the court reporter shall be required to post an appropriate cash deposit and shall remain responsible for the full cost of the court reporter. If transcribed, this record shall be a part of the Council's record of the hearing. A copy of the record shall be furnished to any other party having a direct interest in the hearing at the expense of the party requesting the copy.~~

~~(h) In all hearings, opportunity to respond and present evidence and argument on all issues involved shall be provided to all requesting parties. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments, subject to reasonable time limits set by the Council or the Hearing Examiner.~~

87:1-5-14. Representation [REVOKED]

~~In an individual proceeding, any party has the right to have an attorney who is licensed to practice law by the Oklahoma Supreme Court. The attorney shall be given authority to act for and bind the party he or she represents. If a party names an attorney, the Council or Executive Director shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.~~

87:1-5-15. Prehearing conference [REVOKED]

~~A pre-hearing conference shall be held two (2) weeks prior to the hearing date. At the pre-hearing conference each party shall:~~

~~(1) Exchange witness and exhibit lists;~~
~~(2) Agree to a date for discovery cut off;~~
~~(3) Submit a short written statement of facts; and~~
~~(4) Agree as to the issues to be tried at the hearing.~~

87:1-5-16. Informal disposition [REVOKED]

~~Unless precluded by law, informal disposition may be made of any individual proceeding or other hearing, agreed settlement, consent order, or default. Other authorized representatives may request a full and fair review of decisions denying claims and may review documents and submit comments in writing within ninety (90) days after notice of denial.~~

87:1-5-17. Certificate of mailing [REVOKED]

~~All filings, including orders, notices and briefs, shall include a certificate of mailing showing the names and mailing addresses of adverse parties, their attorneys of record, or other authorized representatives.~~

87:1-5-18. Final order [REVOKED]

~~(a) The Council or designated Hearing Examiner shall enter an order in all cases heard. The order shall separately state in writing all findings of fact, conclusions of law and an order denying or approving the claim. The order of the Council shall be the final order of the agency. The order of the Hearing Examiner shall be the final order upon the expiration of ten (10) calendar days unless the Executive Director orders the matter for further hearing by the Council. If ordered by the Executive Director, the Hearing Examiner's order shall be reviewed by the Council as a proposed order. Upon review of the evidence, pleadings and record, the Council may approve or modify the proposed order of the Hearing Examiner. If approved, the proposed or modified order shall become the final order of the agency. The Council may hear oral arguments during its review as it determines to be useful or necessary. The Council may limit the time of the oral arguments.~~

~~(b) The final order shall be considered a final decision of the Council. The Executive Director shall mark all final orders and shall provide certification of the disposition of the final orders.~~

87:1-5-19. Rehearings [REVOKED]

~~(a) A final order of the agency shall be subject to rehearing, reopening or reconsideration by the Council. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final order of the agency within ten (10) days from the date of entry of the order. The aggrieved party shall set forth clearly in writing all grounds for rehearing, reopening or reconsideration. The grounds for such action shall include only:~~

~~(1) Newly discovered or newly available evidence relevant to the issues;~~

~~(2) Need for additional evidence to adequately develop the facts essential to proper decision;~~

~~(3) Probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;~~

~~(4) Need for further consideration of the issues and the evidence in the public interest; or~~

~~(5) A showing that the issues not previously considered ought to be examined in order to properly dispose of the matter.~~

~~(b) The order of the Council granting rehearing, reconsideration or review, or the petition of a party therefore, shall set forth the grounds which justify such action.~~

~~(c) On reconsideration, reopening, or rehearing, the matter may be heard by the Council or it may be referred to a hearing examiner. The hearing shall be confined to those: grounds upon which the reconsideration, reopening, or rehearing was ordered.~~

87:1-5-20. Judicial review [REVOKED]

~~Any party to the hearing may have the right to appeal to District Court from final orders entered pursuant to the Administrative Procedures Act, Title 75, Section 318, of the Oklahoma Statutes.~~

[OAR Docket #14-747; filed 7-18-14]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 10. FLEXIBLE BENEFITS PLAN [REVOKED]

[OAR Docket #14-748]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. Flexible Benefits Plan [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1361 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 87, as the Oklahoma State Employees Benefits Council has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

87:10-1-1. Purpose [REVOKED]

~~(a) The purpose of this Chapter is to establish the State Employees Flexible Benefits Plan pursuant to Section 1361 et seq. of Title 74 and Article I of the Administration Procedures Act, Sections 250.3 through 308.2 of Title 75 of the Oklahoma Statutes.~~

~~(b) The Flexible Benefits Plan shall incorporate all the Benefit Plans adopted by the Plan Administrator including a cafeteria plan as defined in the Internal Revenue Code Section 125. The cafeteria plan is intended to provide benefits for election by participants as described in this Title and is intended to be a qualified plan under Section 125(d) of the Internal Revenue Code. This cafeteria plan is intended to continue as long as it qualifies under Section 125 and is advantageous to the state and state employees. The individual selections available under the cafeteria plan consist only of a choice between certain statutory taxable and nontaxable benefits as defined in Section 125(f) of the Internal Revenue Code and regulations promulgated thereunder. The Flexible Benefits Plan may also include other Benefit Plans ineligible for inclusion under Section 125 but adopted by the Plan Administrator to be offered to state employees.~~

87:10-1-1.1. Authority [REVOKED]

~~The authority for the rules in this Title is the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq. The rules in this Chapter are promulgated by the Plan Administrator to establish the Flexible Benefits Plan for the State of Oklahoma.~~

87:10-1-2. Definitions [REVOKED]

~~The following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise, and wherever appropriate, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other gender.~~

~~**"Account"** means a record-keeping account established on the books of the Plan Administrator.~~

~~**"Act"** means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.~~

~~**"Authorized Submission Procedure"** means an acceptable method of submitting enrollment and/or change documents which may include submission via electronic transmissions to the Plan Administrator.~~

~~**"Board"** means the Oklahoma State and Education Employees Group Insurance Board.~~

~~**"Cafeteria plan"** means an employer maintained benefit plan under which participants are employees and the participants may choose between cash and nontaxable benefits, as defined in Internal Revenue Code Section 125(d) and regulations promulgated thereunder.~~

~~**"Change in Status"** means a change that a participant may be allowed to make during a Plan Year provided that the change is based on prevailing IRS guidance, is allowed by the Plan Administrator, and complies with all eligibility rules and consistency requirements.~~

~~**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985 as it applies to an employee's right to continue certain coverage under the Flexible Benefits Plan.~~

~~**"Dependent"** means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried or married natural born child, a step child, an adopted child, or a foster child up to the child's twenty-sixth [26th] birthday, regardless of residence, or a child under legal guardianship. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S.Supp.2006, §1303(13)].~~

~~**"Effective date of the plan"** means January 1, 1990 or as restated.~~

~~**"Employer"** or **"Employing agency"** has the same meaning as "Participating employer" as defined in Section 1363(14) of Title 74.~~

~~**"Enrollment period"** means the period of time, as determined and announced by the Plan Administrator each Plan Year during which eligible employees shall make an election of benefits. The period of time shall end no later than thirty (30) days before the beginning of the Plan Year for which the elections are to be effective.~~

~~**"Entry date"** means the first day of the Plan Year except for an employee who first satisfies the requirements for eligibility during the Plan Year (including rehired employees), in which case the entry date shall be the first day of the month next following the satisfaction of the application requirements for eligibility, in accordance with 87:10-3-1.~~

~~**"FMLA"** means the Family and Medical Leave Act of 1993.~~

~~**"Flexible Benefits Plan"** means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.~~

~~**"Flexible Benefits Plan Rules"** means the rules promulgated by the Plan Administrator to implement and administer the State Employees Flexible Benefits Plan.~~

~~**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996.~~

~~**"Internal Revenue Code"** means the Internal Revenue Code of 1986 of the United States, 26 USC, I et seq. as amended from time to time.~~

~~**"Irrevocability Rule"** means the rule that requires an enrollment election in any Plan benefit to remain in force throughout the entire Plan Year.~~

~~**"Period of coverage"** means the Plan Year during which coverage of benefits under the Flexible Benefits Plan is available to a participant. An employee who becomes eligible to participate during a Plan Year may participate for a period lasting until the end of that Plan Year. In this case, the interval commencing on the employee's entry date, and ending as of the last day of eligibility, for that Plan Year.~~

~~**"Permitted Exception"** means an exception allowed to the Irrevocability Rule by the Plan. Any changes based on these exceptions must be on account of and correspond with the underlying event.~~

~~**"Plan Administrator"** means the Oklahoma State Employees Benefits Council.~~

~~**"QMCSO"** means a Qualified Medical Child Support Order.~~

~~**"Statutory nontaxable benefit"** means a benefit provided to a participant under the Flexible Benefits Plan, the value of which is not included in the participant's gross income by a specific provision in the Internal Revenue Code and is permissible under the Flexible Benefits Plan in accordance with Section 125 of the Internal Revenue Code.~~

~~**"USERRA"** refers to the Uniformed Services Employment and Reemployment Rights Act of 1994.~~

SUBCHAPTER 3. FLEXIBLE BENEFITS PLAN PROVISIONS [REVOKED]

87:10-3-1. Adoption of the Flexible Benefits Plan [REVOKED]

~~(a) Each year the Plan Administrator shall adopt the Flexible Benefits Plan, including the basic plan and other benefit plans to be made available for election by state employees.~~

~~(b) Each year the Plan Administrator shall adopt, prior to January 1, an authorized procedure appropriate to and/or electronic web enrollment transmissions, restrictions and procedures regarding the effectively administer the Flexible Benefits Plan during the year. This procedure may include, but is not limited to, enrollment forms elections of various benefit plans and levels of coverage, eligibility requirements, and information collection and retention procedures.~~

87:10-3-2. Benefit plans offered as part of the Flexible Benefits Plan [REVOKED]

~~(a) The basic plan shall be the minimum level of benefits an employee is required to purchase and shall include the basic medical plan, the basic dental plan, the basic life plan, and the basic disability plan as referenced in 74 O.S.Supp.2006, § 1371 unless an employee opts not to choose any benefits pursuant to 74 O.S.Supp.2007, § 1370(A). The Plan Administrator shall establish all the terms, conditions, and details necessary to communicate and administer these plans. The Board shall offer the basic medical plan of benefits as an indemnity plan. All benefits plans, whether offered by the Board, a health maintenance organization or others shall at least meet the minimum requirements of the basic plan. The Plan Administrator shall evaluate all benefit plans to determine if this requirement has been satisfied.~~

~~(b) Only those benefit plans officially offered by the Plan Administrator shall be considered a part of the Flexible Benefits Plan. In addition to the basic plan the Plan Administrator may elect to offer other optional benefit plans. The Plan Administrator shall evaluate and select optional plans for inclusion in the Flexible Benefits Plan.~~

~~(c) Each year the Plan Administrator shall contract with each insurance provider other than the Board. In lieu of a contract, the Plan Administrator shall deliver a letter of understanding each year to the Board outlining the basic plan to allow the Board to administer the Board's offered benefit plans adopted as part of the basic plan. The Board shall provide the Plan Administrator a complete description of any enhanced benefit plans the Board elects to offer. The Plan Administrator shall determine that these elected plans meet the minimum benefit levels of the basic plan. All insurance providers shall provide claims and other financial information as the Plan Administrator may require.~~

87:10-3-3. Applicability of the Flexible Benefits Plan [REVOKED]

~~The Flexible Benefits Plan shall be applicable to all employers as defined in the Act.~~

87:10-3-4. Flexible Benefits Plan not a contract of employment [REVOKED]

~~Nothing contained in the Flexible Benefits Plan shall be construed as a contract of employment between the employer and any employee or participant, or as a right of any employee or participant to be continued in the employment of the employer, or as a limitation of the right of the employer to discharge any employee or participant with or without cause.~~

87:10-3-5. No rights to employer's Plan assets [REVOKED]

~~No employee, participant, dependent, or beneficiary of an employee or participant, nor their heirs, successors, or assignees shall have any right to, or interest in any assets of the employer, the Plan, the Plan Administrator, the Council or the employees, agents, representatives, or designees of same upon termination of a participant's employment or otherwise, except as provided under the Flexible Benefits Plan, and then only to the extent of the benefits payable under the Flexible Benefits Plan to such employee, participant, dependent, or beneficiary.~~

87:10-3-6. Non-alienation of benefits [REVOKED]

~~Benefits payable under the Flexible Benefits Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the employee, prior to actually being received by the person entitled to the benefit under the terms of the Flexible Benefits Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable pursuant to the Flexible Benefits Plan, shall be void. The employer or the Plan Administrator shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits as provided in this Chapter.~~

SUBCHAPTER 5. FLEXIBLE BENEFITS PLAN [REVOKED]

87:10-5-1. Plan Administrator [REVOKED]

~~The Plan Administrator shall name an Executive Director to carry out its duties in the administration of the Flexible Benefits Plan.~~

87:10-5-2. Records and reports of the Plan Administrator [REVOKED]

~~The Plan Administrator shall keep written records as necessary or proper.~~

87:10-5-3. Administrative powers and duties [REVOKED]

~~(a) The Plan Administrator may contract with private firms or organizations to administer the State Employees Flexible Benefits Plan. The contract(s) for the administration of the Flexible Benefits Plan may include the development of benefit standards and options, and may involve design, development, communications and administrative functions relating to the Oklahoma State Employees Benefits Act.~~

~~(b) The Plan Administrator establishes procedures as necessary for implementation and administration of the Flexible Benefits Plan.~~

~~(c) The Plan Administrator shall file or cause to be filed all annual reports, returns, schedules, descriptions, financial statements, and other information as may be required by any federal or state law or regulation, agency or authority.~~

87:10-5-4. Notice of claim [REVOKED]

~~Prior to making any payment of benefits pursuant to the Flexible Benefits Plan, the Plan Administrator may require the participant to provide information and to complete any appropriate documents or forms necessary for the proper administration of the Flexible Benefits Plan. The Plan Administrator shall determine the rights of any participant to a benefit under the Flexible Benefits Plan in accordance with the rules in this Title.~~

87:10-5-5. Availability of Flexible Benefits Plan information and documents [REVOKED]

~~Any participant having a question concerning the operation of the Flexible Benefits Plan or the participant's eligibility for the payment of benefits under the Flexible Benefits Plan shall contact the Plan Administrator in accordance with OAC 87:1-3-6 of this Title.~~

87:10-5-6. Right of the Plan Administrator to initiate action [REVOKED]

~~The Plan Administrator may initiate formal or informal action to accomplish the objectives of the Act and to carry out the duties of the Plan Administrator.~~

SUBCHAPTER 9. AMENDMENT OR TERMINATION OF THE FLEXIBLE BENEFITS PLAN [REVOKED]

87:10-9-1. Amendment of the Flexible Benefits Plan [REVOKED]

~~Any amendments to the Flexible Benefits Plan shall conform to the provisions of the Internal Revenue Code, and the regulations promulgated thereunder, and the Act.~~

87:10-9-2. Termination of the Flexible Benefits Plan [REVOKED]

~~The Flexible Benefits Plan is intended to be permanent; however, it may be terminated by the Plan Administrator in the event the Flexible Benefits Plan ceases to be effective under 74 O.S. Section 1345.~~

87:10-9-3. Preservation of rights and responsibilities [REVOKED]

~~Termination or amendment of the Flexible Benefits Plan under the provisions of Section 1345 of Title 74 of the Oklahoma Statutes shall not affect the rights of any participant to claim reimbursement for expenses incurred prior to such termination or amendment, to the extent such amount is payable under the terms of the Flexible Benefits Plan, prior to the effective date of such termination or amendment. If the Flexible Benefits Plan is terminated, payroll deductions may be made for expenses included in a participant's salary adjustment agreement in accordance with the rules in this Title.~~

SUBCHAPTER 13. ELIGIBILITY REQUIREMENTS [REVOKED]

87:10-13-1. Flexible Benefits Plan eligibility [REVOKED]

~~Eligible individuals as defined in 74 O.S. sections 1363 and 1369 will be notified of their eligibility by the Plan Administrator or its designated representative. The method of notifying eligible individuals shall be determined by the Plan Administrator prior to the start of each enrollment period.~~

87:10-13-2. Enrollment period [REVOKED]

~~An eligible employee who wishes to participate in the Flexible Benefits Plan must elect to participate during one of the following periods:~~

~~(1) Before the beginning of each new Plan Year during the announced enrollment period, or~~

~~(2) Within thirty (30) days after becoming eligible during a Plan Year.~~

87:10-13-3. Termination of participation [REVOKED]

~~(a) A participant will cease participation in the Flexible Benefits Plan as of the earliest of the following events:~~

~~(1) The last day of the month of termination of employment with the employer; or~~

~~(2) The last day of the month the participant ceases to be eligible to participate in the Flexible Benefits Plan; or~~

~~(3) The date of termination of the Flexible Benefits Plan.~~

~~(b) Benefit plan coverage shall terminate as follows:~~

~~(1) For termination as a result of voluntary election, the coverage shall terminate on the last day of the month of receipt and approval of a valid change form at the offices of the Plan Administrator.~~

~~(2) For termination of coverage as a result of ineligibility, the coverage shall terminate on the last day of the month of the event causing the loss of eligibility.~~

~~(c) No vendor, including the Board, shall terminate coverage on any participant unless authorized by the Plan Administrator.~~

87:10-13-4. Elections and changes [REVOKED]

~~The elections and changes are to indicate an employee's choice of flexible benefit plan options, change elections, provide personal data, or effect other actions permitted by the provisions of this Chapter; to allow the employing agency to record the employee's choices and provide information to the~~

~~Plan Administrator; for the Plan Administrator to record acceptance or denial of the employees choices and to provide procedures effecting an employee's elections or changes.~~

87:10-13-5. Premium collection [REVOKED]

~~The employing agency of each participant shall collect premiums for all coverages in effect. The agency shall remit all premiums due to the Plan Administrator for all coverages provided to the participant.~~

87:10-13-7. Premium waiver during disability [REVOKED]

~~During any period in which an employee is receiving disability payments from the State of Oklahoma, the premium for basic life insurance, dependent life insurance, supplemental and accidental death and dismemberment coverage shall be waived, provided that proper physician certification is submitted and accepted. The employee shall resume payment of these life insurance coverage premiums upon a return to active pay status, or if the employee is placed on any other type of leave status. Premium waiver is not retroactive.~~

SUBCHAPTER 17. BENEFIT PLAN ELECTION [REVOKED]

87:10-17-1. Election of benefits and salary adjustment agreement [REVOKED]

~~Prior to the first day of an applicable period of coverage, an eligible employee may elect coverage under the provisions of the Flexible Benefits Plan. The election shall be made by the eligible employee at the time and in the manner specified by the Plan Administrator. Prior to an applicable period of coverage the employer shall provide to eligible employees the necessary authorized submission procedure information prescribed by the Plan Administrator for electing coverage. This procedure shall include a method of authorizing a salary adjustment agreement whereby the participant shall agree to a reduction in compensation equal to the participant's share of the cost of each optional benefit elected under the provisions of the Flexible Benefits Plan. The eligible employee shall be required to submit an election via an authorized submission procedure and in the time and manner required by the Plan Administrator. Prior to the due date for the next ensuing applicable period of coverage, a Participant who has participated in the plan during the previous Plan Year shall elect basic and optional benefits and execute a salary adjustment agreement. Failure of such participant to submit the required election shall be deemed an election of the default benefits as defined in 74 O.S. Section 1371.~~

87:10-17-2. Benefits available for election by participant [REVOKED]

~~In accordance with the procedures set forth in this subchapter, a participant may elect among the benefit plans adopted by the Plan Administrator as a part of the Flexible Benefits Plan.~~

87:10-17-3. Employee election of benefit plans [REVOKED]

~~(a) Choices of benefit plans shall be made by a new eligible employee within thirty (30) days after date of employment. This thirty (30) day period shall be known as the employee's enrollment period. Each new employee failing to make such a valid election will be deemed to have elected employee only coverage under the HealthChoice High Option Health Plan, HealthChoice Dental Plan, HealthChoice basic term life policy, and the HealthChoice disability plan.~~

~~(b) Choices of benefit plans shall be made on a Plan Year basis by the eligible employees during the enrollment period as set by the Plan Administrator. The Plan Administrator will establish eligibility requirements for all benefit plan options each year.~~

~~(c) Eligible employees are required to elect medical, dental, life and disability plans except as provided in the following paragraphs. Employees who fail to make a valid election during each designated enrollment period will be deemed to have elected the same plans elected during the most recent enrollment period during which a valid election was made. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option Health Plan and/or HealthChoice Dental.~~

~~(d) A former employee who is reemployed by the same participating employer within twenty-four (24) months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by the Plan. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at the Board, benefits will be paid to the decedent's estate.~~

~~(e) A former active State employee who is reemployed by the State after thirty (30) days from termination will not be eligible to reenroll in vision plans, Health Care Reimbursement Accounts and Dependent Care Reimbursement Accounts throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.~~

~~(1) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan if the following conditions are met prior to the close of each annual enrollment period:~~

~~(A) The employee must provide proof that he or she is retired from a branch of the United States military; and~~

~~(B) The employee must provide proof of health coverage through a federal plan; and~~

~~(C) The employee must make a proper election not to participate in the Flexible Benefits Plan.~~

~~(2) The Council has the authority to determine the type of information that satisfies the requirements of this subsection.~~

~~(3) An eligible employee making an election not to participate under paragraph (1) of this subsection must make such an election each Plan Year.~~

~~(A) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has never previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan or may make an election not to participate under paragraph (1) of this subsection. If the employee who is eligible to, but has never previously made an election not to participate under paragraph (1) of this subsection, fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection, the employee will be deemed to have elected coverage that was in effect during the previous Plan Year. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option Health Plan and/or HealthChoice Dental.~~

~~(B) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection, and has previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan, or may make an election not to participate under paragraph (1) of this subsection. If an employee who has previously made an election not to participate under paragraph (1) of this subsection fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection during the annual enrollment period, the employee will be deemed to have elected employee only coverage under the HealthChoice High Option Health Plan, the HealthChoice Dental Plan, the HealthChoice basic term life policy, and the HealthChoice Disability Plan.~~

~~(4) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from participating in any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan at any time during the Plan Year for which he or she made the election. Upon re-entry into the state benefits package either through an acceptable midyear event or at the annual Option Period enrollment, benefit options which were declined through the opt-out election by retired military state employees will not automatically be reinstated. The retired military employee must reapply for and be approved through satisfactory evidence of coverage (EOI) before any amounts of Supplemental Life Insurance will again be issued. Only the Basic Life amount (20,000) will be automatically reinstated upon such re-entry. No Guaranteed Issue levels of Supplemental Life will be available.~~

~~(5) Except as provided by the applicable provisions of OAC 87:10-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from electing coverage for his or her dependents under any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan prior to or at any time during the Plan Year for which he or she made the election.~~

~~(6) An eligible employee making an election not to participate under paragraph (1) of this section may continue participation in any of the following:~~

~~(A) Benefit plans available under the flexible benefit plan other than a health plan, dental plan, life plan, supplemental life plan, dependent life plan, and a disability plan;~~

~~(B) Health Care Reimbursement Account Option;~~

~~(C) Dependent Care Reimbursement Account Option; and the~~

~~(D) Insurance Premium Conversion Option.~~

~~(f) Each employee who meets the eligibility requirements but fails to make a proper election under the Flexible Benefits Plan shall be deemed a participant in the Flexible Benefits Plan.~~

~~(g) Coverage shall be effective for a new participant beginning on the first day of the month following the participant's first day in an active pay status.~~

~~(h) Eligible employees may elect to cover a dependent under the following insurance plans: health insurance, dental insurance, dependent life insurance, or vision insurance. When one eligible dependent is covered, all eligible dependents must be covered for all plans except the dependent life insurance plan. An eligible employee cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.~~

~~(i) Primary participants electing coverage for eligible dependents cannot enroll the dependents in a benefit plan or a coverage that differs from the benefit plan or coverage chosen by the primary participant.~~

~~(j) In order for an eligible employees to choose health plan coverage under a Health Maintenance Organization (HMO) plan, the eligible employee must reside or be employed within the selected HMO's service area.~~

87:10-17-4. Changes to benefit elections [REVOKED]

~~(a) A participant may change an election only in accordance with the provisions of this Plan. This Section does not remove the requirement that every employee must enroll in at least the basic plan of coverage except for those employees declining participation pursuant to 87:10-17-3(c)(1).~~

~~(b) All requests for changes submitted to the Plan Administrator must be in a format as determined by the Plan Administrator.~~

~~(c) Provided that all other eligibility requirements are met, and written or electronic notice is provided to the Plan Administrator within thirty (30) days of a qualifying event, including receipt of a Qualified Medical Child Support Order, the effective date of such change of benefits coverage will be the first of the month following receipt of acceptable notice as determined by the Plan Administrator as long as the correct premium is paid. All enrollments and elections are for the entire Plan Year and are irrevocable during same Plan Year unless a change is requested based on one of the following permitted exceptions to the irrevocability rule. A change must comply with the IRS consistency rule as found in Treasury Regulations 1.125-4 as may be amended. Only the permitted exceptions provided for in this chapter shall be allowed as changes to benefits elections unless those changes are prohibited under the Premium Conversion Option, the Dependent Care Reimbursement Account Option or the Health Care Reimbursement Account Option as provided for in subchapters 23, 25, and 27 respectively. All changes shall become effective on a prospective basis and not earlier than the first day of the month following receipt of acceptable notice of the requested change which must be on account of and corresponding with the event with the exception of termination of coverage for a spouse and/or dependents who have ceased to satisfy eligibility as a result of death, which shall become effective the first of the month following the date of the event. Permitted exceptions to the irrevocability rule as allowed within Plan guidelines are as follows:~~

~~(1) HIPAA Special Enrollment Rights (marriage, birth, adoption or placement for adoption, loss of other coverage including exhaustion of COBRA coverage)~~

~~(2) Change in Employee's Legal Marital Status~~

~~(3) Change in the Number of Employee's Dependents~~

~~(4) Change in Employment Status of Employee, Spouse or Dependent that affects eligibility~~

~~(5) Event Causing Employee's Dependent to satisfy or cease to satisfy Eligibility Requirements~~

~~(6) Change in Place of Residence of Employee, Spouse or Dependent~~

~~(7) Commencement or Termination of Adoption Proceedings~~

~~(8) Judgments, Decrees or Orders (changes allowed only to Health, Health Care Reimbursement Account and Dental)~~

~~(9) Medicare or Medicaid (changes allowed only to Health and Health Care Reimbursement Account)~~

~~(10) Significant Change in Cost or a Change in Coverage (changes allowed only to Dependent Care Reimbursement Account)~~

~~(11) Changes in Coverage of Spouse or Dependent under Other Employer's Plan~~

~~(12) FMLA Leave~~

~~(13) Such other events, which may permit such modification or election under the IRS consistency rule as found in Treasury Regulations 1.125-4 and in accordance with other applicable and prevailing Internal Revenue Code regulations promulgated thereunder, and in accordance with this chapter.~~

~~(d) The following are the only permitted exceptions that may become effective on a retroactive basis beginning the first day of the event month. Such events require receipt of acceptable notice by the Plan Administrator or its designee within thirty (30) days of the event:~~

~~(1) Newborn children who may be covered from the first of the birth month provided the proper documentation is submitted within thirty (30) days of the birth event and provided that the full monthly premium is paid.~~

~~(2) Adopted eligible dependent children, those placed for adoption, and eligible children for whom guardianship has been newly granted to the insured or to the insured's spouse and for whom coverage may begin from the first day of physical custody even though a full month's premium must be paid; or at the insured's option may be covered beginning the first of the month following placement.~~

~~(e) The Plan Administrator reserves the right to make any corrections necessary if an error was made regarding the effective date.~~

87:10-17-5. Authorized member signature [REVOKED]

~~A signature other than that of the employee will not be accepted on any enrollment form or application unless the individual signing presents a power of attorney, papers of guardianship, conservatorship, or a legal court order.~~

SUBCHAPTER 19. BENEFIT ALLOWANCE [REVOKED]

87:10-19-1. Flexible benefit allowance [REVOKED]

~~(a) Each participating employer shall credit to each of its participating employees the specified amount as determined by law, as a flexible benefits allowance. Each participant must use a portion or all of their flexible benefit allowance to purchase at least the basic plan.~~

~~(b) An eligible employee making an election not to participate under OAC 87:10-17-3(c)(1) will not be eligible for or credited with any amount of the employee or dependent flexible benefit allowance.~~

87:10-19-2. Costs in excess of flexible benefits allowance [REVOKED]

~~If a participant elects benefits whose cost exceeds the participant's flexible benefits allowance, the excess cost shall be paid for with pay conversion dollars. At the participant's option, pay conversion dollars may be designated as pre-tax (premium conversion) dollars or after-tax dollars. *The elected amount shall be deducted from the participant's compensation in equal amounts each pay period over the plan year* [74 O.S.Supp.2007, §1370(F)].~~

87:10-19-3. Costs less than the flexible benefits allowance [REVOKED]

~~If a participant elects benefits whose cost is less than the participant's flexible benefits allowance, the excess flexible benefit allowance will be paid to the participant as taxable compensation. This taxable compensation shall be paid to the participant in substantially equal amounts during the participant's period of coverage.~~

87:10-19-4. Effect of change in cost of benefit [REVOKED]

~~During an applicable period of coverage, there shall be an automatic adjustment in the amount of flexible benefit dollars used to purchase optional benefits in the event of a change of the cost of providing the optional benefits. The automatic adjustment shall be equal to the increase (or decrease) in such cost.~~

SUBCHAPTER 21. NONDISCRIMINATION [REVOKED]

87:10-21-1. Provisions to prevent discrimination [REVOKED]

~~In the event the Plan Administrator determines that prohibited discrimination described under any applicable provision of the Internal Revenue Code regarding discrimination may occur, the Plan Administrator shall be authorized to cause the election made by any participants to be modified to avoid or cure such discrimination. Upon executing the requisite application for participation, these participants shall be deemed to have expressly consented to any modification of the application and salary adjustment agreement deemed necessary by the Plan Administrator to prevent the occurrence of prohibited discrimination.~~

87:10-21-2. Nondiscrimination not guaranteed [REVOKED]

~~Neither the employer, the Plan Administrator, nor any agent or representative thereof, represents that the Flexible Benefits Plan, the benefits provided, or contributions made pursuant to the Flexible Benefits Plan are at any particular point in time nondiscriminatory as determined in accordance with the applicable provisions of the Internal Revenue Code and regulations promulgated thereunder. The employer, the Plan Administrator, and any agent or representative thereof shall be held harmless by any employee, participant, their representatives, heirs, beneficiaries, administrators, or assigns from any and all tax liability of any nature that might arise by reason of the Flexible Benefits Plan being deemed discriminatory at any time and in any regard or by reason of plan qualification requirements.~~

87:10-21-3. Inclusion in income [REVOKED]

~~If any portion or all of a benefit or benefits becomes taxable, by reason of the Flexible Benefits Plan being deemed discriminatory, the benefit(s) shall be treated as received or accrued in the taxable year of the participant in which the Plan year ends unless applicable law requires inclusion in income at some other time, in which case, such law shall be controlling.~~

SUBCHAPTER 23. INSURANCE PREMIUM CONVERSION OPTION [REVOKED]

87:10-23-1. Premium conversion option [REVOKED]

~~(a) This option allows a participant to pay premiums of elected qualified benefits with pre-tax dollars. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is included as part of the cafeteria plan described in OAC 87:10-1-1.~~

~~(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.~~

87:10-23-2. Definitions [REVOKED]

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

~~"**Qualified benefits expenses**" means any expenses incurred by a participant as payment for the amount of premium expense for any benefit offered by the Plan Administrator providing those qualified benefits expenses are for those amounts that exceed the flexible benefits allowance and are employee's expenses for employee group term life insurance up to $50,000, health, dental, vision, accidental death and dismemberment, long and short term disability and similar benefits which may be offered pursuant to Section 125 of the Internal Revenue Code and regulations promulgated thereunder.~~

~~"**Qualified benefits**" means one or more benefits plans offered by the Plan Administrator in the Cafeteria Plan for use in the Flexible Benefits Plan. For the Cafeteria Plan, the Plan Administrator shall only permit insurance premium expenses to be made by a participant on a pre-tax basis under those insurance plans which qualify for pre-tax contributions under Section 125 of the Internal Revenue Code and regulations promulgated thereunder. The Plan Administrator shall certify its selections and related periods of coverage, a record of which shall be permanently maintained as part of the written State Employees Benefits Plan documents.~~

87:10-23-3. Requirements for participation [REVOKED]

~~Upon submission of an application for participation any eligible employee may participate in the insurance premium conversion option for qualified insurance plans, if:~~

~~(1) The employee's total premium costs exceed the employee's benefits allowance; or~~

~~(2) Prior to the beginning of a period of coverage, the eligible employee has made application to increase insurance coverage under a qualified benefit plan offered by the Plan Administrator, the premium for which will exceed the employee's flexible benefits allowance during the ensuing period of coverage; or~~

~~(3) Any employee has an election change consistent with OAC 87:10-23-10 that causes the employee's total premium costs to exceed the benefit allowance; or~~

~~(4) If the eligible employee chooses to participate.~~

87:10-23-4. Amount of insurance premium expense benefit available [REVOKED]

~~Subject to the limitations in the Internal Revenue Code to avoid discrimination, the amount of insurance premium expenses under the insurance premium conversion option shall be that amount required to pay the participant's portion of the premiums for coverage under each qualified insurance plan included in this plan option. For purposes of the Internal Revenue Code and regulations promulgated thereunder, the amount required to pay the participant's portion of the premiums for coverage shall be the maximum amount of benefit available.~~

87:10-23-5. Reduction of benefits [REVOKED]

~~(a) The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that this option is nondiscriminatory in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis.~~

~~(b) Upon executing the requisite application for participation, a participant shall be deemed to have expressly consented to any modifications of the application and salary adjustment agreement which are necessary to assure nondiscrimination.~~

87:10-23-7. Payment of insurance premium expense [REVOKED]

~~The insurance premium conversion option shall be paid for according to the participant's salary adjustment agreement.~~

87:10-23-9. Other governing provisions [REVOKED]

~~The insurance premium conversion option shall be administered under the terms of this subchapter and Title.~~

87:10-23-10. Benefit election irrevocable unless a permitted exception exists [REVOKED]

~~(a) Except as otherwise provided in this Section, a participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.~~

~~(b) A participant shall be entitled to modify the premium conversion option election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception which shall include all of the exceptions indicated in 87:10-17-4 unless they are prohibited herein. PROHIBITED EXCEPTIONS TO CHANGING PREMIUM CONVERSION OPTION ELECTION:~~

~~(1) Change in place of residence~~

~~(2) COBRA events~~

~~(3) Significant Cost Increases~~

~~(c) The participant shall furnish the Plan Administrator with information relative to a permitted exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria in subchapter 17-4 and is not prohibited by this subchapter, nor by the Plan, or by the prevailing Internal Revenue Code and regulations promulgated thereunder.~~

~~(d) The employee must provide a request to make a change by way of an authorized submission procedure as set forth by the Plan Administrator.~~

~~(e) Any request to make a change must be submitted by the employee to the Plan Administrator within thirty (30) days of the family status event described in subsection (b) of this Section. If the request is not submitted under an authorized submission procedure within thirty (30) days of the event the participant shall waive the option to make changes under this section during such Plan Period.~~

SUBCHAPTER 24. HEALTH SAVINGS ACCOUNT [REVOKED]

87:10-24-1. Health Savings Account [REVOKED]

~~(a) This is an optional benefit within the State Employees Flexible Benefits Plan. This option is qualified under Section 223 of the Internal Revenue Code(IRC) and is, therefore, included as part of the cafeteria plan described in OAC 87:10-1-1.~~

~~(b) The Plan Administrator shall, at all times, administer this option in a manner consistent with the terms and provisions hereof in a uniform and nondiscriminatory manner and in accordance with the prevailing Internal Revenue Codes and applicable regulations promulgated thereunder.~~

87:10-24-2. Definitions [REVOKED]

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

~~**"Dependent"** means an individual, who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.~~

~~**"Health Savings Account (HSA)"** means the bookkeeping account maintained by the HSA Administrator/Trustee/Custodian used for crediting contributions and accounting for benefit payments.~~

~~**"HSA Administrator/Trustee/Custodian"** Insured banks and credit unions are automatically qualified to handle HSAs. Any bank, credit union or any other entity that currently meets the IRS standards for being a trustee or custodian for an IRA or Archer Medical Savings Account (MSA) can be an HSA trustee or custodian. The law also allows insurance companies to be HSA trustees or custodians.~~

87:10-24-3. Requirements for eligibility [REVOKED]

~~(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan who has elected a qualified high deductable health care option shall be eligible to participate in the Health Savings Account option, provided they have not attained the age of 65 years and become Medicare eligible.~~

~~(b) Additionally, an employee enrolled in a high deductable health plan may not enroll in a Health Reimbursement account.~~

87:10-24-4. Amount of benefits available [REVOKED]

~~(a) Subject to the limitations imposed by federal law, the maximum benefit which a participant may receive in any Plan Year for a health savings account shall be subject to the annual maximums set by the IRC 223. The maximum is indexed and is set each year. Individuals age 55 and older can also make additional "catch up" contributions. An employee may also elect catch up benefits as directed by IRC 223 and the catch up provision is also indexed annually.~~

~~(b) The monthly or biweekly amount taken on this pre tax method will be based on the following deduction schedule as directed by the IRC Notice 2004-2. The maximum annual contribution to an HSA is the sum of the limits determined separately for each month, based on status, eligibility and health plan coverage as of the first day of the month. This will be calculated as the maximum annual limit plus catch up, if applicable, divided by 12 then multiplied by the number of monthly periods remaining in the Plan Year. If biweekly, this will be calculated as the maximum annual limit plus catch up, if applicable, divided by 26 then multiplied by the number of biweekly periods remaining in the Plan Year.~~

~~(c) Contributions to the HSA may be made pre-tax under a Section 125 Cafeteria Plan. Individual contributions are deducted pre-tax via payroll deduction. The employee, the employer, or both may make contributions to the HSA account.~~

~~(d) The non-discrimination rules applicable to a Cafeteria Plan are applicable to HSA contributions made under a Cafeteria Plan. This includes both employer and employee contributions. The following Cafeteria Plan rules do not apply to HSAs:~~

~~(1) The prohibition against a benefit that defers compensation by permitting employees to carry over unused elective contributions or plan benefits from one Plan Year to another (the Use It Or Lose It rule).~~

~~(2) The mandatory 12 month period of coverage.~~

~~(3) Change in status rules.~~

87:10-24-5. Internal Revenue Code and regulations [REVOKED]

~~The health savings account option, the benefits provided thereunder, or contributions made pursuant to it, shall be in compliance with all provisions of this Plan and all applicable Internal Revenue Codes.~~

87:10-24-6. Mid-year changes of benefits [REVOKED]

~~Section 125 plans (also known as "salary reduction" or "cafeteria" plans) must meet a different set of rules. Under these plans, contributions (both from employer and/or employee) must meet "non-discrimination" rules. These rules require the employer to ensure that contributions do not favor higher compensated employees. The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the health savings account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Enrollees may change their salary reduction amounts, prospectively, on a monthly basis. An ineligible participant will be allowed to revoke their election, prospectively.~~

87:10-24-7. Health Savings Account option [REVOKED]

~~The Plan Administrator shall establish for each participant a health savings account for each period of coverage. Each health savings account shall initially contain zero dollars ($0.00). A participant's health savings account for a period of coverage shall be increased by the portion of the participant's salary adjustment dollars that may be accrued from month to month for that period of coverage that he or she has elected to apply toward medical care expenses. A participant's health savings account for a period of coverage shall be reduced by the amount of any health savings account transferred to the HSA Custodian per the employees signed enrollment form. The HSA Custodian will provide the employee all annual statements except for W2. The Custodian also will account for prior year payments and properly account for catch up contributions and any distributions to the employee. The Employees Benefits Council expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts.~~

~~HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member.~~

87:10-24-8. Claims for reimbursement [REVOKED]

~~A participant who has elected to participate in the health savings account option shall make application to their respective HSA Custodian for reimbursement of health care expenses incurred by the participant during the Plan Year. The Employees Benefits Council expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts. HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member.~~

87:10-24-9. Forfeiture of unused benefits [REVOKED]

~~The Employees Benefits Council will forward all contributions to the designated HSA Custodian on a monthly basis as determined by the Council. No Contributions will remain with the Employees Benefits Council and, as such, there cannot be any forfeiture (See 87:10-24-8).~~

87:10-24-10. Other governing provisions [REVOKED]

~~The health savings account option shall be administered under the terms of this subchapter and Title.~~

87:10-24-11. Benefit changes [REVOKED]

~~(a) A participant shall be entitled to modify the health savings account election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted elections as provided in IRC 223.~~

~~(b) The participant shall furnish the Plan Administrator with information and documentation relative to a request for a change in enrollment. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated thereunder and is allowed by the Plan.~~

~~(c) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.~~

87:10-24-12. Report to participants [REVOKED]

~~Statements reflecting account balances will be accessible to participants via the Employees Benefits Council, Benefits Administration System (BAS) and shall satisfy the notification requirement reflecting contributions and transmittals to Custodians during such periods. The State will also accumulate and report on the annual W-2 statement all IRC Section 223 deductions based on the tax year the deduction was made.~~

SUBCHAPTER 25. DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION [REVOKED]

87:10-25-1. Dependent care reimbursement account option [REVOKED]

~~(a) This option allows a participant to receive reimbursements for dependent care expenses which are excludable from gross income. This option is intended to be qualified under Section 129 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is therefore, included as part of the cafeteria plan described in OAC 87:10-1-1.~~

~~(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.~~

87:10-25-2. Definitions [REVOKED]

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

~~**"Dependent"** means any individual who is:~~

~~(A) A dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under Section 15(c) of the Internal Revenue Code or, is otherwise, a qualifying individual as provided in Section 21(d)(2) of the Internal Revenue Code, or~~

~~(B) A dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.~~

~~**"Dependent care expenses"** means expenses incurred by a participant which are incurred for the care of a dependent of the participant or for related household services, and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.~~

~~**"Dependent care reimbursement account"** means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.~~

~~**"Eligible period of coverage"** means that time period in which the participant contributes to the dependent care reimbursement account and that the participant is on an active pay status.~~

~~**"Grace Period"** means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.~~

~~**"Run Out Period"** means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.~~

87:10-25-3. Requirements for participation [REVOKED]

~~Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the dependent care reimbursement account option.~~

87:10-25-4. Amount of benefit available [REVOKED]

~~(a) Subject to any limitations imposed by federal law, the maximum amount which a participant may receive in a Plan Year in the form of dependent care expenses under the dependent care reimbursement account option shall be the least of the following:~~

~~(1) The participant's earned income for the Plan Year (after all reductions in compensation including the reduction related to dependent care expenses);~~

~~(2) The earned income of the participant's spouse for the Plan Year; or~~

~~(3) $5,000 ($2,500 in the case of a married individual who files a separate income tax return,) but not to exceed the monthly maximum contribution of $416.67 as defined and allowed by the Plan Administrator.~~

~~(b) The minimum salary adjustment amount for participation in the dependent care reimbursement account option shall be $50 per month.~~

87:10-25-5. Internal Revenue Code and regulations [REVOKED]

~~The dependent care option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.~~

87:10-25-6. Reduction of benefits [REVOKED]

~~The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the dependent care reimbursement account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this subchapter shall be forfeited per OAC 87:10-25-10.~~

87:10-25-7. Dependent care reimbursement account option [REVOKED]

~~The Plan Administrator shall establish for each participant a dependent care reimbursement account for each Plan Year. Each dependent care reimbursement account shall initially contain zero dollars ($0.00). A participant's dependent care reimbursement account for a period of coverage shall be credited with the portion of the participant's flexible reimbursement account dollars that may be accrued from month to month for that Plan Year that he or she has elected to apply toward such account. A participant's dependent care reimbursement account for a Plan Year shall be reduced by the amount of any dependent care expenses paid to a participant.~~

87:10-25-8. Claims for reimbursement [REVOKED]

~~A participant who has elected to participate in the dependent care reimbursement account option shall apply in writing to the Plan Administrator for reimbursement of dependent care expenses incurred by the participant during the period of coverage. The claim shall be made in a manner and on forms prescribed by the Plan Administrator.~~

87:10-25-9. Reimbursement or payment of dependent care expenses [REVOKED]

~~(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's dependent care reimbursement account for dependent care expenses incurred during the Plan Year for which the participant submits documentation in accordance with OAC 87:10-25-8. No reimbursement or payment of dependent care expenses incurred during a Plan Year shall exceed the balance available in the participant's dependent care reimbursement account.~~

~~(b) Participants shall be reimbursed for dependent expenses on a weekly or other reasonable basis during the Plan Year as determined by the Plan Administrator. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.~~

~~(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.~~

~~(d) If a participant ceases to be a participant or terminates employment, such participant shall be entitled to continue receiving benefits pursuant to the dependent care reimbursement account option to the extent of the amount remaining in the participant's dependent care reimbursement account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.~~

87:10-25-10. Forfeiture of unused benefits [REVOKED]

~~Amounts remaining in a participant's dependent care reimbursement account following final payment of all dependent care expenses incurred during the periods described in OAC~~

~~87:10-25-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.~~

87:10-25-11. Report to participants [REVOKED]

~~On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each participant who has received dependent care reimbursement during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to participants no less than once each calendar quarter.~~

87:10-25-12. Other governing provisions [REVOKED]

~~The dependent care reimbursement account option shall be administered under the terms of this subchapter and rules of this title promulgated by the Plan Administrator.~~

87:10-25-13. Benefit election irrevocable unless a permitted exception exists [REVOKED]

~~(a) A participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains except in those situations which qualify as permitted exceptions to the irrevocability rule and are not prohibited as changes by the Plan Administrator. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.~~

~~(b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 87: 10-17-4 and is not a prohibited change as indicated in this subchapter. THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION:~~

~~(1) Significant Changes in Cost will not be allowed to effect any change to the Dependent Care Reimbursement Account Option if that increase is imposed by a dependent care provider who is a relative of the employee. Otherwise the exception is permitted.~~

~~(2) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Dependent Care Reimbursement Account (See subchapter 17-4 for Permitted Exceptions)~~

~~(3) COBRA events will not be allowed to effect any change to the Dependent Care Reimbursement Account~~

~~(4) Judgments, Decrees, or Orders will not be allowed to effect any change to the Dependent Care Reimbursement Account Option (See subchapter 17-4 for Permitted Exceptions)~~

~~(5) Neither Medicare nor Medicaid eligibility or loss thereof will be allowed to effect any change to the Dependent Care Reimbursement Account~~

~~(c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.~~

~~(d) The employee must provide a request for an exception in a timely manner that is compliant with the authorized submission procedure established by the Plan Administrator.~~

~~(e) Any request to make a change must be submitted to the Plan Administrator or its designee within 30 days of the event which provides the basis for an exception to the irrevocability rule as provided for in 87:10-17-4 and this subchapter. If the request is not submitted via an authorized submission procedure as determined by the Plan Administrator within thirty (30) days of the event, the participant shall waive the option to make changes under this section.~~

SUBCHAPTER 26. QUALIFIED TRANSPORTATION ACCOUNT OPTION [REVOKED]

87:10-26-1. Qualified Transportation account option [REVOKED]

~~(a) This option allows an employee to receive reimbursements for qualified mass transportation expenses which are excludable from gross income. This option is intended to be qualified under Section 132 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. As a result, it is excluded as part of the cafeteria plan described in OAC 87:10-1-1.~~

~~(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.~~

87:10-26-2. Definitions [REVOKED]

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

~~**"Eligible period of coverage"** means that time period in which the employee contributes to the Qualified Transportation account and that the employee is on an active pay status.~~

~~**"Mass Transit expense"** means any pass, token, fare card, voucher, or similar item (including an item exchangeable for fare media) entitling a person to transportation. The pass must be used for transportation on a public or privately owned mass transit system, or on transportation provided by a person in the business of transporting people in a vehicle, seating at least six adults, excluding the driver and are eligible expenses~~

~~as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.~~

~~**"Qualified Transportation account"** means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.~~

~~**"Run Out Period"** means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.~~

87:10-26-3. Requirements for participation [REVOKED]

~~Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the Qualified Transportation account option.~~

87:10-26-4. Amount of benefit available [REVOKED]

~~The maximum amount which an employee may receive in a Plan Year in the form of Mass Transit expense reimbursement or payment under the Qualified Transportation account option shall be the maximum amount as determined on a yearly basis by the Internal Revenue Service pursuant to 26 U.S.C. Section 132(f) and 26 C.F.R. Section 1.132-9.~~

87:10-26-5. Internal Revenue Code and regulations [REVOKED]

~~The Qualified Transportation option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.~~

87:10-26-6. Elections/mid-year changes [REVOKED]

~~(a) Employees may elect to participate during the open enrollment Option Period prior to the plan year.~~

~~(b) New Hires and employees not previously enrolled may elect to participate during the plan year.~~

~~(c) Employees who have elected to participate may drop the option any time during the plan year. However, once the account has been dropped, the employee may not re-enroll during the same plan year. Any amounts remaining in the account after the option has been dropped are subject to forfeiture pursuant to OAC 87:10-26-10.~~

~~(d) Employees' requests to participate, or drop participation, in Qualified Transportation accounts must be made in a manner and on forms prescribed by the Plan Administrator.~~

87:10-26-7. Qualified Transportation account option [REVOKED]

~~Each Plan Year, the Plan Administrator shall establish a Qualified Transportation account for each employee who elects to participate in a Qualified Transportation account. During the Plan Year, the applicable payroll office shall on a monthly basis deduct from the employee's payroll the amount designated by the employee and credit the employee's Qualified Transportation account. An employee's Qualified Transportation account for a Plan Year shall be reduced by the amount of any qualified Mass Transit expenses paid to the employee.~~

87:10-26-8. Claims for reimbursement [REVOKED]

~~Claims for reimbursement of qualified Mass Transit expenses incurred during the period of coverage shall be made in a manner and on forms prescribed by the plan administrator.~~

87:10-26-9. Reimbursement or payment of Mass Transit expense [REVOKED]

~~(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the employee from the employee's Qualified Transportation account for Mass Transit expenses incurred during the Plan Year for which the employee submits documentation in accordance with OAC 87:10-26-8. No reimbursement or payment of Mass Transit expenses incurred during a Plan Year shall exceed the balance available in the employee's Qualified Transportation account. The reimbursement must be for the state employee to utilize Mass Transit. Reimbursement for spousal or dependant expenses is not allowed. The Mass Transit pass must be a monthly pass; passes less than one month will not be reimbursed.~~

~~(b) The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run-Out Period.~~

~~(c) Upon demand an employee shall immediately refund any overpayment made by the Plan Administrator on behalf of the employee.~~

~~(d) If an employee ceases to be an active state employee or terminates employment with the state, such employee shall be entitled to continue receiving benefits pursuant to the Qualified Transportation account option to the extent of the amount remaining in the employee's Qualified Transportation account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.~~

87:10-26-10. Forfeiture of unused benefits [REVOKED]

~~Amounts remaining in an employee's Qualified Transportation account following final payment of all Mass Transit expenses incurred during the periods described in OAC 87:10-26-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan. An employee who elects to continue to enroll into a Qualified Transportation account in subsequent years, without periods of interruption, will be permitted to roll over unused amounts from previous years subject to the limitations in OAC 87:10-26-4~~

87:10-26-11. Report to employees [REVOKED]

~~On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each employee who has received Qualified Transportation payments during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to employees no less than once each calendar quarter.~~

SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION [REVOKED]

87:10-27-1. Health care reimbursement account option [REVOKED]

~~(a) This option is an optional benefit within the State Employees Flexible Benefits Plan. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is, therefore, included as part of the cafeteria plan described in OAC 87:10-1-1.~~

~~(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof in a uniform and nondiscriminatory manner and in accordance with the prevailing Internal Revenue Code and applicable regulations promulgated thereunder.~~

87:10-27-2. Definitions [REVOKED]

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

~~**"Dependent"** means an individual, who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.~~

~~**"Health care reimbursement account"** means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.~~

~~**"Medical care expenses"** means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.~~

~~**"Grace Period"** means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.~~

~~**"Rollover Distributions"** means distributions to a Health Savings Account of balances remaining at year end for employees who qualify pursuant to State and federal law.~~

~~**"Run-Out Period"** means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.~~

87:10-27-3. Requirements for eligibility [REVOKED]

~~(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the health care reimbursement account option.~~

~~(b) A former employee who is reemployed by the same participating employer after thirty (30) days from termination will not be eligible to reenroll in a Health Care Reimbursement Account throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.~~

87:10-27-4. Amount of benefits available [REVOKED]

~~(a) Subject to the limitations imposed by federal law to avoid discrimination, the maximum benefit which a participant may receive in any Plan Year for medical care expenses under the health care reimbursement account option shall be subject to a monthly maximum of $350.00 or other amount as determined by the Plan Administrator.~~

~~(b) The minimum salary adjustment amount for participation in this option shall be $10.00 per month.~~

87:10-27-5. Internal Revenue Code and regulations [REVOKED]

~~The health care reimbursement account option, the benefits provided thereunder, or contributions made pursuant to it, shall be in compliance with all provisions of this Plan and all applicable Internal Revenue Code provisions and regulations promulgated thereunder.~~

87:10-27-6. Reduction of benefits [REVOKED]

~~The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the health care reimbursement account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this section shall be forfeited.~~

87:10-27-7. Health care reimbursement account option [REVOKED]

~~The Plan Administrator shall establish for each participant a health care reimbursement account for each period of coverage. Each health care reimbursement account shall initially contain zero dollars ($0.00). A participant's health care reimbursement account for a period of coverage shall be increased by the portion of the participant's salary adjustment dollars that may be accrued from month to month for that period of coverage that he or she has elected to apply toward medical care expenses. A participant's health care reimbursement account~~

~~for a period of coverage shall be reduced by the amount of any health care expenses paid to a participant.~~

87:10-27-8. Claims for reimbursement [REVOKED]

~~A participant who has elected to participate in the health care reimbursement account option shall apply in writing to the Plan Administrator for reimbursement of health care expenses incurred by the participant during the Plan Year. The claim for account reimbursement shall be made in a manner and on a form furnished by the Plan Administrator.~~

87:10-27-9. Reimbursement of health care expenses [REVOKED]

~~(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's health care reimbursement account for health care expenses incurred during the eligible period of coverage, for which the participant submits documentation, in accordance with OAC 87:10-27-8. No reimbursement of health care expenses incurred during a Plan Year shall exceed the maximum amount defined in the salary adjustment agreement.~~

~~(b) Participants shall be reimbursed for medical care expenses on a weekly or other reasonable basis during the Plan Year in accordance with Flexible Benefits Plan Administration Rules. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.~~

~~(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.~~

~~(d) If a participant ceases to be a participant or terminates employment, the participant shall be entitled to continue receiving benefits pursuant to this health care option to the extent of the amount remaining in the participant's health care reimbursement account for expenses incurred during the eligible period of coverage of the current Plan Year.~~

~~(e) If a participant ceases to be a participant or terminates employment, claims incurred after the last day of the month of termination or the date participation ceased shall not be considered for reimbursement, unless the participant elects to continue participation in this option by elected coverage continuation as provided for in this section.~~

~~(f) Any participant may continue this option under the coverage continuation guidelines for COBRA, as provided under OAC 87:10-33-1 on a post tax basis.~~

87:10-27-10. Forfeiture of unused benefits [REVOKED]

~~Following final payment of all health care expenses incurred during the periods described in OAC 87:10-27-9(b), amounts remaining in the health care reimbursement account shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.~~

87:10-27-11. Other governing provisions [REVOKED]

~~The health care reimbursement account option shall be administered under the terms of this subchapter and Title.~~

87:10-27-12. Benefit election irrevocable unless a permitted exception exists [REVOKED]

~~(a) Except as otherwise provided in this Section, a participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.~~

~~(b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 87:10-17-4 and is not a prohibited change as indicated in this subchapter. THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE HEALTH CARE REIMBURSEMENT ACCOUNT OPTION:~~

~~(1) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Health Care Reimbursement Account. (See subchapter 17-4 for Permitted Exceptions)~~

~~(2) COBRA events~~

~~(3) Significant Changes in Cost or a Change in Coverage~~

~~(4) Change in coverage of spouse or dependent under Other Employer's plan (See subchapter 17-4 for Permitted Exceptions)~~

~~(c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.~~

~~(d) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.~~

~~(e) Any request to make a change must be signed by the employee and submitted to the Plan Administrator within thirty (30) days of the event described in subsection17-4 of this document. If the request is not submitted under an authorized procedure and submitted to the Plan Administrator within thirty (30) days of the event, the participant shall waive the option to make changes under this section.~~

87:10-27-13. Report to participants [REVOKED]

~~Statements reflecting account balances shall be provided to participants no less than each calendar quarter and shall satisfy the notification requirement reflecting contributions and reimbursements during such periods.~~

87:10-27-14. Health Savings Accounts Distributions [REVOKED]

~~The Council has discretion to permit rollover distributions to a Health Savings Account as allowed by State and federal law.~~

SUBCHAPTER 28. EARLY MEDICAL ALERT OPTIONAL BENEFIT [REVOKED]

87:10-28-1. Early medical alert optional benefit [REVOKED]

~~(a) This option is a qualified benefit under Section 125 of the Internal Revenue Code. This benefit is an optional benefit within the State Employees Flexible Benefits Plan and is included as part of the cafeteria plan described in Subchapter 1 of this Chapter.~~

~~(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.~~

87:10-28-2. Definitions [REVOKED]

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

~~"**Period of Coverage**" The period of coverage for this benefit runs from January 1 through December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31.~~

87:10-28-3. Requirements for participation [REVOKED]

~~Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the State Employees Flexible Benefits Plan shall be eligible to participate in the early medical alert optional benefit.~~

87:10-28-4. Internal Revenue Code and regulations [REVOKED]

~~The early medical alert optional benefit, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.~~

87:10-28-5. Period of coverage - enrollment [REVOKED]

~~The period of coverage will be on a calendar year basis beginning January 1 and ending December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31. Midyear enrollees must pay the annual cost regardless of entry date. Pro-rated premiums are not available. Participation requires re-enrollment on an annual basis. Members wishing to participate for successive Plan Years must make a positive enrollment election during Option Period for every Plan Year.~~

87:10-28-6. Enrollment [REVOKED]

~~(a) Employees may elect to enroll in this benefit during the Option Period prior to each Plan Year.~~

~~(b) New Hires may elect to participate in this optional benefit when completing the new hire benefits election form within thirty (30) days following date of hire.~~

~~(c) Requests for enrollment must be made in a manner and on forms prescribed by the Plan Administrator.~~

87:10-28-7. Early medical alert account option [REVOKED]

~~The Plan Administrator shall establish for each employee an early medical alert account for each Plan Year. An employee's early medical alert account for a period of coverage shall be credited with the portion of the employee's early medical alert account dollars that may be deducted from payroll through a single payroll deduction. An employee's early medical alert account for a Plan Year shall be reduced by the amount of any early medical alert dollars paid on behalf of the employee.~~

SUBCHAPTER 29. PROCESSING AND REVIEW OF HEALTHCARE AND DEPENDENT CARE SPENDING ACCOUNT CLAIMS [REVOKED]

87:10-29-1. Processing and payment of claims [REVOKED]

~~The Plan Administrator shall authorize and establish a claims reimbursement procedure under which all claims will be processed.~~

SUBCHAPTER 31. COVERAGE CONTINUATION AND REFUNDS [REVOKED]

87:10-31-1. Individual remittances to the Plan Administrator [REVOKED]

~~(a) The following individuals are eligible to make direct remittances to the Plan Administrator for health, life, dental, disability, and any other elected options.~~

~~(1) An eligible employee on approved leave without pay; or~~

~~(2) Disability recipients.~~

~~(b) While on suspension without pay, an employee may continue coverage. If the agency which has suspended the employee fails to pay the employee's flexible benefit allowance, the agency shall provide written notice to the Plan Administrator that the employee has been given reasonable, written notice that the agency has failed to pay the employee's flexible benefit allowance and that the premium payments must be paid by the employee if the coverage is to remain in force and in effect. Coverage is limited to ninety (90) days following the date of suspension or the duration of the administrative appeals process, whichever is greater.~~

~~(c) Unless authorized by the rules of this Chapter for a different method of payment, all premiums due shall be remitted directly to the Plan Administrator by the tenth of the month for which the payment is due. All checks, money orders, and cashier's checks shall be made payable to the Employees Benefits Council. The full amount of the payment for the coverage elected by the individual must be remitted each month. All remittances shall be the sole responsibility of the member, subject to final approval by the Plan Administrator.~~

~~(d) If payment is not received by the end of the month for which the payment is due, coverage may be canceled effective the end of the month in which the last premium was received, except those premiums withheld through the disability program. If the participant proves that the failure to pay premiums was not due to the participant's negligence, the Plan Administrator may reinstate coverage within sixty (60) days. The reinstated coverage shall be subject to payment of any required premiums and submission of evidence of insurability of the employee if required by the insurance company providing the coverage. The employee shall be notified in writing of cancellation of coverage.~~

~~(e) Coverage may be canceled if the participant's payment is returned or refused due to insufficient funds or closed account, unless the check is returned due to no fault of the participant.~~

87:10-31-2. Refund for over deductions [REVOKED]

~~(a) It is the participant's duty to notify the agency coordinator of a change in eligibility for himself, his spouse or his dependents. Any refund of payment for any over deduction shall be made only when the Plan Administrator is notified in writing no later than sixty (60) days from the actual date of the over deduction. No refund will be made for over deductions which occurred more than sixty (60) days prior to the date written notification is received by the Plan Administrator.~~

~~(b) Refunds for excess deductions due to administrative error of the agency shall be limited to either the beginning of the Plan Year in which the error was discovered or the beginning of the calendar year in which the error was discovered, whichever is later.~~

~~(c) A refund of premium form shall be completed by the employee and submitted to the Plan Administrator for approval. If approved, the applicable payroll office will issue a payroll voucher to the employee for the amount of refund due. When the Plan Administrator does not approve a refund, the Plan Administrator shall notify the employee.~~

~~(d) Any benefits paid under this plan for an ineligible employee, spouse or dependent may be offset against any refund due for over deduction.~~

87:10-31-3. Family and medical leave [REVOKED]

~~(a) A participant who is on approved FMLA leave may remit any optional or dependent premiums directly to the Plan Administrator under OAC 87:10-3-1.~~

~~(b) Any participant who chooses not to remit dependent or optional premiums during approved FMLA leave may resume those same coverages effective the first day of the month following the participant's return from approved family and medical leave. Any coverage that lapsed during the approved FMLA leave period shall be reinstated with no evidence of insurability or pre-existing condition exclusions for those dependents covered prior to the FMLA leave commencement date.~~

~~(c) The employing agency of a participant who is on approved FMLA leave shall remit the actual cost of the employee-only coverage for health, dental, life and disability to the Plan Administrator.~~

87:10-31-4. Uniformed Services Employment and Reemployment Rights Act [REVOKED]

~~(a) Under USERRA, "uniformed service" means the performance of duty with the Armed Services, the Coast Guard, the Army National Guard, the Air National Guard and the Commissioned Corps of the Public Health Service and does not consider if this duty is performed on a voluntary or involuntary basis.~~

~~(b) Under USERRA the employer shall restore benefits which employees and their dependents were receiving when the uniformed service began. In addition, the employer shall make available any new benefits that may have gone into effect during the uniformed service period.~~

SUBCHAPTER 33. COBRA COVERAGE [REVOKED]

87:10-33-1. Workers' compensation insurance not affected [REVOKED]

~~The coverage set forth in this title is not in lieu of and does not affect any requirements for coverage by workers' compensation insurance.~~

87:10-33-2. Procedures and implementation [REVOKED]

~~(a) Each agency or employer participating in the Flexible Benefits Plan shall advise each covered employee of his legal right to continue coverage upon separation from state employment. Each covered employee shall sign a notice of right to continue coverage. This notice shall be kept by the agency/employer in each employees' permanent personnel file. An affidavit shall be signed by each agency head/employer and the~~

~~coordinator and returned to the Plan Administrator's office for permanent record.~~

~~(b) COBRA qualifying event notices are to be submitted by the Coordinator any time an employee dies, terminates employment, or reduces work hours so as to be no longer eligible for insurance coverage. Qualifying event notices on behalf of eligible spouses and dependents will also be submitted. These submissions must be sent to the Plan Administrator and or to the COBRA Administrator (Group Insurance Board) within thirty (30) days of the qualifying event.~~

~~(c) COBRA forms are to be filled out by the covered employee or dependent if the qualifying event is divorce, legal separation or the dependent becoming ineligible, for health insurance coverage. This form must be filed within sixty (60) days from the date of the qualifying event in order to obtain continued coverage. If the qualifying event is divorce or legal separation, a copy of the petition or decree shall be furnished along with the COBRA form.~~

~~(d) After a beneficiary elects to continue coverage under COBRA, the beneficiary shall become an inactive member. The beneficiary shall remit all premiums including a two (2) percent administrative fee to the designated COBRA administrator.~~

~~(e) If the beneficiary is entitled to continue the insurance because he or she is a surviving spouse, the beneficiary shall be informed of the right to choose to continue under the health plan currently provided for survivors or to elect to continue under COBRA. If the beneficiary wishes to continue the insurance as a surviving dependent, this election must be made within sixty (60) days from the date of death of the employee. If the beneficiary wishes to keep his/her insurance through COBRA, this election shall be made within sixty (60) days of the date of the letter sent with the COBRA application from the COBRA Administrator. The beneficiary shall be informed of his/her rights under each of these options and that all election decisions are irrevocable.~~

87:10-33-3. COBRA administration [REVOKED]

~~(a) COBRA continuation is only available to those employees and/or dependents who were covered under the plans offered by the Plan Administrator that are eligible for COBRA continuation on the date of the qualifying event or as otherwise defined in section (c) below. A leave under FMLA is not a COBRA qualifying event.~~

~~(b) New dependents may be added to coverage, including newborns, provided the employee had all eligible dependents covered at the time of the qualifying event. New dependents must be added within thirty (30) days of acquiring eligibility.~~

~~(c) A qualified beneficiary is defined as any individual who, on the day before a qualifying event, is covered under a group health plan by virtue of being on that day either a covered employee, the spouse of a covered employee, or a dependent child of a covered employee. A qualified beneficiary is also any child who is born to a covered employee or placed for adoption with a covered employee during a period of COBRA continuation coverage. A child born to or adopted by a qualified beneficiary other than the former employee is not considered a qualified beneficiary under COBRA law.~~

~~(d) If the qualifying event is termination of employment, whether voluntary or involuntary, the employing agency shall make the determination whether or not the termination was due to gross misconduct. The Plan Administrator will not make that decision, nor will it question a decision by the employing agency on this issue. If a decision is made by the agency that the employee was terminated due to gross misconduct, the COBRA form should clearly specify that fact.~~

~~(e) Once election to continue coverage has been made, coverage will terminate in eighteen (18) months if the qualifying event is termination or reduction in hours, or thirty-six (36) months if the qualifying event is death, divorce or legal separation, or ceasing to be a dependent child. Coverage may also terminate if the Plan Administrator ceases to offer any plans eligible for COBRA continuation, or if the beneficiary fails to make timely payments of any premiums required, or if the beneficiary becomes covered under any other group plan unless the new group plan contains an exclusion or limitation with respect to any pre-existing condition of the participant.~~

~~(1) The maximum eligibility period may be extended to twenty-nine (29) months if the Social Security Administration determines that the qualified beneficiary was totally disabled under Title 11 or XVI of the Social Security Act on or before the COBRA event date or within the first sixty (60) days following the start of continuation coverage. The qualified beneficiary must provide the employer or designated COBRA administrator with a copy of the Social Security determination notice within 60 days after the determination is issued and before the end of the initial eighteen (18) months of COBRA.~~

~~(2) If the Social Security Administration reevaluates the participant's case and determines that the participant is no longer disabled, the participant must provide the agency or the designated COBRA administrator with a copy of the determination notice. This copy must be sent within thirty (30) days. Coverage will end at the end of the month that begins more that thirty (30) days after the date of the final determination. For example, if a final determination notice date is May 15, coverage would end June 30.~~

~~(3) If an employee is receiving Medicare prior to retirement or another COBRA event, he/she can continue COBRA coverage for eighteen months (18) after the retirement or other qualifying COBRA event. However, the spouse and or other qualified beneficiaries shall be allowed to have COBRA for thirty-six (36) months after the Medicare entitlement date.~~

~~(f) No evidence of insurability shall be required for continuation of coverage.~~

~~(g) The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service area. In that event, coverage is continued under the plan offered by the Board.~~

~~(h) Each covered beneficiary has the same rights and benefits as any similarly situated person to whom a qualifying event has not occurred. There are the same limitations and exclusions, except to the extent to which it would conflict with federal law.~~

~~(i) Any election of a qualified beneficiary shall be deemed to include an election of continuation on behalf of all other qualified beneficiaries residing together, unless specified in the election.~~

~~(j) Applicable premiums shall be determined on an actuarial basis for a twelve (12) month period, on or before the start of the Plan Year each year. The premiums shall remain the same during the Plan Year.~~

~~(k) All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.~~

~~(l) If a qualified beneficiary waives continuation of coverage, he/she may revoke that waiver anytime within the 60 day election period, but no claims are payable nor will any coverage be applied to the period prior to the revocation of the waiver.~~

~~(m) It is the responsibility of the qualified beneficiary to notify the Plan Administrator if he or she is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage retroactive to the time of ineligibility.~~

~~(n) The date of the qualifying event shall be the same date as the actual loss of coverage under the previous plan. The period of continuation coverage and the applicable notification periods shall begin on the date of the actual loss of other coverage. The Plan Administrator shall have the right to make a final determination as to when the actual date of termination occurred.~~

SUBCHAPTER 35. GROUP HEALTH PLAN DISCLOSURE OF PROTECTED HEALTH INFORMATION TO THE PLAN ADMINISTRATOR [REVOKED]

87:10-35-1. General Provisions [REVOKED]

~~A group health plan may disclose protected health information to the Plan Administrator in its capacity as plan sponsor. The Plan Administrator will use and disclose such information in a manner consistent with the HIPAA requirements of the Standards for Privacy of Individually Identifiable Health Information including the applicable requirements of 45 CFR §164.504(f).~~

[OAR Docket #14-748; filed 7-18-14]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 15. COMPETITIVE BIDDING CRITERIA AND PROCEDURES FOR CONTRACTS AWARDED FOR FLEXIBLE BENEFITS PLANS [REVOKED]

[OAR Docket #14-749]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
87:15-1-1. Purpose [REVOKED]
87:15-1-2. Definitions [REVOKED]
87:15-1-3. General purchasing provisions [REVOKED]
87:15-1-4. Bidder registration [REVOKED]
87:15-1-5. Bidder retention and removal from bidder list [REVOKED]
87:15-1-6. Submission of proposals [REVOKED]
87:15-1-7. Proposal openings [REVOKED]
87:15-1-8. Award of contract [REVOKED]
87:15-1-9. Terms and conditions for acceptable proposals [REVOKED]
87:15-1-10. Excessive Price [REVOKED]
87:15-1-11. Challenge of award [REVOKED]
87:15-1-12. Administrative review [REVOKED]
87:15-1-13. Confidentiality [REVOKED]
87:15-1-14. Vision Plan Participation [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1361 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 87, as the Oklahoma State Employees Benefits Council has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

87:15-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to describe the rules governing the procurement requirements of the Oklahoma State Employees Benefits Council (Council) for contracts to provide flexible benefits plan choices for active State employees and their eligible dependents. Flexible benefit plans are purchased under guidelines approved by the Oklahoma State Employees Benefits Council in compliance with all applicable State statutes. This Chapter does not apply to any products or services required by the Council outside the scope of flexible benefits plans as defined in the Oklahoma State Employees Flexible Benefits Act (74 O.S. §1341 et seq.). Other products or services shall be procured in accordance with the Central Purchasing Act (74 O.S. §85.1 et seq.).~~

87:15-1-2. Definitions [REVOKED]

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

~~"**Audit Clause**" means in accepting any contract with the Oklahoma State Employees Benefits Council, the Bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract are subject to examination by the Council, State Auditor and Inspector, or other designated entities.~~

~~"**Award**" or "**Contract award**" means when the Council votes to approve the acceptance of a proposal from a qualified Bidder meeting all requirements of the procurement as determined by the Council.~~

~~"**Bidder**" means any entity submitting a competitive proposal in response to a solicitation for flexible benefit plans issued under this Chapter.~~

~~"**Bidder's List**" means the list maintained by the Contracts Administrator setting out the names and addresses of qualified suppliers of flexible benefit plans from whom proposals can be solicited.~~

~~"**Business Day**" means any day except Saturday, Sunday, or a legal holiday for State employees as proclaimed by the Governor.~~

~~"**Competitive Negotiation**" means the method by which the Council may contract with qualified Bidders for flexible benefits plans through best and final offer (BFO) process.~~

~~"**Confidential Information**" means information clearly designated in the RFP as being proprietary information and which shall be retained as confidential. All information included in or with a Bidder's proposal lacking such a designation shall be subject to the Oklahoma Open Records Act (51 O.S.2001, § 24(A)(1) et seq.).~~

~~"**Contract**" means when a Bidder submits a proposal, the proposal is submitted as a legal offer and any proposal, when accepted by the Council constitutes a contract (See Award).~~

~~"**Contracts Administrator**" means the Contracts Administrator employed by the Council.~~

~~"**Council**" means the Oklahoma State Employees Benefits Council.~~

~~"**EEOC**" means Equal Employment Opportunity Commission.~~

~~"**Executive Director**" means the Executive Director employed by the Council.~~

~~"**Formal Proposal**" means a proposal which must be submitted in a sealed envelope or container and in conformance with a prescribed format, to be opened at a specified time and specified place. (See also, Proposal.)~~

~~"**HEDIS**" means Health Plan Employer Data and Information Set.~~

~~"**Ineligible Bidder**" means a prospective service provider who, by reason of financial instability, unsatisfactory performance as documented by the Council or other deficiency, does not meet the qualifications for placement on the bidder list.~~

~~"**Late Bid**" or "**Late Proposal**" means a bid or proposal received at the place specified in the RFP after the date and time designated for all proposals to be received.~~

~~"**Proposal**" means the executed document submitted by a Bidder in response to a Request for Proposal (RFP) issued by the Council.~~

~~"**Readiness Reviews**" means the process by which the contracting authority makes scheduled on site visits to the service provider for purposes of testing the readiness of the provider.~~

~~"**Request for Proposal**" or "**RFP**" means the solicitation document used for competitive sealed bidding.~~

~~"**State**" means the State of Oklahoma, acting by and through the Council or its/their designee.~~

~~"**Vision Plan**" means a company, organization, group, or person who owns, operates, and provides a health care benefit plan designed for the care of the eye or the correction or enhancement of one's eyesight.~~

87:15-1-3. General purchasing provisions [REVOKED]

~~(a) The Council has the statutory authority to purchase flexible benefit plans for participants as defined by the Oklahoma State Employees Benefits Act. The Council reserves the right to cancel any given procurement of flexible benefit plans at any time for any reason.~~

~~(b) Except as otherwise specifically provided by this Chapter, all flexible benefit plan contracts required by the Council shall be acquired by competitive bidding pursuant to the terms of this Chapter. Contracts with qualified flexible benefits plans may be awarded on the basis of best and final offer (BFO) through competitive negotiation. The Council, at its own discretion, shall have the option of bidding and contracting any flexible benefit plan through the Department of Central Services, Central Purchasing Division.~~

87:15-1-4. Bidder registration [REVOKED]

~~(a) Any Bidder which seeks to contract to provide flexible benefit plans to the Council must be on the Bidder's list prior to the public release of an RFP solicitation. A Bidder desiring to be on the Bidder List must register with the Contracts Administrator to receive copies of RFP solicitations. Only those Bidders qualified under Oklahoma law to perform the services requested by the Council and who meet the Bidder registration requirements contained herein will be added to the Bidder's List.~~

~~(b) Bidder Qualifications.~~

~~(1) A Bidder has the burden of demonstrating that it has the capability to responsibly do business with the State of Oklahoma. In the interest of providing the highest level of quality to statewide active State employees and their eligible dependents for flexible benefit choices, Bidders seeking Bidder registration with the Council to provide flexible benefit choices in response to a benefit choice RFP solicitation must provide:~~

~~(A) Proof that the benefit provider has been operational (licensed where applicable) and enrolling members within the State of Oklahoma for a period of not less than eighteen (18) months prior to the date proposals are due.~~

~~(B) Audited financial statements for the most recent two (2) full years, and~~

~~(C) Disclosure of all State and Federal regulatory actions taken against the Bidder in the preceding eighteen (18) months.~~

~~(2) The Council can make exception to any of the aforementioned requirements in this subparagraph at its discretion when the Council determines doing so is in the best interest of the State and members.~~

~~(c) Bidders wishing to be added to the Bidder List must request in writing to receive a Bidder registration packet. Written requests must be addressed to: Oklahoma State Employees Benefits Council, First National Center, 120 North Robinson Avenue, Suite 1100, Oklahoma City, Oklahoma 73102, Attention: Contracts Administrator. Bidders shall be provided a packet with registration information and submission forms. All Bidders must renew registrations annually on a plan year basis.~~

~~(d) The Bidder shall complete the information requested in the Bidder registration packet and return the forms to the Contracts Administrator. The Bidder registration forms must be received by the Contracts Administrator not less than seven (7) business days before the issuance of the RFP. Upon receipt, Council shall review the Bidder registration forms for completeness and qualification and determine prior to the public release of an RFP solicitation whether or not the Bidder shall be added to the Bidder's List. The Council shall return the Bidder registration forms in the event the forms have not been properly completed, and shall deny the registration where the form is incomplete and/or the applicant Bidder is not qualified to perform the flexible benefits plan requested in the RFP. Entities not registered as a bidder may receive copies of RFPs pursuant to the Open Records Act.~~

~~(e) The Oklahoma State and Education Employees Group Insurance Board is exempt from the Bidder registration requirement herein.~~

87:15-1-5. Bidder retention and removal from bidder list [REVOKED]

~~(a) To ensure Bidders perform in the best interest of the State, it is necessary to address problems in a swift and equitable manner for all concerned. The Council has determined that Bidder misconduct can cause irreparable harm to the Council and its eligible participants. It is therefore recognized that penalties for poor Bidder performance and/or violation of State and Federal statutes must be addressed.~~

~~(b) The Council may remove any Bidder for any material infraction(s) as determined by the Council to be in the best interest of the State and members, including but not limited to the following. The amount of time a Bidder is removed from the Bidder's List shall be determined by the Council:~~

~~(1) A Bidder which has contracted with the Council to provide flexible benefit plan(s) and which terminates its contract with the Council prior to the contract expiration date.~~

~~(2) Financial insolvency.~~

~~(3) A conviction or plea of guilty to a felony involving fraud, bribery or corruption to the State or to any of its political subdivisions.~~

~~(4) Giving false or misleading information in an application for inclusion on the Bidder's List.~~

~~(5) Certification by the Oklahoma Human Rights Commission that the Bidder is engaging in a discriminatory practice as defined in 25 O.S. §§ 1505 and 1604.~~

~~(6) Failure on the part of the Bidder to meet EEOC and other requirements mandated by public legislation or EBC.~~

87:15-1-6. Submission of proposals [REVOKED]

~~(a) The Bidder's proposal must be submitted in a sealed envelope or container with the name and address of the Bidder, the RFP number, and the date and time of the RFP closing clearly marked on the outside of the envelope or container. All proposals must be complete and in compliance with the instructions provided with the RFP. It is the Bidder's responsibility to read and understand the instructions, terms and conditions provided with the RFP. Failure to comply with the instructions and terms and conditions in the RFP in any material way shall disqualify the proposal as per OAC 87:15-1-9. Proposals are to be mailed or submitted in a sealed envelope or container to the offices of the Council. Faxed proposals shall not be accepted. Any questions regarding the RFP or contract related items shall be directed to the Contracts Administrator.~~

~~(b) If a registered Bidder does not wish to bid on the RFP, the Bidder may fill in the Bidder name, address, and write "No Bid" on the RFP form or cover letter and return the "No Bid" to the Contracts Administrator.~~

~~(c) It is the responsibility of the Bidder to ensure delivery of a proposal to the Council at or prior to the designated date and time on the RFP. The Council shall not be responsible for, and shall not accept, late proposals. Proposals received after the RFP closing date shall be returned unopened to the Bidder. The Council shall not accept proposals from an ineligible Bidder, pursuant to this Chapter.~~

87:15-1-7. Proposal openings [REVOKED]

~~(a) All sealed proposals shall be stamped with the time and date upon receipt at the Council's offices. The proposals shall be placed in a secured bid room until time for the scheduled proposal opening. Access to the room is limited to the Executive Director, the Contracts Administrator, or their designees until the proposal opening.~~

~~(b) Proposals shall be opened at the designated date and time by the Contracts Administrator. Information clearly designated in the RFP as being proprietary or confidential shall not be made public. A proposal opening record shall be completed and maintained in the proposal file.~~

~~(c) Public openings may be requested by a Bidder and/or interested parties prior to the proposal opening. The request may be oral or written and must include the RFP number and closing date.~~

~~(d) No award will be made at routine or public openings. Award recommendations shall be made in writing upon conclusion of the proposal evaluation. The process and procedures for each proposal evaluation shall be further described in the individual RFP.~~

87:15-1-8. Award of contract [REVOKED]

~~(a) Contracts for health plans provided by qualified Bidder(s) may be awarded based on best and final offer BFO through competitive negotiation. In the sole discretion of the Council, a BFO process shall be conducted with qualified Bidders if it is considered by the Council to be in the best interest of the State. In the event the Council considers a BFO process to be in the best interest of the State, all qualified Bidders meeting the minimum requirements of the RFP shall be afforded an opportunity to negotiate a BFO with the Council. The Council shall issue a written request to all qualified Bidders for a BFO. Only qualified Bidders who satisfy the minimum bid requirements specified in the RFP shall be allowed to participate in any BFO negotiation process. The Council retains the right to accept or reject qualified Bidder(s) BFO. The Council shall retain as confidential information contained in the initial proposals submitted by qualified Bidder(s) as well as any subsequent bid offers made by qualified Bidder(s) prior to final contract award as part of the BFO negotiation process. The BFO negotiation process shall allow for modification and alteration of Bidder(s) proposal content and Bidder(s) proposal price after proposals are submitted and during the evaluation process. Upon request for a public bid opening, only the name(s) of the qualified Bidder(s) shall be revealed; neither price nor proposal content shall be revealed and made public until after the BFO process is complete and notice of intent to award is announced by the Council. Only the final, agreed upon price and final, agreed upon proposal content shall be made public after the BFO process is complete and notice of intent to award is announced by the Council. Information clearly designated in the RFP as proprietary shall be held confidential pursuant to the Employees Benefits Act, 74 Okl.St.Ann. § 1365 A.11. After an initial proposal is received and opened by the Council following the bid closing date and time, the initial proposal offered by qualified Bidder(s) may be discussed for clarification and/or modification if the Council deems it advantageous to do so. In this context, "discussion" shall mean clarification, modification, and negotiation, or any of these. Discussion(s) with a qualified Bidder(s) during negotiation and/or clarification shall be conducted individually and privately with qualified Bidder(s) and may be tape recorded by the Council. The Council shall hold all tape recordings, transcripts and notes of discussion(s) confidential. Changes shall not be allowed in qualified Bidder(s) proposal or price after BFOs are received, unless the Council determines, in its sole discretion, that re-submission would be in the best interest of the State. The specific criteria of the BFO shall be specified in the RFP issued by the Council.~~

~~(b) All proposals shall be forwarded to the Contracts Administrator upon completion of the evaluation. The Contracts Administrator shall review the information to determine compliance with the RFP requirements and compliance with all Council rules, policies and procedures. The Council shall be the sole judge in reviewing proposals and awarding contracts.~~

~~(c) The Council shall identify and apply criteria within the RFP and the proposals for final selection and award of contracts. The evaluation process may allow for the selection of less than all of the responsive or qualifying proposals, as allowed by law and as determined to be in the best interest of the State.~~

~~(d) The Contracts Administrator has the right to waive minor deficiencies or informalities in a proposal provided that the best interest of the State would be served without prejudice to the rights of the other Bidders.~~

~~(e) The Council reserves the right to bid and award contracts on an all or none basis, by item or groups of items, whichever is in the best interest of the State.~~

~~(f) All awards shall be made under the terms and conditions as outlined in OAC 87:15-1-9 and any additional terms and conditions as described in the RFP.~~

~~(g) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any contract with the Council.~~

87:15-1-9. Terms and conditions for acceptable proposals [REVOKED]

~~(a) All proposals submitted are subject to the Council's policies and procedures and/or any special conditions and specifications listed in this Subchapter or made part of the RFP.~~

~~(b) Sealed proposals will be opened by the Council at the time and date set in the RFP.~~

~~(c) Proposals received after the closing time will not be considered. Envelopes or containers must contain responses to only one RFP, be sealed, and the name and address of the Bidder inserted in the upper left hand corner. The proposal number and closing date must appear on the face of the envelope or container.~~

~~(d) The proposal shall be in strict conformity with the instructions to the Bidder and shall be submitted in the approved format. All required signatures must be original and written in ink.~~

~~(e) Any questions pertaining to the clarification of the proposal shall be directed to the Contracts Administrator.~~

~~(f) The Council may conduct scheduled on-site visits to the service provider for purposes of testing the readiness of the provider.~~

~~(g) When submitting a proposal to the Council, the Bidder shall agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the Bidder relevant to the contract are subject to examination by the Council, the State Auditor and Inspector, and such other entities as may be specified in the RFP.~~

~~(h) Failure to comply with the terms and conditions shall subject the proposal to disqualification.~~

87:15-1-10. Excessive Price [REVOKED]

~~(a) The Council shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the Council determines the benefit price to be excessive. The Council~~

~~shall have the authority to reject any plan that does not meet the bid requirements. One way to restrict enrollment is to freeze enrollment in the plan's membership as determined to be in the best interests of the State and the members.~~

~~(b) Factors considered by the Council in determining excessive price may include, but are not limited to utilization data and loss ratios on the State group business, a comparison to other carriers proposed prices and/or other employers' plans and prices, actuarial analyses or underwriting principles. The Council may at its discretion, solicit a multi part RFP which shall be designated as such. As a condition to be eligible to bid on Part II of the RFP, the Council shall require Bidders to provide information requested in Part I of the RFP. In the event a Bidder fails to provide the information in Part I of the RFP, the Council shall not consider the Bidder's response to the Part II of the RFP. The Council shall retain as confidential, any proprietary information submitted by a Bidder pursuant to this paragraph.~~

~~(c) Each year, the Council shall specify in the RFP issued by the Council all excessive price factors that shall be considered by the Council for that year's selection of benefit plan options. Benefits plans that bid on the RFP are deemed by the Council to have read and accepted all excessive price factors contained in the RFP.~~

~~(d) Although the Council shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the Council determines the benefit price to be excessive, the Council shall have no duty to do so. Despite the fact that the Council may determine the benefit price to be excessive, the Council nevertheless may choose not to reject the bid or restrict enrollment for reasons the Council determines at that time to be in the best interests of the State and the members. The determining reasons will include, coverage areas where the number of other benefits plans are limited; total number of benefits plans offered; provider networks; employee participation displacement; uniformity of choices for all eligible employee groups; and premiums charged by competing plans.~~

~~(e) The particular factors that are specified in the RFP issued by the Council for determining excessive price may vary from year to year. The specification of particular factors in prior year(s) shall serve as no precedent of the factors that may be specified in subsequent year(s). Similarly, the failure of the Council in prior year(s) to reject a bid or restrict enrollment in any benefits plan for which the Council determines the benefit price to be excessive, shall serve as no precedent as to the action the Council may take in subsequent year(s).~~

87:15-1-11. Challenge of award [REVOKED]

~~(a) Any Bidder may challenge the award of a proposal. A challenge may be based on the following grounds:~~

~~(1) The proposal of the successful Bidder(s) did not meet the RFP requirements in a material way;~~

~~(2) The bidding procedure was done in violation of the Council's rules; or~~

~~(3) Council acted outside the scope of its authority. In the event a Bidder raises this ground in an allegation, said Bidder shall specify the nature of the alleged act.~~

~~(b) After the award is made, the protesting Bidder will deliver a written explanation of the reason for the challenge to the office of the Contracts Administrator within seven (7) business days of the time the Council selects and announces a successful Bidder(s).~~

~~(c) The Contracts Administrator or a designee will review the protesting Bidder's challenge of award, as well as the Council's selection process, and rule on the challenge. The decision will be in writing and shall address each ground raised by the Bidder challenging the proposal, specifically referring to the facts and documents supporting the decision.~~

87:15-1-12. Administrative review [REVOKED]

~~(a) If the protesting Bidder does not agree with the Contracts Administrator's decision on the challenge of award, the protesting Bidder may request an administrative review. Any protesting Bidder may appeal a decision by the Contracts Administrator to the Executive Director. In order for the claim to be eligible for administrative review, the appeal must have been through the challenge of award process as per OAC 87:15-1-11.~~

~~(b) The protesting Bidder must file a notice of appeal with the Executive Director within seven (7) business days of the date of the letter notifying the Bidder of the decision by the Contracts Administrator of the challenge of award by the protesting Bidder, or the postmark of such letter, whichever is later. The letter shall contain the following:~~

~~(1) The letter must state all the facts and arguments giving rise to the claim of controversy and the appeal.~~

~~(2) The letter must also state clearly and separately the alleged error by the Contracts Administrator or other Council personnel and the relief sought with the appeal to the Executive Director.~~

~~(3) The letter must clearly and separately state that the Bidder is requesting an opportunity to be heard in pursuit of the appeal.~~

~~(c) Upon receipt of a properly perfected notice of appeal, the Executive Director shall review the appeal or appoint a designee to conduct the administrative review. The Executive Director may appoint any officer of the Council or may appoint an attorney licensed to practice law to conduct the review. The person conducting the administrative review shall promptly set a time period in which a review will be conducted that will be not more than forty-five (45) days in length beginning from the date the notice is filed. The person conducting the administrative review will set a date in which the Bidder must produce or identify all the documents or other supporting data (verbal or written) which supports the appeal, which date must be within the forty-five (45) day time period above. The person conducting the administrative review may schedule a meeting with the Bidder to discuss the appeal and issues raised, and will examine all such documents and supporting data.~~

~~(d) Within twenty (20) business days after the administrative review period, the person conducting the administrative review shall notify the protesting Bidder by certified mail. The decision by the person conducting the administrative review shall include findings of the facts and conclusions supporting the decision to uphold the award or set the award aside.~~

~~(e) The decision shall be final.~~

87:15-1-13. Confidentiality [REVOKED]

~~The Council, with the cooperation of the Department of Central Services, shall be authorized to retain as confidential, any proprietary information submitted in response to the Council's RFP; provided, however, that any such information requested by the Council from the Bidders shall only be subject to the confidentiality provision of this paragraph if it is clearly designated in the RFP as being protected under this provision.~~

87:15-1-14. Vision Plan Participation [REVOKED]

~~(a) A Vision Plan must notify the Council of its intention to participate in the flexible benefits plan no later than 4:45 p.m., Central Standard Time on the first day of July prior to the beginning of each Plan Year. Such notification must conform to the requirements this section. If the first day of July is a weekend day or other day when the offices of the Council are closed, notification of Vision Plan participation is due by 4:45 p.m., Central Time, on the next day the Council's offices are open.~~

~~(b) Notice of a vision plan's intent to participate in the flexible benefits plan is properly provided upon submission of all of the following:~~

~~(1) A statement from the Vision Plan indicating Vision Plan's intent to participate;~~

~~(2) A list of the providers in Vision Plan's network;~~

~~(3) A document(s) indicating Vision Plan has operated in Oklahoma for at least five (5) years;~~

~~(4) Either a license issued by the Oklahoma State Insurance Department, or a certificate issued by the Oklahoma State Department of Health;~~

~~(5) A list of the rates the Vision Plan will charge during the subsequent Plan Year. Rates must be listed independently for the following categories:~~

~~(A) Employee Only,~~

~~(B) Spouse Only,~~

~~(C) One Child, and~~

~~(D) Two or More Children;~~

~~(6) Accurate product information in a format not to exceed two pages.~~

~~(c) The Council may create forms to standardize and simply the information required by 74 O.S. § 1374 and subsection (b) of this section. If a form(s) have been created, a Vision Plan must complete the form(s) to provide proper notification.~~

~~(d) The Council may require a Vision Plan to submit information in addition to that required in subsection (b) of this section from time to time if the Council deems such information is essential to ensure statutory compliance.~~

~~(e) Information a Vision Plan submits to the Council pursuant to 74 O.S. § 1374 shall be retained as confidential if such information is clearly designated as confidential when submitted.~~

~~(f) Vision Plans not eligible to be offered on a pretax basis as a part of an Internal Revenue Code Section 125 Cafeteria Plan must indicate so when the Vision Plan notifies the Council of its desire to participate in the Flexible Benefits Plan.~~

~~(g) Vision Plans which submit notification of intent to participate in the flexible benefits plan that conform to subsection (a) of this Section and the requirements of 74 O.S. § 1374 are obligated to:~~

~~(1) Enroll employees and eligible dependents in their benefit plan, and~~

~~(2) Offer their benefit plan during the entire subsequent plan year period as that period is defined by the Council.~~

~~(h) The Council may remove a Vision Plan from the Flexible Benefits Plan at any time if it fails to comply or remain in compliance with 74 O.S. § 1374.~~

[OAR Docket #14-749; filed 7-18-14]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 20. AUTHORIZED PAYROLL DEDUCTION VENDOR MATERIAL [REVOKED]

[OAR Docket #14-750]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
87:20-1-1. Purpose [REVOKED]
87:20-1-2. Definitions [REVOKED]
87:20-1-3. General provisions [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1361 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 87, as the Oklahoma State Employees Benefits Council has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

87:20-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to describe the rules governing the process by which materials from vendors that have an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes shall be placed in the annual benefit enrollment materials provided to state employees and their dependents. The provisions of this Chapter do not apply to vendors who do not have authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes.~~

87:20-1-2. Definitions [REVOKED]

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

~~**"Council"** means the State of Oklahoma Employees Benefits Council~~

~~**"Plan Year"** means the period of time, established by the Council, for which benefits are offered to State employees and their eligible dependents.~~

~~**"Vendor"** means a product vendor that has been approved for an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes on or before the last calendar day of July prior to each Plan Year.~~

~~**"Vendor Material"** means a one page, front and back, eight and one half inch by eleven inch document which, at a minimum, identifies the vendor, describes the product being offered, includes the vendor's contact information, and includes the premium or cost of the product. Vendor material must be printed on white paper with a weight equal to 50# offset or 20# bond copy paper.~~

87:20-1-3. General provisions [REVOKED]

~~(a) A vendor must deliver its vendor material to the Employees Benefits Council no later than 4:45 p.m., Central Time, on the second Friday in August prior to the beginning of the benefits enrollment period announced by the Council.~~

~~(b) Vendor material must be designed, printed, and reproduced by the vendor at the vendor's expense.~~

~~(c) The Council will determine the number of copies of vendor material each vendor must supply. The amount will be communicated to vendors each year.~~

~~(d) The Council will bind and distribute all timely and properly submitted vendor material at its own expense.~~

~~(e) The Council may create forms to standardize and simplify the information required by this section. If a form(s) has been created, a vendor must complete the form(s) to provide proper delivery.~~

[OAR Docket #14-750; filed 7-18-14]

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

[OAR Docket #14-697]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. Freestanding Multidisciplinary Child Abuse Teams [NEW]
135:10-25-1 [NEW]
135:10-21-2 [NEW]
135:10-25-3 [NEW]
135:10-25-4 [NEW]
135:10-25-5 [NEW]
135:10-25-6 [NEW]
135:10-25-7 [NEW]
135:10-25-8 [NEW]
AUTHORITY:
Oklahoma Commission on Children and Youth; 10 O.S. § 601.4(9): 10 O.S. § 1150.2(A)(5)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
February 18, 2014 to March 21, 2014.
PUBLIC HEARING:
March 21, 2014
ADOPTION:
March 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY RULES:
n/a
INCORPORATION BY REFERENCE
n/a
ANALYSIS:
The new rules provide the procedure by which the Oklahoma Commission on Children and Youth will coordinate with district attorneys in establishing freestanding multi-disciplinary child abuse teams pursuant to 10A O.S.Supp.2013 § 1-9-102.
CONTACT PERSONS:
Michael Walsh, Oklahoma Commission on Children and Youth, at (405) 606-4900; Michael.Walsh@occy.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 25. FREESTANDING MULTIDISCIPLINARY CHILD ABUSE TEAMS

135:10-25-1. Origin and authority

The legislature gave the Oklahoma Commission on Children and Youth responsibilities for coordinating with each district attorney in the development of freestanding multidisciplinary child abuse teams in each county of the district attorney or in a contiguous group of counties pursuant to 10A O.S. Supp. 2013, Section 1-9-102 (A)(1). The Oklahoma Commission on Children and Youth shall have the authority:

(1) To approve freestanding multidisciplinary child abuse teams;

(2) To evaluate freestanding multidisciplinary child abuse teams by conducting annual on-site reviews of freestanding multidisciplinary child abuse teams;

(3) To designate a freestanding multidisciplinary child abuse team as functioning, provisionally functioning, or non-functioning in accordance with freestanding multidisciplinary child abuse team minimal standards;

(4) To remove freestanding multidisciplinary child abuse team from the list of functioning freestanding multidisciplinary child abuse teams when non-compliant with minimal standards.

135:10-25-2. Duties and responsibilities

The Oklahoma Commission on Children and Youth shall designate staff to perform the following duties:

(1) Provide technical assistance and consultation to district attorneys in the development and coordination of freestanding multidisciplinary child abuse teams;

(2) Issue a listing of Functioning and Provisionally Functioning Freestanding Multidisciplinary Child Abuse Teams based on compliance with minimum standards;

(3) To make recommendations for removal of Non-Functioning Freestanding Multidisciplinary Child Abuse Team to the Commission based on non-compliance with minimum standards;

(4) To facilitate and support the training of Freestanding Multidisciplinary Child Abuse Teams

135:10-25-3. Approval of freestanding multidisciplinary child abuse team

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

(1) **"Annual survey"**means a written document submitted to the Commission summarizing the activities of the team as related to child protection investigations and services with the data elements and format proscribed by the Commission.

(2) **"Annual Site Review"** means the annual on-site review of multidisciplinary team records that assist the Commission in determining the functioning of the freestanding multidisciplinary team.

(3) **"Commission"** means the Oklahoma Commission on Children and Youth

(4) **"Confidentiality statement"** means the written document signed by the multidisciplinary team members assuring that all proceedings conducted during team meetings and child protective investigations will be kept confidential according to clearly defined limits, state law, and respective agency policy and procedure.

(5) **"Community Needs Assessment"** means conducting a process that results in a written document that identifies available services, service gaps, untapped resources and community based priorities for improvement or development of services to the victim and family according to the format and schedule of the Commission.

(6) **"Child Abuse Multidisciplinary Account"** means a continuing fund established by the Oklahoma Legislature for the purpose of providing operating funds to provisionally functioning and functioning multidisciplinary teams.

(7) **"Child Advocacy Center"** means a child friendly, safe and neutral location in which law enforcement and child protective services may conduct and observe forensic interviews with children who are alleged victims of crimes and where non-offending family members may receive support, crisis intervention, and referrals for mental health and medical treatment.

(8) **" Multidisciplinary Child Abuse Team"** means a Multidisciplinary Child Abuse team utilized by a Child Advocacy Center to meet National Accreditation Standards.

(9) **"Data Collection"** means multidisciplinary teams shall maintain data on every case reviewed by the multidisciplinary team in the format proscribed by the Commission.

(10) **"Expertise"** means individual team members' obtaining training and experience in a particular aspect of the multidisciplinary team approach, conducting legally sound and age appropriate interviews, effective investigation techniques, or knowledge about how to conduct joint investigations.

(11) **"Freestanding multidisciplinary team"** means a team not used by a child advocacy center for its accreditation.

(12) **"Functioning Freestanding Multidisciplinary Child Abuse Team"** means a freestanding multidisciplinary team that has met minimal standards promulgated by the Commission.

(13) **"Provisionally Functioning Freestanding Multidisciplinary Child Abuse Team"** means a team that has met the minimal freestanding multidisciplinary team standards for a new team.

(14) **"Non-Functional Freestanding Multidisciplinary Child Abuse Team"** means a team that has not met the minimal standards promulgated by the Commission.

(15) **"Joint Investigations"** means law enforcement and child welfare staff collaborative investigation with written protocols to decrease duplicative efforts and to ensure a thorough process.

(16) **"Interagency agreement(s)"** means the written document(s) signed by the multidisciplinary team member agencies that specify the cooperative effort of the

member agencies to the team and delineates roles and responsibilities.

(17) **"Initial Freestanding Multidisciplinary Child Abuse Team Training"** means training conducted during the early formation of the team where individual team members are oriented to the multidisciplinary child abuse team approach.

(18) **"Multidisciplinary Child Abuse Team"** means a group of individuals of differing disciplines working together collaboratively on a common purpose.

(19) **"Protocol"** means specific methods and procedures used to conduct child protection investigations and interviews.

(20) **"Standards"** means the criteria used to determine functionality of a multidisciplinary team.

(b) **Types of Freestanding Multidisciplinary Child Abuse Team.**

(1) **Functioning Freestanding Multidisciplinary Child Abuse Team.** A Freestanding Multidisciplinary Child Abuse Team shall be included on the list of Freestanding Multidisciplinary Child Abuse Teams when documentation that supports compliance with minimal standards for a functioning freestanding multidisciplinary child abuse team.

(2) **Provisionally Functioning Freestanding Multidisciplinary Child Abuse Team.** A Provisionally Functioning Freestanding Multidisciplinary Child Abuse Team shall be included on the list of Functioning Freestanding Multidisciplinary Child Abuse Team when documentation supports compliance with minimal standards for a provisionally functioning Freestanding Multidisciplinary Child Abuse Team.

(3) **Non-Functioning Freestanding Multidisciplinary Child Abuse Team.** ANon-Functioning Freestanding Multidisciplinary Child Abuse Team shall be removed from the list of Functioning Freestanding Multidisciplinary Child Abuse Team when documentation does not support compliance with minimal standards for a functioning or provisionally functioning Freestanding Multidisciplinary Child Abuse Team.

(c) **Annual On-Site Review.**

(1) Annual On-Site Visit. Commission staff annually shall conduct one on-site compliance visit to each Freestanding Multidisciplinary Child Abuse Team to document compliance with minimal Freestanding Multidisciplinary Child Abuse Team standards.

(2) During each on-site compliance visit Commission staff shall request a completed Annual Survey document and review Freestanding Multidisciplinary Child Abuse Team: interagency agreement, confidentiality statements, member sign-in sheets, joint-investigation and interview protocol, case review documentation, training records, financial accountability policies, and other documents to ascertain compliance with minimal standards.

(d) **Forms.** Commission staff shall use standardized on-site review forms available for public inspection.

(e) **Reports.** Commission staff shall annually issue a Freestanding Multidisciplinary Child Abuse Team Summary Report.

135:10-25-4. Services provided by a freestanding multidisciplinary child abuse team

A freestanding multidisciplinary child abuse team conducts joint investigations in an effort to effectively respond to a report of alleged child abuse.

135:10-25-5. Eligibility standards for a functioning freestanding multidisciplinary child abuse team

A freestanding multidisciplinary child abuse team shall adhere to the following minimal standards to be designated as a functioning freestanding multidisciplinary child abuse team:

(1) A freestanding multidisciplinary child abuse team shall annually review the Interagency Agreement signed by members of the team.

(2) A freestanding multidisciplinary child abuse team shall utilize a Confidentiality Statement approved by the Commission;

(3) A freestanding multidisciplinary child abuse team shall conduct joint investigations whenever feasible involving law enforcement and child welfare in an effort to respond to child abuse reports;

(4) A freestanding multidisciplinary child abuse team shall have written investigation and interview protocols for investigating child maltreatment approved by the Commission;

(5) A freestanding multidisciplinary child abuse team shall utilize a case review process approved by the Commission;

(6) A freestanding multidisciplinary child abuse team shall annually complete the Annual Survey document and submit to the Commission in a format and schedule proscribed by the Commission;

(7) A freestanding multidisciplinary child abuse team members shall participate in on-going professional development training;

(8) A freestanding multidisciplinary child abuse team shall have a written Financial Accountability policy that includes but is not limited to: process for development of annual team budget, signature requirements for checks issued, quarterly expenditure report, cash receipts, cash disbursements, reconciliation, purchasing, and payroll;

(9) A freestanding multidisciplinary child abuse team shall develop individual and team expertise;

(10) Whenever feasible the Commission and freestanding multidisciplinary child abuse team will conduct a Community Needs Assessment to identify available services, service gaps, untapped resources, and priorities for development or improvement of services to the victim and family according to schedule established by the Commission.

135:10-25-6. Eligibility standards for a provisionally functioning freestanding multidisciplinary child abuse team

A freestanding multidisciplinary child abuse team will adhere to the following minimal standards to be designated as a provisionally functioning freestanding multidisciplinary child abuse team:

(1) A freestanding multidisciplinary child abuse team shall demonstrate through documentation that the team has met at least once a month for six consecutive months; at least four of the six meetings shall be for case reviews of alleged child abuse;

(2) A freestanding multidisciplinary child abuse team shall have written joint investigation protocol, interagency agreement, and confidentiality statements;

(3) A freestanding multidisciplinary child abuse team will have a letter of support from their District Attorney or Assistant District Attorney; and

(4) A freestanding multidisciplinary child abuse team will have participated in the initial freestanding multidisciplinary child abuse team training

135:10-25-7. Non-compliance with freestanding multidisciplinary child abuse team minimal standards

Documentation of non-compliance.

(1) The Commission staff shall document clearly and concisely on the annual on-site compliance report area(s) of concern, non-compliance, and recommendation with the Freestanding Multidisciplinary Child Abuse Team Coordinator or District Attorney;

(2) Commission staff shall request the Freestanding Multidisciplinary Child Abuse Team Coordinator or District Attorney's signature on the annual on-site compliance report, explaining that the signature indicates acknowledgement of information recorded during the visit;

(3) The Freestanding Multidisciplinary Child Abuse Team Coordinator or District Attorney shall be given a copy of the completed report.

135:10-25-8. Process for removal of a non-functioning freestanding multidisciplinary child abuse team from the list of freestanding functioning multidisciplinary child abuse teams.

(a) **Process for removal.**

(1) Commission staff shall submit a recommendation for removal of a Freestanding Multidisciplinary Child Abuse Team as to the Commission Director or the Commission Director designee within (30) days of the annual on-site review.

(2) Freestanding Multidisciplinary Child Abuse Team Coordinator or District Attorney shall submit all responses to the recommendation for removal to the Commission Director or Commission Director designee within (10) days of receipt of the notice.

(3) The Commission Director or designee shall be the final decision maker regarding the recommendation for removal of a Freestanding Multidisciplinary Child Abuse Team from the list of Freestanding Multidisciplinary Child Abuse Teams.

(4) The Commission Director or Commission Director Designee will make the final decision within (30) days of the recommendation for removal of a Freestanding Multidisciplinary Child Abuse Team from the listing of Freestanding Multidisciplinary Child Abuse Teams.

(5) Commission staff will send a finding letter within (45) days of the recommendation to remove a Freestanding Multidisciplinary Child Abuse Team from the list of Freestanding Multidisciplinary Child Abuse Teams.

(6) Freestanding Multidisciplinary Child Abuse Team Coordinator or District Attorney may appeal the final decision of removal to the Commission.

(b) **Complaint Procedure.** Complaints received by the Commission concerning Freestanding Multidisciplinary Child Abuse Team case reviews shall be referred to the Oklahoma Commission on Children and Youth, Office of Juvenile System Oversight.

(c) **Public Inspection of Freestanding Multidisciplinary Child Abuse Team Records.**

(1) **Legal Basis.** The Oklahoma Commission on Children and Youth is subject to the Oklahoma Open Records Act Section 24A.1 et.seq. of Title 51 of the review unless they are required by law to be kept confidential.

(2) **Freestanding Multidisciplinary Child Abuse Team Records.** All Oklahoma Commission on Children and Youth Freestanding Multidisciplinary Child Abuse Team records required to establish the level of functioning of a Freestanding Multidisciplinary Child Abuse Team are considered public records shall be open and available for public inspection during reasonable hours.

(3) **Location of Freestanding Multidisciplinary Child Abuse Team Records.** Freestanding Multidisciplinary Child Abuse Team records shall be located at the Oklahoma Commission on Children and Youth office and shall be inspected at that location. The Oklahoma Commission on Children and Youth is located at 1111North Lee Avenue, Suite 500, and Oklahoma City, Oklahoma, 73118.

(4) **Preparation of Freestanding Multidisciplinary Child Abuse Team Records for inspection.** Commission staff shall review the entire record and shall remove confidential information.

(5) **Release of confidential Freestanding Multidisciplinary Child Abuse Team information.** Confidential information shall only be released as provided by statute.

[OAR Docket #14-697; filed 7-8-14]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 1. GENERAL RULES OF PRACTICE AND PROCEDURE

[OAR Docket #14-659]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 19. Actual and Necessary Travel Reimbursements
150:1-19-3 [AMENDED]
150:1-19-5 [AMENDED]
AUTHORITY:
Executive Director of the Department of Commerce and the legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 27, 2013
COMMENT PERIOD:
January 3, 2014 through February 3, 2014
PUBLIC HEARING:
February 4, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amendments clarify reimbursement for expenses for travel under actual and necessary travel reimbursements.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 19. ACTUAL AND NECESSARY TRAVEL REIMBURSEMENTS

150:1-19-3. Review of expenses; criteria for reimbursement

(a) Expenses claimed for actual and necessary reimbursement shall be reviewed by the Director of the Oklahoma Department of Commerce and individually approved or disapproved.

(b) In reviewing expenses claimed for actual and necessary reimbursement, the following criteria shall be applicable:

(1) The purpose for which the travel was intended and requested was a qualified one as set out in 150:1-19-2.

(2) The expense shall be a reimbursable expense under the provisions of 74 O.S., 500.2 et seq. and the guidelines provided by the Office of ~~State Finance~~ Management and Enterprise Services regarding reimbursable expenses.

(3) Expenses for laundry and dry cleaning are reimbursable only if the employee is in travel status more than ~~five~~seven (~~5~~7) nights.

(4) Expenses for others must be verified by receipt. The receipt shall designate date of expense, to whom expense was paid (name of business or entity), for whom the expense was made, a brief explanation of the expenditure (i.e. lunch and tip, lodging, transportation charges), the business purpose of the expenditure (what was the nature of the business involved), and the dollar amount of the expense.

(5) Expenses for meals or entertainment for others shall be reimbursable if they are ordinary and necessary expenses incurred by economic developers. As provided in 26 U.S.C. 274(a) (1) (A), expenses must be directly related to or associated with, the active conduct of business. Expenditures must be on behalf of the company or individuals in whose name the travel claim has been submitted. Documentation as required in paragraph (5) of this section must reflect that the expense was incurred for more than a general expectation of some specific business benefit at some future time; and that business was engaged in during the meal and the main purpose of the combined business and meal was the active conduct of business.

(c) Employees, submitting requests for reimbursement under actual and necessary expenses, shall be required to provide all information necessary to enable the ~~Administrative~~Financial Services Division of the Department to process the request.

150:1-19-5. Required report; contents

(a) The Oklahoma Department of Commerce shall submit a report regarding the actual expenses exempted from the per diem and lodging provisions of 74 O.S., 500.1 through 500.18 no later than the first day of September following the end of each fiscal year to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(b) The report will be completed by the ~~Administrative~~Financial Services Division of the Department and shall contain the following information:

(1) Name of person incurring expense;
(2) Destination and name of hotel;
(3) Purpose and result of travel; and
(4) Amount of expenses reimbursed.

[OAR Docket #14-659; filed 7-3-14]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 15. SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

[OAR Docket #14-660]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 9. Consultant Certification
150:15-9- 4 [AMENDED]
AUTHORITY:
Oklahoma Department of Commerce; 74 O.S. §§ 5001 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 27, 2013
COMMENT PERIOD:
January 3, 2014 through February 3, 2014
PUBLIC HEARING:
February 4, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amendments would clarify continuing education requirements for Certified CDBG Administrators.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. CONSULTANT CERTIFICATION

150:15-9-4. Duration and recertification

Certification lasts for one (1) year. During the year each certified CDBG administrator is to participate fully in at least one continuing education or training activity. Continuing education or training ~~activities include, but are not limited to, attendance at Community Development Block Grant workshops, technical assistance visits, and input or public hearings for the Community Development Block Grant Program~~ consists of the following: CDBG continuing education workshop or the actual certification course.

[OAR Docket #14-660; filed 7-3-14]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 65. OKLAHOMA QUALITY JOBS PROGRAM

[OAR Docket #14-661]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Quality Jobs Program
150:65-1-2. Definitions [AMENDED]
150:65-1-6. Incentive contract [AMENDED]
150:65-1-9. Required information [AMENDED]
150:65-1-11. Additional incentive payments [AMENDED]
Subchapter 6. Small Employer Quality Jobs Program
150:65-6-6. Additional Information [AMENDED]
AUTHORITY:
Executive Director of the Department of Commerce and the legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq., and the Oklahoma Quality Jobs Program 68 O.S. §§ 3601 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 27, 2013
COMMENT PERIOD:
January 3, 2014 through February 3, 2014
PUBLIC HEARING:
February 4, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This action is to clarify the existing Oklahoma Quality Jobs Program rules and to incorporate recent legislative changes in the Oklahoma Quality Jobs Program.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. QUALITY JOBS PROGRAM

150:65-1-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"Application date" means the date on which the establishment's application is first received and stamped by a Quality Jobs representative at the Oklahoma Department of Commerce.

"Approval date" means the date on which the Executive Director of the Oklahoma Department of Commerce issues the offer to an establishment to receive incentive benefits pursuant to the Oklahoma Quality Jobs Program.

"Baseline employment" means an establishment's total number of jobs, which existed in this state prior to the application date of the establishment to the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at anytime within six (6) months prior to such approval. Upon approval of an application if it is more than six months later than the application date, the Department may determine an establishment's baseline employment to be its then current employment or its average employment over the last four quarters and may adjust the average wage requirement to meet the most current average wage requirement.

*"**Change in control event**" means the transfer to one or more unrelated establishments or unrelated persons, of either:*

(A) *beneficial ownership of more than fifty percent (50%) in value and more than fifty percent (50%) in voting power of the outstanding equity securities of the transferred establishment, or*

(B) *more than fifty percent (50%) in value of the assets of an establishment. A transferor shall be treated as related to a transferee if more than fifty percent (50%) of the voting interests of the transferor and transferee are owned, directly or indirectly, by the other or are owned, directly or indirectly, by the same person or persons, unless such transferred establishment has an outstanding class of equity securities registered under Sections 12(b) or 15(d) of the Securities Exchange Act of 1934, as amended, in which event the transferor and transferee will be treated as unrelated; provided, an establishment applying for the Oklahoma Quality Jobs Program Act as a result of a change of control event is required to apply within one hundred eighty (180) days of the change in control event to qualify for consideration. An establishment entering the Oklahoma Quality Jobs Program Act as the result of a change of control event shall be required to maintain a level of new direct jobs as agreed to in its contract with the Department of Commerce and to pay new direct jobs an average annualized wage which equals or exceeds one hundred twenty-five percent (125%) of the average county wage as that percentage is determined by the Oklahoma State Data Center based upon the most recent U.S. Department of Commerce data for the county in which the new jobs are located. For purposes of this paragraph, healthcare premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage. Such establishment entering the Quality Jobs Program Act as the result of a change of control event shall be required to retain the contracted average annualized wage and maintain the contracted maintenance level of new direct jobs numbers as certified by the Oklahoma Tax Commission. If the required average annualized wage or the required new direct jobs numbers do not equal or exceed such contracted level during any quarter, the quarterly incentive payments shall not be made and shall not be resumed until such time as such requirements are met. An establishment described in this paragraph shall be required to repay all incentive payments received under the Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.* [68 O.S. § 3603 (A)(2)].

"Combination" means an establishment, provided it meets the requirements of 68 O.S. Section 3601 et seq. and the requirements set out in 150:65-1-13 of this chapter.

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102, and any successor agencies thereto.

"Cost-benefit analysis" means the analysis the Oklahoma Department of Commerce is required to perform to determine the estimated direct state benefits and estimated direct state costs.

"Date of determination" means the date assigned by the Department on the Incentive Offer on which a subunit and the entity of which the subunit is a part, must demonstrate a net increase in total employment in accordance with 150:65-1-12 (b) and (c) of this chapter.

"Employment of the remainder of the entity of which the subunit is a part" means the total number of jobs of an entity of which the subunit is a part which existed in this state prior to the application date of the subunit as to the Oklahoma Department of Commerce. Such jobs shall be deemed to exist in this state prior to approval of a subunit's application if the activities and functions for which the particular job exists have been ongoing at any time within six (6) months prior to approval. Upon approval of an application of a subunit as an establishment, if it is more than six (6) months later than the application date, the Department may determine the employment of the remainder of the entity of which the subunit is a part to be its then current employment or its average employment over the last four quarters, and may adjust the average wage requirement to meet the then current average wage.

"Entity of which the subunit is a part" means the business or governmental entity of which a subunit is a separate part as described in 68 O.S., Section 3603(8)(a) and 150:65-1-12 of this chapter.

*"**Estimated direct state benefits**" means the tax revenues projected...to accrue to the state as a result of new direct jobs.*[68:3603(A)(4)] Such revenues shall include:

(A) State income tax receipts from employees holding new direct jobs. The Oklahoma Department of Commerce will determine the estimated direct state benefit from personal income tax receipts by reviewing:

(i) historical data on similar or existing projects;

(ii) information provided by the establishment;

(iii) data from federal agencies such United States Bureau of the Census and the United States Department of Labor;

(iv) the most recent historical data from the Oklahoma Tax Commission on average personal tax rates by income class; and,

(v) private sector financial reports; and

(B) State sales and use tax receipts, excise tax receipts, gasoline tax receipts and other anticipated tax receipts resulting from purchases by employees holding new direct jobs. The Department will determine the estimated direct state benefit from such taxes by reviewing:

(i) information supplied by the establishment;

(ii) data from federal agencies such as the United States Department of Labor;

(iii) Oklahoma Tax Commission sales and use tax reports; and,

(iv) private sector financial reports.

"Estimated direct state costs" means the costs projected to accrue to the state as a result of new direct jobs employing new state residents and/or new state service beneficiaries. Such costs shall include:

(A) The costs of educating new state resident children. The Oklahoma Department of Commerce will determine the estimated direct state costs of such educations by using:

(i) information supplied by the establishment;

(ii) the most recent average student allocation per pupil formula provided by the Oklahoma Department of Education; and,

(iii) United States Department of Labor statistics;

(B) The costs of government services such as public health, public safety and transportation provided to new residents and/or state service beneficiaries. The Department will determine the estimated direct state costs for such government costs by examining the state's per capita cost of providing non-common education services and estimating the amount of the state's excess capacity; and

(C) The costs of any industrial access road paid for with state funds and provided by the Oklahoma Department of Transportation; provided, the road is clearly from the facility to the thoroughfare and is clearly and primarily utilized by the establishment.

*"**Estimated net direct state benefits**" means the estimated direct state benefits less the estimated direct state costs.* [68:3603(A)(5)]

"Extraordinary adverse business circumstance" is an unforeseen event or series of events that adversely impact a business' ability to participate in the Oklahoma Quality Jobs Program. Such events shall not include market, economic, or business factors, but be limited to Acts of God, acts of terrorism, and civil unrest.

"Full-time equivalent employment" means employment which has a minimum six-month duration during any twelve-month time period, regardless whether the same employee holds the employment for said time.

"Line of business" means the ~~SIC~~NAICS code that is reflected by the end product or services of a given project resulting in new direct jobs.

"Negative economic event" means (1) a man-made disaster or natural disaster as defined in 63 O.S. § 683.3, resulting in the loss of a significant number of jobs within a particular county of this state, or (2) an economic circumstance in which a significant number of jobs within a particular county of this state have been lost due to an establishment changing its structure, consolidating with another establishment, closing or moving all or part of its operations out of this state.

"Net benefit rate" is set forth at 68 O.S. § 3603(A)(7) as determined by the Oklahoma Department of Commerce.

"New direct job":

(A) *means full-time-equivalent employment in this state in an establishment which has qualified to receive an incentive payment pursuant to the provisions of Section 3601 et seq. of this title* [68 O.S. § 3601]*which employment did not exist in this state prior to the date of approval by the Department of the application of the establishment pursuant to the provisions of Section 3604 of this title* [68 O.S. § 3604]*; provided, that if an application of an establishment is approved by the Department of Commerce after a change in control event and the Director of the Department of Commerce determines that the jobs located at such establishment are likely to leave the state, "new direct job" shall include employment that existed in this state prior to the date of application which is retained in this state by the new establishment following a change in control event, if such job otherwise qualifies as a new direct job, and*

(B) *shall include full-time-equivalent employment in this state of employees who are employed by an employment agency or similar entity other than the establishment which has qualified to receive an incentive payment and who are leased or otherwise provided under contract to the qualified establishment, if such job did not exist in this state prior to the date of approval by the Department of the application of the establishment or the job otherwise qualifies as a new direct job following a change in control event. A job shall be deemed to exist in this state prior to approval of an application if the activities and functions for which the particular job exists have been ongoing at*

any time within six (6) months prior to such approval. With respect to establishments defined in division (10) of subparagraph a of paragraph 1 of this subsection, [NAICS 2111]*new direct jobs shall be limited to those jobs directly comprising the corporate headquarters of or directly relating to administrative, financial, engineering, surveying, geological or geophysical services performed by the establishment. Under no circumstances shall employment relating to drilling or field services be considered new direct jobs. [68 O.S. § 3603(3)]* But does not include jobs which constitute an establishment's baseline employment as determined by the Oklahoma Department of Commerce pursuant to the definitions of this section. An establishment must maintain a total number of jobs equal to its baseline employment number before any job of the establishment shall be considered a new direct job.

"Quality jobs representative" means an Oklahoma Department of Commerce professional or economic development professional, trained in the Oklahoma Quality Jobs Program, who is so designated by the Executive Director, and whose responsibilities in the program include direct contact with applicants and clients, analysis of data, initiation of project proposals, preparation of project profiles and preparation of incentive offers.

"Significant number of jobs" means full-time-equivalent employment in a county equal to or in excess of three percent (3%) of the total amount of full-time-equivalent employment in that county for the calendar year, or most recent twelve-month period in which employment is measured, preceding the event.

"Subunit" means an establishment, provided it meets all requirements of 68 O.S. Section 3601 et seq. and the requirements set out in 150:65-1-12 of this chapter.

150:65-1-6. Incentive contract

(a) After an incentive contract is recommended by the Department, the office of General Counsel shall prepare an incentive contract for the Director's review and signature. The signed incentive contract shall then be forwarded to the establishment. An incentive contract may be accepted by the establishment within sixty (60) days of the date of signing by the Director. The sixty (60) day period can be extended by the Director upon the request of the establishment, at the Director's discretion.

(b) The incentive contract shall be on a form prescribed by the Department which shall include the following information:

(1) The net benefit rate which will be multiplied by verified gross quarterly payroll to determine the amount of quarterly payments;

(2) The estimated direct state benefits which is the maximum amount of benefit payments available;

(3) The project start date;

(4) The baseline employment;

(5) The projected number of new jobs;

(6) The average annual wage; and

(7) Any other information the Department deems necessary.

(c) Upon execution of the incentive contract, the establishment shall return the incentive contract to the Department. The original incentive contract, signed by the chief executive officer or authorized representative, shall be returned to the Department by certified mail with return receipt requested or by personal delivery or by other means acceptable to the Department.

(d) For all purposes of the Oklahoma Quality Jobs Program Act, the effective date of approval of the incentive contract will be the date the signed and accepted incentive contract is received by the Department. Provided, however, the approved project may have a start date which is prior to a later date than the effective date of approval.

150:65-1-9. Required information

(a) The Department may require establishments to provide any of the following information in order to determine eligibility under the provisions of the Oklahoma Quality Jobs Program Act, 68 O.S. Supp. 1993, Section 3601, et seq:

(1) NAICS code number;

(2) Business plans;

(3) Feasibility studies;

(4) Financing proposals;

(5) OESC Form 3 or its electronic equivalent;

(6) OTC Income Tax Withholding form;

(7) Financial statements or sales contracts;

(8) Marketing plans;

(9) Registration with the Oklahoma Secretary of State;

(10) Registration with OESC;

(~~10~~11) Registration with the Commission; and

(~~11~~12) Application for a Manufacturing Sales Tax Exemption, if applicable.

(b) Additional information that the Department may consider in evaluating eligibility may include, but shall not be limited to:

(1) Industry trends;

(2) Service Contracts in place or anticipated of establishments and of both the subunit establishment and the entity of which it is a part, if applicable. In considering this factor, the Department may require information such as length of contracts, likelihood of extension, track record or historical data regarding receipt of contracts and retention of them if subject to renewal;

(3) Historical data on management in place;

(4) Organization structure of the establishment and any related business or governmental entities and the nature of the relationships; particularly, the Department may inquire whether any establishment files a joint tax return with any of its related entities;

(5) Likelihood of job shifting or utilization of employees of the entity of which the subunit is a part or within a combination or amongst other related entities of an establishment and the percentage of employees affected;

(6) Expansion of existing markets;

(7) Extension of existing product line;

(8) labor market; and

(9) other relevant information.

(c) All materials described in (a) and (b) of this section may be kept confidential by the Department pursuant to the terms of its exemptions contain in the Oklahoma Open Records Act.

(d) The Department may require establishments approved to receive incentive payments to provide any information necessary in order to administer the program and prepare program reports.

150:65-1-11. Additional incentive payments

(a) *An establishment that is receiving incentive payments may not apply for additional incentive payments for any new projects until twelve (12) quarters after receipt of the first incentive payment, or until the establishment's actual verified gross payroll for new direct jobs equals or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) during any four consecutive-calendar-quarter period, whichever comes first. After meeting the requirements of this subsection, an establishment may apply for additional incentive payments based upon the gross payroll anticipated from an expansion only.* 68 O.S. § 3606(F).

(b) ~~An establishment that has ceased to receive incentive payments for a period of twelve (12) consecutive quarters, may withdraw from the Oklahoma Quality Jobs Program and reapply to the Department for a new incentive contract pursuant to OAC 150:65-1-4 provided that the establishment qualifies as an eligible entity.~~*An establishment described in this subsection shall be required to repay all incentive payments received under the Oklahoma Quality Jobs Program Act if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in the state within three (3) years from the beginning of the calendar quarter for which the first incentive payment claim is filed.* 68 O.S. § 3604(J).

(c) *If an establishment fails to achieve the required gross payroll within three (3) years of the start date, the establishment shall not make a new or renewal application for incentive payments authorized pursuant to the Oklahoma Quality Jobs Program Act for a period of twelve (12) months from the last day of the last month of the three-year period during which the required gross payroll amount was not achieved.*68 O.S. § 3606(B).

SUBCHAPTER 6. SMALL EMPLOYER QUALITY JOBS PROGRAM

150:65-6-6. Additional Information

(a) To determine an applicant's qualification, the Department may request and consider other information in addition to that information listed in the application, including, without limitation, the following:

(1) ~~SIC or~~ NAICS Code Numbers relating to all activities of an applicant;
(2) Business plans;
(3) Feasibility studies;
(4) Financing proposals;
(5) OESC Form 3 or its electronic equivalent;
(6) Income tax withholding forms;
(7) Marketing plans;
(8) Financial statements or sales contracts;
(9) Registration with the Oklahoma Secretary of State;
(10) Registration with OESC;
(~~10~~11) Registration with the Commission; and
(~~11~~12) Application for a Manufacturing Sales Tax Exemption, if applicable.

(b) Additional information that the Department may consider in evaluating eligibility may include, without limitation, the following:

(1) Industry trends;
(2) Service contracts in place or anticipated;
(3) Historical data on management in place;
(4) Organization structure of the establishment and any related business and the nature of the relationships, including whether such entities file income tax returns on a consolidated basis;
(5) Likelihood of job shifting between qualifying and non-qualifying activities;
(6) Expansion of existing markets;
(7) Extension of existing product line;
(8) Labor market; and
(9) Other relevant information.

(c) All materials described in subsections (a) and (b) hereof may be kept confidential by the Department, if permitted by the Oklahoma Open Records Act, 51 O.S. Sections 24A.1 through 24A.26.

(d) The Department may also require Qualified Establishments to provide any information necessary in order to administer the program and prepare program reports.

[OAR Docket #14-661; filed 7-3-14]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 120. WORKFORCE INVESTMENT ACT

[OAR Docket #14-662]

RULEMAKING ACTION:
PERMANENT Final Adoption

RULES:
Subchapter 1. General Provisions
150:120-1-2. Definitions [AMENDED]
150:120-1-3. Addresses for appeals [AMENDED]
Subchapter 3. Denial or Termination of Eligibility of Training Provider
150:120-3-2. Notice to the training provider [AMENDED]
150:120-3-4. Hearing [AMENDED]
Subchapter 5. Denial of Request for Designation as a Local Workforce Investment Area
150:120-5-3. Hearing [AMENDED]
Subchapter 7. Monitoring
150:120-7-2. Monitoring report [AMENDED]
150:120-7-3. Monitoring resolution [AMENDED]
150:120-7-5. Appeal [AMENDED]
150:120-7-6. Hearing [AMENDED]
Subchapter 9. Audits
150:120-9-1. Audit requirements [AMENDED]
150:120-9-2. Delinquent audit [AMENDED]
150:120-9-7. Appeal [AMENDED]

Subchapter 11. Grievance Procedure
Part 3. Grievances Filed Directly with ODOC
150:120-11-10. Filing [AMENDED]
150:120-11-12. Contents of a grievance [AMENDED]
150:120-11-13. Referral of a grievance filed with ODOC [AMENDED]
Part 5. Appeals to ODOC From Grievance Decisions of a Local Area
150:120-11-21. Appeals with ODOC [AMENDED]
150:120-11-22. Time limit for filing an appeal with ODOC [AMENDED]
Part 7. Informal and Formal Resolutions of Grievances
150:120-11-30. Informal resolution [AMENDED]
150:120-11-31. Hearing [AMENDED]

AUTHORITY:
Executive Director of the Department of Commerce and the Strategic State Workforce Investment Plan submitted by the Governor to the United States Department of Labor and the legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 27, 2013

COMMENT PERIOD:
January 3, 2014 through February 3, 2014

PUBLIC HEARING:
February 4, 2014

ADOPTION:
February 13, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 19, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed rule amendments would make clarifications to the correct parties, addresses, and hearing procedures for actions under the Workforce Investment Act as administered by the Oklahoma Department of Commerce.

CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

150:120-1-2. Definitions

In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Audit Division" means the ODOC division responsible for conducting audit resolutions.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement designed in WIA section 117(c)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

~~**"Director"** means the Deputy Secretary for Workforce Development for the Oklahoma Department of Commerce.~~

"Executive Director" means the Executive Director of the Oklahoma Department of Commerce.

"Fiscal Agent" means an entity chosen by the CLEO to serve as grant subrecipient of the WIA grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

150:120-1-3. Addresses for appeals

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

(1) **Secretary,** U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 201200.

(2) **Regional Administrator,** Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.

(3) ~~**Deputy Secretary for Workforce Development**~~ **Executive Director,** Oklahoma Department of Commerce, ~~P.O. Box 52003~~ 900 North Stiles, Oklahoma City, OK 731~~26-0980~~04-3234.

(4) **Audit Division,** Oklahoma Department of Commerce, ~~P.O. Box 52003~~ 900 North Stiles, Oklahoma City, OK 731~~26-0980~~04-3234.

~~(5) **Executive Director**, Oklahoma Department of Commerce, P.O. Box 52003, Oklahoma City, OK 73126-0980.~~

SUBCHAPTER 3. DENIAL OR TERMINATION OF A TRAINING PROVIDER

150:120-3-2. Notice to the training provider

The Executive Director or his or her designee shall send a certified letter to the training provider at the training provider's address of record with the local board.

150:120-3-4. Hearing

If a timely appeal is received, the Executive Director or his or her designee will conduct a hearing pursuant to its rules at 150:1-11-1 through 150:1-11-17.

SUBCHAPTER 5. DENIAL OF REQUEST FOR DESIGNATION AS A LOCAL WORKFORCE INVESTMENT AREA

150:120-5-3. Hearing

Upon receipt of a timely appeal, the State Council will refer the case to the Executive Director or his or her designee for hearing. A hearing will then be conducted by the Executive Director pursuant to its rules at 150:1-11-1 through 150:1-11-17. Within (30) days from the date the appeal is received from the State Council the Executive Director will issue its findings of fact to the Governor, State Council, and Chief Local Elected Official. A copy of the administrative record will be sent to the Governor.

SUBCHAPTER 7. MONITORING

150:120-7-2. Monitoring report

(a) A monitoring report will be issued by the Executive Director or his or her designee to the grant recipient after each monitoring review. Copies of this report will be addressed to the ~~Director, and copies sent to the Executive Director, Deputy Director, and the~~ Audit Division Director of ODOC. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements of WIA, the regulations promulgated thereunder, administrative requirements, applicable cost principles, grant agreements, and state policies.

(b) Monitoring reports and resolutions generated by a grant recipient must be submitted to ODOC on an annual basis and at least sixty (60) days prior to expiration of the service provider or subrecipient's contract with its subrecipient.

150:120-7-3. Monitoring resolution

(a) The Executive Director or his or her designee is responsible for monitoring resolution.

(b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, and administrative findings or deficiencies.

(c) The grant recipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Executive Director or his or her designee. The response must contain all additional information, documents, or arguments the grant recipient wants the Executive Director or his or her designee to consider in making the initial monitoring determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Executive Director or his or her designee will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Executive Director or his or her designee may request additional information from the entity submitting a response, if clarification is needed. The Executive Director or his or her designee may schedule or the grant recipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Executive Director or his or her designee prior to the first thirty (30) day deadline.

(d) The Executive Director or his or her designee shall issue an initial monitoring determination within sixty (60) days from the date the response is received. The grant recipient has thirty (30) days from the date of the initial monitoring determination to submit its response to the initial monitoring determination to the Director.

(e) The Executive Director or his or her designee shall issue a final monitoring determination in compliance with 150:120-7-4.

(f) All monitoring findings must be resolved within six (6) months after the initial monitoring report is issued.

(g) The Executive Director or his or her designee will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

(h) After follow-up procedures are completed, if the grant recipient is found in non-compliance, the Executive Director or his or her designee will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

150:120-7-5. Appeal

(a) If the grant recipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Executive Director.

~~(c) The Director will then forward a copy of the appeal to the Executive Director within five (5) days from receipt.~~

150:120-7-6. Hearing

(a) The Executive Director will conduct a hearing within thirty (30) days from the receipt of the appeal by the Executive Director unless the parties and the Executive Director agree to waive this requirement in order to allow additional time to resolve the matter, or the Executive Director, or his or her designee, can waive the requirement upon application by one of the parties or unilatterally. The hearing will be conducted pursuant to the Executive Director's rules at 150:1-11-1 through 150:1-11-17.

(b) The Executive Director will issue a decision within thirty (30) days from the date the hearing record is closed.

(c) The decision of the Executive Director will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

(d) ODOC will provide the administrative record to the district court as provided for in ODOC's rule at 150:1-11-15.

(e) At the hearing, the grant recipient bear the burden of proof to show that the WIA funds granted or paid to the grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program.

The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.

(f) Any fee charged to the grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Executive Director or District Court cannot be charged to grant or contract funds received from ODOC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

SUBCHAPTER 9. AUDITS

150:120-9-1. Audit requirements

The subrecipient shall comply with ODOC's audit policy at OAR 150:1-21.

~~(a) A financial and compliance audit by an independent auditor is required annually for each subrecipient.~~

~~(1) Each subrecipient is subject to the audit requirements of 29 CFR Part 95, 29 CFR Part 97, or 29 CFR Part 99 (as appropriate) and shall comply with applicable OMB Circulars, including OMB Circular A-133.~~

~~(2) The audit shall be performed by a certified public accountant or firm, or by a public accountant or public accounting firm.~~

~~(A) Except as provided in subparagraph (B) of this paragraph, no single person or firm shall perform the annual audit for an Oklahoma WIA grant recipient for more than three (3) consecutive years.~~

~~(B) The restriction in subparagraph (A) of this paragraph is waived if WIA funds constitute less than fifty percent (50%) of a grant recipient's total budget.~~

~~(3) The audit shall be performed in accordance with standards required by the federal government, requirements issued by ODOC, and guidelines established by the Generally Accepted Governmental Auditing Standards (GAGAS).~~

~~(b) If the subrecipient does not receive a sufficient amount of federal grant money to require a full audit, ODOC may require a limited scope audit in accordance with federal requirements. The ODOC will be responsible for arranging and paying for all limited scope audits. The limited scope audit will address one or more of the following types of compliance requirements.~~

~~(1) Activities allowed or disallowed;~~

~~(2) Allowable cost and cost principles;~~

~~(3) Eligibility;~~

~~(4) Matching;~~

~~(5) Level of effort;~~

~~(6) Earmarking;~~

~~(7) Reporting.~~

~~(c) The ODOC Audit Division is charged with the responsibility of audit resolution.~~

~~(d) The subrecipient must notify the Audit Division of the name and address of the person or firm that will be performing the annual audit no later than thirty (30) days after the end of the grant recipient's fiscal year. The audit report is to be filed with the Audit Division Director within thirty (30) days after the completion of the audit and no later than one (1) year from the end of the grant recipient's fiscal year. A copy of the audit report shall be delivered to the Director within the same time period. If a management letter is issued to a subrecipient, the subrecipient shall submit the management letter and the responses thereto to ODOC Audit Division within thirty (30) days from the receipt of the management letter.~~

150:120-9-2. Delinquent audit

If the audit has not been received within one (1) year after the end of the grant recipient's fiscal year, the Audit Division Director will send a certified letter to the subrecipient advising it that it has fifteen days to provide its reasons for failing to comply with the requirements set forth in Rule 150:120-5-1. If no response is received within fifteen (15) days, or the response, received is not adequate, the Executive Director, or his or her designee, will send a certified letter to the subrecipient advising it that its current funding and eligibility for future contracts are suspended.

150:120-9-7. Appeal

(a) If the subrecipient is not satisfied with the findings issued in the final determination, it has fifteen days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Executive Director.

~~(c) The Director will then forward a copy of the appeal to the Executive Director.~~

SUBCHAPTER 11. GRIEVANCE PROCEDURE

PART 3. GRIEVANCES FILED DIRECTLY WITH ODOC

150:120-11-10. Filing

A participant or affected party may file a grievance with the Executive Director.

150:120-11-12. Contents of a grievance

Each grievance shall be in writing and should:

(1) Be signed by the grievant or his authorized representative;

(2) Contain the grievant's name and address (or specify another means of contacting him or her);

(3) Identify the individual against whom the grievance is filed, if applicable;

(4) List the date(s) on which the acts which are the basis of the grievance occurred, or if continuing, when such acts began and describe the continuing nature;

(5) List the names and addresses of persons who may have knowledge of the facts of the grievance;

(6) Describe the grievant's allegations in sufficient detail to allow the Executive Director to determine whether:

(A) The Executive Director has jurisdiction over the grievance;
(B) The grievance was timely filed; and
(C) The grievance has apparent merit, i.e., whether the allegations if true, would violate any Title I of WIA.

150:120-11-13. Referral of a grievance filed with ODOC

The Executive Director may refer a grievance, originally filed with ODOC, to the local area if there is a likelihood that it could be resolved at that level. If the referred grievance is not resolved within ten (10) days from the date of receipt by the local area, the Executive Director or his or her designee, will attempt to resolve the issue informally.

PART 5. APPEALS TO ODOC FROM GRIEVANCE DECISIONS OF A LOCAL AREA

150:120-11-21. Appeals with ODOC

An appeal may be filed with the Executive Director from a grievance decision issued at the local area level if:
(1) No decision is reached within 60 days from the date the grievance is received at the local area level; or
(2) Either party is dissatisfied with the local area hearing decision.

150:120-11-22. Time limit for filing an appeal with ODOC

(a) If the local area does not render a decision within sixty (60) days from the date of receipt of the grievance, an appeal must be filed with the Executive Director within 30 days from the expiration of the sixty (60) day time period.
(b) If the local area renders a decision that a party is dissatisfied with, the appeal must be filed with the Executive Director within 30 days of the date the local area mails the decision to the party by certified mail.

PART 7. INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES

150:120-11-30. Informal resolution

The Executive Director or his or her designee will attempt to resolve any grievance or appeal informally by meeting with the parties in person or discussing the grievance with the parties by telephone. If the grievance is not resolved informally within fifteen (15) days from the receipt of the grievance or appeal, the Executive Director will ~~forward the grievance or appeal to the Executive Director~~ proceed with the Hearing process.

150:120-11-31. Hearing

The Executive Director will conduct the hearing pursuant to its rules at 150:1-11-1 through 150:1-11-17. The hearing process will be completed within sixty (60) days from the date the grievance was received by the Executive Director unless the parties and the Executive Director agree to waive this requirement in order to allow additional time to resolve the matter, or the Executive Director can waive the requirement upon application by one of the parties..

[OAR Docket #14-662; filed 7-3-14]

TITLE 155. OKLAHOMA CONSERVATION COMMISSION
CHAPTER 20. CONSERVATION COST-SHARE PROGRAM

[OAR Docket #14-664]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
155:20-1-5 [AMENDED]
AUTHORITY:
The Oklahoma Conservation Commission and the Conservation District Act contained in 27A O.S. 2011 §§ 3-1-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 1, 2013 through December 11, 2013
PUBLIC HEARING:
December 11, 2013
ADOPTION:
January 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 7, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014.
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed changes to this rule eliminate the <20 acres and the $1,000 of soil dependent products sold annually restrictions to allow urban/suburban natural resource issues to be addressed (i.e. cedar eradication, fire risk management, erosion & sediment control) by the locally led conservation districts as needed and pursuant to 27A O.S. § 3-3-114.
CONTACT PERSON:
Janet Stewart, General Counsel, Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma City, OK 73105-4210, phone: (405) 742-1240, email: janet.stewart@conservation.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

155:20-1-5. Eligibility for Conservation Cost-Share Program

(a) **~~Ineligible~~Eligible land.** ~~Allocated funds shall not be used on tracts of land smaller than twenty acres in size from~~

~~which less than $1,000 of soil dependent products are sold annually. These restrictions shall not apply to tracts of land which serve as waste collection sites, waste transfer sites, or to cost share practices implemented in priority watersheds and unique priority areas within a conservation district. Withstanding these provisions, the~~The determination whether land is eligible for cost-share payments shall be pursuant to any restrictions established by the conservation district in whose jurisdiction the land is located and pursuant to 27A O. S. Ann. §§ 3-3-114.

(b) **Eligible purposes.** Cost-share payments shall be available only for eligible conservation practices.

(c) **Eligible conservation practices.** Conservation practices that the Commission has approved shall be eligible for cost-share payments. A complete listing of the eligible conservation practices will be identified in the Commission's program year guidelines.

(d) **Requirement to file an application and conservation plan.** In order to qualify for a cost-share payment, an eligible person shall file:

(1) An application for allocated funds.

(2) A conservation plan approved by the district in which the eligible person's land is located.

[OAR Docket #14-664; filed 7-7-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD

[OAR Docket #14-522]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Description of Organization
158:1-1-1 [AMENDED]
158:1-1-2 [AMENDED]
Subchapter 3. General Operation and Procedures
158:1-3-5 [AMENDED]
158:1-3-6 [AMENDED]
158:1-3-7 [AMENDED]
158:1-3-8 [AMENDED]
158:1-3-9 [AMENDED]
158:1-3-10 [NEW]
158:1-3-11 [NEW]
158:1-3-12 [NEW]
Subchapter 5. Procedure in Individual Proceedings
158:1-5-3 [AMENDED]
158:1-5-5.1 [NEW]
158:1-5-7 [AMENDED]
158:1-5-12 [AMENDED]
158:1-5-13.1 [NEW]
158:1-5-17 [AMENDED]
Subchapter 7. Oklahoma Small Business Regulatory Flexibility Act
158:1-7-1 [AMENDED]
158:1-7-2 [AMENDED]
158:1-7-3 [AMENDED]
AUTHORITY:
Construction Industries Board: 59 O.S. §§ 858-627, 1000.4, 1000.5, 1002, 1032, 1681, and 1850.3
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Procedure in Individual Proceedings
158:1-5-3 [AMENDED]
158:1-5-5.1 [NEW]
158:1-5-7 [AMENDED]
158:1-5-12 [AMENDED]
158:1-5-13.1 [NEW]
Gubernatorial Approval:
October 15, 2013
Register publication:
31 Ok Reg 113
Docket number:
13-1241
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Many of the amendments are cleanup in nature and correct punctuation and grammar and correct or clarify references and citations. There are also amendments/new sections in Subchapter 3 for the purpose of implementing provisions pursuant to Senate Bill 1863 which created the Post-Military Service Occupation, Education and Credentialing Act; amendments/new sections in Subchapter 5 reflecting changes adopted under emergency rulemaking procedures for the purpose of implementing amendments to 59 O.S. § 1000.4 related to the automatic review of all fines, penalties and fees assessed for any violation of law or rule imposed after an administrative proceeding, and related to procedures for appealing an administrative ruling; and deletion of a definition in 158:1-7-2 which is duplicative of a definition in 158:1-1-2.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION

158:1-1-1. Purpose

(a) These rules implement the Administrative Procedures Act, 75 O.S. § 250, *et seq., as amended* ("APA"). These rules govern formal proceedings of the Construction Industries Board and may be supplemented by procedural rules within a particular ~~departmental~~division or unit area. Informal proceedings may be held as announced by the Construction Industries Board or as agreed with any person or entity.

(b) These rules are adopted to simplify procedure, avoid delays, ~~save~~ reduce expenses, and facilitate the administration of the Construction Industries Board Act of Oklahoma and all other regulatory laws and rules administered by the Construction Industries Board. To that end, the provisions of these rules shall be given a fair and impartial construction.

158:1-1-2. Definitions

Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa. The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Construction Industries Board Act as found at 59 O.S. § 1000.1, *et seq*~~et seq~~.

"Administrator" means the Administrator of the Board as described in the Act.

"Administrative Law Judge" means a person appointed by the Construction Industries Board to conduct an individual hearing under the Administrative Procedures Act and may be ~~a~~an employee or a private attorney with whom the Construction Industries Board has a contract for services.

"Board" means the Oklahoma Constructions Industries Board.

"Respondent" means the person(s) or legal entity(ies) named in a petition for an individual proceeding, against whom relief is sought.

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

158:1-3-5. Access to Agency records pursuant to the Open Records Act

(a) **Official records.** Official records include records required to be maintained by law, the record in individual proceedings, records submitted to the agency by any person and any other "record" as that term is defined by the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq*~~et seq~~. (OORA).

(b) **Access to official records.** Every record defined by subparagraph (a) above wherein disclosure is not otherwise specifically excepted by law or the OORA is subject to inspection and mechanical reproduction under the provisions set forth below.

(c) **Initial procedural requirements.** A request for inspection may be submitted orally or in writing. To encourage a fully articulated and accurate response to a request, the Board recommends a request be submitted in a form that is susceptible to memorialization such as a writing, electronic mail or facsimile transmission, and must reasonably describe the records sought. Additionally, if applicable, every request must specify a time period for which records are being sought. A request submitted in the manner above, reasonably describing the records sought and stating an appropriate time period for the records being sought will be timely acknowledged and further processed for a review and inspection. If, consistent with the OORA, staff personnel determine that a search is necessary to gather and collect the records sought by the requester, the requester is required to pay, in advance, a search fee pursuant to subparagraph (h) below.

(d) **Requests received.** Requests submitted to the agency will not be deemed to have been received unless and until the request has been identified by agency personnel as a request properly filed in accordance with these rules. After a determination is made estimating the search time necessary to gather the records requested, the agency will remit an advice of the cost to the requester. Upon receipt of the requested search fee, the request will be deemed to have been received by the agency and will then be timely processed for inspection.

(e) **Abandonment.** Any request not confirmed by a tender of the requisite search fee within thirty (30) days of advice by the agency shall be deemed to be abandoned, unless, within the time stated, the requester can show cause why the confirmation should be delayed or postponed.

(f) **Cooperation with the ~~board~~Board.** If the requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, the processing of the subject request may be suspended by agency personnel. A request that remains suspended for a period exceeding sixty (60) days shall be deemed abandoned.

(g) **Appeal.** If the agency cannot comply with the request for disclosure, the requester shall be notified in writing, within thirty (30) days of notice of the adverse determination, stating the reason(s) therefor and advising the requestor of the right, at the requestor's option, of administrative appeal under the provisions of ~~subparagraph~~ OAC 158:1-3-7.

(h) **Fees.** The following are fees for reproduction of records:

(1) Paper Records

(A) Regular copy - $0.25 per page

(B) Certified copy - $1.00 per page

(C) Copy sent by fax - $0.35 per page

(D) Copy of pages larger than 8-1/2 X 11 - $0.50 per page.

(2) Audio Tapes

(A) With tape provided - $5.00 per tape

(B) Without tape provided - $10.00 per tape.

(3) Electronic Records - Requester is required to furnish blank tape(s) if reproduction is not in a printout format.

(A) $50.00 per hour programming time

(B) $1,850.00 per CPU hour

(C) $50.00 per hour for other computer time.

(4) Search Fees - $25.00 per hour.

158:1-3-6. Administrative Law Judges and clerks

(a) **Administrative Law Judge.** The Administrator may designate a person to serve as ~~a~~ an Administrative Law Judge for any proceeding properly filed with the Board. Administrative Law Judges shall be familiar with the rules of procedure and generally familiar with the substantive rules governing the matter, and shall not have had prior involvement in the matter other than as ~~a~~an Administrative Law Judge. The Administrative Law Judge so designated shall have full authority to conduct all aspects of the hearing.

(b) **Hearing clerks.** The Administrator shall designate a person to serve as hearing clerk for the Board. The clerk shall maintain the administrative hearing files and dockets.

(c) **Authority.** The Administrative Law Judge shall have complete authority to conduct the proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The Administrative Law Judge may also:

(1) arrange and issue notice of the date, time and place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) administer oaths and affirmations;

(4) regulate the course of the hearing and govern the conduct of participants;

(5) examine witnesses;

(6) rule on, admit, exclude and limit evidence;

(7) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;

(8) rule on motions and other pending procedural matters; and

(9) divide the hearing into stages or combine interests of parties whenever the number of parties is large or the issues are numerous and complex.

158:1-3-7. Requesting individual proceedings and rulemaking

(a) **APA governs.** The Administrative Procedures Act, 75 O.S. § 250, *et seq*~~et seq~~., governs individual proceedings and rulemaking undertaken by the Board.

(b) **Petitions.** All initial requests for hearings or other adjudicatory, declaratory or rulemaking action of the Board should be made in the form of a petition, unless otherwise provided by specific statute or rule.

(c) **Petitioner(s).** The Board or the Administrator, and other petitioners when authorized by law, may initiate petitions for individual proceedings and for rulemaking.

(d) **Motions.** All requests for action in a matter already before the Board shall be made in the form of a motion.

(e) **Must state reason and sign.** All requests must state clearly and with specificity the reason and basis for the request, and the action or relief sought. The request shall be signed by the person presenting the same, or his attorney pursuant to 75 O.S. § 310-(5), and in all cases shall include the signer's address and phone number.

(f) **Where filed.** All requests shall be filed with the hearing clerk.

(g) **Response.** The Board or the Administrator shall timely respond to such petitions or motions, either by initiating proceedings or by denying the request in writing. The Administrator may refer rulemaking petitions, and petitions requesting declaratory rulings on the applicability of any rule, to appropriate advisory councils and committees for their recommendations, and shall do so when required by statutes. Any petition for rulemaking will be deemed to be denied if the Administrator has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is filed with the hearing clerk.

158:1-3-8. Fee for dishonored checks

The Construction Industries Board may charge and collect a fee of $25.00 from any licensee, registrant or other obligor of a fee, fine, or other payment for each return by a ~~band~~ bank or other depository institution of a dishonored check, negotiable order of withdrawal or share draft issued by the licensee, registrant or other obligor.

158:1-3-9. Fees for plan review and project review for code conformance

(a) **Plan review fee.** For formal review of project plans pursuant to 59 O.S. §§ 1002.1, 1681.1 and 1850.3a, the Construction Industries Board shall charge a fee of $ 75.00 per hour per review, one hour minimum, not to exceed $200 for any single review.

(b) **Project review inspection fee.** For inspection services related to a project review for code conformance pursuant to 59 O.S. § 1000.5(A)(2), the Construction Industries Board shall charge a fee of $ 75.00 per hour, per inspection, one hour minimum, not to exceed $200 for any single inspection.

(c) **Limitations on inspection fees.** The fee required in subsection (b) herein only applies in localities where the Construction Industries Board is the authority having jurisdiction for code enforcement purposes and the inspection services are performed at the request of a contractor or property owner. The Construction Industries Board shall not charge a fee for inspections related to licensing or licensee investigations.

(d) **Each code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein based on the trade (plumbing, electrical or mechanical) work inspected for code conformance by the Construction Industries Board~~-~~.

(e) **Subsequent code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein for each subsequent inspection of work for conformance to a code, including scheduled progress inspections performed at different intervals during the stages of construction.

158:1-3-10. Acceptance of Military education, training, and experience toward qualification for licensure examination

(a) **Licensure - post-military service.** In accordance with 59 O.S. § 4100.4 of the Post-Military Service Occupation, Education and Credentialing Act, the related trade committee and the Board shall, upon satisfactory evidence of substantially equivalent education, training and experience by an applicant for licensure, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license issuance.

(1) An applicant applying under this paragraph must complete and submit the following:

(A) Appropriate application(s).

(B) Satisfactory evidence of education, training and experience obtained by the applicant as a member of the military Armed Forces or Reserves of the United States.

(C) License certification(s) from jurisdiction(s) in which the applicant has held or currently holds a license, if applicable.

(D) Criminal history background application, finger print card and fee, if applicable.

(E) Successful completion of the appropriate examination.

(b) **Military spouse applicant - equivalency.** In accordance with 59 O.S. § 4100.5 the Board shall issue the individual an equivalent license in an equivalent category if, in the opinion of the related trade committee, the requirements for licensure of the other state are substantially equivalent to those required by this state, and the applicant:

(1) is actively licensed in another state;

(2) is the spouse of an active-duty member of the Armed Forces or Reserves of the United States;

(3) has a spouse subject to a military transfer to this state; and

(4) left employment in another state to accompany their spouse to this state.

(c) **May be required to meet additional requirements.** If, in the opinion of the related trade committee, there is a question as to the competence of the previously licensed applicant, the individual may be required to meet additional educational courses and/or successfully complete the required examination.

158:1-3-11. Expediting issuances of license to military spouse

The following procedures are hereby established to expedite the issuance of a license for spouses of certain members of the Armed Forces on active duty in this state.

(1) The Board shall expedite consideration of requests by military spouses by methods appropriate to the volume of such requests by, in its sole discretion, referring to the related trade committee to review them, or other appropriate methods. The Board may request supplemental information as may be necessary. The application will be heard, if necessary, at the next practicable trade related committee meeting following submission of all requested documentation.

(2) Upon satisfactory completion of any specific requirements in Oklahoma that were not required in the state in which the military spouse is licensed, or passing the required examination, the Board may issue the applicant an electrical, mechanical or plumbing journeyman license, or electrical, mechanical, or plumbing contractor license, or building and construction inspector license, or home inspector license, subject to the usual requirements of Oklahoma licensure, including, but not limited to, continuing education, payment of license and renewal fees, and compliance with all applicable statutes and rules of the Board.

158:1-3-12. Renewals for licensee - post-military service

(a) **Active duty as a member of the Armed Forces of the United States.** In accordance with 59 O.S. § 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act, while a licensee holder is on active duty the license may be renewed without payment of the license fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Board prior to license expiration, along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Board evidence of successful completion of the continuing education requirement for the current license renewal term.

(1) If a licensee on active duty does not request such waiver in writing and the license expires, the applicant may, by written request, provide the Board documentation as required in paragraph (a) of this section; however, no later than one (1) year after discharge from active duty.

(2) In the event a license expires during the events as noted herein, the Board shall waive any retesting license examination as a result of the expired license.

(b) **Member of the National Guard or reserve component of the Armed Forces.** In accordance with 72 O.S. § 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Board receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all license fees and continuing education shall be waived for this time period as well as license examination otherwise required as a result of license expiration.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL PROCEEDINGS

158:1-5-3. Service of petition and notice of hearing

(a) **Service.** The Petition and notice of hearing shall be served on the Respondent by personal service or by mail or other lawful means ~~as may be provided in the Oklahoma Pleading Code~~.

(b) **Personal service.** Personal service of the petition and the notice of hearing upon an individual shall be made by delivering the Petition personally on the Respondent or by leaving a copy of the Petition at the individual's dwelling place or the usual place of abode with some person residing therein who is fifteen (15) years of age or older.

(c) **Board as petitioner.** Where the Board is the petitioner, personal service of the petition and notice of hearing may be made by a person designated by the Administrator to make such service for the Board.
(d) **Service by mail.** Service of the petition and the notice of hearing may be made by certified mail, return receipt requested, restricted delivery.
(e) **Proof of service.** The person serving the petition and the notice of hearing shall file proof of service with the hearing clerk within twenty (20) days of service or before the date of the hearing whichever is sooner. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.
(f) **Substitute service.** Substitute service in a matter against a licensee may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition and notice of hearing were mailed first class mail to the last known address of the licensee.
(g) **Service of Proposed Order and Notice of Appeal.** A person shall file an entry of appearance and agreement to allow use of regular mail for proposed orders. Issuance of proposed orders and the notice of appeal may then be sent by regular mail. If an entry of appearance or agreement is not filed, then the proposed order and notice of appeal will be sent using a certificate of mailing indicating the date of mailing and the name and address of the addressee.

158:1-5-5.1. Entry of Appearance

Respondents, attorneys representing Respondents, and attorneys representing the Board in an individual proceeding shall file an entry of appearance. The entry of appearance shall include the case caption of the individual proceeding, the name, address, telephone number, and electronic mailing address of Respondent or of Respondent's attorney.

158:1-5-7. Continuances

Motions for a continuance of the hearing to another date or time shall be in writing and filed with the Hearing Clerk with a copy to the parties and the Administrative Law Judge. A motion for a continuance shall state the reasons for the request and specify the length of time requested. The Administrative Law Judge shall act upon such motion promptly and shall grant or deny such request at his discretion. If the motion is denied, it may be renewed orally by the party at the hearing. No administrative hearing case shall be delayed or continued once placed upon the Board's agenda for final review except with consent of the parties.

158:1-5-12. Order

Following the hearing, the Administrative Law Judge shall prepare a proposed final order to be ~~as~~ authorized by the Board. The proposed final order will be automatically reviewed by the entire Board to be affirmed, denied, or remanded to the Administrative Law Judge for further hearing, with or without instructions. A written recommendation and summary of the case will be provided to the Board by the Administrator. The decision by the Board that is affirmed or denied will be a final order. Any decision to remand will be brought before the Board following further proceeding by the Administrative Law Judge and the new proposed order will be reviewed by the Board according to this section. The Board member attending the original or remanded trade hearing board hearing will abstain from discussion or voting when the same matter is before the Board. The Board will review proposed orders no later than the last day of the quarter the proposed order was issued.

158:1-5-13.1. Appeals

(a) Any person subject to an administrative fine, penalty or fee shall have all rights to appeal according to the Administrative Procedures Act once a final order is authorized by the Board. A person may appeal a proposed order to the Board, and any final order by the Board may be appealed to the district court of Oklahoma County.
(b) In order to appeal the Administrative Law Judge's proposed order, the person must file with the Board a Request for Appeal and brief within ten (10) business days of the issuance of the Administrative Law Judge's proposed order. The Request for Appeal and brief shall be no more than fifteen (15) pages and the person shall set forth a summary of the exceptions with the Administrative Law Judge's proposed order. The attorney for the Board may issue a brief in response. The person will then be notified of the date and time of the appropriate Board meeting regarding the appeal.
(c) A request for oral arguments shall be made at the time the Request for Appeal is filed with the Board. Oral arguments will be limited to no more than ten minutes (10) for each side. Briefs and oral arguments shall not include any new factual information.
(d) The Board may affirm the proposed order, deny the proposed order, or remand the case to the hearing officer, with or without instructions.

158:1-5-17. Notice of violation and compliance orders

(a) The Board, through its investigator, may issue a written notice of violation to any person or entity who is in violation of any standard or rule adopted by the Board. The notice of violation shall be served in accordance with OAC 158:1-5-3.
(b) Fifteen (15) days following the service of the notice of violation, the Board, through the administrator, may issue a written order requiring compliance with such standards or rules immediately or within a specified period of time. The fifteen-day notice period may be reduced to render the order reasonably effectual. Such order shall state with specificity the nature of the violation. Additionally, such order may assess a fine for each day of noncompliance with the order. All orders shall be served in accordance with OAC 158:1-5-3.
(c) Any person or entity issued an order must request a hearing no later than fifteen (15) days after the order is served. If a hearing is not requested, the order shall become final. If a hearing is requested, a hearing shall be held before the appropriate hearing board of the Construction Industries Board.

SUBCHAPTER 7. OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT

158:1-7-1. Purpose

Pursuant to the Oklahoma Small Business Regulatory Flexibility Act (75 O.S. ~~Supp. 2002,~~ § 501, *et seq.*), these Rules apply to all fines and penalties imposed by the Board.

158:1-7-2. Definitions

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

~~**"Board"** means the Oklahoma Construction Industries Board.~~

"Fine or penalty" means a consequence that is a result of violating any statute, ordinance or rule governed by the Board pursuant to the Construction Industries Board Act.

"Small Business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees that is subject to regulation by the Board.

158:1-7-3. Waiver or reduction of administrative fine or penalty

(a) Pursuant to the Oklahoma Small Business Regulatory Flexibility Act, a small business which is regulated by the Board can request a waiver or reduction in an administrative fine or penalty. An administrative fine or penalty may be waived by the Board against a small business if:

(1) The small business corrected the violation within thirty (30) days of receiving notice of a violation or a citation; or

(2) The violation was the result of an excusable misunderstanding of the Board's interpretation of a rule.

(b) The Board may not grant a waiver or reduction if:

(1) The small business was notified of the violation of a statute, ordinance or rule by the Board, i.e., given a warning prior to the issuance of an administrative fine or penalty;

(2) The small business did not exercise good faith in complying with a statute, ordinance or rule;

(3) The violation involved willful or criminal conduct by the small business;

(4) The violation resulted in a serious health, safety or environmental impact; or

(5) The fine or penalty was assessed pursuant to federal law and for which no waiver was authorized by federal law or regulation.

[OAR Docket #14-522; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 10. FINE SCHEDULE

[OAR Docket #14-523]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:10-1-1.1 [NEW]
Subchapter 3. Administrative Fine Schedule
158:10-3-1 [AMENDED]
158:10-3-3 [AMENDED]
Subchapter 5. Oklahoma Small Business Regulatory Flexibility Act
158:10-5-2 [AMENDED]
158:10-5-3 [AMENDED]
AUTHORITY:
Construction Industries Board: 59 O.S. § 1000.1, et seq.; and 59 O.S. §§ 858-627, 1002, 1681, and 1850.3
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments are cleanup in nature. The amendments add a definition of "Act" and "Administrator" and move the definition of "Board" for clarification purposes; clarify and correct citations and references; and correct a scrivener's error in 158:10-3-1(a)(7) regarding the fine for forging or altering a license. This scrivener's correction will not change the amount of the fine that has been applied for several years.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:10-1-1.1. Definitions

Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa. The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Construction Industries Board Act as found at 59 O.S. § 1000.1, *et seq.*

"Administrator" means the Administrator of the Construction Industries Board as described in the Construction Industries Board Act.

"Board" means the Oklahoma Constructions Industries Board.

SUBCHAPTER 3. ADMINISTRATIVE FINE SCHEDULE

158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act, the Plumbing License Law of 1955, and Home ~~Inspectors~~ Inspection Licensing Act

(a) The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the Electrical License Act, the Mechanical Licensing Act and The Plumbing License Law of 1955, or each of the respective licensing laws. Except as provided in Section 158:10-3-2, the fine schedule for citations issued by the Board for violations of the following requirements is:

(1) Contracting without license, which includes offering to perform work:
- (A) First - $500.00
- (B) Second or subsequent - $1,000.00.

(2) Inactive contractor or a journeyman engaged in contracting:
- (A) First - $500.00
- (B) Second or subsequent - $1,000.00.

(3) Contractor working unlicensed or unregistered individual (per person):
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(4) Contractor working registered apprentice without direct supervision (per apprentice):
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(5) Unlicensed or unregistered individual performing trade work under the direction of one acting as a contractor:
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(6) Loaning a license:
- (A) First - $500;
- (B) Second or subsequent - $1,000.00.

(7) Forging or altering a license:
- (A) First - ~~$1,000.00~~$500.00;
- (B) Second or subsequent - ~~$500.~~$1,000.00.

(8) Code violations per day (after NOV compliance date):
- (A) First - $500.00.

(9) Contracting with an expired bond:
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(10) Contracting with expired insurance
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(11) Failure to properly display firm name and state license number on vehicles:
- (A) First - $500.00;
- (B) Second or subsequent - $1,000.00.

(b) The fine schedule for citations issued by the Board for Violations of the Home ~~Inspector~~ Inspection Licensing Act or the Rules promulgated there under shall be subject to the following fines:

(1) Violation of 158:70-5-2(d):
- (A) First violation: $50.00
- (B) Subsequent violation: $200.00

(2) Violations of 158:70-11-2(a):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(3) Violations of 158:70-11-2(b):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(4) Violations of 158:70-11-2(c):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(5) Violations of 158:70-11-2(d):
- (A) First violation: up to $200.00
- (B) Subsequent violation: up to $500.00

(6) Violations of 158:70-11-2(e):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(7) Violations of 158:70-11-2(f):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(8) Violations of 158:70-11-2(g):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(9) Violations of 158:70-11-2(h):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(10) Violations of 158:70-11-2(i):
- (A) First violation: up to $500.00
- (B) Subsequent violation: up to $1,000.00

(11) Violations of 158:70-11-2(j):
- (A) First violation: up to $1,000.00
- (B) Subsequent violation: up to $2,000.00

(12) Violations of 158:70-11-2(k):
- (A) First violation: up to $200.00
- (B) Subsequent violation: up to $500.00

(13) Violations of 158:70-11-2(l):
- (A) First violation: up to $200.00
- (B) Subsequent violation: up to $500.00

(14) Violations of 158:70-11-2(m):
- (A) First violation: up to $200.00
- (B) Subsequent violation: up to $500.00

(15) Violations of 158:70-11-2(n):
- (A) First violation: up to $200.00
- (B) Subsequent violation: up to $500.00

(c) Violations of any other provision of the Electrical Industry Regulations, the Mechanical Industry Regulations and the

Plumbing Industry Regulations not otherwise provided hereinabove or in 158:10-3-2, shall be subject to a fine of $200.00 for the first offense and $400.00 for each subsequent offense.

158:10-3-3. Administrative citations

(a) Issuance of a citation. A citation which is issued to a person for violation of one or more of the compliance requirements provided in Section 158:10-3-1~~,~~and Section 158:10-3-2~~, and Section 158:10-3-4~~ shall advise the person of the hearing date at which the person may contest the issuance of the citation and/or the amount of the fine. Such hearings shall be conducted in compliance with the Oklahoma Administrative Procedures Act and the Oklahoma Open Meetings Act.

(b) Orders following hearing. A final order may uphold the citation as issued, reduce the amount of the fine or dismiss the action. A default order may be issued if the person cited has been advised in writing of the hearing date and fails to appear. The fine is due and payable immediately upon issuance of the order unless otherwise provided therein. A final order is appealable to the district court in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 5. OKLAHOMA SMALL BUSINESS REGULATORY FLEXIBILITY ACT

158:10-5-2. Definitions

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

~~**"Board"** means the Oklahoma Construction Industries Board.~~

"Fine or penalty" means a consequence that is a result of violating any statute, ordinance or rule governed by the Board pursuant to the Construction Industries Board Act.

"Small Business" means a for-profit enterprise consisting of fifty (50) or fewer full-time or part-time employees that is subject to regulation by the Board.

158:10-5-3. Waiver or Reduction of Administrative fine or penalty

(a) Pursuant to the Oklahoma Small Business Regulatory Flexibility Act, a small business which is regulated by the Board can request a waiver or reduction in an administrative fine or penalty. An administrative fine or penalty may be waived by the Board against a small business if:

(1) The small business corrected the violation within thirty (30) days of receiving notice of a violation or a citation; or

(2) The violation was the result of an excusable misunderstanding of the Board's interpretation of a rule.

(b) The Board may not grant a waiver or reduction if:

(1) The small business was notified of the violation of a statute, ordinance or rule by the Board, i.e., given a warning prior to the issuance of an administrative fine or penalty;

(2) The small business did not exercise good faith in complying with a statute, ordinance or rule;

(3) The violation involved willful or criminal conduct by the small business;

(4) The violation resulted in a serious health, safety or environmental impact; or

(5) The fine or penalty was assessed pursuant to federal law and for which no waiver was authorized by federal law or regulation.

[OAR Docket #14-523; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #14-524]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:30-1-1 [AMENDED]
158:30-1-2 [AMENDED]
158:30-1-3 [AMENDED]
Subchapter 3. Procedures of the Committee and Hearing Board
158:30-3-1 [AMENDED]
158:30-3-2 [AMENDED]
Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name
158:30-5-2 [AMENDED]
158:30-5-4 [AMENDED]
Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
158:30-9-1 [AMENDED]
158:30-9-2 [AMENDED]
158:30-9-3 [AMENDED]
158:30-9-4 [AMENDED]
Subchapter 13. Procedure of the Variance and Appeals Board~~s~~, Plan Review Applications and Fees, Code Variance Applications and Fee, and Code Interpretation Appeals
158:30-13-1 [AMENDED]
158:30-13-2 [AMENDED]
158:30-13-3 [AMENDED]
158:30-13-4 [AMENDED]
AUTHORITY:
Construction Industries Board: 59 O.S. §§ 1000.4(A)(1) and 1002
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Many of the amendments are cleanup in nature and correct spelling, punctuation and grammar, and correct or clarify references and citations. In addition, 158:30-1-2 adds a definition of "Hearing Board" and corrects the definition of "Bonds and Insurance Unit" and "Variance"; 158:30-1-3 adds requirement for notifying the Construction Industries Board of changes in address, business relationship, or structure; 158:30-3-1 updates language to reflect current procedure for filing application for licensure, and updates language to reflect current provisions of the Oklahoma Open Records Act; 158:30-3-2 removes obsolete language; 158:30 9-1 clarifies education that can be substituted for a portion of the experience requirement for examination; 158:30-9-3 is amended to make it clear that all applicable continuing education requirements must be met before any license may be renewed; 158:30-9-4 removes requirement related to providers offering reasonable accommodations for disabled licensees attending continuing education classes because the continuing education providers are already subject to requirements under federal law that address this matter; 158:30-13-1, 158:30-13-2, 158:30-13-3 and 158:30-13-4 clarifies circumstances under which the Construction Industries Board can conduct a plan review, clarifies reference to code/standard of installation from which a variance can be requested, and allows the Administrator to appoint a designee to approve/contest applications for a variance and provide testimony to rebut an application.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:30-1-1. Purpose

The rules in this Chapter implement the Plumbing ~~Licensing~~ License Law of 1955, ~~Title~~ 59 O.S. § 1001, *et seq., as amended.*

158:30-1-2. Definitions

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

"Act" means the ~~plumbing license law~~ Plumbing License Law of 1955 as found at 59 O.S. § 1001, *et seq., as amended*.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1 *et seq.*

"Applicant" means any person applying for an examination, for a license or registration, for review of plans and specifications or for a plumbing code variance from the current, published edition of the code of plumbing regulations endorsed by the International Code Council (ICC) by the Board under the Act.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds~~,~~ and insurance~~, and citations~~ under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Plumbing Examiners.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed plumbing contractor or plumbing journeyman.

"Farm Operations"

(A) For purposes of the Plumbing License Law, "farm" means land devoted primarily to production for sale of livestock or agricultural commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(B) For purposes of the Plumbing License Law, "~~Farm~~ farm building" means all homes (i.e., domiciles, residences), or buildings therewith designed and used primarily for and in conjunction with conducting farming operations, provided that said buildings are not connected to a public water and/or sewage system. A "farm building" shall not include other structures such as stores, service stations, schools, motels, or any other building having public access, whether connected to private or public water or sewer systems.

"Hearing Board" means the Plumbing Hearing Board.

"Maintenance of state owned or operated facilities" means maintenance of state institutions and school districts and will be construed as all repair and/or upkeep of existing plumbing or plumbing fixtures within existing state owned buildings or local school district owned buildings. This term shall not include the installation of plumbing in a new building or new additions to existing structures or replacement of plumbing systems in existing buildings.

"Plumbing" means and includes:

(A) all piping, fixtures, appurtenances and appliances for, and in connection with, a supply of water within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a water main or other source of supply;

(B) all piping, fixtures, appurtenances and appliances for sanitary drainage or storm drainage facilities, including venting systems for such facilities, within or adjacent to any building, structure, or conveyance, on the premises and to the connection with a public disposal system or other acceptable terminal;

(C) the installation, repair, maintenance and renovation of all piping, fixtures, appurtenances and appliances for a supply of water, or for the disposal of waste water, liquid waste, or sewage within or adjacent to any building, structure, or conveyance, on the premises and to the source of supply of water or point of disposal of wastes;

(D) the original installation of a water softener but not the exchanging of the units whereby only unions are disturbed in the replacement;

(E) the installation of water services and building sewers; and

(F) sewer cleaning-house sewer maintenance.

"Plumbing License Unit" means the staff and administrative support unit to the Committee of Plumbing Examiners and the Plumbing Hearing Board.

"Reciprocity agreement" means an agreement whereby a person holding a plumber's license or registration who is licensed in another state with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Variance" means the use of an alternative material or method of construction from that prescribed in the ~~current, published edition of the code of plumbing regulations endorsed by the International Plumbing Code~~ standard of installation as described in OAC 158:30-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Plumbing Installation Code Variance and Appeals Board.

158:30-1-3. License requirement

(a) No person, on behalf of himself or on behalf of a plumbing firm, shall engage or offer to engage in, by advertisement or otherwise, any plumbing work who does not possess a valid and appropriate license or registration from the Construction Industries Board pursuant to these rules.

(b) Any changes in address, business relationship, structure or affiliation shall be reported in writing to the Oklahoma Construction Industries Board within thirty (30) days of such change.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE AND HEARING BOARD

158:30-3-1. Procedures of the Committee

The Committee of Plumbing Examiners (the "Committee") shall serve the Board in an advisory capacity, formulate rules pursuant to the Plumbing License Law of 1955, and assist and advise the Administrator on the examination of applicants for licenses as journeyman plumber and/or plumbing contractor, in accordance with these rules and the terms and conditions of the law. The Committee shall make up a part of the State Plumbing Hearing Board.

(1) The Committee ~~of Plumbing Examiners (the "Committee")~~ shall meet at least twice each year. ~~The Committee shall give open meeting notices.~~Meetings of the Committee will comply with the Oklahoma Open Meeting Act. The Board shall notify all examination applicants by direct mail of the procedures and contact information to set a date and time for examination.

(2) The public may obtain information and make submissions, requests, and applications for plumbing examinations by mail or in person at the Oklahoma Construction Industries Board.

(3) ~~The only formal procedure available to the public is to apply for a plumbing license. This~~ Application for licensure shall be done by filling out an application for examination ~~with the Administrator at Oklahoma Construction Industries Board, Oklahoma City, Oklahoma, address. The application~~on a form ~~shall be~~ provided by the Plumbing Licensing ~~unit~~ Unit.

(4) All forms and instructions used by the Plumbing Licensing Unit shall be approved by the Administrator pursuant to ~~Title~~ 59 O.S. ~~1981, Section~~§1007, and are available at the offices of the Board.

(5) ~~All rules and policy statements and interpretations of policy and results of examinations shall be available on request from the Board.~~All records not privileged from disclosure by law are subject to the provisions of the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.* Copies shall be priced as determined by rule of the Oklahoma Construction Industries Board.

(6) The Administrator will confirm or deny that a person is licensed upon request of the public.

158:30-3-2. Procedures of the Hearing Board

(a) The Hearing Board shall meet as often as is necessary to enforce the requirements of the Act and these Rules. The Hearing Board~~,~~shall be comprised of a designee of the Construction Industries Board and the Committee~~, shall follow the Rules of Practice and Procedure of the Oklahoma Construction Industries Board~~.

(b) The standard of review to be used by the Hearing Board for individual proceedings concerning the work of contractors, journeymen and apprentices shall be the standard of installation referenced in OAC 158:30-1-4.

SUBCHAPTER 5. LICENSE TYPES, BOND REQUIREMENTS, AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:30-5-2. Insurance and bond requirements

(a) Unless as otherwise provided in OAC 158:30-5-2(b) below: Each active plumbing contractor must maintain a five thousand dollar ($5,000.00) corporate surety bond, payable to the Board, and must cause the surety to deposit a copy of such bond with the Plumbing Licensing Unit and with each municipality in which the bonded plumbing contractor proposes to commence plumbing work.

(b) An active plumbing contractor may satisfy the requirements of OAC 158:30-5-2(a) above by depositing with the Plumbing Licensing Unit, either the sum of $5,000 cash, or a certificate of deposit in the sum of $5,000 payable to the order of the Plumbing Licensing Revolving Fund.

(c) Failure to maintain a corporate surety bond in effect shall constitute grounds for summary suspension of a bonded plumbing contractor license immediately upon the expiration of such bond.

(d) A corporate surety bond may be accepted from any surety authorized to do business in the State of Oklahoma. It shall continue in effect until thirty (30) days have elapsed after the Bond and Insurance Unit is notified by the surety of the

cancellation of such bond, unless the bond expired on a date certain on its face. Sureties must notify each municipality furnished with a copy of the bond regarding the pending cancellation if known to them.

(e) The Board shall notify the surety of the summary suspension or revocation of the license of any of its bonded licensed plumbing contractors.

(f) A bond or other surety filed in accordance with OAC 158:30-5-3(a) shall be in lieu of filing a bond with each municipality where the plumbing contractor works, and shall be conditioned upon all the following terms:

(1) Plumbing contractors shall faithfully and properly conduct business in compliance with applicable statutes, rules of the Oklahoma Construction Industries Board, and with all the applicable ordinances of the municipality in which plumbing work is performed.

(2) Plumbing contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(3) In lieu of a corporate surety, an active plumbing contractor may deposit with the Bonds and ~~insurance~~ Insurance Unit the required amount in lawful money or negotiable bonds of the United States, accompanied by a written instrument, to be approved by the Construction Industries Board, executed and acknowledged by the active plumbing contractor, and setting forth the conditions upon which the deposit is made. When the true owner is other than the active plumbing contractor making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration, the instrument and deposit may be returned by the Bonds and Insurance Unit to the depositor or the true owner, if the depositor is other than the named true owner, after application of the deposit to claims made pursuant to these Rules.

(4) Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects himself to the jurisdiction of the Construction Industries Board and irrevocably appoints the Administrator as his agent upon whom any papers affecting his liability may be served. Every surety or depositor of security consents to his liability being joint and several. Consequently, judgment may be entered against the surety, or depositor of security, in accordance with his obligation simultaneously with judgment against the principal, and execution may thereupon issue.

(5) Plumbing contractors shall protect, save harmless and indemnify the State and municipalities against any liability imposed by law against the State and municipalities for the negligence of said contractor arising from any act or omission while engaged in work pursuant to the Plumbing License Law.

(6) Any aggrieved person may bring an action upon the bond for the recovery of penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(7) For purposes of this Section, the term plumbing contractor also includes the agents, servants, and employees of a plumbing contractor.

(g) Exceptions. The bond and insurance requirement will be waived if:

(1) The plumbing contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his ~~inactive~~ license is valid and the bond and insurance requirements are met; or

(2) The plumbing contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform plumbing work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

(h) Insurance. A plumbing contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000.

158:30-5-4. Plumbing journeymen and contractor licenses by reciprocity

(a) **General procedures for application.** Any person holding a valid plumbing journeyman license or plumbing contractor license issued by another State who is seeking to obtain a license by reciprocity shall first submit an application to the Construction Industries Board on a form provided by the Board. The application shall include all documentation necessary to show the applicant meets the requirements established by these rules. All applications shall first be directed to the Committee or its designee for an initial review to determine if the applicant meets the qualifications for a license by reciprocity as set forth in these rules and in 59 O.S. § 1000.5A or any subsequent enactment of the Legislature. Following this review, the Committee or its designee shall make a recommendation to the Board or its designee as to whether the application should be approved or disapproved. The Board or its designee shall make the final determination as to whether an application shall be approved or disapproved. If the Board or its designee disapproves an application, the application shall be returned to the applicant with the reason for the disapproval.

(b) **Application fees.** Before an application will be considered, a person applying for a plumbing journeyman license by reciprocity must pay an application and licensing fee of $ 75. If the person is applying for a plumbing contractor license, the person must pay an application and licensing fee of $225. These fees shall not be refundable under any circumstances.

(c) **Requirements for issuance of a license by reciprocity.** An application for a license by reciprocity may be approved upon a satisfactory showing by the applicant of the following:

(1) That the requirements for licensure from the State in which the applicant is licensed ~~is~~are determined to be substantially the same or equivalent to the requirements for obtaining a license by examination in this state. In making this determination the following shall be considered:

(A) Whether the experience required by the other State to be eligible to sit for the license examination is substantially the same or equivalent to the Board's requirements;

(B) Whether the experience commercial/industrial work required by the other State is substantially the same or equivalent to the Board's requirements;

(C) Whether the continuing education requirements of the other State are substantially the same or equivalent to the Board's requirements;

(D) Whether the codes adopted by the other State are substantially the same or equivalent to the Board's requirements;

(E) Whether the examination of the other State is substantially the same or equivalent to the Board's requirements. This shall include the score required to pass the examination, the subject matter of the examination, the codes on which the examination is based, and whether the examination is in written form.

(2) That the other State will recognize a license issued by the State of Oklahoma through the Construction Industries Board. Paragraphs 1 and 2 of this rule may only be satisfied by the existence of a reciprocity agreement between the Board and the State issuing the applicant's current license as provided in subsection (d) of this rule.

(3) That the applicant is currently licensed by a State that meets the requirements of Section 1 of this rule and that one (1) year immediately prior to the application, the applicant lawfully practiced an applicable trade within and under the laws of that State.

(4) That no disciplinary matters are pending against the applicant in any jurisdiction in which the applicant is currently licensed. This requirement will be considered satisfied upon presentation of a certified statement from the licensing authorities of all jurisdictions in which the applicant is currently licensed that no disciplinary matters are pending against applicant.

(5) That the applicant obtained the license to be reciprocated by examination.

(d) **Reciprocity agreements.** The Board may enter into a reciprocity agreement with another State if the requirements for licensure in the other State are deemed by the Board to be substantially the same or equivalent to the requirements for obtaining an original license by examination in this state.

(e) **Additional requirements for contractor applicants.** Applicants seeking a plumbing contractor license by reciprocity who meet the necessary qualifications for a license as required in this rule will be granted a journeyman license by reciprocity. The applicant will be issued a contractor license upon successfully passing the Oklahoma Plumbing Contractor Business and Law portion of the full contractor examination and satisfaction of the bonding and insurance requirements of OAC 158:30-5-2.

SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES

158:30-9-1. Examination procedures

(a) The plumbing standards for the plumbing examination shall be the International Plumbing Code as adopted in OAC 158:30-1-4.

(b) Any previously certified examination may be used to meet an examination requirement.

(c) Examination for a plumber's license shall include, but not be limited to, written questions and drawings and/or charts.

(d) The maximum grade value of each part of the plumbing examination shall be 100 points. An examinee must make 75% or more on each part, above, to pass the examination.

(e) ~~An associate degree or Career Tech diploma certifying completion of a plumbing educational program consisting of a minimum of 1000 classroom hours from a school, approved by the Committee, and one (1) year of verifiable experience in the plumbing trade while employed by a licensed plumbing contractor, or~~

~~(f) A Career Tech diploma certifying completion of an educational program consisting of a minimum of 500 classroom hours from a school, approved by the Committee, and two (2) years of verifiable experience in the plumbing trade.~~

~~(g)~~ Applicants for the plumbing contractor examination must be capable of reading English without assistance. A person who cannot meet this requirement may request a hearing before the Committee to request reasonable accommodations.

(~~h~~f) Except as authorized by the Plumbing Examining Committee, no person, other than examinees, shall be permitted in the examination area.

(~~i~~g) An examinee who is caught cheating during the course of an examination shall be deemed to have failed the examination.

(~~j~~h) Applicants for the journeyman examination must be eighteen (18) years of age or older and have either

(1) three (3) years of experience in the plumbing trade while employed by a licensed Plumbing contractor.

(2) equivalent verifiable three (3) years of experience in the plumbing trade while serving in the U.S. military.

(3) a verifiable out-of-state plumbing license that must be:

(A) current, and

(B) in good standing.

(~~k~~i) Applicants for the contractors examination must be eighteen (18) years of age or older and have four (4) years of experience in the plumbing trade while employed by a licensed Plumbing contractor.

(j) The following may be substituted for a portion of the experience requirement in (h)(1) and (i) of this Section: An associate degree or Career Tech diploma certifying completion of a plumbing educational program consisting of a minimum

of 1000 classroom hours from a school, approved by the Committee, may be substituted for two (2) years of experience. A Career Tech diploma certifying completion of an educational program consisting of a minimum of 500 classroom hours from a school, approved by the Committee, may be substituted for one (1) year of experience.

(~~l~~k) The fees for a license must be on deposit with the Administrator in advance of the examination.

(~~m~~l) If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

158:30-9-2. Fee schedule for contractors, journeymen, and apprentices

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section OAC 158:30-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the ~~administrator~~ Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5-(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

(1) contractors application - $30.00
(2) initial contractor license - $300.00
(3) renewal contractor license - $200.00
(4) renewal contractor late fee - $100.00
(5) journeyman application - $25.00
(6) initial journeyman license - $50.00
(7) renewal journeyman license - $75.00
(8) renewal journeyman late fee - $25.00
(9) apprentice application - $5.00
(10) apprentice registration - $20.00

158:30-9-3. Duration of licenses

(a) All licenses shall have a duration of no longer than one (1) year, and shall expire on the last day of the birth month of the licensee each year.

(b) Before any license may be renewed, all applicable continuing education requirements must be met.

(c) Any license issued by examination may be renewed by submitting the license fee for the next year by ~~a~~ check or money order ~~and~~which must be delivered or mailed on or before the birth month expiration date, or by credit card through a state-wide internet online licensing system.

(~~c~~d) An expired license issued by examination may be reinstated if: The license fee is submitted after the license expired, and is accompanied by a late fee.

(~~d~~e) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one (1) year from the day of surrender.

(~~e~~f) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any division of the Construction Industries Board.

158:30-9-4. Continuing Education

(a) **Continuing education requirements.**

(1) By July 1, 2014, no contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE"); and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Administrator, or trade section chief, within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the Oklahoma Uniform Building Code Commission, any other code approved by the Committee as an appropriate code for topics of continuing education for licensees, and/or other trade related subject matters approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing act, the trade regulations, and other trade or safety related subject matters approved by the Committee.

(2) Credit will be given for CE programs approved by the Plumbing Examining Committee or its designee.

(3) Except as provided herein these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the educational requirements of these rules for three (3) years from the date he or she passed their current licensing exam.

(b) The following standards will govern the approval of continuing education programs by the ~~Plumbing Examining Committee (~~Committee~~)~~.

(1) The program must be offered by a provider having substantial, recent, experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised

participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for change must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) A credit hour is at least 50 minutes of instruction with a 10 minute break.

(8) CE courses shall be presented in one of the following formats:

(A) Six (6) credit hours presented on one day

(B) Two sessions of three (3) credit hours each presented within a seven day period

(C) One session of two (2) credit hours for the purposes of presenting a manufacturers' installation course,

(D) An approved correspondence or online course, or

(E) Another format approved by the ~~committee~~ Committee.

(9) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Examining Unit the original sign-in sheets from the course.

(D) Providers must maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(10) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Plumbing Examining Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes:

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunches and evaluation time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the product for which the installation is being provided.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory assessments of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time reconsider and grant or revoke approval of an application or course.

(A) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(d) **Course advertisement.**

(1) All advertising must include the course identification.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course #_____ has been approved by the Construction Industries Board Plumbing Examining Committee for _____ hours of CE credit.

(e) **Correspondence or online course approval.**

(1) Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall

provide a student with a document of completion which certifies completion of approved correspondence courses.

(2) Only licensees meeting one or more of the following requirements may receive CE credit for taking ~~an~~ a correspondence or online course:

(A) Any licensee residing outside of Oklahoma

(B) Who has an expired license that requires a CE course that is no longer available in the classroom,

(C) Any licensee who is currently incarcerated, or

(D) Any licensee who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CE class.

~~(3) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.~~

(f) **Alternate Credit accrual.**

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the ~~committee~~Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

(g) **Complaint procedure.**

(1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(3) The Committee may consider an unsigned or anonymous complaint for further investigation.

(4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

SUBCHAPTER 13. PROCEDURE OF THE VARIANCE AND APPEALS BOARD~~S~~, PLAN REVIEW APPLICATIONS AND FEES, CODE VARIANCE APPLICATIONS AND FEE, AND CODE INTERPRETATION APPEALS

158:30-13-1. Plan review applications and fees

(a) Applications for the review of plans and specifications to ensure conformance with State adopted installation codes may be submitted in writing to the Construction Industries Board. An application and the appropriate filing fee shall accompany the construction plans and specifications submitted for plan review. Plan review may only be conducted for construction projects where a city or town has not adopted a ~~nationally recognized,~~ trade installation code by ordinance that is more stringent than the standard of installation as described in OAC 158:30-1-4. Applications shall only be reviewed if submitted prior to the bid dates for the project.

(b) The Board will advise the applicant through its liaison if the application is determined to be incomplete in order for the applicant to re-submit a complete~~,~~ plan review application.

(c) The plan review fee for:

(1) plumbing plans and specifications shall be $75.00;

(2) plumbing and electrical or mechanical plans and specifications shall be $150.00;

(3) plumbing, electrical, and mechanical plans and specifications shall be $200.00.

(4) If electrical, plumbing, and mechanical review is required, the fees will be equally distributed among the three trades.

(d) Plan review is not required but is a service provided by the Board to assist with code compliance.

158:30-13-2. Procedures of the Variance and Appeals Board

The Administrator shall call a meeting of the Variance and Appeals Board after the Administrator receives proper application for a variance accompanied by the fifty dollar ($50.00) filing fee or receives proper notice of an appeal of the ~~Board's~~Administrator's interpretation of the ~~current, published edition of the code of plumbing regulations endorsed by the International Plumbing Code~~standard of installation as described in OAC 158:30-1-4, as applied to a particular installation. Variance and Appeals Board meetings are held in the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1 or at another location named by the Administrator. The Variance and Appeals Board shall comply with the Oklahoma Open Meetings Act.

158:30-13-3. Code variance applications and fee

(a) Applications for a variance from the ~~current, published edition of the code of plumbing regulations endorsed by the International Code Council (ICC) by an Oklahoma licensed plumber~~ standard of installation as described in OAC 158:30-1-4 shall be submitted to the Administrator. An application provided by the Administrator and the fifty-dollar ($50.00) filing fee shall accompany sufficient technical data

submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the ~~current, published edition of the code of plumbing regulations endorsed by the International Plumbing Code~~standard of installation as described in OAC 158:30-1-4 that are relevant to the application, or submitted where a city or town has adopted a ~~nationally recognized,~~more stringent plumbing installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application, and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the Administrator's or the Administrator's designee's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

158:30-13-4. Code interpretation appeals

A plumbing contractor, or any party who has an ownership interest in or who is in responsible charge of the design of or work on the plumbing installation, may appeal the Administrator's interpretation of the ~~current, published edition of the code of plumbing regulations endorsed by the International Code Council (ICC)~~standard of installation as described in OAC 158:30-1-4 as applied during the Administrator's review of plumbing plans and specifications or inspection of the plumbing installation to the Variance and Appeals Board created pursuant to 59 O.S. § 1021.1. Such appeals shall be made in writing to the Administrator within fourteen days after the Administrator's code interpretation or receipt of written notice of the alleged code violation by the licensed plumbing contractor, and shall be heard only if based on a claim that:

(1) the true intent of the installation code has been incorrectly interpreted;

(2) the provisions of the code do not fully apply, or

(3) an equal or better form of installation is proposed.

[OAR Docket #14-524; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #14-525]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
158:40-1-1 [AMENDED]
158:40-1-2 [AMENDED]
158:40-1-3 [AMENDED]
Subchapter 3. Procedures of the Committee and the Hearing Board
158:40-3-1 [AMENDED]
158:40-3-2 [AMENDED]
Subchapter 5. Licensing Requirements, Display of License, and Firm Name, and Bond Requirements
158:40-5-1 [AMENDED]
158:40-5-2 [AMENDED]
158:40-5-3 [AMENDED]
158:40-5-5 [AMENDED]
Subchapter 7. License Classifications
158:40-7-1 [AMENDED]
158:40-7-2 [AMENDED]
158:40-7-4 [AMENDED]
158:40-7-5 [AMENDED]
158:40-7-6 [AMENDED]
Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
158:40-9-2 [AMENDED]
158:40-9-3 [AMENDED]
158:40-9-4 [AMENDED]
Subchapter 11. License Revocation or Suspension and Prohibited Acts
158:40-11-1 [AMENDED]
158:40-11-2 [AMENDED]
Subchapter 13. Procedures of the Variance and Appeals Board, Plan Review Applications and Filing Fees, Code Variance Applications and Filing Fee and Code Interpretation Appeals
158:40-13-1 [AMENDED]
158:40-13-2 [AMENDED]
158:40-13-3 [AMENDED]
158:40-13-4 [AMENDED]

AUTHORITY:
Construction Industries Board: 59 O.S. §§ 1000.4(A)(1), 1000.5, and 1681

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013

COMMENT PERIOD:
December 17, 2013, through January 17, 2014

PUBLIC HEARING:
January 22, 2014

ADOPTION:
January 22, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Many of the amendments are cleanup in nature and correct spelling, punctuation and grammar, and correct or clarify references and citations. In addition, 158:40-1-2 adds a definition for "Alarm Endorsement" or "Alarm Endorsement registration," and for "Oklahoma Uniform Building Code Commission" or "OUBCC" and clarifies/amends the definition for "Applicant," "Bonds and Insurance Unit," "Temporary electrical journeyman," and "Variance"; 158:40-1-3 makes gender reference neutral and adds provision for reporting changes in address, business relationship, or structure to the Construction Industries Board; 158:40-3-1 updates language to reflect current exam procedures and law regarding the Oklahoma Open Records Act; 158:40-3-2 removes obsolete language; 158:40-5-1 and 158:40-5-2 remove obsolete provisions no longer applicable; 158:40-5-3 clarifies requirement to provide proof of compliance with bond and insurance requirements and removes obsolete provisions no longer applicable; 158:40-5-5 makes gender reference neutral; 158:40-7-1 corrects a scrivener's error to reflect that 4,000 hours of experience (the amount historically used) must be verified

in commercial/industrial work for the unlimited electrical journeyman examination, but the correction does not change the total hours of experience required; 158:40-7-5 changes references to "state" when referring to a state other than Oklahoma and "State" when referring to the State of Oklahoma; 158:40-9-2 clarifies that examination questions are based on the standard of installation as described in OAC 158:40-1-4 and other related questions; 158:40-9-4 removes unnecessary language to reflect same language as other trades, removes requirement for Construction Industries Board Administrator to also review all applications for approval of continuing education courses, and removes provision that requires providers of correspondence or online continuing education courses to provide accommodations for disabled licensees because the continuing education providers are already subject to requirements under federal law that address this matter; 158:40-11-2 removes a duplicate subsection; 158:40-13-1, 158:40-13-2, 158:40-13-3 and 158:40-13-4 clarifies circumstances under which the Construction Industries Board can conduct a plan review, clarifies reference to code/standard of installation from which a variance can be requested, and allows the Administrator to appoint a designee to approve/contest applications for a variance and provide testimony to rebut an application.

CONTACT PERSON:

Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:40-1-1. Purpose

The rules in this Chapter implement the Electrical ~~Licensing~~ License Act.

158:40-1-2. Definitions

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

"Act" means the Electrical ~~Licensing~~ License Act as found at 59 O.S. § 1680,~~et seq~~*et seq*.

"Administrator" means the Administrator of the Board ~~created by SB 354~~ as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq*.

"Alarm Endorsement" or **"Alarm Endorsement registration"** means a licensed electrician or registered electrical apprentice who has met the endorsement registration requirements may install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like.

"Applicant" means any person applying for an examination, for a license or registration, for review of plans and specifications, or for an electrical code variance from the ~~National Electrical Code~~ standard of installation as described in OAC 158:40-1-4 by the Board under the Act.

"Apprentice" means an electrical worker registered pursuant to OAC 158:40-~~9~~5-1 ~~and~~ who is limited to working for a contractor and is ~~must be~~ directly supervised by a licensed contractor or journeyman with the appropriate license classification for the work being performed.

"Associated with and responsible for" means the relationship between an electrical contractor and electrical firm based on the electrical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the electrical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Electrical ~~Licensing~~ License Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds~~,~~and insurance~~, and citations~~ under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Electrical Examiners.

"Contractor" means a person who meets the definition of 59 O.S. § 1682(5) and is licensed in the appropriate category for any electrical work performed.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed electrical contractor or electrical journeyman in the appropriate category for any electrical work supervised.

"Electrical facility" means wiring, fixtures, appurtenances and appliances used for and in connection with a supply of electricity, but excludes the connection with a power meter or other supply source.

"Electrical firm" means any firm, corporation, partnership, sole proprietorship, joint venture or any other business entity engaged in the business of planning, contracting, supervising or furnishing labor or labor and materials for the installation, repair, maintenance or renovation of electrical facilities according to the Act.

"Electrical License Unit" means the staff and administrative support unit to the Committee of Electrical Examiners and the Electrical Hearing Board.

"Electrical maintenance" means electrical work limited to maintaining existing electrical systems, facilities or equipment by an employee of a person, company, corporation or entity owning the electrical systems, facilities or equipment. Maintenance shall not include any alterations or additions to existing systems, facilities or equipment.

"Electrical work" means work on "electrical facilities" as that term is defined in 59 O.S.~~2001, Section~~ §1682.

"Hearing Board" means the Electrical Hearing Board created by the Act.

"Inactive contractor" means any class of licensed electrical contractor who has formally and voluntarily placed ~~his or her~~ their contractor's license in an inactive status.

"Journeyman electrician" or **"journeyman"** means any person, other than a contractor or apprentice, who engages in the installation, repair, maintenance or renovation of electrical facilities according to the Act, in the category in which the person is licensed.

"Limited electrical contractor" means any person who has qualified and become licensed in accordance with OAC 158:40-7-4. Such person is prohibited from engaging in the work of a journeyman electrician.

"Military electrical installation experience" means verifiable military experience in electrical work which is the same as or similar to electrical construction work as defined under Oklahoma law.

"Oklahoma Uniform Building Code Commission" or **"OUBCC"** means the state agency created under 59 O.S. § 1000.20, *et. seq*., and authorized to adopt all building codes and standards for residential and commercial construction to be used as minimum standards by all entities within this State.

"Reciprocity agreement" means an agreement whereby a person holding an electrical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refinery Electrical Journeyman" means an electrician licensed as a refinery electrical journeyman electrician pursuant to OAC 158:40-7-6 and is limited to performing electrical work only in refinery facilities.

"Residential contractor" means an electrician licensed as a residential contractor pursuant to OAC 158:40-7-2 and is limited to performing residential electrical construction work.

"Residential journeyman" means an electrician licensed as residential journeyman electrician pursuant to OAC 158:40-7-2 and limited to performing residential electrical construction work.

"Temporary ~~Journeyman~~electrical journeyman" means an electrician temporarily licensed by the Oklahoma Construction Industries Board as a journeyman electrician ~~pursuant to 59 O.S. § 1685.1~~ and is limited to electrical construction per the ~~appropriate~~ equivalent temporary journeyman classification determined by the Board.

"Variance" means the use of an alternative material or method of construction from that prescribed in the ~~National Electrical Code~~ standard of installation as described in OAC 158:40-1-4 for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Electrical Installation Code Variance and Appeals Board.

158:40-1-3. License requirement

(a) No person, on their own behalf ~~of himself~~ or on behalf of an electrical firm, shall engage or offer to engage in, by advertisement or otherwise, any electrical work who does not possess a valid and appropriate license or registration from the Construction Industries Board pursuant to these rules.

(b) No person shall act as a foreman, supervisor or superintendent over any electrical work on behalf of an electrical contractor unless such person possesses a valid license as an electrical contractor or journeyman from the Construction Industries Board in the appropriate category for the work performed.

(c) Any changes in address, business relationship, structure or affiliation shall be reported in writing to the Oklahoma Construction Industries Board within thirty (30) days of such change.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE AND THE HEARING BOARD

158:40-3-1. Procedures of the ~~committee~~ Committee

(a) Committee meetings are generally, unless otherwise stated by the Administrator, held in the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1. The Committee shall oversee the continuing availability of the examination and shall meet ~~and conduct examinations,~~ as often as is necessary, but at least once each quarter when applications are pending. Meetings of the Committee will comply with the Oklahoma Open Meeting Act.

(b) The Committee shall work with the Construction Industries Board to provide for the administration, grading and processing of electrical examinations, by contract or otherwise~~;~~. The Committee may recommend regulations to the Administrator and to the ~~State~~ Construction Industries Board~~;~~, and shall act as advisor to the Administrator on electrical matters.

(c) Application for licensure shall be done by filling out an application for examination on a form provided by the Electrical License Unit.

(d) The public may communicate with the Committee, in person or by mail, through the Oklahoma Construction Industries Board. ~~The Administrator will make available all forms and instructions used by the Committee, rules, and all other written statements of policy or interpretations, all final orders, decisions and opinions.~~ All records not privileged from disclosure by law are subject to the provisions of the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq.* Copies will be provided upon payment of a fee of 25 cents per page.

158:40-3-2. Procedures of the ~~hearing board~~ Hearing Board

(a) The Hearing Board shall meet as often as is necessary to enforce the requirements of the Act and these Rules. The Hearing Board~~,~~shall be comprised of a designee of the Oklahoma Construction Industries Board and the Committee~~, shall follow the Rules of Practice and Procedure of the Oklahoma Construction Industries Board~~.

(b) The standard of installation to be used by the Hearing Board for individual proceedings concerning the work of contractors, journeymen and apprentices shall be the applicable standard established pursuant to OAC 158:40-1-4, unless a city or county electrical requirement is otherwise applicable as a matter of law.

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-1. Apprentice requirements

(a) Apprentice electricians shall be registered with the Construction Industries Board and must be under the direct "on-the-job" supervision of a licensed journeyman or contractor of the appropriate category of the work performed when engaged in the work of an apprentice.

(b) No more than two (2) apprentice electricians shall work under the supervision of a single journeyman or contractor.

(c) Apprentice electricians shall work only under a licensed electrician who shall be responsible for the direct supervision of no more than two electrical apprentices.

(d) Apprenticeship registration is effective upon the posting of the application and evidence of such posting shall be a copy of the executed application form with proof of tender of the proper fee which may serve as evidence of registration for a period not to exceed thirty (30) days.

(e) Prior to engaging in any activity described in subsection (f) herein, a registered electrical apprentice shall obtain an alarm endorsement registration from the Construction Industries Board. Such alarm endorsement registration may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical endorsement registration shall require an additional fee in accordance with OAC 158:40-9-3. To obtain an electrical endorsement registration, a registered apprentice electrician shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(f) A registered apprentice electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the registered apprentice electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (h) herein.

(g) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (h) herein.

(h) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the ~~inflection~~ infliction of physical harm on another person committed while unlawfully present on the property of another.

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (i) herein.

(i) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for alarm endorsement registration by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(j) An individual who has been convicted of a disqualifying crime as set forth in subsection (h) shall be denied an alarm endorsement registration. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an alarm endorsement registration to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, ~~Section 308a et seq. of Title 75 of the Oklahoma Statutes~~ 75 O.S. § 308a, *et seq*.

~~(k) Every apprentice electrician requiring an alarm endorsement registration on the effective date of this rule shall have~~

~~ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement registration. A person applying for said alarm endorsement registration within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.~~

158:40-5-2. Journeyman requirements

(a) Each journeyman must be licensed and employed by a licensed contractor before engaging in the work of a journeyman electrician.

(b) No journeyman shall contract to furnish labor or labor and materials.

(c) Prior to engaging in any activity described in subsection (d) herein, a licensed electrical journeyman shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with OAC 158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical journeyman shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. § 150.9 for a national criminal history record check.

(d) A licensed journeyman electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the licensed journeyman electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (f) herein.

(e) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (f) herein.

(f) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the ~~inflection~~ infliction of physical harm on another person committed while unlawfully present on the property of another~~.~~;

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (g) herein.

(g) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another~~.~~;

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person; or

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(h) An individual who has been convicted of a disqualifying crime as set forth in subsection (f) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, ~~Section 308a et seq. of Title 75 of the Oklahoma Statutes~~75 O.S. § 308a, *et seq*.

~~(i) Every journeyman electrician requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in~~

~~which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.~~

158:40-5-3. Contractor requirements

(a) Each electrical firm must have a person who is currently licensed as an electrical contractor employed full time, and who shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Act and these Rules. Such contractor shall be an officer, partner or owner of that electrical firm, and shall be responsible for the work of and licensed on behalf of that electrical firm.

(b) An electrical contractor may choose to place his license on inactive status and not be required to provide a bond and insurance. An inactive electrical contractor is a person who, because of the nature of his business, does not hold out or offer ~~himself~~to provide services to the public as an electrical contractor. The inactive electrical contractor's license may be used to perform work as a journeyman electrician.

(c) Each electrical contractor shall advise the Electrical License Unit by mail within thirty (30) days of any change in address or business relationship, structure or affiliation. Failure to so notify shall be cause for administrative sanction.

(d) An electrical contractor shall only be permitted to represent one electrical firm.

(e) When two or more electrical firms desire to associate on a job or project as electrical contractors, each person or electrical firm shall have an electrical contractor licensed by the Board, and each shall register with the city or town in whose jurisdiction they intend to operate.

(f) ~~All active electrical contractors~~ Each person on initial application and upon receiving an active contractor's license, prior to engaging in electrical work, and all active electrical contractors submitting renewal applications, shall provide proof of compliance with bond and insurance requirements as set forth in OAC 158:40-5-5 and~~must show~~ proof of compliance with ~~the Nonresident Contracting Act, Title~~ 68 O.S.~~Oklahoma Statutes, Sections~~ §§1701 through 1707, by ~~indicating on initial and annual renewal applications~~ providing the following:

(1) ~~address~~ Address of business;

(2) Phone number of business;

(3) Number of employees;

(4) Federal Tax Number;

(5) Employer's Social Security Numbers;

(6) Employer's account number assigned by the Oklahoma Employment Security ~~commission~~ Commission; and

(7) Nonresident electrical contractor bond on file with the Oklahoma Tax Commission, if applicable.

(8) Proof of workers' compensation policy in compliance with the provisions of Title 85 of the Oklahoma Statutes.

(g) Each active electrical contractor shall document the hours worked by each apprentice electrician and the hours worked in commercial, industrial and residential electrical work.

(h) Prior to engaging in any activity described in subsection (i) herein, a licensed electrical contractor shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with OAC 158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical contractor shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. § 150.9 for a national criminal history record check.

(i) A licensed electrical contractor shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the licensed contractor electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (k) herein.

(j) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (k) herein.

(k) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the ~~inflection~~ infliction of physical harm on another person committed while unlawfully present on the property of another~~.~~;

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (l) herein.

(l) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another~~.~~;

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person; or

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(m) An individual who has been convicted of a disqualifying crime as set forth in subsection (k) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, ~~Section 308a et seq. of Title 75 of the Oklahoma Statutes~~ 75 O.S. § 308a, *et seq*.

~~(n) Every electrical contractor requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.~~

158:40-5-5. Bond and insurance requirements

(a) Each active electrical contractor must furnish a license bond in the amount of $5,000.00 to the Bonds and Insurance Unit. This bond is to be a continuous bond with a thirty (30)-day cancellation notice. Such bond shall be conditioned upon faithful and lawful performance of all work entered upon by ~~him~~ the contractor within the State of Oklahoma and shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond will be filed with the Bonds and Insurance Unit of the Oklahoma Construction Industries Board and be in lieu of all other license bonds to any political subdivision.

(b) Each active electrical contractor must maintain insurance coverage and furnish and maintain in effect in the Bonds and Insurance Unit of the Oklahoma Construction Industries Board, Electrical Licensing Division, a certificate of insurance therefore which indicates that the electrical contractor has a comprehensive general liability policy including manufacturers and contractors, completed operations, and independent contractors liability coverage. Limits of liability are to be no less than $50,000.00 combined single limit for bodily injury and property damage.

(c) Each active electrical contractor shall be aware of the requirements of Title 85 of the Oklahoma Statutes (Workers' Compensation Act and the Rules and Regulations of the Workers' Compensation Court of the State of Oklahoma), and indicate in the space provided on the application compliance therewith.~~)~~

(d) Failure to provide the complete information with current bond and insurance certificate will result in an inactive electrical contractor's license being issued until such time as the requirements are met. Failure to maintain the bond and insurance in force, as required, will result in the summary suspension of the electrical contractor's active license and the issuance of an inactive license to said electrical contractor.

(e) Electrical contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(f) Exceptions. The bond and insurance requirement will be waived if the electrical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform electrical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

SUBCHAPTER 7. LICENSE CLASSIFICATIONS

158:40-7-1. Unlimited electrical license

(a) Applicants for an unlimited electrical contractor examination must be eighteen (18) years of age or older and must verify at least twelve thousand (12,000) hours (6 years) experience on-the-job in electrical construction work. At least six thousand (6,000) of the hours of experience must be verified in commercial/industrial work. Experience must be obtained while employed by a licensed electrical contractor. No more than two thousand (2,000) of the hours may be counted as experience for any combination of verified actual classroom hours of formal electrical education and/or military electrical experience. Applicants must submit proof of two (2) years' experience as an unlimited licensed electrical journeyman prior to making application for the unlimited electrical contractor's license.

(b) Applicants for an unlimited electrical journeyman examination must be ~~at least~~ eighteen (18) years of age or older and must verify eight thousand (8,000) hours (4 years) on-the-job experience in the electrical construction trade, as defined in 90-2 National Electrical Code, under the supervision of a journeyman or contractor. Experience must be obtained while employed by a licensed electrical contractor. ~~Six thousand (6,000)~~ Four Thousand (4,000) of the hours of experience must be verified in commercial/industrial work. No more than two thousand (2,000) of the hours may be counted as experience for any combination of verified actual classroom hours of formal electrical education and/or military electrical experience.

(c) A licensed residential electrician may work as an apprentice electrician on commercial/industrial jobs in order to qualify experience for an unlimited license exam.

(d) A licensed residential electrician may work as an apprentice under the unlimited license category.

158:40-7-2. Residential electrical license

(a) Residential electrical licenses are limited to wiring buildings as defined in the National Electrical ~~code~~Code for one and two family dwellings.

(b) Applicants for residential electrical contractor examination must:

(1) be eighteen (18) years of age or older,

(2) have passed the residential or unlimited journeyman examination, and

(3) submit proof of two (2) years experience as a licensed electrical journeyman and have at least four thousand (4,000) hours of experience as a residential or unlimited journeyman electrician under the employment and supervision of an unlimited or residential electrical contractor.

(c) Applicants for residential electrical journeyman examination must:

(1) be eighteen (18) years of age or older, and

(2) verify at least four thousand (4,000) hours (2 years) experience in the electrical construction trade as an apprentice under the direct supervision of an unlimited or residential journeyman electrician or unlimited or residential electrical contractor~~.~~, with no ~~(3) No~~ more than one thousand (1,000) of the hours ~~may be~~ being counted as experience for any combination of verified actual classroom hours of formal electrical education and/or military electrical experience.

158:40-7-4. Limited electrical contractor

(a) Applicants for Limited Electrical Contractor examination must be ~~at least~~ eighteen (18) years of age or older and must have a degree in Electrical Engineering from an accredited college or university. Additionally, an applicant must have eight thousand (8,000) hours (4 years) of electrical experience in field construction, electrical estimating, electrical project management in commercial and industrial electrical work; or

(b) Applicant for a Limited Electrical Contractor examination must be ~~at least~~ eighteen (18) years of age or older and must verify sixteen thousand (16,000) hours (8 years) experience in the electrical trade performing electrical work, estimating or project management. The experience must be verified in commercial and/or industrial work.

158:40-7-5. Electrical journeyman and contractor licenses by reciprocity

(a) **General procedures for application.** Any person holding a valid electrical journeyman license or electrical contractor license issued by another ~~State~~ state who is seeking to obtain a license by reciprocity shall first submit an application to the Construction Industries Board on a form provided by the Board and confirm that a written reciprocity agreement exists between the applicant's state and Oklahoma for the license the applicant is seeking. The application shall include all documentation necessary to show the applicant meets the requirements established by these rules. All applications shall first be directed to the Committee or its designee for an initial review to determine if the applicant meets the qualifications for a license by reciprocity as set forth in these rules and in 59 O.S. § 1000.5~~A.~~a or any subsequent enactment of the Legislature. Following this review, the Committee or its designee shall make a recommendation to the Board or its designee as to whether the application should be approved or disapproved. The Board or its designee shall make the final determination as to whether an application shall be approved or disapproved. If an application is disapproved by the Board or its designee, the application shall be returned to the applicant with the reason for the disapproval.

(b) **Application fees.** Before an application will be considered, a person applying for an electrical journeyman license by reciprocity must pay an application and licensing fee of $ 75. If the person is applying for an electrical contractor license, the person must pay an application and licensing fee of $300. These fees shall not be refundable under any circumstances.

(c) **Requirements for issuance of a license by reciprocity.** An application for a license by reciprocity may be approved upon a satisfactory showing by the applicant of the following:

(1) That the requirements for licensure from the ~~State~~ state in which the applicant is licensed is determined to be substantially the same or equivalent to the requirements for obtaining a license by examination in this ~~state~~State.

In making this determination the following shall be considered:

(A) Whether the experience required by the other ~~State~~ state to be eligible to sit for the license examination is substantially the same or equivalent to the Board's requirements;

(B) Whether the experience in commercial/industrial work required by the other ~~State~~ state is substantially the same or equivalent to the Board's requirements;

(C) Whether the continuing education requirements of the other ~~State~~ state are substantially the same or equivalent to the Board's requirements;

(D) Whether the codes adopted by the other ~~State~~ state are substantially the same or equivalent to the Board's requirements;

(E) Whether the examination of the other ~~State~~ state is substantially the same or equivalent to the Board's requirements. This shall include the score required to pass the examination, the subject matter of the examination, the codes on which the examination is based, and whether the examination is in written form~~.~~; and

(F) Whether the above-listed factors are set forth and determined to be substantially the same or equivalent in a written reciprocity agreement.

(2) That the other ~~State~~ state will recognize a license issued by the State of Oklahoma through the Construction Industries Board. Paragraphs 1 and 2 of this rule may only be satisfied by the existence of a reciprocity agreement between the Board and the ~~State~~ state issuing the applicant's current license as provided in subsection (d) of this rule.

(3) That the applicant is currently licensed by a ~~State~~ state that meets the requirements of Section 1 of this rule and that one year immediately prior to the application, the applicant lawfully practiced an applicable trade within and under the laws of that ~~State~~ state.

(4) That no disciplinary matters are pending against the applicant in any jurisdiction in which the applicant is currently licensed. This requirement will be considered satisfied upon presentation of a certified statement from the licensing authorities of all jurisdictions in which the applicant is currently licensed that no disciplinary matters are pending against applicant.

(5) That the applicant obtained the license to be reciprocated by examination.

(d) **Reciprocity agreements.** The Board may enter into a reciprocity agreement with another S ~~State~~ state if the requirements for licensure in the other ~~State~~ state are deemed by the Board to be substantially the same or equivalent to the requirements for obtaining an original license by examination in this ~~state~~State.

(e) **Additional requirements for contractor applicants.** Applicants seeking an electrical contractor license by reciprocity, who meet the necessary qualifications for a license as required in this rule and for which there is a written reciprocity agreement for contractors, will be granted a journeyman license by reciprocity. The applicant will be issued a contractor license upon successfully passing the Oklahoma Electrical Contractor Business and Law portion of the full contractor examination and satisfaction of the insurance and bonding requirements of OAC 158:40-5-5.

158:40-7-6. Refinery electrical license

(a) Applicants for a refinery electrical journeyman examination must:

(1) be ~~at least~~ eighteen (18) years of age or older;

(2) successfully pass the unlimited refinery electrical journeyman exam; and

(3) have a verifiable license in the unlimited electrical classification issued by a jurisdiction outside of the State of Oklahoma. The license must be:

(A) current, and

(B) in good standing.

(b) Refinery electrical license holders may perform electrical work only in refinery facilities. For purposes of this section, refinery facilities shall mean any facility designed and operated to receive, unload, store, process and refine raw crude oil.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-2. Examinations

(a) Electrical license examinations may include, without limitation, the following parts:

(1) Written questions, consisting of open book, closed book and problems, based on the standard of installation as described in OAC 158:40-1-4 ~~current National Electrical Code~~ and other related questions; and

(2) Practical shop, which for contractors shall also include written questions on job estimating and the laws and regulations relating to electricians.

(b~~3~~) The maximum grade value of each part of the examination shall be 100 points. A passing score is 75% or more on each part.

(c~~4~~) Each applicant shall pay all examination and license fees before undertaking any examination. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited. Reexamination fees shall be the same as the initial examination fees.

(d~~5~~) Applicants for a contractor license must be capable of reading without assistance.

(e~~6~~) Unless authorized by the Administrator, only examinees shall be permitted in the examination area.

(f~~7~~) Any applicant who fails a first examination must wait thirty (30) days before taking any other electrical examination. All subsequent failures will result in a waiting period of at least ninety (90) days.

(g~~8~~) Applicants shall present positive identification before undertaking an examination.

(h~~9~~) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Administrator shall determine when the applicant may retake the exam, which time shall be no fewer than thirty (30) days and no longer than three hundred sixty-five (365) days.

(~~b~~i) Any previously certified examination may be used to meet an examination requirement.

158:40-9-3. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in ~~section~~ OAC 158:40-9-2 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the ~~administrator~~Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S. § 1000.5~~-~~(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration and annual renewal fees shall be ~~annually~~ as follows:

(1) contractors application - $30.00
(2) initial contractor license - $300.00
(3) renewal contractor license - $200.00
(4) renewal contractor license with late fee - $300.00
(5) journeyman application - $25.00
(6) initial journeyman license - $50.00
(7) renewal journeyman license - $75.00
(8) renewal journeyman license with late fee - $100.00
(9) apprentice application - $5.00
(10) apprentice registration - $20.00
(11) initial alarm endorsement - $75.00
(12) renewal alarm endorsement - $25.00

(c) **License renewal penalties.** Thirty (30) days after the expiration of a license for contractors and journeyman a late license renewal fee is effective, as provided in the Act and as listed above. Upon meeting the continuing education requirements listed in OAC 158:40-9-4, a license may be renewed up to a year from the original renewal date. Any license which remains expired for longer than one (1) year shall not be renewed. The former license holder shall be required to make an initial application and retest to obtain the license formerly held.

(d) **Outstanding fines.** A license cannot be issued until the applicant has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

(e) **Duration of licenses.** All licenses and alarm endorsements shall have a duration of no longer than one year, and shall expire on the last day of the birth month of the licensee each year. The alarm endorsement for apprentices shall expire on the expiration date of each apprentice registration.

158:40-9-4. Continuing education

(a) **Continuing Education Requirements.**

(1) By July 1, 2014, no contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education (CE) ~~within thirty-six (36) months preceding the application for renewal~~; and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the ~~Oklahoma Uniform Building Code Commission~~OUBCC and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing act, the trade regulations, and other trade or safety related subject matters approved by the Committee.

(2) Credit will be given for CE programs approved by the ~~Electrical Examining Committee (~~Committee~~)~~ or its designee.

(3) Except as provided herein these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the educational requirements of these rules for three (3) years from the date he or she passed their current licensing exam.

(b) **The following standards will govern the approval of continuing education programs by the Committee.**

(1) The program must be offered by a provider having substantial, recent, experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of

class. All requests for changes must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) Each attendee of a continuing education course shall have, or otherwise be provided with, a copy of the OUBCC's most recently adopted edition of the National Electrical Code and revisions for use during the duration of the course.

(8) Sixty (60) minutes constitutes one (1) instructional hour.

(9) CE courses shall be presented in one of the following formats:

(A) Six instructional hours presented on one day

(B) Two sessions of three instructional hours each presented within a seven day period

(C) An approved correspondence or online course, or

(D) Another format approved by the ~~committee~~ Committee.

(10) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Electrical License Unit the original sign-in sheets.

(D) Providers must maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(11) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Electrical Examining Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee ~~and the Construction Industries Board Administrator~~ will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes:

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunch time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory evaluations of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.

(A) The Committee or its designee shall be granted access to attend, observe and audit any continuing education course approved by the ~~committee~~Committee.

(B) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.

(C) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(d) **Course Advertisement.**

(1) All advertising must include the course identification.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course #_____ has been approved by the Construction Industries Board Electrical Examining Committee for _____ hours of CE credit.

(e) **Correspondence or Online course approval.** ~~(1)~~Providers seeking to offer correspondence or online courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee, or its designee, prior to the courses being offered as continuing education. An access code and password shall be provided to the Committee, or its designee, for an online course for the purpose of review and approval. Correspondence or online courses shall have sufficient explanation and or graphics to

expound the concepts and changes being taught. The format of the online course shall be constructed so as to illicit interaction between the student and the material presented. Each page of text shall be designed with a question that must be answered before advancing to the next page or a test at the end of a subject matter before the course is considered complete. Approved correspondence and online courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion that shall certify completion of an approved correspondence or online course.

~~(2) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.~~

(f) **Alternate Credit accrual.**

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the ~~committee~~Committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

(g) **Complaint procedure.**

(1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(3) The Committee may consider an unsigned or anonymous complaint for further investigation.

(4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:40-11-1. License revocation or suspension

(a) The employment and use of unlicensed individuals performing electrical work, the employment and use of individuals as apprentices without registration, or cheating may be considered justification to suspend or revoke said electrical contractor's license based upon illegal use of license.

(b) The repeated violation of any of these rules or any provision of the Act, or the violation of a multiple of any of these rules or provision of the Act, may be considered justification to suspend or revoke the licensee's license or registration.

158:40-11-2. Prohibited acts

(a) The following prohibited acts apply to all license holders:

(1) No person, entity, or firm may perform work without first obtaining the appropriate license or registration pursuant to these Rules.

(2) No licensee shall perform work contrary to any provision of the standard of installation in OAC 158:40-1-~~3~~4, except as otherwise provided by law or rule. Each violation of the standard of installation in OAC 158:40-1-4 can be treated as a separate violation of this Chapter.

(3) No person shall offer to engage in work during the period his license is suspended or revoked.

(4) No employing firm shall employ or use an unlicensed or unregistered individual or entity to perform work.

(5) No person, entity, or firm may transfer a license or registration.

(6) No individual or entity, licensed pursuant to these Rules, shall enter into an agreement for the use of his license with any firm or person which is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.

(7) No person shall make a materially false or fraudulent statement in an application for license.

(8) No person may alter a license.

(9) No licensee shall perform work without keeping their license on their person or in close proximity while performing work.

(10) No person may engage in cheating or any act involving the fraudulent misrepresentation of an applicant by an examinee.

(11) No person or entity shall deny access to the Construction Industries Board or its representative on a job site.

(b) The following prohibited acts apply to persons issued a contractor license:

(1) No licensee shall allow more than two (2) apprentices per journeyman at a job site.

(2) No licensee shall fail to maintain a bond and insurance as provided for in OAC 158:40-5-5.

~~(3) No licensee shall fail to provide proof of financial responsibility to the Administrator as provided for in 158:40-5-5(b).~~

(~~4~~3) No licensee shall be associated with and responsible for more than one firm.

~~(5) No licensee shall fail to provide proof of financial responsibility to the Administrator as provided for in 158:40-5-5.~~

(c) The following prohibited acts apply to persons issued a journeyman license:

(1) No licensee shall perform work except under the employment or supervision of a contractor.

(2) No licensee shall engage in the planning, contracting, or furnishing of labor and/or materials used for work.

SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FILING FEES, CODE VARIANCE APPLICATIONS AND FILING FEE AND CODE INTERPRETATION APPEALS

158:40-13-1. Plan review applications and filing fees

(a) Applications for the review of plans and specifications to ensure conformance with State adopted installation codes may be submitted in writing to the Oklahoma Construction Industries Board. An application, and the appropriate filing fee, shall accompany the construction plans and specifications submitted for plan review. Plan review ~~by the Construction Industries Divisionshall~~ may only be conducted for construction projects where a city or town has not adopted a ~~nationally recognized~~ trade installation code by ordinance that is more stringent than the standard of installation as described in OAC 158:40-1-4. Applications shall only be reviewed if submitted prior to the bid dates for the project.

(b) The Board will advise the applicant through its liaison if the application is determined to be incomplete in order for the applicant to re-submit a complete~~,~~ plan review application.

(c) The plan review fee for:

(1) electrical plans and specifications shall be $75.00;

(2) electrical and mechanical or plumbing plans and specifications shall be $150.00;

(3) electrical, mechanical and plumbing plans and specifications shall be $200.00.

(4) If electrical, plumbing, and mechanical review is required, the fees will be equally distributed among the three trades.

(d) Plan review is not required, but is a service provided by the Board to assist with code compliance.

158:40-13-2. Procedures of the ~~variance~~Variance and ~~appeals board~~Appeals Board

The Administrator shall call a meeting of the Variance and Appeals Board after the Administrator receives proper application for a variance accompanied by the fifty dollar ($50.00) filing fee or receives proper notice of an appeal of the ~~Board's~~Administrator's interpretation of the ~~National Electrical Code~~ standard of installation as described in OAC 158:40-1-4, as applied to a particular installation. Variance and Appeals Board meetings are held at the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1 or at another location named by the Administrator. The Variance and Appeals Board shall comply with the Oklahoma Open Meetings Act.

158:40-13-3. Code variance applications and filing fee

(a) Applications for a variance from the ~~National Electric Code by an Oklahoma licensed, electrical contractor~~standard of installation as described in OAC 158:40-1-4 shall be submitted to the Administrator. An application and the fifty dollar ($50.00) filing fee shall accompany sufficient technical data submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the ~~National Electric Code~~ standard of installation as described in OAC 158:40-1-4 that are relevant to the application, or submitted where a city or town has adopted a ~~nationally recognized,~~more stringent trade installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application, and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

158:40-13-4. Code interpretation appeals

An electrical contractor, or any party who has an ownership interest in or who is in responsible charge of the design of or work on the electrical installation, may appeal the ~~Board's~~ Administrator's interpretation of the ~~National Electrical Code~~standard of installation as described in OAC 158:40-1-4 as applied during the ~~Appeals and Variance Board's~~Administrator's review of electrical plans and specifications or inspection of the electrical installation to the Variance and Appeals Board created pursuant to 59 O.S. § 1697. Such appeals shall be made in writing to the Administrator within fourteen (14) days after the Board's code interpretation or receipt of written notice of the alleged code violation by the licensed electrical contractor, and shall be heard only if based on a claim that:

(1) the true intent of the installation code has been incorrectly interpreted;

(2) the provisions of the code do not fully apply; or

(3) an equal or better form of installation is proposed.

[OAR Docket #14-525; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #14-526]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:50-1-2 [AMENDED]
158:50-1-3 [AMENDED]
Subchapter 3. Procedures of the Committee and the Hearing Board [NEW]
158:50-3-1 [NEW]
158:50-3-2 [NEW]
Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name
158:50-5-2 [AMENDED]
158:50-5-3 [AMENDED]
Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-1 [AMENDED]
158:50-9-2 [AMENDED]
158:50-9-3 [AMENDED]
158:50-9-5 [AMENDED]
158:50-9-7 [AMENDED]
Subchapter 11. License Revocation or Suspension and Prohibited Acts
158:50-11-1 [AMENDED]
158:50-11-2 [AMENDED]
Subchapter 13. Procedures of the Variance and Appeals Board, Plan Review Applications and Fees, Code Variance Applications and Fee, Code Interpretation Appeals
158:50-13-1 [AMENDED]
158:50-13-2 [AMENDED]
158:50-13-3 [AMENDED]
158:50-13-4 [AMENDED]
AUTHORITY:
Construction Industries Board: 59 O.S. §§ 1000.4 and 1850.3
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Many of the amendments are cleanup in nature and correct spelling, punctuation and grammar, and correct or clarify references and citations. In addition, 158:50-1-2 clarifies/amends the definition for "Applicant," "Bonds and Insurance Unit," "Petroleum refinery," "Petroleum refinery journeyman," and "Variance"; 158:50-1-3 makes gender reference neutral and adds provision for reporting changes in address, business relationship, or structure to the Construction Industries Board; the new Subchapter 3, Sections 158:50-3-1 and 158:50-3-2, adds language to reflect current procedures of the Committee of Mechanical Examiners and of the Mechanical Hearing Board; 158:50-5-2 makes gender reference neutral and clarifies limitations of a limited residential journeyman license; 150:50-9-1 updates to reflect current procedure that the examination fee is to be paid directly to testing provider, and current procedure of requiring applicant for mechanical license examination, like in other trades, who is not licensed to maintain an apprentice registration on file with the Construction Industries Board to receive credit for experience obtained in Oklahoma, and establishes requirements for experience gained outside of the State of Oklahoma; 158:50-9-3 removes the time limit in which an expired license can be reinstated; 158:50-9-7 removes unnecessary language to reflect same language as other trades, adds provision that continuing education course approval is rescinded upon adoption of a different statewide code and that a new application showing updates of new code is required, and provides for applications for correspondence and online courses to be resubmitted annually; 158:50-13-1, 158:50-13-2, 158:50-13-3 and 158:50-13-4 clarifies circumstances under which the Construction Industries Board can conduct a plan review, clarifies reference to code/standard of installation from which a variance can be requested, and allows the Administrator to appoint a designee to approve/contest applications for a variance and provide testimony to rebut an application.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:50-1-2. Definitions

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

"Act" means Mechanical Licensing Act as found at 59 O.S. § 1850.1,~~et seq~~*et seq*.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1,~~et seq~~ *et seq*.

"Applicant" means any person applying for an examination, for a license or registration, for review of plans and specifications or for a mechanical code variance from the ~~ICC International Mechanical Code or the International Fuel Gas Code and the International Residential Code~~ standard of installation described in OAC 158:50-1-4 by the Construction Industries Board under the Act.

"Associated with and responsible for" means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds,and insurance~~, and citations~~ under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Mechanical Examiners.

"Credit Hour or Hour" means at least 50 minutes of classroom instruction with a 10 minute break.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed mechanical contractor or mechanical journeyman.

"Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

"Ground source piping" means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

"Health care facility" includes but is not limited to hospitals, nursing homes, limited care facilities, clinics, medical or dental offices, and ambulatory care centers, whether permanent or moveable.

"Hearing Board"means the Mechanical Hearing Board.

"Humidification" when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

"HVAC" or "heating, ventilation and air conditioning" means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

"ICC" means the International Code Council.

"Limited residential journeyman" means a type and category of mechanical license that is restricted to new installations in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this chapter.

"Mechanical License Unit" means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

"Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, exhaust system, cooling system, mechanical refrigeration system, ventilation system, medical gas system, medical-surgical vacuum systems, or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor or Department of Health, provided that minor repairs and maintenance are excluded.

"Medical gas piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in health care facilities for oxygen, nitrous oxide, medical air, carbon dioxide, helium, nitrogen, instrument air, medical-surgical vacuum, waste anesthetic gas disposal, mixtures thereof, or any other gaseous, partly gaseous substance, material or any mixtures thereof used in a health care facility. Replacing cylinders and filters, and performing routine and preventive maintenance that does not breach the integrity of the medical gas piping system and does not constitute the installation, repair, or replacement of medical gas piping shall not require a medical gas piping licensee.

"Medical gas journeyman" means a type and category of mechanical license that is restricted to medical gas piping.

"Minor repairs and maintenance" means minor repairs or maintenance prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the low voltage manufacturer installed controls, the vent system of fuel burning appliances or any repair or maintenance which would violate the safe operation of the equipment.

"Petroleum refinery" means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

"Petroleum refinery journeyman" means a type and category of mechanical license that is restricted to petroleum refinery process piping.

"Petroleum refinery process piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

"Process" means a series of operations performed in the making or treatment of a product.

"Process piping" means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial production and processing systems, and piping used to carry any gaseous, or partly gaseous, substance or material as part of a medical gas piping system.

"Reciprocity" means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure

requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refrigeration system" means installation, repairing and servicing of a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

"Variance" means the use of an alternative material or method of construction from that prescribed in the ~~ICC International Mechanical Code or the International Fuel Gas Code or the International Residential Code~~ standard of installation as described in OAC 158:50-1-4 and/or other approved documents by the Oklahoma Uniform Building Code Commission for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals Board.

"Verifiable experience" means mechanical experience obtained while employed by a licensed Mechanical contractor, or by other means approved by the Committee of Mechanical Examiners including equivalent experience earned while serving in the U.S. Military, for which one (1) year of verifiable experience equals two thousand (2,000) hours.

158:50-1-3. License requirement and exemptions

(a) No person, ~~on behalf of himself~~ on their own behalf or on behalf of a mechanical firm, shall engage or offer to engage in, by advertisement or otherwise, any mechanical work who does not possess a valid and appropriate license from the Construction Industries Board unless otherwise exempt by law or this Chapter. No State agency, a political subdivision of the State, business entity or trust shall act as a mechanical firm unless a licensed, active mechanical contractor is associated with and responsible for all mechanical work of such entity.

(b) The terms air conditioning, sheet metal, and heating do not include the design, installation, construction, maintenance, service, repair, alteration, or modification of a portable or self contained ductless air conditioning or heating unit that has a cooling capacity of less than two and one-half (2 1/2) tons or a heating capacity of 36,000 British Thermal Units per Hour (~~BTU/H~~ Btu/h) or less.

(c) No person shall install, replace or repair gas piping unless such person is licensed under the Mechanical Licensing Act or is licensed as a plumbing contractor or journeyman plumber pursuant to the laws of this state.

(d) No person shall install, replace or repair floor furnaces or wall heaters unless such person is licensed under the Mechanical Licensing Act or is licensed as a plumbing contractor or journeyman plumber pursuant to the laws of this state.

(e) No person shall install, replace or repair any radiant-floor heating systems unless such person is licensed under the Mechanical Licensing Act or is licensed as a plumbing contractor or journeyman plumber pursuant to the laws of this state.

(f) No person shall install, replace or repair any medical gas or medical-surgical vacuum systems unless such person is licensed under the Mechanical Licensing Act as a medical gas journeyman, an unlimited mechanical contractor, process piping mechanical contractor, plumbing contractor or journeyman plumber pursuant to the laws of this state and shall provide proof of being certified by examination in accordance with the most current National Fire Protection Act ("NFPA") 99 standard or certified in the proper installation of medical gas piping by an organization approved by the Committee.

(g) No person shall act as a foreman, supervisor or superintendent over any mechanical work on behalf of a mechanical contractor unless such person possesses a valid license as a mechanical contractor or journeyman from the Construction Industries Board.

(h) Any changes in address, business relationship, structure or affiliation shall be reported in writing to the Oklahoma Construction Industries Board within thirty (30) days of such change.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE AND THE HEARING BOARD

158:50-3-1. Procedures of the Committee

The Committee shall serve the Board in an advisory capacity, assist and advise the Board on all matters pertaining to the formation of rules pursuant to the Act, and assist and advise the Administrator on the examination of applicants for licenses as a mechanical contractor or journeyman and on all matters related to the licensing of mechanical contractors and mechanical journeymen and the registering of mechanical apprentices, in accordance with these rules and the terms and conditions of the law. The Committee shall make up a part of the Mechanical Hearing Board.

(1) Committee meetings are generally, unless otherwise stated by the Administrator, held in the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1. The Committee shall oversee the continuing availability of the examination and shall meet as often as is necessary, but at least once each quarter. Meetings of the Committee will comply with the Oklahoma Open Meeting Act.

(2) The Committee shall work with the Construction Industries Board to provide for the administration, grading and processing of mechanical examinations, by contract or otherwise. The Committee may recommend regulations to the Administrator and to the Construction Industries Board, and shall act as advisor to the Administrator on mechanical matters.

(3) Application for licensure shall be done by filling out an application for examination on a form provided by the Mechanical License Unit.

(4) The public may communicate with the Committee, in person or by mail, through the Oklahoma Construction Industries Board. All records not privileged from disclosure by law are subject to the provisions of the Oklahoma Open Records Act, 51 O.S. § 24A.1, *et seq*. Copies will be provided upon payment of a fee of 25 cents per page.

158:50-3-2. Procedures of the Hearing Board

(a) The Hearing Board shall meet as often as is necessary to enforce the requirements of the Act and these Rules. The Hearing Board shall be comprised of a designee of the Oklahoma Construction Industries Board and the Committee.

(b) The standard of installation to be used by the Hearing Board for individual proceedings concerning the work of contractors, journeymen and apprentices shall be the applicable standard established pursuant to OAC 158:50-1-4, unless a city or county mechanical requirement is otherwise applicable as a matter of law.

SUBCHAPTER 5. LICENSE TYPES, LIMITATIONS OF LICENSES, CONTRACTOR SPECIAL REQUIREMENTS AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:50-5-2. Limitations of licenses

(a) **License duties.**

(1) Journeyman is a person who possesses the knowledge and skills to perform mechanical work within a category or categories without direct supervision.

(2) Contractor is a person who possesses the knowledge and skills of a journeyman and who is responsible, either to ~~himself or his~~ the contractor or the contractor's employer, for planning, contracting, supervising, or furnishing labor and/or materials used for mechanical work. A mechanical contractor shall only be associated with and responsible for one mechanical firm. However, a mechanical contractor may be responsible for one firm with branch offices.

(A) Active contractor is one who is actively performing as a contractor and who has met the bond and insurance requirements for licensure.

(B) Inactive contractor is one who has met all the licensing requirements of a contractor, but has chosen not to currently perform as a contractor. An inactive contractor is not required to provide bond or insurance, and will be regulated as a journeyman.

(b) **License categories.**

(1) A limited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:

(A) any cooling product, system, or equipment including the process piping, that has a cooling capacity of no more than twenty-five (25) tons, and/or

(B) all heating equipment including the process piping that have a heat input of no more than 500,000 ~~British Thermal Units per hour~~ Btu/h per appliance.

(2) A limited residential journeyman license entitles the licensee to install complete new systems in new construction for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress. Installations shall include 5-ton or less cooling systems and 150,000 Btu/h or less heating systems and related accessories such as humidifiers, filtering systems, kitchen vent hoods, exhaust fans and clothes dryer vent exhausts for such dwellings. Such installations shall not include any fuel gas piping, welding, soldering, brazing or final connection of refrigerant lines or final connection of any electrical wiring permitted to be installed in accordance with Oklahoma statutes.~~A limited residential journeyman license entitles the licensee to install:~~

~~(A) 5-ton or less cooling systems and/or~~

~~(B) 150,000 British Thermal Units per hour or less heating systems. Installations shall include complete new systems for detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress. Accessory appurtenances (such as humidifiers and filtering systems), kitchen vent hoods, exhaust fans and clothes dryer vent exhausts for such dwellings shall not be prohibited to be installed by the holder of this category. Such installations shall not include any welding, soldering or final connection of refrigerant lines or final connection of any electrical wiring permitted to be installed in accordance with Oklahoma statutes.~~

(3) An unlimited mechanical HVAC license entitles the licensee to install, alter, modify, service, maintain, or repair a ventilation (duct) system and/or:

(A) any cooling product, system, or equipment, including the process piping, and/or

(B) heating equipment, including the process piping.

(4) A natural gas piping license entitles the licensee to install, alter, modify, service, maintain, or repair all natural gas piping.

(5) A process piping license entitles the licensee to install, alter, modify, service, maintain, or repair all process piping.

(6) A refrigeration license entitles the licensee to install, alter, modify, service, maintain, or repair refrigeration products, systems, or equipment, including the process piping.

(7) A sheet metal license entitles the licensee to install, alter, modify, service, maintain, or repair all ferrous and nonferrous duct systems.

(8) A ground source piping license entitles the licensee to install, alter, modify, service, maintain or repair all piping outside a structure for a ground source (earth or water) loop pipe.

(9) A petroleum refinery journeyman license entitles the licensee to install, alter, modify, service, maintain, or repair all petroleum refinery process piping, and said license is limited to petroleum refinery process piping work only. A petroleum refinery journeyman shall be under the direction and supervision of a licensed unlimited mechanical contractor or a licensed process piping mechanical contractor.

(10) A medical gas journeyman license entitles the licensee to install, alter, modify, service, maintain, or repair medical gas or medical-surgical vacuum systems,

or equipment, including the piping. A medical gas journeyman shall be under the direction and supervision of a licensed unlimited mechanical contractor or a licensed process piping mechanical contractor.

158:50-5-3. Bond and insurance requirements

(a) **Bond.**

(1) A corporate surety bond, (the "bond") in the sum of five thousand dollars ($5,000.00) payable to the Oklahoma Construction Industries Board and approved by the Administrator shall be permanently deposited with the Bonds and Insurance Unit prior to the issuance of the mechanical contractor's license.

(2) Said bond shall be executed by the applicant for the contractor's license and by a surety authorized to do business in the State of Oklahoma, and shall be a continuous bond with a thirty (30) day cancellation notice to the Board.

(3) Said bond shall be in lieu of filing a bond with each municipality where the contractor works and shall be conditioned upon all of the following terms:

(A) The mechanical contractor, his agents and employees shall faithfully and properly conduct business in compliance with all the applicable provisions of ordinances and provisions of the municipality in which he is performing mechanical work;

(B) The mechanical contractor shall pay all fines and penalties imposed by courts of competent jurisdiction for the violation of said ordinances or provisions. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(C) The mechanical contractor shall protect, save harmless and indemnify the municipality and the state against any liability imposed by law against said municipality or state for the negligence of said contractor, his agents or employees, which arises from any act or omission of said individuals engaged in work pursuant to the Mechanical Licensing Act;

(D) Any person aggrieved may bring an action upon the bond for the recovery of the penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(b) **Insurance.** A mechanical contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000.

(c) **Exceptions.** The bond and insurance requirement will be waived if:

(1) The mechanical contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his ~~inactive~~ license is valid and the bond and insurance requirements are met; or

(2) The mechanical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform mechanical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

158:50-9-1. Qualifications for mechanical licensure

(a) **Application.** A person desiring to be licensed under this Chapter shall file an application with the application fee, examination fee (unless the examination fee is paid directly to a testing provider), and the initial License fee to the Administrator. The fees must be received no less than three (3) working days before the examination date. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

(b) **Experience.** All persons applying for a license must provide proof of experience in the mechanical trade. Applicants for mechanical license examinations who are not licensed and wish to include experience gained in Oklahoma must maintain an apprentice registration on file with the Oklahoma Construction Industries Board for all experience obtained in Oklahoma. The Construction Industries Board will not consider experience obtained in Oklahoma as verifiable experience for periods in which an apprentice is unregistered. Experience gained outside of the State of Oklahoma must be lawfully obtained according to any applicable federal or state laws and must be comprised of mechanical construction work as defined under Oklahoma law or similar types of mechanical work.

(1) Applicants for a journeyman license must be at least eighteen (18) years of age and have:

(A) three (3) years of verifiable experience in the mechanical trade in the category for which he is applying, or

(B) an associate's degree or vocational diploma certifying completion of an educational program consisting of 1000 hours or more from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and one (1) year of verifiable experience in the mechanical trade, or

(C) ~~have~~ a vocational diploma certifying completion of an educational program consisting of 500 or more hours from a school, approved by the Committee, which exhibits knowledge of the trade in the

category of license applied for and two (2) years of verifiable experience in the mechanical trade, or

(D) equivalent, verifiable experience in the mechanical trade while serving in the U.S. military, or

(E) experience sufficient to obtain the special certification required for the mechanical category sought by the tendered application, such as Ground Source Piping and Medical Gas~~.~~, or

(F) a verifiable out-of-state license in the mechanical classification for which the applicant is applying. The license must ~~be~~:

(i) be current,

(ii) be in good standing, and

(iii) ~~and~~ meet ~~qualification~~ qualifications listed in (A)~~, (B), or (C)~~ through (E) above.

(2) Applicants for a contractor license must meet the same requirements as a journeyman with an additional one (1) year of experience.

(c) **Examination.** A license cannot be issued until the applicant has passed the appropriate examination for the license type and category. Examinations and the passing score for each examination shall be approved by the Committee. Applicants for the Ground Source Piping category shall provide proof of being certified by examination in the proper installation of ground source piping by an organization approved by the Committee. Applicants for the Petroleum Refinery journeyman category shall provide proof of being certified by examination in the area of industrial pipefitter by an organization approved by the Committee. Applicants for the Medical Gas category shall provide proof of being certified by examination in accordance with the most current NFPA 99 standard or certified in the proper installation of medical gas piping by an organization approved by the Committee.

(1) If the applicant does not pass the exam, the applicant may reapply for the exam and pay an additional retesting fee. However, no person will be allowed to retake an exam within thirty (30) days of the first failed exam or within ninety (90) days of the second or subsequent failed exam.

(2) Any person suspected of cheating during an examination shall be immediately notified of the suspicion and shall not be allowed to finish the examination. He shall be called before the Committee during the next scheduled meeting for discussion of the incident. If the Committee determines that the person did in fact cheat, the examinee's application for licensure shall be denied and the Committee shall determine when the applicant can next apply for an examination.

(3) No person shall be allowed any assistance in reading the contractor's examination, nor shall any persons other than the examinees or the Committee members be allowed in the examination area. However, an applicant may request that the Committee make reasonable accommodations for any disability.

(d) **Outstanding fines.** A license cannot be issued until the applicant has paid any and all outstanding fines due and owing to any ~~department~~ division of the Construction Industries Board.

158:50-9-2. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in ~~section~~ OAC 158:50-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to sitting for the examination. The unit testing fee shall be the amount negotiated by the ~~administrator~~ Administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee ~~provided in~~ pursuant to 59 O.S. § 1000.5~~.~~(A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

(1) contractors application - $30.00
(2) initial contractor license - $300.00
(3) renewal contractor license - $200.00
(4) renewal contractor late fee - $100.00
(5) journeyman application - $25.00
(6) initial journeyman license - $50.00
(7) renewal journeyman license - $75.00
(8) renewal journeyman late fee - $25.00
(9) apprentice application - $5.00
(10) apprentice registration - $20.00

158:50-9-3. Duration of licenses

(a) All licenses shall have a duration of no more than one (1) year, and shall expire on the last day of the birth month of the licensee each year.

(b) Any license issued may be renewed by submitting the license fee for the next year by a check or money order and be mailed on or before the birth month expiration date.

(c) A license renewed under the provision of OAC 158:50-9-3(b) is effective when notice of such renewal is issued by the Construction Industries Board.

(d) An expired license may be reinstated if: The license fee is submitted ~~within one (1) year after the license expired,~~ and is accompanied by a late fee, plus any applicable continuing education, and any insurance and bonding requirements.

(e) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one (1) year from the day of surrender.

(f) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any ~~department~~ division of the Construction Industries Board.

158:50-9-5. Apprentice registration

(a) A person may register as a mechanical apprentice if the person does not meet the qualifications for licensure but wishes to learn or perform mechanical work. An individual licensed in

any category shall be permitted to work as an apprentice in any category for which they are not licensed by complying with the requirements of this chapter for ratio and direct supervision.

(b) The apprentice will be registered if a completed application form with the application and registration fee listed in OAC 158:50-9-2(a)(4) for a one (1) year period is submitted to the Mechanical License Unit along with verification of enrollment in an approved school or training course or a statement of employment by the licensed mechanical contractor who arranged for employment of the apprentice.

(c) The apprentice must perform mechanical work in the same category as the licensed mechanical person who is supervising the apprentice.

(d) An apprentice who participates in activities inconsistent with the provisions of the Act and the rules of this Chapter shall be subject to the sanctions described in OAC 158:50-11-3.

(f) Mechanical apprentices must be under the direct supervision of a licensed Mechanical contractor or journeyman when engaged in Mechanical work.

158:50-9-7. Continuing Education

(a) **Continuing Education Requirements:**

(1) By July 1, 2014, no contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education ("CE") ~~within thirty-six (36) months preceding the application for renewal~~; and thereafter, the licensee shall complete six (6) hours every three (3) years or thirty-six (36) months. The continuing education course and instructor shall be approved in advance by the Committee. Exceptions to advance approval, or post-course approval, may be allowed by the Committee, or its designee, for substitute instructors in emergency situations when written notice of the emergency is provided to the Committee within seven (7) days of the course. The continuing education material shall cover codes and revisions adopted by the Oklahoma Uniform Building Code Commission and/or other trade related subject matters appropriate for topics of continuing education for licensees and approved by the Committee including: examination materials, manufacturers' installation of equipment or parts, the licensing act, the trade regulations, and other trade or safety related subject matters approved by the Committee.

(2) Credit will be given for CE programs approved by the ~~Mechanical Examining~~ Committee, or its designee.

(3) Except as provided herein, these rules shall apply to every licensed mechanical journeyman or contractor.

(4) A licensee is exempt from the education requirements of these rules for three (3) years from the date he or she passed their current licensing exam.

(b) **Standards.** The following standards will govern the approval of continuing education programs by the Mechanical Examining Committee.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.

(2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An onsite conference room, that meets standards imposed by number 3 above, shall be considered outside the regular workplace.

(5) A credit hour means at least 50 minutes of classroom instruction with a 10 minute break.

(6) CE courses shall be presented in one of the following formats.

(A) Six credit hours presented in one day.

(B) Two sessions of three credit hours each presented within a seven day period.

(C) One session of two credit hours of trade related instruction, Mechanical Licensing Act and/or Mechanical Industry Regulations.

(D) An approved correspondence course.

(E) Another format approved by the Committee.

(7) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets from the course to the Examining Unit of the Construction Industries Board.

(D) Providers shall maintain copies of all sign-in sheets for a period of two (2) years following the conclusion of the course.

(E) Complaint Procedure.

(i) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(ii) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(iii) The Committee may consider an unsigned or anonymous complaint for further investigation.

(iv) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt

of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(v) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) **Application Procedures.**

(1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least thirty (30) days prior to the scheduled start date.

(A) Supporting documents shall include the following.

(i) A resume or brief summary of qualifications of all course developers and instructors.

(ii) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.

(iii) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the trade related instruction being provided.

(2) An application is to be submitted for each date, or dates, that constitute a single course.

(3) Each course must be included on a separate application.

(d) **Mechanical Examining Committee Acceptance.**

(1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.

(2) The approval of any course will be made by a majority vote of the Committee at the regularly scheduled meeting of the Mechanical Examining Committee.

(3) The Committee's designee may approve additional dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.

(5) Approval is rescinded upon the adoption of a different statewide code and a new application showing updates of new code is necessary.

(e) **Committee Rejection and Reevaluation of a Course.**

(1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.

(A) Failure to comply with the continuing education provisions.

(B) Inadequate application or supporting documentation.

(C) Failure to instruct on topic approved.

(D) Inadequate experience of program developer or instructor.

(E) Unsatisfactory evaluation of the course instructor or materials from previous classes.

(2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.

(A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.

(3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.

(f) **Appeals.**

(1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the committee within fifteen (15) days of the receipt of the notice.

(2) All appeals will be heard by the Committee at its next regularly scheduled meeting.

(g) **Course Presentation.**

(1) The program, including the named advertised participants, shall be conducted as approved by the committee, subject to emergency withdrawals and minor alterations.

(2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.

(h) **Course Advertisement.**

(1) All advertising must include the course ID number.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # has been approved by the Construction Industries Board Mechanical Examining Committee for hours of CE credit.

(i) **Correspondence and Online Courses.**

(1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.

(2) Correspondence courses shall be required to comply with all requirements of continuous education courses, except sign-in sheets.

(3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.

(4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.

(5) Applications shall be resubmitted annually, from date of approval, for review and approval.

(j) **Alternate Credit Method.** Credit may be earned through teaching an approved continuing education course. The Committee may award up to six hours of CE credit, not to exceed the number of approved hours for that CE course.

(k) **Continuing Education Not Required for Petroleum Refinery Journeyman.** Provisions (a) - (j) herein shall not apply to the license category of Petroleum Refinery Journeyman. The Petroleum Refinery Journeyman license may be renewed without continuing education.

(l) **Continuing Education Not Required for Ground Source Piping.** Provisions (a) - (j) herein shall not apply to the license category of Ground Source Piping. The Ground Source Piping category license may be renewed without continuing education provided that a current approved certification is submitted.

(m) **Continuing Education Not Required for Medical Gas.** Provisions (a) - (j) herein shall not apply to the license category of Medical Gas. The Medical Gas category may be renewed without continuing education provided that a current approved certification is submitted.

SUBCHAPTER 11. LICENSE REVOCATION OR SUSPENSION AND PROHIBITED ACTS

158:50-11-1. License retention requirements

All mechanical work performed by the licensee shall be minimally in accordance with the adopted references in OAC 158:50-1-4. An exception shall be made only if the plans calling for other than the adopted references in OAC 158:50-1-4 or have been approved by the Office of State Fire Marshal.

158:50-11-2. Prohibited acts

(a) The following prohibited acts apply to all license holders:

(1) No person, entity, or firm may perform mechanical work without first obtaining the appropriate license or registration pursuant to these rules.

(2) No licensee shall perform mechanical work in a category under which he is not licensed or work outside of the confinements of the required Medical Gas certification.

(3) No licensee shall perform work contrary to any provision of the adopted references in OAC 158:50-1-4, except as otherwise provided by law or rule. Each violation of the adopted references in OAC 158:50-1-4 can be treated as a separate violation of this Chapter.

(4) No person shall offer to engage in mechanical work during the period his license is suspended or revoked.

(5) No employing mechanical firm shall employ or use and unlicensed or unregistered individual or entity to perform mechanical work.

(6) No person, entity, or firm may transfer a license or registration.

(7) No individual or entity, licensed pursuant to these Rules shall enter into an agreement for the use of his license with any firm or person which is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Board.

(8) No person shall make a materially false or fraudulent statement in an application for license.

(9) No person may alter a license.

(10) No licensee shall fail to notify the Administrator of a change in his address.

(11) No licensee shall perform mechanical work without keeping their license and any required certification on their person or in close proximity while performing mechanical work.

(12) No person may engage in cheating or any act involving the fraudulent misrepresentation of an applicant by an examinee.

(13) No person or entity shall deny access to the Construction Industries Board or its representative on a job site.

(b) The following prohibited acts apply to persons issued a contractor license:

(1) No licensee shall employ or supervise persons performing mechanical work unless those persons are licensed or registered to perform that category of work.

(2) No licensee shall allow any apprentice to perform mechanical work at the contractor's job site unless the apprentice will have direct supervision by a person licensed to perform in that category of mechanical work.

(3) No licensee shall allow more than three (3) apprentices per journeyman at a job site.

(4) No licensee shall fail to maintain a bond as provided for in OAC 158:50-5-3.

(5) No licensee shall fail to provide proof of financial responsibility to the Administrator as provided for in OAC 158:50-5-3 (b).

(6) No licensee shall be associated with and responsible for more than one mechanical firm.

(c) The following prohibited acts apply to persons issued a journeyman license:

(1) No licensee shall allow an apprentice under his direct supervision to perform mechanical work for which the journeyman is not licensed to perform.

(2) No licensee shall perform mechanical work except under the employment or supervision of a Mechanical Contractor.

(3) No licensee shall engage in the planning, contracting, or furnishing of labor and/or materials used for mechanical work.

SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FEES, CODE VARIANCE APPLICATIONS AND FEE, CODE INTERPRETATION APPEALS

158:50-13-1. Plan review applications and fees

(a) Applications for the review of plans and specifications to ensure conformance with State adopted installation codes may be submitted in writing to the Oklahoma Construction Industries Board. An application and the appropriate filing fee~~,~~ shall accompany the construction plans and specifications submitted for plan review. Plan review by the ~~Department~~Division shall only be conducted for the construction projects where a city or town has not adopted a ~~nationally recognized~~ trade installation code by ordinance that is more stringent than the standard of installation as described in OAC 158:50-1-4. Applications shall only be reviewed by the Administrator if submitted prior to the bid dates for the project. Plan review shall be completed within (14) fourteen days of the receipt of a complete application.

(b) The Board will advise the applicant through its liaison if the application is determined to be incomplete in order for the applicant to re-submit a complete~~,~~ plan review application.

(c) The plan review fee for:

(1) mechanical plans and specifications shall be $75.00;

(2) mechanical and plumbing or electrical plans and specifications shall be $150.00;

(3) mechanical, plumbing, and electrical plans and specifications shall be $200.00.

(4) If electrical, plumbing, and mechanical review is required, the fees will be equally distributed among the three trades.

(d) Plan review is not required but is a service provided by the Board to assist with code compliance.

158:50-13-2. Procedures of the Variance and Appeals Board

The Administrator shall call a meeting of the Variance and Appeals Board after the Administrator receives proper application for a variance accompanied by the fifty dollar ($50.00) filing fee or receives proper notice of an appeal of the ~~Department's~~ Administrator's interpretation of the ~~ICC International Mechanical Code currently adopted or the International Fuel Gas Code currently adopted and the International Residential Code currently adopted (Chapters 12 through 24)~~ standard of installation as described in OAC 158:50-1-4 as applied to a particular installation. Variance and Appeals Board meetings are held at the principal offices of the Construction Industries Board referenced at OAC 158:1-3-1, or at another location named by the Administrator. The Variance and Appeals Board shall comply with the Oklahoma Open Meetings Act.

158:50-13-3. Code variance applications and fee

(a) Applications for a variance from the ~~adopted references~~ standard of installation as described in OAC 158:50-1-4 by an Oklahoma-licensed, mechanical contractor, or other person as stated in statute, shall be submitted to the Administrator. An application form and the fifty-dollar ($50.00) filing fee shall accompany sufficient technical data submitted to support the proposed variance. Applications submitted after the use of materials or methods of construction not in conformance with the ~~adopted references~~ standard of installation as described in OAC 158:50-1-4, or submitted where a city or town has adopted a ~~nationally recognized,~~ more stringent mechanical installation code by ordinance, shall not be considered by the Variance and Appeals Board.

(b) The applicant and the Administrator or the Administrator's designee may offer testimony to the Variance and Appeals Board which is relevant to the code variance requested. If testimony will be offered to support the application, the applicant shall include in the application the identity of the applicant's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness. If the Administrator or the Administrator's designee contests the application, and will offer testimony to rebut the application, the Administrator or the Administrator's designee will provide the applicant with the identity of the Administrator's or the Administrator's designee's witnesses by name, profession or occupation, address and telephone number, and a concise summary of the expected testimony of each witness.

158:50-13-4. Code interpretation appeals

A mechanical contractor, or any party who has an ownership interest in or who is in responsible charge of the design of or work on the mechanical installation, may appeal the ~~Department's~~Administrator's interpretation of the ~~adopted references~~ standard of installation as described in OAC 158:50-1-4 as applied during the Administrator's review of mechanical plans and specifications or inspection of a mechanical installation to the Variance and Appeals Board created pursuant to ~~Title~~ 59~~,~~ O.S. ~~Supp. 1994,~~ § 1850.16. Such appeals shall be made in writing to the Administrator within fourteen (14) days after the ~~Department's~~ Administrator's code interpretation or receipt of written notice of the alleged code violation by the licensed mechanical contractor, and shall be heard only if based on a claim that:

(1) the true intent of the installation code has been incorrectly interpreted;

(2) the provisions of the code do not fully apply; or

(3) an equal or better form of installation is proposed.

[OAR Docket #14-526; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #14-527]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:60-1-2 [AMENDED]
Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses
158:60-5-2 [AMENDED]
158:60-5-3 [AMENDED]
158:60-5-4 [AMENDED]
158:60-5-5 [AMENDED]
AUTHORITY:
Construction Industries Board: 59 O.S. §§ 1000.4 and 1032
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Many of the amendments are cleanup in nature and correct formatting, spelling, punctuation and grammar, and correct or clarify references and citations. In addition, 158:60-1-2 removes definition for "OCIB EXAM" to avoid confusion because the Inspectors Examining Committee no longer prepares the exam; 158:60-5-2 allows for late fee to be collected if application for renewal of expired license is made more than one year after license expiration, corrects requirements for initial licensure because there is currently no Oklahoma Inspector Examination and continuing education is not required for initial licensure, and clarifies that continuing education is required for license renewal; 158:6-5-3 requires notification in writing to the Construction Industries Board of change in address or in employment status related to license; 158:60-5-4 clarifies fees and certification and continuing education requirements for inspectors; 158:60-5-5 clarifies continuing education requirements, requires continuing education providers to submit the original sign-in sheets for all sessions within seven days of completion of the course, establishes standards for continuing education, removes requirement that providers are to offer reasonable accommodations for disabled licensees attending a course because the continuing education providers are already subject to requirements under federal law that address this matter, and establishes limitations on continuing education course approval.
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:60-1-2. Definitions

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

"Act" means the Oklahoma Inspectors Act as found at 59 O.S. § 1031, *et seq*~~et seq~~.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1, *et seq*~~et seq~~.

"Board" means the Construction Industries Board.

"Certification" means approval by a certifying organization demonstrating that an applicant has passed an appropriate certification examination.

"C.E.U."or **"CEU"** means a continuing education unit that is either one (1) credit hour of Committee approved instruction or its equivalent as determined by the Committee.

"Committee" means the Oklahoma Inspector Examiners Committee.

"Credit Hour" means fifty (50) minutes,~~(~~or more~~)~~, of instruction with a ten (10) minute break.

~~**"OCIB EXAM"** means an examination prepared by the Committee.~~

"OUBCC" means the Oklahoma Uniform Building Code Commission.

"Political Subdivision" means a municipality, city, town, village, county, or public trust where a city or town is a beneficiary.

"Provisional license" means a license issued for not more than two (2) years to a person who has made proper application but does not meet all licensing requirements.

"Regular work place" means the immediate individual office including desk, chair, computer and office telephone wherein the inspector is expected to be reached and to conduct day-to-day office business.

"Residential" means the classification of inspector license~~,~~ which authorizes an individual to conduct electrical, mechanical, plumbing or building inspections of only those structures designated as use group R3 or R4 in the most current Residential code adopted by the "OUBCC".

"Unlimited" means the classification of inspector license which authorizes an individual to conduct electrical, mechanical, plumbing or building inspections of all structures or installations.

SUBCHAPTER 5. CATEGORIES AND CLASSIFICATIONS OF INSPECTOR LICENSES, QUALIFICATIONS FOR INSPECTOR LICENSURE, LICENSE REQUIREMENTS FOR INSPECTORS, FEES, CERTIFICATION AND CONTINUING EDUCATION FOR INSPECTORS, AND CONTINUING EDUCATION COURSES

158:60-5-2. Qualifications for inspector licensure

(a) Initial application must be made on the form provided by the Administrator and must be approved by the employing political subdivision or authority having jurisdiction ("AHJ").

(b) The proper fees must accompany any application, including the late fee if application for renewal is made ~~within one year~~ after expiration of the initial license.

(c) The applicant must submit, as soon as is practicable after application for initial license is made,~~:~~

~~(1)~~ proof of certification by a national inspector certifying organization recognized by the Committee,~~;~~

~~(2) proof of certification by the Committee that the person has passed the Oklahoma Inspector Examination; or~~

~~(3) proof that the required C.E.U.'s have been completed.~~

(d) Before an application for license renewal can be approved, the Board must receive proof of completion of the required C.E.U.'s.

(e) ~~Section~~ OAC 158:60-5-4 sets forth the licensing qualifications for the license categories and classifications provided in OAC 158:60-5-1. Additional certifications or exams may be recognized by approval of the Committee and the Construction Industries Board on a case by case basis. However, no person shall be required to meet the continuing education requirements for the licensing year the certification requirements of OAC 158:60-5-2(c)~~1 or 2~~ are met.

(~~e~~f) A provisional license is issued to allow a person to work as an inspector even though all the license qualifications have not been met. This provisional license will provide the licensee with adequate time and motivation to become educated and meet all licensure requirements within two (2) years after being issued the provisional license. No person shall be issued more than one provisional license in any category. The initial fee for the provisional license shall be $35.00.

158:60-5-3. License requirements for inspectors

(a) The licensee shall notify the ~~Administrator~~ Construction Industries Board in writing within fifteen (15) days of any change in address or change in employment status related to the license.

(b) The licensee shall, in addition to any local procedures or requirements, notify the Administrator as to persons suspected of performing building, electrical, mechanical, or plumbing work within their jurisdiction who are not properly licensed by the State. All licensed building and construction inspectors shall require all persons doing work in his/her jurisdiction to meet all requirements for licensing and code standards.

(c) Any person who voluntarily surrenders their license during an investigation by the licensing authority shall be treated as if their license had been revoked by the Administrator on the day of surrender.

(d) The licensee shall not attempt to retain licensure by making false statements concerning C.E.U.'s.

(e) In political subdivisions where licensing is required by the Act ~~act~~, no person may perform building and construction inspections in a category in which he or she is not licensed.

158:60-5-4. Fees, certification and continuing education for inspectors

Fees, certification and continuing education requirements for inspectors are as follows:

(1) Building inspectors (both unlimited and residential licenses):

(A) $35.00 Fee for initial license and renewal;

(B) ~~$70.00~~ $35.00 Late fee, if applicable; ~~and~~

(C) Approved Certification;~~or Construction Industries Inspector's Exam.~~ and

(D) Completion of six (6) ~~Approved~~ C.E.U.'s for renewal license ~~6 hours~~.

(2) Electrical inspectors (both unlimited and residential licenses):

(A) $35.00 Fee for initial license and renewal;

(B) ~~$70.00~~ $35.00 Late ~~fees~~ fee, if applicable ~~for renewal license~~; ~~and~~

(C) Approved Certification;~~or Construction Industries Inspector's Exam.~~ and

(D) Completion of six (6) ~~Approved~~C.E.U.'s for renewal license ~~6 hours~~.

(3) Mechanical inspectors (both unlimited and residential licenses):

(A) $35.00 Fee for initial license and renewal;

(B) ~~$70.00~~ $35.00 Late ~~fees~~ fee, if applicable ~~for renewal license~~; ~~and~~

(C) Approved Certification;~~or Construction Industries Inspector's Exam.~~ and

(D) Completion of six (6) ~~Approved~~C.E.U.'s for renewal license ~~6 hours~~.

(4) Plumbing inspectors (both unlimited and residential licenses):

(A) $35.00 Fee for initial license and renewal;

(B) ~~$70.00~~ $35.00 Late ~~fees~~ fee, if applicable ~~for renewal license~~; ~~and~~

(C) Approved Certification;~~or Construction Industries Inspector's Exam.~~ and

(D) Completion of six (6) ~~Approved~~C.E.U.'s for renewal license ~~6 hours~~.

(5) Energy Code inspector (both unlimited and residential licenses):

(A) $35.00 Fee for initial license and renewal;

(B) ~~$70.00~~ $35.00 Late ~~fees~~ fee, if applicable ~~for renewal license~~; ~~and~~

(C) Approved Certification;~~or Construction Industries Inspector's Exam.~~

(D) Completion of six (6) ~~Approved~~C.E.U.'s for renewal license ~~6 hours~~.

158:60-5-5. Continuing education ~~courses~~

(a) **Continuing education requirements:**

(1) No license shall be renewed unless the licensee has completed at least six (6) hours of continuing education within twelve (12) months preceding the application for renewal.

(2) Credit will only be given for continuing education programs approved by the Committee.

(3) A licensee is exempt from the continuing education requirements of these rules for one (1) year from the date he or she passed their current licensing exam.

(b) **Application procedures for continuing** ~~Continuing~~ education course approval. Any provider or instructor which desires to sponsor education to licensees in compliance with the continuing education requirements of OAC 158:60-5-4 ~~Subchapter 5~~ shall file an application for approval on the form prescribed by the Committee, or its designee. The application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of credit hours of classroom and supervised instruction. Licensees shall not receive continuing education credit for attending classes that are not approved by the Committee. ~~After~~ Within seven (7) days of the completion of the course, the provider or instructor shall submit the original sign-in sheets for all sessions to the Inspectors Examining Unit of the Construction Industries Board. The sign-in sheets shall include the signature and state inspector license number of each person in attendance. The provider or instructor shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless changes have been approved. Changes to the program shall be submitted to the Committee, or its designee, within ten (10) days of the training session for review by the ~~committee~~ Committee. Failure to obtain approval of changes may result in loss of CEU approval.

(~~b~~c) ~~**Approval requirements**~~ **Standards for continuing education.** ~~All continuing education providers shall abide by the following requirements~~The following standards will govern the approval of continuing education programs by the Inspectors Examining Committee:

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training.

(2) All material and information presented shall pertain to the discipline in which the person is licensed.

(~~2~~3) All courses must be of at least two (2) credit hours in length.

(~~3~~4) The training location must be outside the regular work place or after hours.

(~~4~~5) Correspondence or online course approval standards:~~.~~

(A) Providers or instructors seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(B) Only licensees meeting one or more of the following requirements may receive CEU credit for taking a correspondence or online course;

(i) Any licensee residing outside of Oklahoma,

(ii) Any licensee that has an expired license which requires a ~~CE~~ continuing education course that is no longer available in the classroom,

(iii) Any licensee who is currently incarcerated, or

(iv) Any licensee who submits written proof to the Committee from a physician stating the medical reason that the licensee is unable to attend a ~~CE~~ continuing education class.

~~(C) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.~~

(~~5~~6) Along with a course application, a video presentation may be submitted for course material and instructor approval by the Committee if the video presentation is closely related to the subject matter of the course and meets the following:

(A) All video presentations must be submitted in electronic format at least thirty (30) days in advance of the Committee meeting reviewing the course application, except for manufacturer's videos generally accepted in the industry covering accepted industry practices or standards. If the electronic format does not allow forwarding by email, then seven (7) copies of a portable storage format is required.

(B) Video segments shall be no more than thirty (30) minutes, followed by a discussion and no more than fifty percent (50%) of the total course time.

(C) The required copies of each individual video presentation training segment must be submitted with the CEU class approval request for review and approval by the Committee of the course material and instructor. However, if the video is a manufacturer's video, the Committee is not required to approve of the instructor in the video as long as the video course material and video presentation is approved by the Committee.

(D) An approved instructor will be present during the viewing of any video and will monitor the class for questions. Prior to any video presentation, class participants shall be instructed to raise their hand if they have a question or comment during the video presentation. When a class participant has a question or comment during the video presentation, the instructor must be able to stop or pause the video to accommodate live interactive discussion.

(E) Audio and video equipment shall be arranged in advance or otherwise provided to assure that class participants are able to see and hear all portions of any video presentation. In the case of audio or video failure, the time of the video presentation may be presented by the approved instructor over subject matter previously approved for that instructor.

(~~c~~d) **Approval Limitations**

(1) The Committee's designee may approve additional course dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(2) Approval is rescinded upon the adoption of a different statewide code by OUBCC, and a new application showing updates of new code is necessary.

(e) **Complaint procedure.:**

(1) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(3) The Committee may consider an unsigned or anonymous complaint for further investigation.

(4) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(5) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

[OAR Docket #14-527; filed 6-26-14]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 70. HOME ~~INSPECTORS ACT~~ INSPECTION INDUSTRY REGULATIONS

[OAR Docket #14-528]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:70-1-1 [AMENDED]
158:70-1-2 [AMENDED]
158:70-1-3 [AMENDED]
Subchapter 3. Procedures of the Committee
158:70-3-1 [AMENDED]
Subchapter 5. License Requirements, License Fees, License Period, Re-Examination, Display and Insurance
158:70-5-1 [AMENDED]
158:70-5-2 [AMENDED]
Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity
158:70-9-1 [AMENDED]
158:70-9-3 [AMENDED]
158:70-9-4 [AMENDED]
158:70-9-5 [AMENDED]
158:70-9-6 [AMENDED]
Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts
158:70-11-1 [AMENDED]
158:70-11-2 [AMENDED]
Appendix A. Sample Home Inspection Exclusion Form [REVOKED]
Appendix A. Sample Home Inspection Exclusion Form [NEW]
AUTHORITY:
Construction Industries Board: 59 O.S. §§ 858-627 and 1000.4
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 17, 2013, through January 17, 2014
PUBLIC HEARING:
January 22, 2014
ADOPTION:
January 22, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Many of the amendments are cleanup in nature and correct formatting, spelling, punctuation and grammar, and correct or clarify references and citations. In addition, the Chapter heading is amended to help alleviate confusion between statutes and administrative rules; 158:70-1-2 deletes the definition for "Department" which is no longer applicable, and adds a definition for "Home Inspection Training" to distinguish between prelicense education and continuing education; 158:70-1-3 deletes obsolete language; 158:70-3-1 corrects the address of the Construction Industries Board (CIB); 158:70-5-1 makes language gender neutral and adds provision that licensee must report change in principal business address to the CIB; 158:70-5-2 puts cap on education course approval fees if the same home inspection organization conference has multiple instructors and/or multiple courses; 158:70-9-3 contains amendments to help distinguish prelicense education from continuing education, establishes requirements for advertising approved continuing education courses, requires each course to be submitted on separate application for each date, or dates, that constitute a single course, and requires that course applications be resubmitted annually from date of approval (no charge for previously approved course with an approved instructor and no significant course content changes).
CONTACT PERSON:
Linda Ruckman, Board Secretary/Executive Assistant, 405-521-6550.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

158:70-1-1. Purpose

The rules in this Chapter implement the Home Inspection Licensing Act, ~~Title~~ 59 O.S. ~~2001,~~ § 858-621, ~~et seq~~*et seq*.

158:70-1-2. Definitions

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

"Act" means the Home Inspection Licensing Act, found at 59 O.S. § 858-621, ~~et seq~~ *et seq*.

"Alarm systems" means warning devices, installed or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.

"Applicant" means any person applying for an examination for a license or registration under the Act.

"Architectural service" means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

"Board" means the Construction Industries Board.

"Certificates of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Classroom hour", **"credit hour"**, and **"clock hour"** are each equal to fifty (50) minutes out of each sixty (60) minute segment.

"Client" means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.

"Committee" means the Committee of Home Inspector Examiners established by the Home ~~Inspector~~ Inspection Licensing Act, 59 O.S. §858-624.

"Component" means a part of a system.

"Continuing education"and **"CE"** means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.

"Continuing education verification form" means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.

"Cosmetic" means a condition that affects appearance but not the manner in which the system or component functions.

"Decorative" means ornamental; not required for the operation of the essential systems and components of a home.

"Defect" means a condition, malfunction or problem, which is not decorative or cosmetic, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.

~~**"Department"** means the Construction Industries Board.~~

"Describe" means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.

"Dismantle" means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.

"Engineering service" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

"Further evaluation" means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.

"Home" or "residence" means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.

"Home inspection" or **"inspection"***means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended.* [59 O.S. §~~:~~858-622(~~5~~3)]

"Home inspection license unit" means the staff and administrative support unit to the Committee of Home Inspector Examiners.

"Home inspection report" means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.

"Home Inspection Training" means prelicense education that is approved by the Committee to satisfy the education requirements to qualify an applicant to take a home inspector examination for licensure as a home inspector.

"Home inspector" means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.

"Inspect" means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.

"Installed" means attached such that removal requires tools.

"Instructor" means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.

"Normal working order" means the system or component functions without defect for the primary purpose and manner for which it was designed.

"Normal operating controls" means devices such as thermostats, switches or valves intended to be operated by the homeowner.

"Practice of Architecture" means that practice defined in ~~section 46.3 of Title~~ 59 O.S. § 46.3 and exempt from the Home ~~Inspector's~~ Inspection Licensing Act under ~~Title~~ 59 O.S. §858-623(B)(2).

"Professional craftsman" means a person who can demonstrate by certification, education or experience, specialized skill in the construction or repair of homes, duplexes, apartment buildings or similar structures. Persons demonstrating specialized skill by experience alone must be able to show that they have been actively engaged in their profession, trade or craft for at least one (1) year prior to the performance of a single item inspection.

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved qualifying and continuing education to home inspectors.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.

"Readily openable access panel" means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.

"Reciprocity agreement" means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Recreational facilities" means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.

"Report" means to communicate in writing.

"Roof drainage systems" means components used to carry water off a roof and away from a building.

"Shut down" means a state in which a system or component cannot be operated by normal operating controls.

"Solid fuel burning appliances" means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

"Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

"Technically exhaustive" means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.

"Under-floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the floor.

"Unsafe" means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.

"Wiring methods" means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

158:70-1-3. Standards of workmanship and practice

(a) **General requirements.**

(1) These standards of practice are the minimum levels of inspection practice required of inspectors for the components and systems identified in these rules. Home inspections performed in accordance with these standards of practice are intended to provide the client with information regarding the condition of the systems and components at the time of the inspection.

(2) The inspector shall be governed by the following general requirements:

(A) The inspector shall inspect all readily accessible installed systems and components listed in these standards of practice.

(B) The inspector shall complete a written inspection report in accordance with these standards and submit the report to the client within an agreed upon time frame.

(C) The inspector shall identify in any written report the client, the inspector who performed the inspection by name and license number, and the address of the inspected property.

(D) The inspector shall report:

(i) those systems and components inspected, which in the professional opinion of the inspector, are in normal working order;

(ii) those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order and the reason, if not self-evident;

(iii) those systems and components inspected which, in the professional opinion of the inspector, could impair the safety of the occupants or client and the reason, if not self-evident;

(iv) the inspector's recommendations to have corrected, further evaluated or monitored any reported condition or defect; and,

(v) any systems and components designated for inspection in these standards, which were present at the time of the Home Inspection but were not inspected and the reason they were not inspected.

(3) These standards of practice are not intended to limit inspectors from:

(A) including other inspection services or inspecting other systems or components in addition to those required by these Standards;

(B) providing a higher level of inspection performance than required by these Standards;

(C) reporting other observations or conditions in addition to those required by these Standards; or,

(D) excluding systems and components from the inspection, if requested by the client in writing prior to the inspection and recorded on a signed form, such as the sample form "Sample Home Inspection Exclusion" at Appendix A of this Chapter.

(4) ~~Beginning July 1, 2006 all~~All home inspectors shall maintain a log or record of all home inspections performed, for a minimum period of five (5) years from the date of inspection. The log or record shall include the name of the client, the address of the property, and the date of the inspection. The home inspector shall maintain a copy of all home inspections completed within the past thirty-six (36) months. The log or record and inspection reports may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon request of an authorized representative of the Construction Industries Board.

(5) A home inspector who visually examines any portion of a residential unit that is part of a real property consisting of more than four (4) dwelling units, shall advise, in writing, the person requesting the visual examination that the visual examination being conducted by the home inspector is not governed by the Act and these rules.

(b) **General limitations and exclusions.**

(1) The inspector is not required to perform any action or make any determination not specifically stated in these Standards of Practice.

(2) Inspections performed in accordance with these standards are not required to be technically exhaustive, will not identify concealed conditions or latent defects and are only applicable to buildings with four or fewer dwelling units and their garages, both attached and detached, or carports.

(3) The inspector is not required to:

(A) perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority;

(B) determine the condition of systems or components which are not readily accessible;

(C) determine the remaining life of any system or component;

(D) determine the strength, adequacy, effectiveness, efficiency or insurability of any system or component;

(E) determine the causes of any condition or defect;

(F) determine the methods or materials for repair or correction of any defect;

(G) determine future conditions including, but not limited to, failure of systems and components;

(H) determine the suitability of the property for any specialized use or compliance with any regulatory requirements other than this Chapter;

(I) determine the presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms, mold, mildew, fungi, or diseases harmful to humans;

(J) determine the presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water, or air;

(K) determine the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances;

(L) determine the operating costs of any system or component;

(M) determine the acoustical properties of any system or component;

(N) perform engineering or architectural services or perform work in any trade or professional service other than home inspections;

(O) provide warranties or guarantees of any kind;

(P) operate any system or component which is shut down or otherwise inoperable or turn on any utility services;

(Q) operate any system or component which does not respond to normal operating controls, or shut-off valves;

(R) enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or may damage the property or its systems or components;

(S) enter the under-floor crawl spaces, attics or any area which, in the opinion of the inspector, is not readily accessible;

(T) inspect or determine the integrity of underground systems or components, including, but not limited to, main drain lines connecting to sewers, water lines, gas lines, electrical lines and underground storage tanks or other underground indications of their presence whether abandoned or active;

(U) inspect systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements and areas in multi-unit housing, such as condominium properties or cooperative housing;

(V) move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris;

(W) dismantle any system or component, except as explicitly required by these rules; or,

(X) light any standing gas pilot light that does not have a spark-igniter, including but not limited to heating systems, water heaters and fireplaces; or,

(Y) determine the cost to correct any defect or provide cost estimates.

(4) The inspector shall not:

(A) offer or perform any act or service contrary to law;

(B) determine or report on the market value of the property or its marketability;

(C) report on the advisability of the purchase of the property; or,

(D) advertise or solicit to perform repair services on the inspected home for a period of one (1) year from the date of the inspection.

(c) **Structural system inspection requirements.**

(1) The inspector shall inspect:

(A) the foundation structure including slabs, piers, columns, posts, stem walls;

(B) the floor structure including beams, girders, joists, trusses, sill plates, blocking, bracing, drilling, notching and sub floors;

(C) the wall structure;

(D) the roof structure including rafters, trusses, sheathing, blocking, bracing, drilling, notching and fire stops;

(E) the ceiling structure including joists, trusses, blocking, bracing, drilling, notching and fire stops at ceiling penetrations; and,

(F) the crawlspace, basement and attic moisture conditions and indicators of harmful water penetration or condensation on structural components.

(2) The inspector is required to:

(A) describe the foundation, floor structure, roof structure, ceiling structure and wall structure;

(B) describe indicators of foundation or structural movement;

(C) enter the crawlspace and attic to determine the general condition of the components;

(D) report the method used to observe the crawlspace and attic if the inspector did not enter; and,

(E) probe structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required where no deterioration is visible.

(3) The inspector is not required to:

(A) enter a crawlspace or any foundation area where the headroom is less than 18 inches, the access opening is less than 18 inches by 24 inches, where the area is excessively wet, or where the inspector reasonably determines the conditions or materials are hazardous to the safety of the inspector;

(B) enter an attic space where head room is less than 30 inches, the access opening is less than 18 inches wide by 24 inches long, or where the inspector reasonably determines conditions or materials are hazardous to the safety of the inspector; or

(C) perform any invasive or destructive inspection.

(d) **Exterior inspection requirements.**

(1) The inspector shall inspect:

(A) the exterior wall covering, trim, flashings, caulking and protective coatings;

(B) all exterior doors and locking devices;

(C) overhead garage doors and garage door openers including safety mechanisms;

(D) storm windows and doors;

(E) attached decks/patios, balconies, stoops, steps, porches, and their associated railings;

(F) eaves, soffits and fascias;

(G) driveways and walkways leading to dwelling entrances;

(H) vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to have an adverse effect on the structure; and,

(I) the primary garage or carport.

(2) The inspector shall describe:

(A) the exterior wall covering;

(B) attached decks/patios and balconies;

(C) driveways; and,

(D) walkways.

(3) The inspector is not required to inspect:

(A) screening, shutters, awnings, and similar seasonal accessories;

(B) fences;

(C) geotechnical or hydrological conditions;

(D) recreational facilities;

(E) detached structures except the primary garage or carport;

(F) seawalls, break-walls, and docks; or,

(G) erosion control and earth stabilization measures.

(e) **Roof system inspection requirements.**

(1) The inspector shall inspect the:

(A) roof covering;

(B) roof drainage systems;

(C) flashings;

(D) skylights;

(E) chimneys;

(F) attic ventilation covers; and,

(G) other roof penetrations.

(2) The inspector shall describe the roof covering.~~:~~

~~(A) the roof covering;~~

~~(B) the inspector shall report;~~

(3) The inspector shall report:

(~~C~~A) the number of layers of roof covering;

(~~D~~B) asphalt/composition shingles over wood shingles; and,

(~~E~~C) the methods used to inspect the roof.

(~~3~~4) The inspector is not required to inspect:

(A) the interiors of flues or chimneys;

(B) antennae; or,

(C) other installed accessories.

(f) **Plumbing system inspection requirements.**

(1) The inspector shall inspect:

(A) the interior water supply and distribution systems and components;

(B) the connections, flow and drainage of fixtures, and fittings at bathtubs, showers, sinks, toilets and the exterior hose bibs immediately adjacent to the structure;

(C) the clothes washing machine faucets and drains, unless a washing machine is in place;

(D) drain, waste and vent systems and components;

(E) the shower and bathtub enclosure surfaces;

(F) the water heating equipment, safety devices/valves, clearances, vent systems, flues and chimneys, gas supply piping, and gas shut off valves;

(G) the fuel storage and/or fuel distribution systems; and,

(H) the drainage sumps, sump pumps and related piping.

(2) The Inspector shall describe:

(A) water supply piping materials;

(B) drain, waste, and vent piping materials;

(C) the water heating equipment and the energy sources;

(D) the location of the main water shut-off, main fuel shut-off and the house sewer cleanout, and

(E) the presence of any shade of yellow corrugated stainless steel tubing ("CSST") flexible gas piping observed during the inspection in which the inspector is not required to identify concealed conditions, components not readily accessible, or any other item excepted from inspection pursuant to OAC 158:70-1-3. If any shade of yellow CSST flexible gas piping is observed, the home inspector shall notify the client, in writing, as follows: "Manufacturers believe the product is safer if properly bonded and grounded as required by the manufacturer's installation instructions. Proper bonding and grounding of the product can only be determined by a licensed electrical contractor."

(3) The inspector is not required to:

(A) inspect the interiors of flues or chimneys, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems~~,~~;

(B) determine the quantity or quality of the water supply;

(C) determine whether water supply and waste disposal are public or private;

(D) operate safety valves, shut-off valves or washing machine hose connections, if installed appliances are present; or,

(E) use technically exhaustive techniques to determine the water tightness or integrity of shower pans or enclosures.

(g) **Electrical system inspection requirements.**

(1) Except as provided in OAC 158:70-1-3(b), the Inspector shall inspect:

(A) The service drop;

(B) the service entrance conductors, cables, and raceways;

(C) the service equipment and main disconnects;

(D) the service grounding;

(E) the interior components of service panels and sub panels by removing the panel dead front covers;

(F) the branch circuit conductors, over current protection devices and the compatibility of the conductors with the device;

(G) conduit, wiring and splicing including the basement, crawl space and attic;

(H) interior and exterior installed lighting fixtures, switches and ceiling fans;

(I) receptacles including polarity and grounding, ground fault circuit interrupters and arc fault circuit interrupters; and,

(J) exterior electrical components that provide service to a qualifying garage or carport.

(2) The Inspector shall describe:

(A) the amperage and voltage rating of the service;

(B) the wiring methods;

(C) the location of main disconnect(s), distribution panels and sub panels;

(D) the presence of solid conductor aluminum branch circuit wiring; and,

(E) the absence of smoke detectors.

(3) The inspector is not required to:

(A) inspect remote control devices unless the device is the only control device, alarm systems and components, low voltage wiring systems and components or ancillary wiring systems and components not a part of the primary electrical power distribution system;

(B) measure amperage, voltage/voltage drop, or impedance;

(C) insert any tool, probe or testing device inside panels or dismantle any electrical device or control other than to remove the dead front covers of the main and sub panels; or,

(D) test or operate any over current protection device except ground fault and arc fault circuit interrupters.

(h) **Heating, Air conditioning and distribution system inspection requirements.**

(1) **Heating systems.**

(A) The inspector shall open readily openable access panels.

(B) The inspector shall inspect:

(i) the installed heating equipment including backup heating devices;

(ii) controls;

(iii) heating operation;

(iv) burners and burner chambers in fuel fired heating systems;

(v) combustion air provisions;

(vi) gas supply piping and shut off valve;

(vii) electrical supply provisions and disconnects;

(viii) clearances;

(ix) vent systems, flues, and chimneys; and,

(x) bathroom supplemental heating appliances.

(C) The inspector shall describe the heating methods by their distinguishing characteristics and the energy sources.

(D) The inspector is not required to:

(i) inspect the interiors of flues or chimneys, humidifiers or dehumidifiers, solar space heating systems, and heat exchangers;

(ii) measure amperage of electric heating elements.

(2) **Air conditioning systems.**

(A) The inspector shall open readily openable access panels.

(B) The inspector shall inspect:

(i) installed cooling equipment;

(ii) cooling operation;

(iii) condensate disposal provisions;

(iv) the electrical supply provisions and disconnect; and,

(v) the refrigerant lines.

(C) The inspector shall describe the cooling methods by their distinguishing characteristics and the energy sources.

(D) The inspector is not required to:

(i) verify sizing or component matching; or,

(ii) operate equipment when outdoor temperatures may cause damage to the equipment.

(3) **Heat and air conditioning distribution systems.**

(A) The inspector shall inspect:

(i) plenums and ducts with associated supports, insulation, supply registers and return grills;

(ii) radiators and piping;

(iii) filters; and,

(iv) main air handlers fans and blowers.

(B) The inspector shall describe the type of conditioned air distribution system.

(C) The inspector is not required to:

(i) inspect electronic air filters, heat reclamation equipment or dampers;

(ii) determine duct leakage or calculate duct sizing; or,

(iii) determine the uniformity, adequacy, or distribution balance of the heat or cooling supply to habitable rooms.

(i) **Interior inspection requirements.**

(1) The inspector shall inspect:

(A) walls, ceilings and floors of the dwelling and garage;

(B) steps, stairways, balconies and railings;

(C) doors and windows including operation, glazing and thermal pane seals;

(D) installed cabinets and countertops; and,

(E) indicators of harmful water penetration or condensation on interior and structural components.

(2) The inspector shall describe the walls, ceilings and floors.

(3) The inspector is not required to inspect:

(A) paint, wallpaper, and other finish treatments;

(B) carpeting and other floor coverings;

(C) window treatments;

(D) the operation of interior door locks, latches and devices; or,

(E) recreational facilities.

(j) **Insulation and ventilation inspection requirements.**

(1) The inspector shall inspect:

(A) insulation and vapor retarders/barriers in unfinished spaces~~,~~;

(B) ventilation of attics and foundation areas~~,~~;

(C) mechanical ventilation systems; and,

(D) the clothes dryer exhaust system.

(2) The inspector shall describe:

(A) the insulation and vapor retarders or barriers in unfinished spaces; and,

(B) the absence of insulation in unfinished spaces at conditioned surfaces.

(3) The inspector is not required to:

(A) disturb insulation or vapor retarders or barriers;

(B) operate powered attic vents; or,

(C) determine indoor air quality.

(k) **Appliance inspection requirements.**

(1) The inspector shall inspect the:

(A) food waste disposal;

(B) range/stove, regardless of whether it is an installed or free standing appliance;

(C) cook top;

(D) oven(s);

(E) dishwasher;

(F) ventilation equipment or range hoods;

(G) installed microwave;

(H) trash compactor; and,

(I) gas appliance connectors and shut off valves.

(2) The inspector shall describe the range/stove, cook top and oven(s) by the energy source.

(3) The inspector is not required to:

(A) operate appliances in all modes or self-cleaning cycles; or,

(B) inspect clocks, timers, thermostats or household appliances not listed in these standards.

(l) **Fireplaces and solid fuel burning appliances inspection requirements.**

(1) The inspector shall inspect the:

(A) hearth and hearth extension;

(B) damper;

(C) gas supply; and,

(D) the firebox, vent systems, flues and chimneys.

(2) The inspector shall describe:

(A) the fireplaces;

(B) solid fuel burning appliances; and,

(C) chimneys.

(3) The inspector is not required to:

(A) inspect the interiors of flues or chimneys, the fire screens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, the heat distribution assists whether gravity controlled or fan assisted or free standing solid fuel burning appliances;

(B) ignite or extinguish fires;

(C) determine draft characteristics; and,

(D) move fireplace inserts, stoves or firebox contents.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE

158:70-3-1. Procedures of the Committee.

(a) Committee meetings are generally, and unless otherwise stated by the Committee, held at the offices of the Construction Industries Board at 2401 N.W. 23rd Street, Suite ~~5~~ 2F, Oklahoma City, Oklahoma 73107. The ~~committee~~Committee shall meet as often as is necessary, but at least once each quarter. Meetings of the ~~committee~~Committee will comply with the Oklahoma Open Meetings Act.

(b) The Committee shall provide oversight to the overall licensure examination process; shall set minimum standards for certifying qualified applicants; may write examinations; may recommend regulations to the Administrator and to the Board; and, shall act as advisor to the Administrator on home inspection licensing and standards enforcement matters.

(c) The only formal procedure available to the public is to apply for a home inspection license. Application for a home inspection license shall be accomplished by filling out an application for examination on a form provided by the ~~committee~~Committee.

(d) The public may communicate with the Committee, in person or by mail, through the ~~Agency~~Board. The ~~Agency~~Board will make available all forms and instructions used by the Committee, rules, and all other written statements of policy or interpretations, all final orders, decisions and opinions. Copies of same may be provided in accordance with OAC 158:1-3-5.

SUBCHAPTER 5. LICENSE REQUIREMENTS, LICENSE FEES, LICENSE PERIOD, RE-EXAMINATION, DISPLAY AND INSURANCE

158:70-5-1. Home inspection license requirements

(a) No persons, on their own behalf ~~of himself~~ or on behalf of a firm or company engaged in home inspection work shall engage or offer to engage in, by advertisement or otherwise, any home inspection work who does not possess a valid and appropriate license from the ~~Agency~~Board, unless otherwise exempt by law.

(b) Any change in the principal business address of a licensee must be reported in writing to the Oklahoma Construction Industries Board within thirty (30) days of such change.

158:70-5-2. License fees, license period, re-examination, display, and insurance requirements

(a) **Initial license fees.** The following fees apply to home inspection industry licensure:

(1) Approval fees for schools, instructors and home inspection organizations - $100.00. If the same home inspection organization conference has multiple instructors, the fee will not exceed $100.00.

(2) Approval fees for educational course content - $50.00. If the same home inspection organization conference has multiple courses, the fee will not exceed $100.00.

(3) Application for license - $30.00

(4) Licensure for reciprocity - $50.00

(5) Examination fee - $200.00

(6) License fee - $250.00

(7) License renewal - $150.00

(8) License reactivation - $50.00

(b) **License period.**

(1) A license shall expire twelve (12) months after issuance, and may be renewed without penalty ~~during the month~~for thirty (30) days following expiration.

(2) A license which has been expired for more than one (1) year shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and other licensure requirements.

(c) **Re-examination.** Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(d) **License display.** The state issued license number shall be placed on all letterhead stationery, business cards, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued license number.

(e) **Personal license display.** All persons subject to these rules shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Insurance requirements.** Each licensee must maintain insurance coverage and furnish and maintain in effect a certificate of insurance therefore which indicates that the licensee has a comprehensive general liability policy. Limits of liability are to be no less than $50,000.00 combined single limit for bodily injury and property damage. The certificate of insurance shall provide for thirty (30) days notice to the Home Inspection License Unit, prior to cancellation or material alteration of the required insurance.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS, COURSE APPROVAL REQUIREMENTS, INSTRUCTOR REQUIREMENTS, CONTINUING EDUCATION, DENIED APPLICATION APPEAL, SUBMISSION OF RECORDS, SUBSTANTIAL COMPLIANCE AND RECIPROCITY

158:70-9-1. Qualifications and examination applications

Applicants for home inspection license examinations must be eighteen (18) years of age or older and be of good moral character, and every application must be accompanied by evidence of successful completion of ninety (90) credit hours of home inspection training that is approved pursuant to OAC 158:70-9-3, or its equivalent.

158:70-9-3. Course approval requirements

(a) Any person or entity seeking to conduct an approved course for ~~qualifying~~ home inspection training or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Committee in accordance with ~~Section~~OAC 158:70-5-2.

(b) Applications shall include the following information:

(1) Name and address of the provider;

(2) Contact person and his or her address, telephone number and fax number;

(3) The location of the courses or programs;

(4) The number and type of education credit hours requested for each course;

(5) Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;

(6) If a prior approved course has substantially changed, a summarization of these records;

(7) The names and qualifications of each instructor who is qualified in accordance with ~~Section~~OAC 158:70-9-4~~, and~~;

(8) Information demonstrating the proposed home inspection training program meets the education standards for licensing; and,

(9) Information ~~as to how~~ demonstrating the proposed continuing education course meets the standard provided in ~~Section~~OAC 158:70-9-5-(b).

(c) The ~~Agency~~Board may automatically accept without further review, courses pre-approved by the Committee.

(d) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. All advertising must include the course ID number and the number of hours of CE credit approved by the Committee, except for advertising that refers or links to a website that displays the required information including the course ID in the website material that advertises or refers to the home inspection class.~~Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the committee before it is advertised or held.~~

(f) The Committee may decline to renew, or revoke the approval of any qualifying course or any instructor or entity previously approved to conduct a ~~pre-licensing~~ home inspection training course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants to pass the national Home Inspection Examination or similar qualifying examination.

(g) Each course is to be submitted on a separate application for each date, or dates, that constitute a single course.

(h) Applications shall be resubmitted annually, from date of approval, for review and approval.

158:70-9-4. Instructor requirements

(a) **Instructor qualifications.** An instructor should have one of the following qualifications:

(1) Three (3) years of recent experience in the subject matter being taught; or

(2) A degree related to the subject area being taught; or

(3) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught~~.~~; or

(4) Other educational, teaching, or professional qualifications determined by the Committee which constitute an equivalent to one or more of the qualifications in the previously stated sub-paragraphs (1), (2), and (3) of this paragraph.

(b) **Instructor renewal.** In order to maintain approved status, an instructor must furnish evidence that the instructor has taught a Committee approved course, or any other CE~~U~~ course the Committee determines to be equivalent, within a required thirty-six (36) month period.

(c) **Re-application.** Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

158:70-9-5. Continuing education

(a) **Continuing education hours.** No home inspection license shall be renewed unless the licensee has completed at least eight (8) credit hours, consisting of no more than two (2) hours of Ancillary Systems topics per year, of continuing education prior to the date of renewal.

(b) **Special approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:

(1) Course content should be designed to update knowledge and improve inspection skills directly related to the components and systems described in Subchapter 1 of this Chapter.

(2) All courses shall be at least two (2) hours in length. Recommended curriculum for Committee approval may cover, but it is not limited to, the following topics related to residential real property of four or fewer residences: (Approval of Continuing Education material is not an endorsement or underwriting of the subject content or the presentation.)

(A) structural systems

(B) foundations, basements, grading and drainage

(C) interior walls, windows, doors, stairways, ceilings and floors

(D) exterior walls, windows, doors, and stairways

(E) exterior coatings, claddings and glazing

(F) roof structure, coverings, penetrations, drainage and attics

(G) porches, decks, driveways and walkways

(H) railings and assistive devices

(I) thermal insulation, air penetration, and moisture barriers

(J) electrical service entrances, panels, branch electrical circuits, connected devices

(K) environmental heating, cooling ventilation, and air conditioning devices, controls and distribution systems~~.~~

(L) solid, liquid, and gas fuel heating systems

(M) electrical heating and cooling systems chimneys, ductwork, vents, fans and flues (including dryer vents)

(N) home inspection administrative subjects

(i) Oklahoma home inspection laws and regulations

(ii) Oklahoma Standards of Practice

(iii) ethics

(iv) Home Inspection documentation, forms and contracts

(v) Report writing and legal ramifications of report content

(O) Ancillary Systems

(i) Plumbing systems, controls, and components (including septic systems)

(ii) Water supply system, capacities, and components (drilled wells/community water supplies)

(iii) Swimming pools, spas and hot tubs~~.~~

(iv) Solar/wind/generator energy systems

(v) Lawn irrigation systems

(vi) Energy auditing

(3) Unless provided after regular working hours, the training location shall be outside the regular work place.

(4) The CE~~U~~ provider shall return the sign-in sheets to the home inspection license unit.

(5) Complaint procedure.

(A) A person, government, or private organization may submit a written complaint to the Committee, or its designee, charging a provider of continuing education with a violation of the rules, and specifying the grounds for the complaint.

(B) Complaints must be in writing and include contact information, and shall be filed on the proper complaint form prescribed by the Construction Industries Board, or its designee.

(C) The Committee may consider an unsigned or anonymous complaint for further investigation.

(D) Upon receipt of a signed complaint form, a copy shall be sent to the continuing education provider addressed in the complaint. The continuing education provider shall provide a written response within fifteen (15) days. Upon receipt of the continuing education provider's written response, both complaint and response shall be considered by the Committee, or its designee, for appropriate action including dismissal of the complaint, further investigation, or a finding of violation of a statute or rule. The Committee, or its designee, shall notify both complainant and continuing education provider of the determination made by the Committee. Failure of the continuing education provider to respond will be considered as a violation of this rule.

(E) If a reasonable cause violation determination is made by the Committee, the Oklahoma Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken including but not limited to all parts of this subsection.

158:70-9-6. Denied application appeal

(a) **Denied instructor/provider application.** If the Committee fails to approve any proposed instructor or entity seeking to conduct an approved course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision. The applicant may appeal the decision by filing a written request for a hearing before the Committee within thirty (30) days after notice of denial. The Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter. No part of the application fee is refundable.

(b) **Denied course application.** If the Committee fails to approve any proposed continuing education ~~offering of~~ or proposed ninety (90) hour home inspection training course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision to the applicant for approval. Upon the written request from the applicant, filed within thirty (30) days after such notice of denial, the Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter for an appeal of the determination of the cause for rejection. No portion of the fee is refundable.

SUBCHAPTER 11. LICENSE REVOCATION AND SUSPENSION AND ADDITIONAL PROHIBITED ACTS

158:70-11-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the ~~Agency~~Board within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

(e) Any person whose license is suspended pursuant to these Rules may not perform a home inspection and, prior to reinstatement, must make application therefor, which must be accompanied by evidence of successful completion of the continuing education requirements set forth in OAC 158:70-9-3.

(f) Any person whose license is revoked pursuant to these rules may not perform a home inspection before attaining licensure pursuant to OAC 158:70-9-1.
(g) Failure to cooperate or provide information regarding an investigation may be grounds to suspend or revoke a licensee's home inspection license.
(h) Failure to maintain and furnish a certificate of insurance coverage as provided in OAC 158: 70-5-2(f) may be grounds to suspend or revoke a licensee's home inspection license.

158:70-11-2. Additional prohibited acts

(a) No person, entity, or firm may perform home inspection work without first obtaining a license or registration pursuant to these Rules.
(b) No person shall offer to engage in work as a home inspector during the period his or her license is suspended or revoked.
(c) No employing home inspection firm shall employ or use an unlicensed home inspector to perform home inspection work.
(d) No person, entity, or firm may transfer a license or registration.
(e) No home inspector, licensed pursuant to this Chapter, shall enter into an agreement for the use of his or her license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the ~~Agency~~Board.
(f) No person shall make a materially false or fraudulent statement in an application for license or for approval of continuing education, engage in cheating, or otherwise commit an act in violation of OAC 158:70-9-2(g).
(g) No person shall falsify or fail to disclose in a home inspection report a material defect.
(h) No person shall accept inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion.
(i) No person shall accept inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments.
(j) No person shall perform a home inspection upon a home, or any part thereof, where the home inspector has solicited or performed any work or repair service therein upon a system or component described in Subchapter 1 of this Chapter, within the previous thirty (30) days. If the person performing the home inspection has performed such work within the previous one-hundred eighty (180) days, such prior work must be disclosed to the client.
(k) No person shall solicit or perform work or repair services upon~~,~~ a home, or any part thereof, that the home inspector has inspected for one (1) year after the date of the inspection.
(l) No person shall knowingly accept compensation from more than one client for a single home inspection, unless the home inspector has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated.
(m) Unless upon demand in writing by the ~~Agency~~Board, a law enforcement agency, or by order of a court of competent jurisdiction, no person shall disclose the results of a home inspection to any person other than the client without the written consent of the client.
(n) No person shall fail to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client. Based upon the potentially adverse affect to the home inspector's ability to produce an unbiased report, some circumstances or conditions are presumed to adversely affect the client and must be disclosed to the client in writing prior to the inspection. These include, but are not limited to, the following:

(1) Situations where the payment of remuneration or other consideration is made by the home inspector to a third party and representing a reward or compensation to the third party for the home inspector receiving inspection employment.
(2) Situations where the payment of remuneration or other consideration is received by the home inspector from a third party and representing a reward or compensation for the home inspector recommending services or products to the client or other persons having an interest in the property.
(3) In those cases where the client is the buyer of real property, situations where the home inspector has had some prior connection, relationship or association with the seller, his or her assigns or family members related to the seller within the second degree.
(4) Situations where prior reports or inspections have been made or conducted upon any system or component of the real property that the home inspector has agreed to inspect.

(o) No person shall fail to submit a written home inspection report within a reasonable time as determined by the ~~Agency~~Board to the client after compensation has been paid to the home inspector.

APPENDIX A. SAMPLE HOME INSPECTION EXCLUSION FORM [REVOKED]

APPENDIX A. SAMPLE HOME INSPECTION EXCLUSION FORM [NEW]

(SAMPLE) HOME INSPECTION EXCLUSION FORM

PER OAC 158:70-1-3(a)(3)(D):
The Inspector shall report on any systems and components designed for inspection in these standards which were present at the time of the Home Inspection but were not inspected and a reason they were not inspected.
EXCLUSIONS REQUESTED BY CLIENT PRIOR TO INSPECTION:
(Initials = excluded from inspection)
_____Structural Systems
_____Exterior
_____Roof System
_____Plumbing System
_____Electrical System
_____Heating System
_____Cooling System
_____Interior
_____Insulation & Ventilation
_____Appliances
_____Fireplaces and solid fuel burning appliances
_____Other as noted _____

I, _____, the client, understand that by excluding the above systems or components from mandatory inspection in accordance with Oklahoma Home Inspection Industry Regulations (OAC 158:70), I relieve the inspector of any responsibility to report on their condition at the time of the inspection and take full responsibility for any future adverse conditions or malfunctions that may have been disclosed at the time I excluded them from inspection.

DATE: _____ CLIENT SIGNATURE_____

INSPECTOR _____LIC#_____

[OAR Docket #14-528; filed 6-26-14]

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

[OAR Docket #14-605]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Licensing
160:15-5-1 [AMENDED]
160:15-5-6 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. § 1512(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. LICENSING

160:15-5-1. Licensure forms

(a) **Application.**

(1) The pawnbroker license application shall be completed by the entity seeking a pawnbroker's license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within sixty (60) days from the filing of a final application unless the period is extended by written agreement between the applicant and the Administrator [59:1505(C)].

~~(4) If an applicant fails to comply with the application process, the application fee for license shall be returned to the applicant, but the Administrator shall retain the investigation fee for license. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a pawnbroker's authority to transact business within Oklahoma.

(c) **Annual report.** Annual reports shall be filed by all pawnbrokers and postmarked on or before the first day of May of each year, reporting pawn transactions and pledged goods not redeemed as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [59:1508(G)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The pawnbroker license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [59:1506(C)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

(e) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after the notice, whichever is later. [59:1506(C)]

160:15-5-6. Moving or closing a location

(a) At least thirty (30) days before the address of a pawnshop is changed, the owner shall notify the Administrator ~~[59:1505(B)]~~ in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a pawnshop is to be closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing pawnshop closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy~~

~~of the announcement along with the license for the closing pawnshop.~~

[OAR Docket #14-605; filed 7-1-14]

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

[OAR Docket #14-606]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing
160:30-1.1 [AMENDED]
160:30-3-3.4 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 24 O.S. § 140
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSING

160:30-3-1.1. Licensure forms

(a) **Application.**

(1) The credit services organization license application shall be completed by the entity seeking a credit services organization license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within sixty (60) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator [24:143(C)].

~~(4) If the applicant fails to comply with the application process, the application fee for license shall be returned to the applicant, but the Administrator shall retain the investigation fee for license. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a credit services organization authority to engage in business within Oklahoma.

(c) **Annual report.** Annual reports shall be filed by all credit services organizations and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [24:146(E)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The credit services organization license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [24:144(C)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

(e) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after written notice of delinquency, whichever is later. [24:144(C)]

160:30-3-3.4. Moving or closing a location

(a) At least thirty (30) days before the address of a credit service organization is changed, the owner shall notify the Administrator ~~[24:144(B)]~~in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a credit service organization is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing credit service organization closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing credit service organization.~~

[OAR Docket #14-606; filed 7-1-14]

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

[OAR Docket #14-607]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing
160:35-3-1.1 [AMENDED]
160:35-3-1.4 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. § 1955(C)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed. A rule amendment removes a provision that requires a delinquency notice to be mailed to a licensee if a license is not renewed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSING

160:35-3-1.1. Licensure forms

(a) **Application.**

(1) The lessor license application shall be completed by the entity seeking a rent-to-own license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.

~~(3) If the applicant fails to comply with the application process, the application fee for license shall be returned to the applicant. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a lessor's authority to engage in the rental-purchase business within Oklahoma

(c) **Renewal application.** The lessor license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [59:1952(B)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

~~(d) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after written notice of delinquency, whichever is later.~~

160:35-3-1.4. Moving or closing a location

(a) At least thirty (30) days before the address of the location to which the license applies is changed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a location to which the license applies is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall~~

~~attach a copy of the announcement along with the license for the closing location.~~

[OAR Docket #14-607; filed 7-1-14]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 50. HEALTH SPAS

[OAR Docket #14-608]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Registration
160:50-3-1.1[AMENDED]
160:50-3-11 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. § 2010
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed. A rule amendment removes a provision that requires a delinquency notice to be mailed to a licensee if a license is not renewed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. REGISTRATION

160:50-3-1.1. Registration forms

(a) **Application.**

(1) The license application shall be completed by the entity seeking a health spa license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.

~~(3) If the applicant fails to comply with the application process, the initial registration fee shall be returned to the applicant. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a health spa's authority to engage in business within Oklahoma. The license shall be prominently displayed in an area of the health spa facility that is used or visited by a majority of the members. The license is not transferable or assignable.

(c) **Renewal application.** The license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

~~(d) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after the notice, whichever is later.~~

160:50-3-11. Moving or closing a location

(a) At least thirty (30) days before the address of a health spa is changed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a health spa is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing health spa closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing health spa.~~

[OAR Docket #14-608; filed 7-1-14]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 55. MORTGAGE BROKERS, MORTGAGE LENDERS AND MORTGAGE LOAN ORIGINATORS

[OAR Docket #14-609]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
160:55-1-1 [AMENDED]
160:55-1-2 [AMENDED]
Subchapter 3. Licensing
160:55-3-1.1 [AMENDED]
160:55-3-3.1 [AMENDED]
160:55-3-4 [AMENDED]
160:55-3-8 [AMENDED]
160:55-3-9.1 [AMENDED]
160:55-3-12 [AMENDED]
160:55-3-13 [AMENDED]
Subchapter 7. Records
160:55-7-1 [AMENDED]
Subchapter 9. Enforcement
160:55-9-3 [AMENDED]
160:55-9-4 [AMENDED]
160:55-9-5 [AMENDED]
160:55-9-6 [AMENDED]
160:55-9-7 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. §§ 2095.1(2), 2095.5(C), 2095.13 and 2095.14
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
House Bill 1828 amended the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act (Oklahoma SAFE Act) and established a mortgage lender license, effective November 1, 2013. The rule amendments implement the mortgage licensing requirements for mortgage lenders established in House Bill 1828 by specifying that an application, bond, minimum net worth, criminal background checks of control persons and credit reports of control persons are required. A licensed mortgage loan originator must also be designated to oversee any activity of a mortgage lender that satisfies the definition of a mortgage broker as defined by the Oklahoma SAFE Act.

The rule amendments clarify that a mortgage loan originator designated to oversee mortgage loan origination activities for a mortgage broker or mortgage lender may not serve as the designated mortgage loan originator for any other mortgage broker, mortgage lender or branch office. The rule amendments also update references regarding the proper venue for administrative appeals and the requirements for orders issued by the Administrator.

A rule amendment establishes a process for a licensee to request an inactive license status in accordance with the Oklahoma SAFE Act. A rule amendment removes a requirement that licensees return a license to the Administrator upon notification of an address change or upon notification that a business location is closing.

Rule amendments also remove language regarding the failure of an applicant to provide information requested by the Administrator and language regarding the failure of an applicant to qualify for a license. The rule amendments include new provisions stating that if an applicant fails to provide the information requested by the Administrator, a failure to provide information as requested by the Administrator shall be deemed a withdrawal of an application.

A rule amendment specifies that mortgage loan originator license applicants must pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry (NMLS&R) in accordance with standards established by the Oklahoma SAFE Act. The testing rule amendment will authorize the Administrator to adopt any qualified written test developed by NMLS&R in accordance with standards established by the Oklahoma SAFE Act.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

160:55-1-1. Purpose

The rules in this chapter provide regulations relating to the licensure of mortgage brokers, mortgage lenders and mortgage loan originators.

160:55-1-2. Definitions

Except as otherwise specifically defined in this section, the definitions set forth in the SAFE Act are incorporated herein and made a part hereof. The following words or terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"APA" means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

"Applicant" means an entity or individual that has submitted an initial or renewal application for licensure as a mortgage broker, mortgage lender or mortgage loan originator.

"Days" mean calendar days. In computing any period of time for communications between a person and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the licensed location, the Department or the office of the court clerk is closed.

"Department" means the Oklahoma State Department of Consumer Credit.

"Deputy Administrator" means the Deputy Administrator of the Department.

"License" means the instrument issued pursuant to the SAFE Act and these rules that is the sole authorization for an

entity or individual to engage in mortgage business in the State of Oklahoma.

"Mortgage business" ~~means the business of taking residential mortgage loan applications or offering, negotiating or modifying the terms of residential mortgage loans in the State of Oklahoma.~~ means activity that satisfies the definition of a mortgage broker, mortgage lender or mortgage loan originator as defined by the SAFE Act.

"NMLS&R" means the Nationwide Mortgage Licensing System and Registry.

"RESPA" means the Real Estate Settlement Procedures Act of 1974 beginning at §2601 of Title 12 of the United States Code.

"SAFE Act" means the Oklahoma Secure and Fair Enforcement for Mortgage Licensing Act beginning at §2095 of Title 59 of the Oklahoma Statutes.

SUBCHAPTER 3. LICENSING

160:55-3-1.1. Licensing requirements

(a) **Mortgage loan originator license.** The requirements for obtaining a mortgage loan originator license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department's website shall include a link to the NMLS&R website.

(2) **Pre-licensing education.** Twenty (20) hours of pre-licensing education are required. Pre-licensing education courses and providers are reviewed and approved by NMLS&R. Information regarding pre-licensing education, including, but not limited to, approved courses, providers and scheduling is available from NMLS&R.

(3) **Testing.** ~~An applicant is required to pass a test. The test consists of two (2) parts, a national part and an Oklahoma part. A score of seventy five percent (75%) correct answers to questions is required on both parts to pass the test. The testing providers are selected by NMLS&R. The test is developed by testing providers selected by NMLS&R.~~An applicant is required to pass a qualified written test developed by the NMLS&R in accordance with the standards established under 59 O.S. § 2095.9. The test is administered by a test provider approved by the NMLS&R based upon reasonable standards. Information regarding the test is provided by NMLS&R, including but not limited to, approved testing providers, testing locations, study materials and test scheduling.

(4) **Background checks.** Applicants are required to pass a background check. The background check consists of the following:

(A) **Fingerprints.** An applicant is required to submit fingerprints to NMLS&R. Information regarding fingerprints is indicated on the NMLS&R website.

(B) **Applicants with felony convictions or pleas.** Applicants with felony convictions or applicants that have pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the applicant was convicted or in which the applicant pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United States of America.

(C) **Credit reports.** An applicant is required to submit personal information to NMLS&R for the purpose of obtaining credit reports. The purpose of the credit reports is to determine the financial responsibility of an applicant.

(5) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

(6) **Fees.** Payment of all required license fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(7) **Results.** Test score results, verification of completion of pre-licensing education and background check information are submitted to the Administrator by NMLS&R. The Administrator reviews the information to determine if an applicant qualifies for licensure.

(b) **Mortgage broker license.** The requirements for obtaining a mortgage broker license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department website shall include a link to the NMLS&R website.

(2) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

(3) **Designation of mortgage loan originator.** An applicant shall designate a licensed mortgage loan originator to oversee the operations of the applicant. ~~An individual shall not serve as the designated mortgage loan originator for more than one (1) mortgage broker.~~ An individual designated to serve as the mortgage loan originator for a mortgage broker shall not serve as the designated mortgage loan originator for any other mortgage broker, mortgage lender or any branch office of the mortgage broker.

(4) **Officers, owners, directors and partners.** The application shall list each officer, owner, director or partner of the applicant. An officer, owner, director or partner

of the applicant shall not act as a mortgage loan originator as defined by the SAFE Act unless each officer, owner, director or partner is licensed as a mortgage loan originator. Each officer, owner, director or partner of the applicant is required to pass a background check. The applicant shall submit the following information for each officer, owner, director or partner to NMLS&R:

(A) **Fingerprints.** Information regarding fingerprints is indicated on the NMLS&R website.

(B) **Felony convictions or pleas.** Any officer, owner, director or partner of a mortgage broker applicant with a felony conviction or that has pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the officer, owner, director or partner was convicted or in which the officer, owner, director or partner pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United States of America.

(C) **Credit reports.** Each officer, owner, director or partner of a mortgage broker applicant is required to submit personal information to NMLS&R for purposes of obtaining credit reports for each officer, owner, director or partner of a mortgage broker applicant. The purpose of the credit reports is to determine the financial responsibility of each officer, owner, director or partner of a mortgage broker applicant.

(D) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

(5) **Fees.** Payment of all required fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(c) **Mortgage broker branch office license.** An applicant maintaining more than one location for the transaction of mortgage business shall obtain a branch office license for each location. The NMLS&R website provides information for obtaining branch office licenses.

(1) **Fees.** Payment of all required license fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(2) **Designated loan originator.** Each mortgage broker branch office shall designate a licensed mortgage loan originator to oversee the operations of the mortgage broker branch office. An individual shall not serve as the designated mortgage loan originator for more than one (1) branch office.

(3) **Results.** The results of any information required for the application process are submitted to the Administrator by NMLS&R. The Administrator reviews the information to determine if an applicant qualifies for licensure.

(4) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

(d) **Mortgage lender license.** The requirements for obtaining a mortgage lender license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department website shall include a link to the NMLS&R website.

(2) **Bond.** The applicant shall file a One Hundred Thousand Dollar ($100,000.00) bond that satisfies the requirements of 59 O.S. § 2095.11.1. The bond shall also secure the faithful performance of all duties and responsibilities of any branch office of the mortgage lender.

(3) **Net worth.** The applicant must have a minimum net worth of Twenty-Five Thousand Dollars ($25,000.00) that is verified as required by 59 O.S. § 2095.11.1.

(4) **Designation of mortgage loan originator.** The applicant shall designate a licensed mortgage loan originator to oversee mortgage loan origination activities if the applicant engages in activity that satisfies the definition of a mortgage broker as defined by the SAFE Act. An individual designated as the mortgage loan originator for a mortgage lender shall not serve as the designated mortgage loan originator for any other mortgage lender, mortgage broker or any branch office of the mortgage lender.

(5) **Criminal background check.** Officers, owners, directors and partners, as applicable, shall submit fingerprints through NMLS&R for purposes of obtaining a criminal background check. Any officer, owner, director or partner of a mortgage lender applicant with a felony conviction or that has pled guilty or nolo contendere to a felony crime shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the officer, owner, director or partner was convicted or in which the officer, owner, director or partner pled guilty or nolo contendere to the felony crime. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United States of America.

(6) **Financial responsibility.** Each officer, owner, director and partner, as applicable, must demonstrate financial responsibility. Each officer, owner, director and partner, as applicable, must submit personal information to NMLS&R for purposes of obtaining a credit report. The credit report will be utilized to determine the financial responsibility of each officer, owner, director and partner of the mortgage lender applicant, as applicable.

(7) **Fees.** Payment of all required fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(8) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

(d) **Mortgage lender branch office license.** A mortgage lender applicant that maintains more than one location for the transaction of business shall obtain a branch office license for each location. The requirements for obtaining a mortgage lender branch office license consist of the following:

(1) **Application.** The application shall be submitted through the NMLS&R Internet website. The Department website shall include a link to the NMLS&R website.

(2) **Fees.** Payment of all required fees shall be submitted through NMLS&R. Information regarding acceptable methods of payment is available on the NMLS&R website.

(3) **Designation of mortgage loan originator.** The applicant shall designate a licensed mortgage loan originator to oversee mortgage loan origination activities if the applicant engages in activity that satisfies the definition of a mortgage broker as defined by the SAFE Act. An individual designated to serve as the mortgage loan originator for a mortgage lender branch office shall not serve as the designated mortgage loan originator for any other mortgage lender, mortgage broker or any branch office of the mortgage lender.

(4) **Additional information.** The Administrator is authorized to require additional information from an applicant. Any additional information required by the Administrator shall be submitted to the Administrator. An applicant that fails to provide information as requested by the Administrator shall be deemed a withdrawal of the application.

160:55-3-3.1. ~~License denials~~ Inactive status

~~(a) **Background and purpose.** The SAFE Act authorizes the Administrator of Consumer Credit to deny a mortgage broker or mortgage loan originator license or decline to renew a mortgage broker or mortgage loan originator license, after notice and hearing pursuant to Article II of the APA, for failing to meet the requirements of the SAFE Act or for withholding information in an application for a license or renewal of a license. [59:2095.17]. The purpose of this rule is to provide procedures for processing and denying applications for mortgage broker or mortgage loan originator licenses if an applicant fails to meet the requirements of the SAFE Act or withholds information in an application for a license or renewal of a license.~~

~~(b) **Notification procedures.**~~

~~(1) **General notification requirements.** The Department shall notify an applicant if the applicant fails to meet the requirements of the SAFE Act or if the applicant has withheld information regarding an application. The notification shall indicate the requirements of the SAFE Act the applicant has failed to meet or indicate the information that has been withheld from the application. The notification may be sent via certified mail, return receipt requested, courier service, electronic mail, facsimile or regular United States Mail. The applicant shall have thirty (30) days from the date notification is sent to respond to the notification.~~

~~(A) **Applicants failing to meet the requirements of the SAFE Act.** If an applicant has failed to meet the requirements of the SAFE Act for licensure, the applicant may withdraw an application by notification in writing to the Department within thirty(30) days from the date notification is sent from the Department. The applicant may request a refund of the license fee, which shall be refundable to the licensee upon request. If the applicant fails to request a withdrawal of the application within the required period of time, a Notice of Hearing shall be filed in accordance with Article II of the APA for denial of the license. License fees shall not be refundable if an application is denied after notice and hearing in accordance with Article II of the APA.~~

~~(B) **Applicants that have withheld information.** Applicants that have withheld information regarding an application shall have thirty (30) days from the date notification is sent from the Department to provide the withheld information. A Notice of Hearing shall be filed in accordance with Article II of the APA for denial of the license if an applicant fails to provide withheld information within the required period of time. License fees shall not be refundable if an application is denied after notice and hearing in accordance with Article II of the APA.~~

~~(c) **License fee.** For purposes of this section, license fee shall mean the initial and renewal license fee and shall not include an application fee or the fee paid into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund.~~

(a) **Renewal through NMLS&R.** A licensee that wishes to be placed on an inactive license status in accordance with the SAFE Act must renew the applicable license through NMLS&R and pay the required license renewal fees.

(b) **Notification to the Administrator.** After renewing the applicable license through NMLS&R, a licensee must notify the Administrator in writing of the inactive license status request. The Administrator shall place the applicable license on an inactive license status upon a request in writing and issue a

refund for any license renewal fees paid in excess of the inactive license status fee.

160:55-3-4. Licensure periods

~~Any license issued during a year shall run only to December 31 of that year~~. A new license issued prior to November 1 shall be effective through December 31 of that year. A new license issued on or after November 1 shall be effective through December 31 of the following calendar year.

160:55-3-8. Mortgage broker and mortgage lender license changes

(a) **Notification.** At least thirty (30) days before any proposed change in ownership or any change in the officers, owners, directors, partners or the designated mortgage loan originator of a mortgage broker or mortgage lender, the mortgage broker or mortgage lende shall notify the Administrator of the proposed change by regular United States mail, electronic mail, facsimile or courier service. The mortgage broker or mortgage lender shall also contact the Administrator for instructions regarding the completion of necessary documentation to process the proposed change.

(b) **Required documentation and information.**

(1) **Change in ownership, officers, directors or partners.** A mortgage broker or mortgage lender with a proposed change of ownership or a proposed change of any officers, directors or partners shall submit the following information for each new proposed owner, officer, director or partner:

(A) Fingerprints.

(B) Personal information for obtaining credit reports.

(C) Any proposed officer, owner, director or partner that has a felony conviction or has pled guilty or nolo contendere to a felony shall submit a certified copy of the indictment or other official court document indicating the criminal charges against the applicant and a certified copy of the final judgment and sentence of the court. Whether a particular crime is classified as a felony is determined by the law of the domestic, military or foreign court in which the officer, owner, director or partner was convicted or in which the officer, owner, director or partner pled guilty or nolo contendere to the felony. Domestic court includes any state or federal court of the United States of America. State court includes the courts of any state, territory, district, commonwealth or possession of the United State of America.

(D) Any additional documentation required by the Administrator.

(2) **Change of designated mortgage loan originator.** A mortgage broker or mortgage lender with a proposed change for the designated mortgage loan originator shall submit to NMLS&R the name and license number or unique identifier issued by NMLS&R for the proposed, designated mortgage loan originator.

(c) **Proposed change involving fifty percent (50%) or more new owners, officers, directors or partners.** A mortgage broker or mortgage lender with a fifty percent (50%) or more proposed change in ownership, officers, directors or partners shall submit a new license application in accordance with the SAFE Act and rules promulgated by the Administrator.

160:55-3-9.1. Address changes and closing requirements

(a) At least thirty (30) days before the address of the principal place of business or the address of a branch office is changed, the mortgage broker or mortgage lender shall notify the Administrator through NMLS&R and pay the appropriate fee for an amended license. ~~The mortgage broker shall return the license to the Administrator along with an appropriate fee for an amended license.~~

(b) At least thirty (30) days before a location is to be closed, the mortgage broker or mortgage lender shall notify the Administrator through NMLS&R. ~~The mortgage broker shall return the license to the Administrator.~~

(c) A mortgage loan originator shall notify the Administrator through NMLS&R of any address change at least thirty (30) days prior to the change of their address of record and pay the appropriate fee for an amended license. ~~The mortgage loan originator shall return the license to the Administrator along with the appropriate fee for an amended license.~~

160:55-3-12. Standards for determining financial responsibility

(a) **Purpose.** Mortgage loan originator applicants and the owners, officers, directors and partners of mortgage broker and mortgage lender applicants must demonstrate financial responsibility pursuant to the SAFE Act and this rule. The SAFE Act authorizes the Administrator to deny license applications if an applicant for a mortgage loan originator license or if any owner, officer, director or partner of a mortgage broker or mortgage lender applicant has not demonstrated financial responsibility. The SAFE Act provides general guidelines for determining a failure to demonstrate financial responsibility, such as outstanding judgments, foreclosures, tax liens and a pattern of seriously delinquent accounts. The purpose of this rule is to establish specific criteria for determining when an applicant for a mortgage loan originator license or when any owners, officers, directors or partners of a mortgage broker or mortgage lender applicant have failed to demonstrate financial responsibility pursuant to the SAFE Act and this rule.

(b) **Standards demonstrating financial responsibility pursuant to the SAFE Act and this rule.**

(1) **Threshold ~~combined~~ credit score.** ~~A threshold credit score shall be set by the Administrator. The credit score of an applicant shall be the combined, average credit score of the applicant from the three (3) major credit reporting bureaus.~~ A credit score for a mortgage loan originator applicant or an owner, officer, director and partner of an applicable mortgage broker or mortgage lender applicant is provided by the credit reporting bureau utilized by the NMLS&R. The Administrator shall set

a threshold credit score to assist in the determination of financial responsibility.The Administrator shall publish the threshold credit score on the Department website. The Administrator may adjust the threshold credit score as necessary. Any adjustments to the threshold credit score shall be published on the Department website.

(2) **Mortgage loan originators.** If an applicant's credit score equals or exceeds the threshold credit score, the applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of an applicant is less than the threshold credit score, the Administrator shall review the credit ~~reports~~report of the applicant provided by NMLS&R for any current outstanding judgments (excluding judgments solely as a result of medical expenses) current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years to determine if the applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

(3) **Mortgage brokers and mortgage lenders.** If the credit score of all of the owners, officers, directors or partners of the mortgage broker or mortgage lender applicant equals or exceeds the threshold credit score, the mortgage broker or mortgage lender applicant shall be deemed to have demonstrated financial responsibility pursuant to the SAFE Act and this rule. If the credit score of any of the owners, officers, directors or partners of the mortgage broker or mortgage lender applicant is less than the threshold credit score, the Administrator shall review the credit reports of the owners, officers, directors or partners of the mortgage broker or mortgage lender applicant with a credit score that is less than the threshold credit score for any current outstanding judgments, excluding judgments solely as a result of medical expenses, current outstanding tax liens or other government liens and filings, foreclosures within the past three (3) years and seriously delinquent accounts within the past three (3) years of such owner, officer, director or partner to determine if the mortgage broker or mortgage lender applicant demonstrates financial responsibility pursuant to the SAFE Act and this rule.

160:55-3-13. Challenging information entered into NMLS&R

(a) **Purpose.** This rule establishes a process for mortgage brokers, mortgage lenders and mortgage loan originators to challenge information entered into NMLS&R by the Administrator. A process for challenging information entered into NMLS&R is required by the SAFE Act.

(b) ~~**Process.**~~ **Process.** A mortgage broker, mortgage lender or mortgage loan originator shall comply with the following procedures to challenge information entered into NMLS&R by the Administrator:

(1) A mortgage broker, mortgage lender or mortgage loan originator shall submit written notification to the Administrator indicating the mortgage broker, mortgage lender or mortgage loan originator is challenging information entered into NMLS&R by the Administrator concerning the mortgage broker, mortgage lender or mortgage loan originator.

(2) The written notification may be submitted by electronic mail, facsimile, United States Mail or courier service. The Administrator may require a different method of notification if the method of notification utilized by a mortgage broker, mortgage lender or mortgage loan originator is illegible or is unable to be viewed by the Administrator. The Administrator may notify a mortgage broker, mortgage lender or mortgage loan originator that a different method of notification must be utilized via electronic mail, facsimile, United States Mail or courier service.

(3) Written notification shall indicate the information being challenged.

(4) Written notification shall include documentation substantiating the challenge.

(5) Written notification shall include the unique identifier of the mortgage broker, mortgage lender or mortgage loan originator.

(c) **Decision of Administrator.**

(1) The Administrator shall notify the mortgage broker, mortgage lender or mortgage loan originator of the decision concerning the challenge.

(2) The decision of the Administrator shall be in writing and shall state the action taken by the Administrator in response to the challenge of the mortgage broker, mortgage lender or mortgage loan originator.

(3) The decision of the Administrator may be submitted to the mortgage broker, mortgage lender or mortgage loan originator by certified United States Mail, return receipt requested, electronic mail, facsimile, courier service or regular United States mail.

(d) **Hearing.**

(1) Within thirty (30) days after notification of the decision is sent, the mortgage broker, mortgage lender or mortgage loan originator may request a hearing concerning an adverse decision of the Administrator regarding the challenge of the mortgage broker, mortgage lender or mortgage loan originator.

(2) A mortgage broker or mortgage loan originator shall request a hearing in writing via electronic mail, facsimile, United States mail or courier service. The request shall be directed to the Administrator.

(3) A hearing shall be conducted in accordance with Article II of the APA and the SAFE Act.

(4) The Administrator shall issue a final order concerning the challenge as required by the APA.

SUBCHAPTER 7. RECORDS

160:55-7-1. Records and changes

(a) **Records.** Each licensee's records shall be maintained in compliance with the SAFE Act and these rules.

(1) **Transaction journal.** As part of the books and records related to their mortgage business, each licensee

shall maintain a transaction journal that discloses the consumer's full name, date of loan, loan account number, name of lender and address of lender.

(2) **Retention.** Mortgage brokers, mortgage lenders and mortgage loan originators shall preserve and make available such books and records related to their mortgage business for four (4) years from the date of the initial transaction between the ~~person~~licensee and each borrower, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. Trust account records shall be preserved and made available for at least three (3) years after the date of final entries therein. The records shall be maintained for such time periods whether the person is currently licensed or previously licensed.

(3) **Location.** Records shall be maintained at a designated location or maintained in an electronic format. Licensees shall designate in writing to the Administrator whether records are maintained at a physical location or maintained in an electronic format. The Administrator may require a ~~mortgage broker~~a licensee or any entity or individual subject to the SAFE Act to submit records via electronic mail or certified mail, return receipt requested, to the Administrator for purposes of reviewing a complaint or for conducting an examination.

(b) **Changes.** Each ~~person~~licensee shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted through NMLS&R within thirty (30) days of such change or addition unless the SAFE Act or these rules require otherwise.

SUBCHAPTER 9. ENFORCEMENT

160:55-9-3. License surrender

~~Any person~~A licensee may surrender any license by submitting notification to NMLS&R and delivering ~~it~~the license to the Administrator ~~with written notice of its surrender~~. Such surrender shall not affect the liability of the ~~person~~licensee for acts committed before the surrender of the license. A surrender shall not impair or affect the obligation of any preexisting lawful contract between the ~~person~~ licensee and any borrower.

160:55-9-4. License reinstatement

The Administrator may reinstate suspended licenses or issue new licenses to ~~a person~~ an entity or individual whose license or licenses have been revoked if the Administrator finds that the ~~person~~entity or individual meets the licensing requirements then in effect and if the Administrator finds the circumstances for which the license was suspended or revoked no longer exists.

160:55-9-5. Hearing procedure-emergency actions

(a) **Hearing notice.**

(1) If the public health, safety, or welfare imperatively requires emergency action, such action, including the suspension of a license instanter or a cease and desist instanter, may be ordered pending the final outcome of proceedings instituted by the Administrator [75:314(C)(2) and 314.1]. ~~In such cases, the Administrator shall notify the party of such action by certified mail with return receipt requested or personal delivery, and shall include in such notice an order of hearing. The hearing shall be held within ten (10) days of the notice unless postponed by written agreement between the party and the Administrator.~~ An emergency order shall include an order for a hearing as required by administrative rule 160:3-1-4(j) and shall also be served as provided by administrative rule 160:3-1-4(j).

(2) The notice shall:

(A) state the time, place and nature of the hearing;

(B) state the legal authority and jurisdiction for the hearing;

(C) refer to the statutory sections and rules involved; and

(D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(b) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(c) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(d) **Order.**

(1) The Administrator shall issue an order ~~within thirty (30) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.~~ in accordance with administrative rule 160:3-1-4(i).

(2) The order shall:

(A) be in writing;

(B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(C) state conclusions of law;

(D) state the effective date; and

(E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

160:55-9-6. Circumvention prohibited

Whenever a ~~person~~a licensee has an administrative action taken against a license, the Administrator may deny ~~the person's~~a request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

160:55-9-7. Review of an order

(a) **Rehearing, reopening or reconsideration.**

(1) **Application.**

(A) Any party aggrieved by a final order may apply for a rehearing, reopening or reconsideration within ten (10) days from the date of the order [75:317(A)].

(B) The application shall be in writing and assert a statutory ground for a rehearing, reopening or reconsideration.

(C) The statutory grounds are:

(i) newly discovered or newly available evidence, relevant to the issues;

(ii) need for additional evidence adequately to develop the facts essential to proper decision;

(iii) probable error committed by the Department in the proceeding or in the decision such as would be ground for reversal on judicial review of the order;

(iv) need for further consideration of the issues and the evidence in the public interest; or

(v) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter [75:317(A)(1) - (5)].

(2) **Applicable order.**

(A) The Administrator shall issue an order granting or denying the rehearing, reopening or reconsideration within thirty (30) days from receipt of the application unless the period is extended by written agreement between the party and the Administrator.

(B) If the application is granted, the order shall set forth the grounds that justify it [75:317(B)].

(3) **Hearing.**

(A) If the rehearing, reopening or reconsideration is granted, the hearing shall be limited to the ground or grounds upon which it was ordered [75:317(D)].

(B) All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(4) **Rehearing order.**

(A) The Administrator shall issue an order from the rehearing, reopening or reconsideration within ~~sixty (60) days~~a reasonable period of time from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(B) The order shall:

(i) be in writing;

(ii) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(iii) state conclusions of law;

(iv) state the effective date; and

(v) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(5) **Tolling.** The period for judicial review shall run from the day the party is notified of the final disposition of the application if the application was filed timely [75:317(E)].

(6) **Prerequisite.** An application shall not be a prerequisite to secure judicial review [75:318(A)(3)].

(b) **District Court.**

(1) **Petition.**

(A) ~~Any party aggrieved by a final order may file a petition in the district court of the party's resident county or the situs county of the property interest within thirty (30) days from the day the party is notified of the order [75:318(B)(2)].~~Any person aggrieved by a final agency order of the Administrator may obtain judicial review in accordance with the Oklahoma Administrative Procedures Act. The venue of any such action shall be in the district court of Oklahoma County.

(B) The petition shall be served upon the Department and all other parties of record, and proof of service shall be filed in the court within ten (10) days after the petition is filed [75:318(C)].

(2) **Stay.** The filing of a proceeding for review shall not automatically stay the final order, but the Department may stay the order or the court may or shall impose a stay in accordance with the APA [75:319(1)].

(3) **Record.** The Department shall transmit the record of its proceeding to the court within thirty (30) days after the service of the petition unless the court has granted an extension [75:320].

(4) **Review scope.** The review shall be confined to the record and done by the court without a jury [75:321].

(5) **Court order.** The court may affirm, set aside, modify, reverse or remand the agency order in accordance with the APA [75:322].

(c) **Supreme Court.** Any party aggrieved by a final judgment of a district court may appeal to the Supreme Court in the manner and time provided in civil actions [75:323].

[OAR Docket #14-609; filed 7-1-14]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 60. PRECIOUS METAL AND GEM DEALERS

[OAR Docket #14-610]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing
160:60-3-1 [AMENDED]
160:60-3-6 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. § 1534
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed. A rule amendment removes a provision that requires a delinquency notice to be mailed to a licensee if a license is not renewed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSING

160:60-3-1. Licensure forms

(a) **Application.**

(1) The license application shall be completed by the entity seeking a dealer or employee license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within sixty (60) days from the filing of a final application unless the period is extended by written agreement between the applicant and the Administrator [59:1525(G)].

~~(4) If the applicant fails to comply with the application process, the application fee for license shall be returned to the applicant, but the Administrator shall retain the investigation fee for license. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a dealer or employee's authority to engage in transactions in goods within Oklahoma. The license shall be prominently displayed in an area of the location that is used or visited by a majority of the public

(c) **Renewal application.** The license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [59:1526(A) and (B)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

~~(d) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after the notice, whichever is later [59:1526(A) and (B)].~~

160:60-3-6. Moving or closing a location

(a) At least thirty (30) days before the address of a location is changed, the owner shall notify the Administrator ~~[59:1525(H)]~~ in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a location is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.~~

[OAR Docket #14-610; filed 7-1-14]

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

[OAR Docket #14-611]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing
160:65-3-1 [AMENDED]
160:65-3-6 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 14A O.S. § 6-104(2)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSING

160:65-3-1. Licensure forms

(a) **Application.**

(1) The supervised lender license application shall be completed by the entity seeking a supervised lender license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within ninety (90) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator [14A:3-504(3)].

~~(4) If the applicant fails to comply with the application process, the application fee for license shall be returned to the applicant, but the Administrator shall retain the investigation fee for license. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a supervised lender's authority to engage in supervised loans within Oklahoma.

(c) **Annual report.** Annual reports shall be filed by all supervised lenders and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [14A:3-506(5)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The supervised lender license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [14A:3-504(5)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

(e) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after written notice of delinquency, whichever is later. [14A:3-504(5)]

160:65-3-6. Moving or closing a location

(a) At least thirty (30) days before the address of a location is changed, the owner shall notify the Administrator [14A:3-504(8)] in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a location is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. ~~In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.~~

[OAR Docket #14-611; filed 7-1-14]

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

[OAR Docket #14-612]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing
160:70-3-1 [AMENDED]
160:70-3-6 [AMENDED]
AUTHORITY:
Administrator of Consumer Credit; 59 O.S. § 3116(A)(5)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014

PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 12, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
A rule amendment re-organizes a provision stating that if an application that is not reviewed for any failure on the part of the applicant shall be deemed a withdrawal of the application and not a denial. A rule amendment removes a provision regarding the refund of certain fees if a license applicant fails to comply with the application process. A rule amendment removes a provision that requires a licensee to return a license when an address change is requested or when a business location is closed. A rule amendment removes a provision that requires a delinquency notice to be mailed to a licensee if a license is not renewed.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73112, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSING

160:70-3-1. Licensure forms

(a) **Application.**

(1) The deferred deposit lender license application shall be completed by the person seeking a deferred deposit lender license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.

(3) The Administrator shall grant or deny a license application within ninety (90) days from the day of filing unless the period is extended by written agreement between the applicant and the Administrator.

~~(4) An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application and not a denial.~~

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a deferred deposit lender's authority to engage in deferred deposit loans within Oklahoma. No other license issued by the Administrator authorizes a person to engage in deferred deposit loans within Oklahoma [59:3103].

(c) **Annual report.** Annual reports shall be filed by all deferred deposit lenders and postmarked on or before the first day of May of each year, reporting the business and operations as of December 31st of the preceding year. The annual reports shall be confidential, but the Administrator may compile a statistical report using the information therein. [59:3114(F)] As a courtesy, the Department may mail a notice of annual report to each licensee, but the failure to do so shall not relieve any licensee of the duty to file timely or impair the authority of the Administrator against any licensee.

(d) **Renewal application.** The deferred deposit lender license renewal application shall be completed by persons previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

~~(e) **Delinquency notice.** If the license is not renewed, a delinquency notice may be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid.~~

160:70-3-6. Moving or closing a location

(a) At least thirty (30) days before the address of a licensed location is changed, the licensee shall notify the Administrator in writing [59:3112(D)]. The licensee shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. ~~In the change notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.~~

(b) At least thirty (30) days before a licensed location is to be closed, the licensee shall notify the Administrator in writing. The licensee shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. ~~In the closing notice, the licensee shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.~~

[OAR Docket #14-612; filed 7-1-14]

TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE

[OAR Docket #14-555]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General

165:5-1-3. Definitions [AMENDED]
165:5-1-7. Procedure for adoption of rules [AMENDED]
Part 5. Response to Citizen Environmental Complaints
165:5-1-26. Receipt of pollution complaints [AMENDED]
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
165:5-3-2. Fees for the Petroleum Storage Tank Division [AMENDED]
Part 3. Public Utility Assessment Fees
165:5-3-21. Definitions [AMENDED]
165:5-3-22. Fee allocation [AMENDED]
165:5-3-25. Reporting requirement [AMENDED]
Subchapter 7. Commencement of a Cause
Part 3. Oil and Gas
165:5-7-6. Drilling and spacing unit establishment or modification [AMENDED]
165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]
165:5-7-34. Waiver of pit closure requirements [AMENDED]
Subchapter 11. Prehearing Procedures
165:5-11-1. Deposition and discovery [AMENDED]
Subchapter 13. Initial and Subsequent Proceedings
165:5-13-3. Hearings [AMENDED]
165:5-13-5. Exceptions to Report of Administrative Law Judge [AMENDED]
Appendix D. Notice of Application for Waiver of Pit Closure [REVOKED]
Appendix D. Notice of Application for Waiver of Pit Closure [NEW]

AUTHORITY:

Oklahoma Corporation Commission; 17 O.S. § 52, 17 O.S. § 166.1, 17 O.S. § 139.101 *et seq.*, 17 O.S. § 180.11, 17 O.S. § 281, 27A O.S. § 1-3-101, 51 O.S. § 24A.5(3), 52 O.S. § 1, 52 O.S. § 99, 52 O.S. § 139, Article IX, Sections 18 and 18a of the Oklahoma Constitution, and OAC 165:5-1-7

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 14, 2014.

COMMENT PERIOD:

January 14, 2014, through February 24, 2014

PUBLIC HEARING:

March 13, 2014

ADOPTION:

March 13, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 19, 2014

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:

June 19, 2014

EFFECTIVE:

September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

OAC 165:5-1-3 is amended to modify the definition of Secretary; OAC 165:5-1-7 to modify language regarding emergency rulemakings, and to strike provisions regarding Petroleum Storage Tank Division (PSTD) rulemakings as such language unnecessarily repeats portions of 17 O.S. § 340; OAC 165:5-1-26 to change the means by which written acknowledgement of the receipt of pollution complaints is provided to relevant parties; OAC 165:5-3-1 to eliminate the fees for earthen or wash pit construction, enlargement or transfer applications, to provide for certification of documents by the Secretary, and to reflect the name change of the Oklahoma Office of State Finance to the Oklahoma Office of Management and Enterprise Services, and OAC 165:5-3-2 to change PSTD copying, certification, postage and search fees so that such fees are consistent with the fees charged by other Divisions appearing in OAC 165:5-3-1.

OAC 165:5-3-21 is amended regarding definitions pertaining to public utility assessment fees; OAC 165:5-3-22 concerning public utility assessment fee allocation; OAC 165:5-3-25 to change the date by which affected public utilities are to submit a report to the Public Utility Division (PUD) Director and the information required to be submitted in the report; OAC 165:5-7-6 concerning drilling and spacing unit establishment or modification; OAC 165:5-7-27 to reorganize notice provisions for proposed noncommercial injection or disposal wells and commercial disposal wells, and OAC 165:5-7-34 to correct a reference to the rule regarding exemption of an operator from responsibility for closure of a noncommercial pit and transfer to the surface owner responsibility for maintenance and closure of the pit.

OAC 165:5-11-1 is amended regarding discovery in proceedings on the PUD docket; OAC 165:5-13-3 concerning order of proof during hearings; OAC 165:5-13-5 to provide that oral exceptions regarding motions and emergency matters shall be set for hearing before the Commission en banc unless referred to an Oil and Gas Appellate Referee or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, 20, 25, 26, 27, 28, 29, 30, and/or 32, and Appendix D regarding notice of application for waiver of pit closure is revoked and a new Appendix D proposed to correct grammatical errors.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-3. Definitions

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

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means any person commencing a proceeding.

"Application" means any written request by an applicant commencing a proceeding for Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a cause and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based

upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Document" means any written matter filed in a cause. A "document" includes any attached appendices.

"Intervenor" means any party of record who is not an applicant or named respondent.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

(A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;

(B) Transcript of proceedings at all hearings;

(C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;

(D) Exhibits, together with attachments, appendices, and amendments thereto;

(E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;

(F) Exceptions and motions subsequent to the hearing;

(G) Orders or rules of the Commission; and

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(m), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence, inability, or disqualification of the Secretary to act.

"Staff counsel" means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

165:5-1-7. Procedure for adoption of rules

(a) The Commission shall comply with all applicable provisions of the Administrative Procedures Act ("APA"), 75 O.S. §250 et seq., and Article IX of the Oklahoma Constitution.

(b) In addition to the statutory requirements of the APA, notice of proposed rulemaking action shall be published one time at least thirty (30) days prior to public hearing in a newspaper of general circulation published in Oklahoma County. If, however, the Commission finds that ~~an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rulemaking~~a rule is necessary as an emergency measure, the Commission may promulgate, pursuant to applicable provisions of the APA, any such rule without notice and hearing.

~~(c) All rulemakings concerning the Petroleum Storage Tank Division shall be developed as follows:~~

~~(1) **Storage Tank Advisory Council.**~~

~~(A) Pursuant to 17 O.S. § 340, the Storage Tank Advisory Council may recommend rules to implement the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program.~~

~~(B) The staff of the Petroleum Storage Tank Division shall have no standing to recommend to the Commission en banc proposed permanent rules or changes to such rules which have not previously been submitted to the Storage Tank Advisory Council.~~

~~(C) Rulemakings proposed by the Storage Tank Advisory Council, shall follow the applicable rulemaking procedures of the APA and the rules of the Commission.~~

~~(D) All actions of the Storage Tank Advisory Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the APA.~~

~~(E) The Commission may adopt permanent rules without the advice of the Storage Tank Advisory Council or not in accord with the advice of the Council. However, if any permanent rules are so adopted, the Commission shall detail the reasons on the rule~~

~~report submitted to the Governor and the Legislature pursuant to the APA.~~

~~(2) **Emergency rulemakings.** The Commission may promulgate emergency rules without the advice of the Storage Tank Advisory Council when time constraints of the emergency as determined by the Commission, do not permit timely development of recommendations by the Storage Tank Advisory Council.~~

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-26. Receipt of pollution complaints

(a) Any pollution complaint received by the Commission or any of its Divisions, including any regional or district offices, shall be recorded immediately upon receipt in such format as the Commission may designate.

(b) A written acknowledgement of pollution complaint receipt will be ~~mailed~~sent to the complainant, alleged violator, and other relevant parties, if known, within two (2) business days following receipt of the pollution complaint and shall provide the status of the pollution complaint at that time.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any subsequent pleading or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) through (E) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(H) shall be charged for any informal dispute resolution procedure that commences.

(D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(E) No filing fee shall be paid by a customer filing a Consumer Services docket application against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. All filing fees must be paid and documents requiring a filing fee submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Commercial recycling facility application - $1,000.00

(E) Conservation docket and pollution docket base applications - $100.00

(F) Permit to drill - $175.00

(G) Emergency walk-thru permit to drill - $500.00

(H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(I) Permit for one-time land application of water based fluids - $100.00

(J) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(K) Application for non-commercial injection or disposal well - $100.00

(L) Emergency application on the conservation or pollution docket - $100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - $100.00

(2) **Transportation fees.**

(A) Transportation docket application - $100.00

(B) Other transportation fees:

(i) Intrastate license and certificate fees.

(I) Original application filing fee - $100.00

(II) Sub application filing fee - $100.00

(III) Renewal application filing fee - $50.00

(IV) Reinstatement application filing fee - $100.00

(V) Name change application filing fee - $50.00

~~(VI) Earthen or wash pit construction, enlargement or transfer application fee - $500.00~~

(~~VII~~VI) Identification device or per vehicle fee - $7.00

(ii) Deleterious Substance License Permit application filing fee - $350.00

(iii) International Fuel Tax Agreement (IFTA) fees.

(I) IFTA decal - $2.00 per vehicle per decal set

(II) IFTA reinstatement fee - $100.00

(iv) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(v) Temporary registration and fuel permit fees.

(I) Temporary registration (72 hour trip permit) - $12.00

(II) Temporary fuel permit (120 hours) - $25.00

(III) Unladen or hunters permit (45 days) - $25.00

(vi) Harvest permit fees (power units only).

(I) Thirty day permit - $20.00 per axle

(II) Sixty day permit - $35.00 per axle

(III) 15 day extension - $8.75 per axle

(3) **Utility fee.** Public utility docket application - $100.00

(4) **Enforcement fee.** Enforcement docket application - $100.00

(c) **Certified copies.** A fee of $1.00 per copied page is charged for each copy of an order or other document on file with the Commission certified by the ~~Court Clerk~~Secretary, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Copies of any file or order -

(A) Non-certified copies - $0.25 per page; certified copies $1.00 per page

(B) Postage - actual cost

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of ~~State Finance, Information Services Division~~Management and Enterprise Services.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page.

(h) **Payments by Credit Card**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card

holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) **General.**

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(b) **Fees.**

(1) **Application fee.** The amount of fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is $100.00.

(2) **Annual fee.** An annual storage tank permit fee shall be charged to all owners of regulated petroleum storage tanks for each storage tank currently in use as follows:

(A) For petroleum storage tanks - $25.00 per tank.

(B) A facility which has both petroleum and hazardous substance will be considered as one facility.

(C) For noncommercial agricultural underground storage tanks containing petroleum products - $10.00 per tank.

(D) For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.

(E) Billings will be mailed out approximately 60 days in advance of the due date as noted on the billing.

(3) **UST Installer licensing fee.** Any individual who is to be licensed as an underground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(4) **Remediation Consultant License.** Any individual who qualifies as a Remediation Consultant shall pay the following fees:

(A) Application fee - $25.00
(B) Examination/re-exam fee - $25.00
(C) License fee (2-year license) - $50.00
(D) License renewal fee (2-year license) $50.00
(E) If licensed for six months or less - $25.00

(5) **UST Remover licensing fee.** Any individual who is to be licensed as an underground storage tank remover shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(6) **AST Installer licensing fee.** Any individual who is to be licensed as an aboveground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(7) **Vapor Monitoring Well Technician licensing fee.** Any individual who is to be licensed as a monitoring technician shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(8) **Miscellaneous fees.**

(A) **Certified copies.** A fee of $1.00 per copied page is charged for each ~~certified~~ copy of an order or other document on file with the Commission certified by the Secretary, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

(i) Batch reproduction on continuing basis (per page) - $0.25

(ii) Copy of any document prepared in OCC offices (per page) - $0.25

(iii) Copies of any file or order -

(I) Non-certified copies - $0.25 per page; certified copies $1.00 per page

(II) Postage - actual cost

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of ~~State Finance, Information Services Division~~Management and Enterprise Services.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of ~~$7.00~~$10.00 per hour (minimum of one

hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

(9) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus:

(A) Assess payment of a penalty of 50% of the computed total fee of that application or facility; and/or

(B) Suspend tank operation until payment of any fee or penalty assessed under this subsection.

PART 3. PUBLIC UTILITY ASSESSMENT FEES

165:5-3-21. Definitions

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

"Director" means the Director of the Public Utility Division of the Oklahoma Corporation Commission.

"Filing tariffs with the Commission" means submission of the tariffs to the Director.

"Fiscal year" means the period beginning July 1 and ending June 30 of each year.

"Public utility" means:

(A) Those companies as defined by 17 ~~Okl.St.Ann.~~O.S.§151, excluding those companies encompassed by paragraph (d) of Section 151.

(B) Any telephone or telecommunications company subject to 17 ~~Okl.St.Ann.~~O.S. §131 et seq., including interexchange telecommunications companies as defined by 165:55-1-4, resellers as defined by 165:56, ~~and~~ operator service providers as defined by 165:57, and pay phone service providers as defined by 165:58.

(C) Any association or cooperative corporation doing business under the Rural Electric Cooperative Act except for generation and transmission associations or cooperative corporations, or transmission associations or cooperative corporations.

"Regulated Oklahoma jurisdictional ~~annual~~ gross operating revenues" means those revenues which are recorded in the accounts of the public utility, resulting from sales of commodities or services provided to ~~regulated~~Regulated Oklahoma ~~jurisdictional~~Jurisdictional ~~customers~~Customers. For telecommunications companies this shall include, but should not be limited to, ~~support~~revenues received for intrastate services from all Oklahoma and Federal universal service and low income funds for regulated and non-regulated services, revenues received from the Oklahoma Universal Service Fund for Special Universal Services, revenues received from the Oklahoma Universal Service Fund for Primary Universal Services, and revenues received from the Oklahoma Lifeline Fund and Federal Lifeline support received pursuant to 47 CFR Subpart E. The inclusion of revenues described in the previous sentence as Regulated Oklahoma jurisdictional gross operating revenues shall be for the limited purpose of the calculation of allocations for payment into the Public Utility Assessment Fee according to this Part 3 of Subchapter 3 of OAC 165:5 and shall not be construed as affecting the jurisdictional nature of the funds as determined by the telecommunications companies in accordance with 47 CFR Parts 32 and 36 for separations purposes or other purposes such as determining jurisdictional tax liability.

"Regulated Oklahoma Jurisdictional Customers" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision, or the United States or the State of Oklahoma, receiving utility service from a public utility pursuant to rates and charges established by, or filed with the Commission and recipients of Special Universal Services as defined in 17 O.S. §139.102.

"Special Universal Services" means the same as is defined in 17 O.S. §139.102.

165:5-3-22. Fee allocation

(a) Pursuant to 17 ~~Okla.St.Ann. 1993,~~O.S. §180.11, an annual fee shall be assessed as follows:

(1) The assessment shall, after excluding the amount allocated to the interexchange telecommunications companies, resellers, pay phone service providers and operator service providers in paragraph (2) of this subsection, be borne by the affected public utilities as follows:

(A) One-half shall be allocated based on that proportion which the total ~~regulated~~Regulated Oklahoma jurisdictional gross operating revenues of each public utility bears to the total ~~regulated~~Regulated Oklahoma jurisdictional gross operating revenues of all public utilities; ~~which amounts shall be exclusive of amounts paid to public utilities pursuant to rates and charges established by the Commission if the public utility provides response to 165:5-3-25(a)(3),~~ and

(B) One-half shall be allocated based on that proportion which the total number of ~~regulated~~Regulated Oklahoma ~~jurisdictional~~Jurisdictional ~~customers~~Customers of each public utility bears to the total number of ~~regulated~~Regulated Oklahoma ~~jurisdictional~~Jurisdictional ~~customers~~Customers of all public utilities.

(2) For interexchange telecommunications companies, resellers, pay phone service providers and operator service providers, the allocation shall be based on the proportion that each interexchange telecommunications company's, reseller's, pay phone service provider's, and operator service provider's total ~~regulated~~Regulated Oklahoma jurisdictional gross operating revenues bears to the total ~~regulated~~Regulated Oklahoma jurisdictional gross operating revenues of all public utilities~~; which amounts shall~~

~~be exclusive of amounts paid to public utilities pursuant to rates and charges established by the Commission if the public utility provides response to 165:5-3-25(a)(3) as applied to the total amount of the assessment to be collected from all public utilities for each year~~.

(b) The fees assessed pursuant to this Section shall be on a fiscal year basis and shall equal the amount of the budgetary limit for the Public Utility Division established by the legislature for said fiscal year.

(c) After final legislative and gubernatorial approval of the budgetary limit for the Public Utility Division, notice of the annual assessed amount pursuant to (a)(1) and (2) of this Section shall be sent by electronic mail or certified mail, return receipt requested, to each public utility.

165:5-3-25. Reporting requirement

(a) On or before ~~May 15~~April 1 of each year, each affected public utility shall submit to the Director a report based on the preceding calendar year containing the following data:

(1) ~~Monthly average regulated~~Prior calendar year end Regulated Oklahoma ~~jurisdictional~~Jurisdictional~~customers~~Customers.

(2) Total prior calendar year~~regulated~~Regulated Oklahoma jurisdictional gross operating revenues.

~~(3) Total amounts paid to other public utilities pursuant to rates and charges established by the Commission.~~

(b) The reporting requirement set forth in (a)(1) of this Section does not apply to interexchange telecommunication companies.

~~(c) The reporting requirement set forth in (a)(3) of this Section is optional.~~

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the ~~most recent~~ order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to ~~the most recent~~such order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission ~~may provide that such horizontal well unit supersedes one or more of such non-horizontal drilling and spacing units or may~~shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units~~.,In the event the Commission provides for the concurrent existence of a horizontal well unit and a non-horizontal drilling and spacing unit, as provided above,~~and each such unit may be concurrently developed.

(1) In any spacing proceeding to establish or form a horizontal well unit, the application filed in such proceeding shall set forth and describe~~:~~

~~(A) any non-horizontal drilling and spacing unit that may be superseded by such horizontal well unit; and~~

~~(B)~~ any non-horizontal drilling and spacing unit that ~~may exist~~exists concurrently with such horizontal

well unit, including the well or wells located in any such non-horizontal drilling and spacing unit.

(2) The order entered in such proceeding ~~shall describe any non-horizontal drilling and spacing unit that will be superseded by the horizontal well unit, and~~ shall describe any non-horizontal drilling and spacing unit that ~~will exist~~exists concurrently with the horizontal well unit, including the well or wells located in such non-horizontal drilling and spacing unit. The order establishing or forming a horizontal well unit that ~~will exist~~exists concurrently with any non-horizontal drilling and spacing unit shall state, based on the evidence presented, that the consent in writing required by subsection (h) of this Section has been obtained and filed or that a waiver of such consent requirement as authorized by subsection (i) of this Section has been granted by the Commission.

(h) No order of the Commission authorizing a horizontal well unit that overlies any existing well, or portion of any existing drilling and spacing unit with any existing well, producing from the same common source of supply will become effective until at least fifty percent (50%) of the ownership having a right to drill in each such well ~~and/or~~and drilling and spacing unit consents in writing to the formation of such horizontal well unit ~~by filing~~and such written consent or consents are filed with the Court Clerk of the Commission in ~~such cause~~the applicable spacing proceeding or otherwise entered into the record in such proceeding. Requests for such consent must be sent by restricted mail to the owners having the right to drill in any existing well and/or drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement. For purposes of this subsection, a showing of good cause means applicant must present sufficient testimony and evidence, and the Commission must find in the order, that applicant has established the following:

(1) Due diligence was exercised to locate each owner having a right to drill in any existing well and/or any existing drilling and spacing unit producing from the same common source of supply as the proposed horizontal well unit;

(2) A bona fide effort was made to obtain the required percentage of consent;

(3) Alternate methods of development are inadequate to prevent waste and to protect correlative rights unless the consent requirement is waived and the proposed horizontal well unit created; and

(4) Any correlative rights or vested rights, or both, of owners in the existing well(s) and/or drilling and spacing unit(s), and in the proposed horizontal well unit, will be adequately protected if the consent requirement is waived and the proposed horizontal well unit created.

165:5-7-27. Enhancement or addition of injection and disposal wells

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat.

(A) **Noncommercial.** A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing spacing unit or well within one-half (1/2) mile of each enhanced recovery injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each enhanced recovery injection or disposal well with a requested injection rate of five thousand barrels per day or more.

(B) **Commercial.** A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.

(2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing a permit approving fluid injection, shall consider the following:

(i) Maximum injection rate.

(ii) Maximum surface injection pressure.

(iii) Injection fluid.

(iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to the following: ~~owner of the surface of the land on which the injection or disposal well is to be located, and with regard to injection or disposal wells with a requested injection rate of less than five thousand barrels per day to each operator of a producing spacing unit or well within one-half (1/2) mile of the proposed noncommercial injection or disposal well location, and to each operator of a producing spacing unit or well within one (1) mile of either a proposed noncommercial injection or disposal well location with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well location. In addition, if the application involves a proposed horizontal injection or disposal well, a copy of the application for approval shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of the proposed noncommercial injection or disposal well with a requested injection rate of less than five thousand barrels per day, and to each operator of a producing spacing unit or well within one (1) mile of the lateral of either a proposed noncommercial injection or disposal well with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well. Further, if the application involves a proposed commercial disposal well, a copy of the application for approval shall be served within five (5) days of the date the application is filed by regular mail or delivered to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well.~~

(1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;

(2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;

(3) For a noncommercial injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of such proposed well;

(4) For a noncommercial injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of such proposed well;

(5) For a noncommercial horizontal injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of such proposed well; and

(6) For a noncommercial horizontal injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

(1) PD or tracking number.

(2) Name and address of applicant.

(3) Location of proposed well to nearest 10 acre tract.

(4) Well name.

(5) The geological name of the injection formation.

(6) The top and bottom of the injection interval.
(7) Maximum injection pressures.
(8) Maximum B/D or MCF/D injection rate.
(9) The type of well (injection, disposal, commercial).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter may be approved administratively by the Manager of Underground Injection Control.

(f) Any operator of a commercial disposal well facility shall file with the Manager of Document Handling for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(g) The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(h) Operators of commercial disposal well facilities authorized prior to the effective date of subsections (f) and (g) must either comply with those subsections or close such facilities within one (1) year of the effective date of those subsections.

(i) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC permit can be issued immediately without additional area of review, notice, or protest period.

165:5-7-34. Waiver of pit closure requirements

(a) **Section applicability.** The provisions of this Section shall apply to each application under ~~165:10-7-16(e)(7)~~165:10-7-16(e)(9) to exempt an operator from responsibility for closure of a pit and transfer to the surface owner responsibility for maintenance and closure of the pit.

(b) **Names required.** Each application under this Section shall be filed in the name of the well operator and the surface owner of the land on which the pit is located.

(c) **Surface owner signature.** The application shall not be approved without the signature of the surface owner on the application.

(d) **Application form.** The applicants shall prepare the application with a caption in a format which complies with Appendix D to this Chapter.

(e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.
(B) The terms of the protest period.
(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.
(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix D to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.
(B) Each adjacent surface owner and surface lessee.

(4) **Proof of notice.** The applicant shall submit a certificate of service.

(h) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.
(B) Title: Protest.
(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(1) Filing of the application.

(2) Filing of all required exhibits.

(3) The date of completion of service of process on all respondents in the cause.

(4) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or file exceptions to the report as under 165:5-13-5.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under ~~(g)~~(j)(1) of this Section.

(l) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix E to this Chapter.

SUBCHAPTER 11. PREHEARING PROCEDURES

165:5-11-1. Deposition and discovery

(a) **Depositions.**

(1) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by the Commission or of a person. The order may direct that the deposition of a witness be taken inside or outside the State of Oklahoma.

(2) The order shall state the time and place the deposition shall be taken, and the person taking the deposition shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date scheduled for taking the deposition.

(3) The manner of taking depositions shall otherwise be governed by the laws relating to taking of depositions for use in the District Courts of Oklahoma. Attendance of a witness for taking of his deposition shall be governed by OAC 165:5-11-3, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(4) A deposition may be offered in evidence at the hearing by any person.

(b) **Production of documents.**

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the cause, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which production is required unless otherwise agreed by the applicant, respondent and intervenors.

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(c) **Interrogatories.**

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which answer is required unless otherwise agreed by the applicant, respondent and intervenors.

(d) **Protective orders.**

(1) The Commission, upon motion, may make such orders relating to discovery as may be necessary or appropriate for the protection of and to prevent hardship to and excessive burden upon a person. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed.

(2) The Commission may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this subsection.

(e) **Discovery in proceedings on the PUD docket.**

(1) ~~In~~Except as otherwise directed by the Commission, in proceedings on the PUD docket, the ~~applicant, respondent, and intervenors~~ parties of record may also obtain discovery by document request, data request or interrogatory without ~~applying~~filing a motion for an order of the Commission. When discovery is sought without a prior order, the provisions of (b) (3), (4) and (5) of this Section shall apply, and the references to orders therein shall be deemed to mean requests for discovery.

(2) In a proceeding ~~subject~~filed pursuant to 17 O.S. § 152(B), 17 O.S. § 137, or 18 O.S. § 438.31 et seq., discovery by document request, data request or interrogatory shall be ~~subject to~~governed by the provisions of OAC 165:5-7-61. In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory shall be in accordance with (e)(3) below.~~In any other proceeding on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) days after receipt of the same, unless:~~

~~(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The applicant, respondent and intervenors are not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,~~

~~(B) The applicant, respondent and intervenors agree in writing to a different response time.~~

(3) In a proceeding requesting relief pursuant to the Oklahoma Telecommunications Act of 1997, discovery by document request, data request or interrogatory by the OUSF Administrator shall be answered within ten (10) business days, unless an objection is filed within five (5) business days and a ruling is made establishing a different response time or the applicant and the Administrator agree to a different response time. The filing of an objection shall toll the time to respond pending the ruling on the objection.

(4) In all other proceedings on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) calendar days after receipt of the same, unless:

(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The objecting party is not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,

(B) The party requesting discovery and the producing/responding party agree in writing to a different response time.

(~~3~~5) The Commission may allow a shorter or longer time for response for good cause shown, but in no event may the Commission order a response to be served in less than ten (10) business days, except as otherwise agreed by the ~~applicant, respondent and intervenors~~person ordered to respond.

(~~4~~6) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next regular business day.

(~~5~~7) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(~~6~~8) Objections to a document request, data request, interrogatory, or the time in which to respond may be presented to the Administrative Law Judge unless otherwise ordered by the Commission en banc. Any ruling by the Administrative Law Judge on an objection may be orally referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1).

(~~7~~9) Any objection(s) relating to a discovery request or the time in which to respond shall be set on the next PUD motion docket unless the Administrative Law Judge~~, applicant, respondent and intervenors~~and the requesting and responding parties of record agree to a different date and time.

(~~8~~10) The responding ~~applicant, respondent and intervenors~~party shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting ~~applicant, respondent and intervenors~~party any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

(f) This Section shall not be interpreted to limit the Commission's authority pursuant to Article IX, Sections 18, 19, and 28 of the Oklahoma Constitution.

(g) Pursuant to 17 O.S. § 330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted under the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. See also OAC 165:5-21-7.

SUBCHAPTER 13. INITIAL AND SUBSEQUENT PROCEEDINGS

165:5-13-3. Hearings

(a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.

(b) **Scope of hearings.** The Commission, Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.

(c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or indicting corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.

(d) **Preliminary matters.** The following shall be addressed prior to receiving evidence:

(1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

(2) Ruling may be made on any pending motions, including requests pertaining to discovery.

(3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(e) **Rules of evidence.** The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be received subject to final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(f) **Order of proof.** The applicant or complainant who institutes a cause ~~shall~~may open and close the proof. Staff counsel ~~shall~~may open and close a cause instituted by the Commission or a staff member. Intervenors ~~shall~~may be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(g) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(h) **Adverse party.** A party of record may call ~~and~~an adverse person or an officer or employee of an adverse person, in which case the witness may be impeached and otherwise cross-examined.

(i) **Record.** All testimony shall be taken on the record.

(j) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(k) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.

(6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.

(7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(l) **Exhibits.** All exhibits shall be identified by docket and cause number prior to submitting to the Commission.

(m) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:

(1) The evidence summarized has been admitted in evidence, or is admissible; and

(2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.

(n) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.

(o) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.

(p) **Reopening the record.** Any person may file and serve, by regular mail, on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC 165:5-9-1(b). The motion and notice shall include a statement that if the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(q) **Corrections to transcript.** In all proceedings, an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(r) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

165:5-13-5. Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas <u>or transportation</u> related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on any oil and gas <u>or transportation</u> related exceptions without a response being filed or hearing oral presentation on said motion.

(1) **Oral exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of his or her intent to lodge exceptions and any request for oral arguments on the exceptions before the Commission en banc. Written exceptions shall not be required. Oral exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee <u>or an Administrative Law Judge regarding matters involving issues addressed in Chapters 10, 15, 16, 20, 25, 26, 27, 28, 29, 30 and/or 32</u>. Oral exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral exceptions will be set on the next regularly scheduled day for such matters unless:

(A) The parties agree to another date; or

(B) The Commission specifies otherwise.

(2) **Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) days in which to file exceptions to the report before the Commission en banc. To perfect exceptions, written exceptions must be filed within ten (10) days after filing of the Report of the Administrative Law

Judge. The person filing exceptions shall serve copies of the exceptions and notice of hearing for the exceptions on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) day period for filing the exceptions. In exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) days shall be allowed for the filing of cross exceptions. OAC 165:5-13-2 shall govern the setting of the exceptions. If a party desires the Commission en banc to hear oral arguments on any exceptions, a motion for oral argument of exceptions before the Commission en banc must be filed with the exceptions.

(b) **Contents of the exceptions.** For purposes of (a)(2) of this Section, the written exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his exceptions, or to present at the initial hearing on exceptions thereon additional grounds for exceptions from the report. A person taking exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing of the exceptions, then any person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the exceptions shall be considered based on the summary of evidence in the appealed report.

(c) **Responses to written exceptions.** For purposes of exceptions under (a)(2) of this Section, any other person may file written response to the exceptions within five (5) days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc, or the Oil and Gas Appellate Referee or Administrative Law Judge to whom the exceptions have been referred, submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the exceptions shall be considered upon the summary of the evidence in the exceptions to the report.

(d) **Contents of the Oil and Gas Appellate Referee or Administrative Law Judge Reports.** In a case where exceptions are referred to an Oil and Gas Appellate Referee or Administrative Law Judge, such Referee or Administrative Law Judge shall file a written report, stating a recommendation to the Commission to affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) **Scope of review by the Commissioners.** With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT CLOSURE [REVOKED]

APPENDIX D. NOTICE OF APPLICATION FOR WAIVER OF PIT CLOSURE [NEW]

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

APPLICANTS:	)	
	)	
RELIEF SOUGHT: WAIVER OF PIT	)	
CLOSURE REQUIREMENT UNDER	)	
165:10-7-16.	)	CAUSE P.D. NO.
	)	
LEGAL DESCRIPTION OF TRACT	)	
WITH PIT(S):	)	

NOTICE OF APPLICATION

NOTICE IS HEREBY GIVEN that the Applicant in this cause is requesting the Commission to issue an order granting the Applicant a waiver of the closure requirement for pit(s) at the above captioned location.

NOTICE IS ALSO GIVEN that any protest to this application must be filed with the Court Clerk within the protest period prescribed by 165:5-7-34, said protest period being not less than fifteen (15) days after service of this notice.

NOTICE IS FURTHER GIVEN that an initial site inspection shall be made by the Applicant and a representative of the Field Operations Department staff on the ____ day of _____, 20__. Any interested person may attend.

NOTICE IS FURTHER GIVEN that if the application is unprotested, then it shall be referred to the Conservation Division of the Commission for review without hearing and that if the application is protested, then any protestants shall receive notice of hearing as prescribed by 165:5-7-34.

NOTICE IS FURTHER GIVEN that for information concerning this action, contact (Name of Attorney--not firm name--or individual signing the application), (Address), (City), (State), (phone number).

CORPORATION COMMISSION OF OKLAHOMA

_____
Chairman

_____
Vice Chairman

_____
Commissioner

DONE AND PERFORMED this ___ day of _____, 20__.

BY ORDER OF THE COMMISSION:

_____
Secretary of the Commission

[OAR Docket #14-555; filed 6-30-14]

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

[OAR Docket #14-479]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Administration
Part 1. General Provisions
165:10-1-2. Definitions [AMENDED]
165:10-1-4. Citation effective date [AMENDED]
165:10-1-7. Prescribed forms [AMENDED]
Subchapter 3. Drilling, Developing, and Producing
Part 3. Completions
165:10-3-15. Venting and flaring [AMENDED]
165:10-3-17. Well site and surface facilities [AMENDED]
Part 5. Operations
165:10-3-26. Well logs [AMENDED]
165:10-3-28. Horizontal drilling [AMENDED]
Subchapter 5. Underground Injection Control
165:10-5-5. Application for approval of enhanced recovery injection and disposal operations [AMENDED]
165:10-5-6. Testing and monitoring requirements for enhanced recovery injection wells and disposal wells [AMENDED]
165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1 [AMENDED]
Subchapter 7. Pollution Abatement
Part 3. Storage and Disposal of Fluids
165:10-7-33. Use of truck wash pits [NEW]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. § 52, 27A O.S. § 1-3-101, 52 O.S. § 1, 52 O.S. § 99, 52 O.S. §139, Article IX, Section 18a of the Oklahoma Constitution and OAC 165:5-1-7
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2013-34, the proposed rules were submitted to the Governor and Cabinet Secretary on January 14, 2014.
COMMENT PERIOD:
January 14, 2014, through February 24, 2014
PUBLIC HEARING:
March 13, 2014
ADOPTION:
March 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 18, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rules were amended in an effort to update, standardize and streamline language and procedures appearing in OAC 165:10, as well as to address changes in technology, especially with respect to horizontal drilling. OAC 165:10-1-7 was amended to provide for use of a new Form 1014T by operators applying for permits to use truck wash pits in conjunction with new rule OAC 165:10-7-33 regarding truck wash pits. OAC 165:10-1-7 was also amended to require persons who contract to land apply materials to file Form 1014LC or Form 1014SB as surety with the Commission pursuant to OAC 165:10-7-10. OAC 165:10-1-7 was also amended to include Form 1036 Complaint Notice and Form 1036A Contempt Citation, which forms can be issued by Commission personnel regarding alleged violations of Commission rules pursuant to OAC 165:10-3-17, OAC 165:10-7-7 and OAC 165:10-7-9.

CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939, s.conrad@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. ADMINISTRATION

PART 1. GENERAL PROVISIONS

165:10-1-2. Definitions

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

"Agent"means any person authorized by another person to act for him.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of exposure" means an area within a circle constructed with the point of escape of poisonous gas (hydrogen sulfide) as its center and the radius of exposure as its radius.

"Associated gas" means any gas produced from a Commission ordered combination oil and gas reservoir in which allowed rates of production are based upon volumetric withdrawals.

"BS&W" means basic sediment and water which is that portion of fluids and/or solids that settle in the bottom of storage tanks and/or treating vessels and is unsaleable to the first purchaser in its present form. BS&W usually consists of water, paraffin, sand, scale, rust, and other sediments.

"Barrel" means 42 (U.S.) gallons at 60 F at atmospheric pressure.

"Basic sediment pit" means a pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank.

"Blowout" means the uncontrolled escape of oil or gas, or both, from any formation.

"Blowout preventer" means a heavy casinghead control fitted with special gates and/or rams which can be closed around the drill pipe or which completely closes the top of the casing.

"Blowout preventer stack" means the assembly of well control equipment including preventers, spools, valves, and nipples connected to the top of the casinghead.

"Carrier", or **"transporter"**, or **"taker"** means any person moving or transporting oil or gas away from a lease or from any common source of supply.

"Casing pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Choke manifold" means an assembly of valves, chokes, gauges, and lines used to control the rate of flow from the well when the blowout preventers are closed.

"Closure" means the practice of dewatering, trenching, filling, leveling, terracing, and/or vegetating a pit site after its useful life is reached in order to restore or reclaim the site to near its original condition.

"Commercial disposal well" means a well where the owner receives and disposes of produced water or any deleterious substance from multiple well owners/operators and receives compensation for these services and where the owner's primary business objective is to provide these services.

"Commercial pit" is a disposal facility which is authorized by Commission order and used for the disposal, storage, and handling substances or soils contaminated by deleterious substances produced, obtained, or used in connection with drilling and/or production operations. This does not include a disposal well pit.

"Commercial recycling facility" means a facility that is authorized by Commission order to recycle materials defined as deleterious substances in OAC 165:10-1-2. Such substances must undergo at least one treatment process and must be recycled into a marketable product for resale and/or have some beneficial use. This definition does not include the reuse of drilling mud that was previously utilized in drilling or plugging operations.

"Commercial soil farming" means the practice of soil farming or land applying drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling of a well or wells at an off-site location. Multiple applications to the same land are likely.

"Commission" means the Corporation Commission of the State of Oklahoma.

"Common source of supply" or **"pool"** means "that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid by a common accumulation of oil and/or gas; provided that, if any such area is underlaid, or appears from geological or other scientific data or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by strata of earth and not connected with each other, then such area shall, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply." [52. O.S.A. §86.1(c)].

"Completion/fracture/workover pit" means a pit used for temporary storage of spent completion fluids, frac fluids, workover fluids, drilling fluids, silt, debris, water, brine, oil scum, paraffin, or other deleterious substances which have been cleaned out of the wellbore of a well being completed, fractured, recompleted, or worked over.

"Condensate" means a liquid hydrocarbon which:

(A) Was produced as a liquid at the surface,

(B) Existed as gas in the reservoir, and

(C) Has an API gravity greater than or equal to fifty degrees, unless otherwise proven.

"Conductor casing" means a casing string which is often set and cemented at a shallow depth to support and protect the top of the borehole from erosion while circulating and drilling the surface casing hole.

"Conservation Division" means the Division of the Commission charged with the administration and enforcement of the rules of this Chapter.

"Contingency plan" is a written document which provides for an organized plan of action for alerting and protecting the public within an area of exposure following the accidental release of a potentially hazardous volume of poisonous gas such as hydrogen sulfide.

"Contractor" means any person who contracts with another person for the performance of prescribed work.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at an absolute pressure of 14.65 pounds per square inch and at a temperature of 60°F. Conversion of volumes to conform to standard conditions shall be made in accordance with Ideal Gas Laws corrected for deviation from Boyle's Law when the pressure at point of measurement is in excess of 200 pounds per square inch gauge.

"Date of completion" means:

(A) For an oil well, the date that the well first produces oil into the lease tanks through permanent wellhead equipment.

(B) For a gas well, the date of completion of a gas well is the date that gas is capable of being delivered to a pipeline purchaser.

(C) For a well, which does not produce either oil or gas, is the date on which attempts to obtain production from the well cease.

"Day" means a period of 24 consecutive hours. For reporting purposes, it shall be from 7:00 a.m. to 7:00 a.m. the following day.

"Deleterious substances" means any chemical, salt water, oil field brine, waste oil, waste emulsified oil, basic sediment, mud, or injurious substance produced or used in the drilling, development, production, transportation, refining, and processing of oil, gas and/or brine mining.

"Design mud weight" means the planned drilling mud weight to be used. This mud weight is used in the design of the casing strings.

"Design wellhead pressure" means the maximum anticipated wellhead pressure which is expected to be experienced on the inside of the casing string and on wellhead equipment. This pressure is used to design the casing string and to select wellhead equipment with sufficient working pressure rating.

"Development" means any work which actively looks toward bringing in production, such as erecting rigs, building tankage, drilling wells, etc.

"Directional drilling" means intentional changing of the direction of the well from the vertical.

"Director of Conservation" means the person in official charge of the Conservation Division.

"Discharge" means the release or setting free by any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of substances.

"Distressed well" means a well authorized by Commission order to produce at an unrestricted rate in the interest of

public safety due to technical difficulties which temporarily cannot be controlled.

"Diverter" means a device attached to the wellhead to close the vertical access and direct any flow into a line away from the rig. Diverters differ from blowout preventers in that flow is not stopped but rather the flow path is redirected away from the rig.

"Duly authorized representative" means, for the purpose of underground injection well applications, that person or position having a responsibility for the underground injection well.

"Emergency pit" means a pit used for the storage of excessive or unanticipated amounts of fluids during an immediate emergency situation in the drilling or operation of a well, such as a well blowout or a pipeline rupture. This does not include a spill prevention structure required by local, state, or federal regulations.

"Enhanced recovery operation" means the introduction of fluid or energy into a common source of supply for the purpose of increasing the recovery of oil therefrom according to a plan which has been approved by the Commission after notice and hearing.

"Enhanced recovery well" means a well producing in an enhanced recovery operation in accordance with Commission order.

"Exchangeable Sodium Percentage (ESP)" is the relative amount of the sodium ion present on the soil surface, expressed as a percentage of the total Cation Exchange Capacity (CEC). Since the determination of CEC is time consuming and expensive, a practical and satisfactory correlation between the Sodium Adsorption Ratio (SAR) and ESP was established. The SAR is defined elsewhere in this Section. ESP can be estimated by the following empirical formula:

$$\text{ESP} = \frac{100\,(-0.0126 + 0.01475 \times \text{SAR})}{1 + (-0.0126 + 0.01475 \times \text{SAR})}$$

"Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" or in the definition of "treatable water", but which has been exempted according to the procedures in 165:5-7-28 and 165:10-5-14.

Facility" means, for the purposes of 165:10-21-15, any building(s), parts of a building, equipment, property, or vehicles that are actively engaged in the reuse, recycling, or ultimate destruction of deleterious substances pursuant to 68 O.S. Supp. 1986, §2357.14-§2357.20.

"Field" means the general area underlaid by one or more common sources of supply.

"Flare pit" means a pit which contains flare equipment and which is used for temporary storage of liquid hydrocarbons which are sent to the flare but are not burned due to equipment malfunction. Flare pits may be used in conjunction with tank batteries or wells.

"Flowing well" means any well from which oil or gas is produced naturally and without artificial lifting equipment.

"Fresh water strata" means a strata from which fresh water may be produced in economical quantities.

"Gas" means any petroleum hydrocarbon existing in the gaseous phase.

(A) Casinghead gas means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil.

(B) Dry gas or dry natural gas means any gas produced in which there are no appreciable hydrocarbon liquids recoverable by separation at the wellhead.

(C) Condensate gas means any gas which is produced with condensate as defined as "condensate".

"Gas allowable" or **"allowable gas"** means the amount of natural gas authorized to be produced from any well by order of the Commission or as provided by statute.

"Gas lift" means any method of lifting liquid to the surface by injecting gas into the well bore from which production is obtained.

"Gas repressuring" means the injection of gas into a common source of supply to restore or increase the gas energy of a reservoir.

"GOR (Gas/Oil Ratio)" means the ratio of the gas produced in standard cubic feet to one barrel of oil produced during any stated period. Condensate and load oil excepted under 165:10-13-6 shall not be considered as oil for purposes of determining GOR.

"Hardship well" means a well authorized by Commission order to produce at a specified rate because reasonable cause exists to expect that production below said rate would damage the well and cause waste.

"Hydraulic fracturing operations" means operations on a well wherein fluid is applied for the express purpose of initiating or propagating fractures in a target geologic formation.

"Hydrogen sulfide gas (H_2S)" means a toxic poisonous gas with a chemical composition of H_2S which is sometimes found mixed with and produced with fluids from oil and gas wells.

"Hydrologically sensitive area" means a principal bedrock aquifer, the recharge or potential recharge area of a principal bedrock aquifer, or an unconsolidated alluvium or terrace deposit, according to the Oklahoma Geological Survey "Maps Showing Principal Groundwater Resources and Recharge Areas in Oklahoma" or other maps approved by the Commission.

"Hydrostatic head" or **"hydrostatic pressure"** means the pressure which exists at any point in the wellbore due to the weight of the column of fluid or gas above that point.

"Illegal gas" means gas which has been produced within the State from any well or wells in violation of any rule, regulation, or order of the Commission, as distinguished from gas produced within the State not in violation of any such rule, regulation, or order which is "legal gas".

"Illegal oil" means oil which has been produced within the State from any well or wells in violation of any rule, regulation or order of the Commission, as distinguished from oil produced within the State not in violation of any such rule, regulation, or order which is "legal oil".

"Intermediate casing" means the casing string or strings run after setting the surface casing and prior to setting the production string or liner.

"Kick" means the intrusion of formation liquids or gas that results in an increase in circulation pit volume. Without corrective measures, this condition can result in a blowout.

"Land application" is the application of deleterious substances and/or soils contaminated by deleterious substances to the land for the purpose of disposal or land treatment; also known as soil farming.

"Lease allowable" means the total of the allowables of the individual wells on the lease.

"Liner" means a length of casing used downhole as an extension to a previously installed casing string to case the hole for further drilling operations and/or for producing operations.

"Meter" means an instrument for measuring and indicating or recording the volumes of gases or liquids.

"Mud" means any mixture of water and clay or other material as the term is commonly used in the industry.

"Multi-well system" means two or more wells that have intersecting well-bores or laterals.

"Multiple zone completion" means the completion of any well so as to permit the production from more than one common source of supply, with such common sources of supply completely segregated.

"Noncommercial pit" means an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of deleterious substances or soils contaminated by deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not include a disposal well pit.

"Normal pressure" means a formation pore pressure, proportional to depth, which is roughly equal to the hydrostatic pressure gradient of a column of salt water (.465 psi/ft).

"Off-site reserve pit" means a pit located off-site which is used for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Oil" or **"crude oil",** means, for purposes of these regulations, any petroleum hydrocarbon, except condensate, produced from a well in liquid form by ordinary production methods.

"Oil allowable" or **"allowable oil"** means the amount of oil authorized to be produced from any well by order of the Commission.

"Operator" means the person who is duly authorized and in charge of the development of a lease or the operation of a producing property.

"Overage" means the oil or gas delivered to a carrier, transporter, or taker in excess of the allowable set by the Commission for any given period.

"Owner" means the person or persons who have the right to drill into and to produce from any common source of supply, and to appropriate the production either for himself, or for himself and others.

"Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, and shall include the plural.

"Plug" means the closing off, in a manner prescribed by the Commission, of all oil, gas, and waterbearing formations in any producing or nonproducing wellbore before such well is abandoned.

"Pollution" means the contamination of fresh water or soil, either surface or subsurface, by salt water, mineral brines, waste oil, oil, gas, and/or other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining, transporting, or processing of oil or gas within the State of Oklahoma.

"Pool" See "common source of supply".

"Potential" means the properly determined capacity of a well to produce oil or gas, or both, under conditions prescribed by the Commission.

"Primary well" means a wellbore that, as part of a multi-well system, serves as the conduit through which oil and gas is produced to the surface.

"Producer" See "Operator" or "Owner".

"Production casing" means the casing string set above or through the producing zone of a well which serves the purpose of confining and/or producing the well production fluids.

"Productivity index" means the daily production of oil in barrels per unit pressure differential between the static reservoir pressure and the stabilized flowing pressure during flow at a stated rate.

"Proration period" means:

(A) The proration period for any well, other than an unallocated gas well, shall be one calendar month which shall begin at 7 a.m. on the first day of such month and end at 7 a.m. on the first day of the next succeeding month unless otherwise specified by order of the Commission.

(B) The proration period for any unallocated gas well shall be one calendar year which shall begin at 7:00 a.m. the first day of such year and end at 7:00 a.m. on the first day of the next succeeding year unless otherwise specified by order of the Commission.

"Public area" means a dwelling place, a business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can reasonably be expected to be populated by humans.

"Public street" or **"road"** means any federal, state, county, or municipal street or road owned or maintained for public access or use.

"Purchaser" or **"transporter"** means any person who acting alone or jointly with any person or persons, via his own, affiliated or designated carrier, transporter, or taker, shall directly or indirectly purchase, take, or transport by any means whatsoever or otherwise remove from any lease, oil or gas, and/or other hydrocarbons produced from any common source of supply in this State, excepting royalty portions from leases owned by that person.

"Radius of exposure" means that radius constructed with the point of escape of poisonous (hydrogen sulfide) gas as its starting point and its length calculated by use of the Pasquill-Gifford equations.

"Reclaimer" or **"reclamation plant"** includes any person licensed by the Oklahoma Tax Commission pursuant to 68 O.S.§1015.1 who reclaims or salvages or in any way

removes or extracts oil from waste products associated with the production, storage, or transportation of oil including, but not limited to BS&W, tank bottoms, pit and waste oil, and/or waste oil residue.

"Recomplete" or **"recompletion"** means any operation to:

(A) Convert an existing well from an injection well or disposal well, to a producing well, or

(B) Add or change common sources of supply in an existing well.

"Recycling" is the reuse, processing, reclaiming, treating, neutralizing, or refining of materials and by-products into a product of beneficial use which, if discarded, would be deleterious substances.

"Recycling/reuse pit" means a pit which is used for the recycling or reuse of deleterious substances, is located off-site, and is operated by the generator of the waste.

"Re-enter" or **"re-entry"** is the act of entering a plugged well for the purpose of utilizing said well for the production of oil or gas, for the disposal of fluids therein, for a service well, or for the salvaging of tubing or casing therefrom.

"Remediation pit" means a pit which is used for the handling, storage, or disposal of deleterious substances and/or soils contaminated by deleterious substances which are relocated to the pit for the purpose of remediating a site which is known to be or suspected to be causing pollution.

"Reserve pit" or **"circulation pit"** means a pit located either on-site or off-site which is used in conjunction with a drilling rig for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Reservoir" See "common source of supply".

"Reservoir pressure" means the static or stabilized pressure in pounds per square inch existing at the face of the formation of an oil or gas well.

"Reuse" is the introduction (or reintroduction) into an industrial, manufacturing, or disposal process of a material which would otherwise be classified as a deleterious substance. A material will be considered "used or reused" if it is either:

(A) Employed as an ingredient (including use as an intermediate) in an industrial, manufacturing, or disposal process to make or recover a product.

(B) Employed in a particular function or application as an effective substitute for a commercial product or non-deleterious substance.

"Rotating head" means a rotating, pressure sealing device used in drilling operations utilizing air, gas, foam, or any other drilling fluid whose hydrostatic pressure is less than the formation pressure.

"Secretary" means the duly appointed and qualified Secretary, Assistant Secretary or Acting Secretary of the Commission, or any person appointed by the Commission to act as such Secretary during the absence ~~of the Secretary~~, ~~his~~ inability, or disqualification of the Secretary to act.

"Separator" means any apparatus for separating oil, gas, and water as they are produced from a well at the surface.

"Service well" means a well that, as part of a multi-well system, is used for drilling laterals, stimulation, or maintenance, or functions in any capacity other than as a conduit to the surface for the production of oil and gas.

"Slick spot" means a small area of soil having a puddled, crusted, or smooth surface and an excess of exchangeable sodium. The soil is generally silty or clayey, is slippery when wet, and is low in productivity.

"Slit trench" means a pit or bermed area at the drilling site used for the temporary storage of drilling fluids and/or cuttings to provide access for equipment to remove the contents off site.

"Sodium Adsorption Ratio (SAR)" means the index which indicates the relative abundance of sodium ions in solution as compared to the combined concentration of calcium and magnesium ions. It is calculated as follows:

$$SAR = \frac{(Na\ ppm/23.0)}{\text{sq. root of } [\{(Ca\ ppm/20.02)+(Mg\ ppm/12.16)\}/2]}$$

where Na=Sodium
Ca=Calcium
Mg=Magnesium

"Soil farming" means the application of oilfield drilling or produced wastes to the soil for the purpose of disposing of the waste without being a detriment to water or land; also known as land application.

"Spill containment pit" mean a permanent pit which is used for the emergency storage of oil and/or saltwater spilled as a result of any equipment malfunction.

"Subnormal pressure" means the formation pore pressure, proportional to depth, which is less than a hydrostatic pressure gradient of .465 psi/ft.

"Sulfide stress cracking" means the cracking phenomenon which is the result of corrosive action of hydrogen sulfide on susceptible metals under stress.

"Surface casing" means the first casing string designed and run to protect the treatable water formations and/or control fluid or gas flow from the well.

"Tank bottoms" means the liquids and/or solids in that portion of a storage facility below the sales line or connection that are unsaleable to the crude oil first purchaser in its present form. Tank bottoms may consist of a combination of several elements including, but not limited to, oil, BS&W, and treating fluids.

"Treatable water" means, for purposes of setting surface casing and other casing strings, subsurface water in its natural state, useful or potentially useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal, and recreational purposes, and which will support aquatic life, and contains less than 10,000 mg/liter total dissolved solids or less than 5,000 ppm chlorides. Treatable water includes, but is not limited to, fresh water.

"Trenching" means the practice of constructing trenches in or adjacent to a pit for the purpose of relocating all or a portion of the solids so as to facilitate closure.

"Truck wash pit" means a pit used for the temporary storage of fluids generated from the washing or cleaning of

a motor vehicle, trailer or container used to transport or store deleterious substances.

"Ultimate destruction" means the treatment of a deleterious substance such that both its weight and volume remaining for disposal have been substantially reduced, and there is no demonstrated process or technology commercially available to further reduce its weight and volume and remove or reduce its harmful properties, if any. For the purposes of demonstrating a substantial reduction in weight and volume, any aqueous portion separated from the balance of a waste that meets drinking water standards or is evaporated into the ambient air shall count toward the weight and volume reduction.

"Underage" means the volume of allowable oil or gas not actually delivered to a carrier, transporter, or taker during any given proration period.

"Underground Source of Drinking Water (USDW)" means an aquifer or its portion which:

(A) Supplies any public water system; or

(B) Contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(C) Is not an exempted aquifer.

"Unit operations" means a unit consisting of a portion of a lease, a lease, or more than one lease or portions thereof which covers contiguous lands containing one or more common sources of supply which has been approved by Commission order as a unit for the purpose of unitized management, after notice and hearing.

"Vacuum" means pressure below the prevailing pressure of the atmosphere.

"Waste" means:

(A) As applied to the production of oil, in addition to its ordinary meaning, "shall include economic waste, underground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands." [52 O.S.A., 86.2]

(B) As applied to gas, in addition to its ordinary meaning, shall include economic waste; "the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply; the inefficient or wasteful utilization of gas in the operation of gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing, or releasing, directly or indirectly, into the open air, of gas from well productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply." [52 O.S.A. §86.3]

(C) The use of gas for the manufacture of carbon black or similar products predominately carbon, except as specifically authorized by the Commission, shall constitute waste.

(D) The flaring of tail gas at gasoline, pressure maintenance, or recycling plants where a market is available.

"Waste oil" shall include, but not be limited to, crude oil or other hydrocarbons used or produced in the process of drilling for, developing, producing, or processing oil or gas from wells, oil retained on cuttings as a result of the use of oil-based drilling muds, or any residue from any oil storage facility on a producing lease or on a commercial disposal operation or pit. The term "waste oil" shall not include any refined hydrocarbons to which lead has been added.

"Waste oil residue" means that portion of waste oil remaining after treatment and after the saleable liquids and water have been extracted. Waste oil residue is a type of waste oil.

"Well log" or **"well record"** means a systematic, detailed and correct record of formations encountered in the drilling of a well.

165:10-1-4. Citation effective date

(a) These rules shall be cited as OAC Title 165 Chapter 10 (OAC 165:10).

(b) The effective date of the rules of this Chapter is as set out below:

(1) Order No. 937 - Effective 06/16/15
(2) Order No. 1299 - Effective 08/20/17
(3) Order No. 1986 - Effective 01/05/22
(4) Order No. 6251 - Effective 04/12/33
(5) Order No. 6252 - Effective 04/15/33
(6) Order No. 6393 - Effective 07/19/33
(7) Order No. 6394 - Effective 07/20/33
(8) Order No. 7263 - Effective 04/10/34
(9) Order No. 8229 - Effective 10/31/33
(10) Order No. 17528 - Effective 01/24/45
(11) Order No. 19334 - Effective 10/24/46
(12) Order No. 29232 - Effective 10/06/54
(13) Order No. 30712 - Effective 09/09/55
(14) Order No. 44297 - Effective 04/01/61
(15) Order No. 47397 - Effective 12/01/61
(16) Order No. 53568 - Effective 12/08/63
(17) Order No. 53749 - Effective 01/03/64
(18) Order No. 62481 - Effective 05/11/66
(19) Order No. 62631 - Effective 06/01/66

(20) Order No. 63817 - Effective 10/04/66
(21) Order No. 64203 - Effective 11/10/66
(22) Order No. 64207 - Effective 12/01/66
(23) Order No. 65747 - Effective 05/05/67
(24) Order No. 66006 - Effective 06/08/67
(25) Order No. 66778 - Effective 09/05/67
(26) Order No. 67113 - Effective 10/09/67
(27) Order No. 67379 - Effective 11/06/67
(28) Order No. 69103 - Effective 06/01/68
(29) Order No. 69104 - Effective 06/01/68
(30) Order No. 69340 - Effective 07/01/68
(31) Order No. 70704 - Effective 01/03/69
(32) Order No. 75248 - Effective 07/01/69
(33) Order No. 77627 - Effective 01/01/70
(34) Order No. 78830 - Effective 01/01/70
(35) Order No. 78831 - Effective 01/01/70
(36) Order No. 79460 - Effective 04/01/70
(37) Order No. 79461 - Effective 04/01/70
(38) Order No. 80401 - Effective 06/01/70
(39) Order No. 80402 - Effective 06/01/70
(40) Order No. 81221 - Effective 08/01/70
(41) Order No. 81222 - Effective 08/01/70
(42) Order No. 83168 - Effective 01-01-71
(43) Order No. 84223 - Effective 04-01-71
(44) Order No. 84224 - Effective 04-01-71
(45) Order No. 84318 - Effective 03-29-71
(46) Order No. 85138 - Effective 06-01-71
(47) Order No. 85139 - Effective 06-01-71
(48) Order No. 87730 - Effective 01-01-72
(49) Order No. 87829 - Effective 01-01-72
(50) Order No. 93381 - Effective 10-05-72
(51) Order No. 93382 - Effective 10-05-72
(52) Order No. 94418 - Effective 01-01-73
(53) Order No. 96671 - Effective 04-01-73
(54) Order No. 87829 - Effective 01-01-72
(55) Order No. 94418 - Effective 01-01-73
(56) Order No. 102096 - Effective 01-01-74
(57) Order No. 109595 - Effective 01-01-75
(58) Order No. 117899 - Effective 03-01-76
(59) Order No. 128534 - Effective 03-01-77
(60) Order No. 128781 - Effective 03-01-77
(61) Order No. 138348 - Effective 03-01-78
(62) Order No. 151077 - Effective 03-23-79
(63) Order No. 161968 - Effective 01-03-80
(64) Order No. 164345 - Effective 03-17-80
(65) Order No. 164346 - Effective 02-14-80
(66) Order No. 164347 - Effective 02-14-80
(67) Order No. 165935 - Effective 04-01-80
(68) Order No. 185407 - Effective 03-09-81
(69) Order No. 185890 - Effective 03-16-81
(70) Order No. 187373 - Effective 04-02-81
(71) Order No. 211505 - Effective 03-30-82
(72) Order No. 228675 - Effective 01-01-83
(73) Order No. 230515 - Effective 01-01-83
(74) Order No. 230781 - Effective 01-01-83
(75) Order No. 246797 - Effective 01-01-84
(76) Order No. 250273 - Effective 01-01-84
(77) Order No. 250466 - Effective 01-01-84
(78) Order No. 260734 - Effective 07-01-84
(79) Order No. 290210 - Effective 01-09-86
(80) Order No. 292212 - Effective 02-10-86
(81) Order No. 299185 - Effective 06-12-86
(82) Order No. 302126 - Effective 10-08-86
(83) Order No. 303650 - Effective 10-02-86
(84) Order No. 304257 - Effective 10-16-86
(85) Order No. 305211 - Effective 11-07-86
(86) Order No. 311872 - Effective 05-06-87
(87) Order No. 312391 - Effective 05-14-87
(88) Order No. 310755 - Effective 06-01-87
(89) Order No. 313445 - Effective 06-12-87
(90) Order No. 313446 - Effective 07-09-87
(91) Order No. 313660 - Effective 06-17-87
(92) Order No. 313932 - Effective 06-25-87
(93) Order No. 314001 - Effective 06-27-87
(94) Order No. 313446 - Effective 07-09-87
(95) Order No. 315275 - Effective 08-19-87
(96) Order No. 320171 - Effective 12-21-87
(97) Order No. 320741 - Effective 01-08-88
(98) Order No. 320742 - Effective 01-08-88
(99) Order No. 321123 - Effective 01-21-88
(100) Order No. 323847 - Effective 05-01-88
(101) Order No. 325144 - Effective 05-02-88
(102) Order No. 326275 - Effective 06-27-88
(103) Order No. 326343 - Effective 06-01-88
(104) Order No. 326344 - Effective 06-01-88
(105) Order No. 327514 - Effective 07-01-88
(106) Order No. 327515 - Effective 07-01-88
(107) Order No. 329661 - Effective 08-26-88
(108) Order No. 329662 - Effective 08-26-88
(109) Order No. 329663 - Effective 08-26-88
(110) Order No. 334130 - Effective 01-04-89
(111) Order No. 337475 - Effective 03-31-89
(112) Order No. 337476 - Effective 03-31-89
(113) Order No. 339860 - Effective 05-07-89
(114) Order No. 341102 - Effective 08-25-89
(115) Order No. 341103 - Effective 08-14-89
(116) Order No. 346071 - Effective 03-29-90
(117) Order No. 346107 - Effective 03-30-90
(118) Order No. 355458 - Effective 03-20-91
(119) Order No. 355461 - Effective 03-20-91
(120) Order No. 355463 - Effective 03-20-91
(121) Order No. 355471 - Effective 03-21-91
(122) Order No. 364365 - Effective 06-25-92
(123) Order No. 364382 - Effective 06-25-92
(124) Order No. 368011 - Effective 05-23-93
(125) Order No. 372796 - Effective 06-25-93
(126) Order No. 381632 - Effective 07-11-94
(127) Order No. 381755 - Effective 07-11-94
(128) Order No. 387223 - Effective 10-20-94
(129) RM No. 950000023 - Effective 07-01-96
(130) RM No. 950000024 - Effective 07-01-96
(131) RM No. 950000025 - Effective 07-11-96
(132) RM No. 960000008 - Effective 07-01-96
(133) RM No. 960000009 - Effective 07-01-96
(134) RM No. 960000018 - Effective 10-15-96
(135) RM No. 970000002 - Effective 07-01-97

(136) RM No. 970000011 - Effective 07-01-98
(137) RM No. 970000025 - Effective 07-11-98
(138) RM No. 980000013 - Effective 07-15-98
(139) RM No. 980000016 Emergency, - Effective 03-30-98
(140) RM No. 980000017 Emergency, - Effective 03-30-98
(141) RM No. 980000020 Emergency, - Effective 01-05-99
(142) RM No. 980000033 - Effective 07-01-99
(143) RM No. 980000034 - Effective 07-01-99
(144) RM No. 980000035 - Effective 07-01-99
(145) RM No. 990000010 - Emergency, - Effective 12-28-99
(146) RM No. 200000002 - Effective 07-01-00
(147) RM No. 200000009 - Emergency, - Effective 11-02-00
(148) RM No. 200000009 - Permanent, - Effective 05-11-01
(149) RM No. 200100005 - Effective 07-01-01
(150) RM No. 200100006 - Effective 07-01-01
(151) RM No. 200100009 - Emergency, - Effective 01-14-02
(152) RM No. 200200017 - Effective 07-01-02
(153) RM No. 200300001 - Effective 07-01-03
(154) RM No. 200400006 - Effective 07-01-04
(155) RM No. 200600012 - Effective 07-01-06
(156) RM No. 200600013 - Emergency, - Effective 10-04-06
(157) RM No. 200700004 - Effective 07-01-07
(158) RM No. 200800003 - Effective 07-11-08
(159) RM No. 200900001 - Effective 07-11-09
(160) RM No. 201000003 - Effective 07-11-10
(161) RM No. 201100004 - Emergency, - Effective 05-19-11
(162) RM No. 201000007 - Effective 07-11-11
(163) RM No. 201200005 - Effective 07-01-12
(164) RM No. 201300001 - Effective 07-01-13

165:10-1-7. Prescribed forms

(a) Required Conservation Division forms may be submitted to the Commission on forms supplied by the Commission or on xerographic copies of Commission forms or by operator computer generated forms. Operator computer generated forms will be printed from Commission designed files made available to operators via the electronic Bulletin Board Service (BBS), Internet (World Wide Web) or magnetic disk. Operator computer generated forms must contain the exact language and wording of Commission forms. Any alteration of Commission forms language and wording may subject the signature party and/or operator to perjury charges.

(b) The following Conservation Division forms are prescribed for filing purposes:

(1) **Form 1000 - Notice of Intention to Drill application:**Operator shall file Form 1000 before any oil, gas, injection, disposal, service well or stratigraphic test hole is drilled, recompleted, re-entered or deepened. Such notice shall include the name(s) and address(es) of the surface owner(s) of the land upon which the well is to be located. The Commission shall process the application and mail a copy of the permit to drill or re-enter to the surface owner(s). Upon approval, the operator will have six months to commence the permitted operations. A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if written request for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted. A copy of the approved permit shall be posted at the well site. [Reference 165:10-3-1 and 165:10-1-25 and OAC 165:10-7-31]

(2) **Form 1000B - Application to Drill Deep Anode Groundbeds:**Form 1000B is required to be filed for wells drilled for deep anode groundbeds as required by OAC 165:10-7-14. The purpose of Commission Form 1000B is to ensure groundwater is being protected in construction of the deep anode groundbed. [Reference 165:10-7-14]

(3) **Form 1000S - Application for seismic operations:**A permit for seismic operations must be obtained. The applicant must post a $50,000 bond with the Surety Department in the Oil and Gas Conservation Division. The application must also be accompanied with a pre-plat of the project area. [Reference 165:10-7-31]

(4) **Form 1001 - Notification of Intention to Plug:**Operator shall file notice on Form 1001, in duplicate, five days prior to plugging operations and shall notify the appropriate Conservation Division District Office before work is started. If the well is an exhausted producer, list OTC assigned county and lease number. If the Intent to Plug is cancelled, the operator shall notify the Commission by letter. [Reference 165:10-11-4 and 165:10-11-6]

(5) **Form 1001A - Notification of Spudding of New Well:** Operator shall file a Form 1001A with the Conservation Division within 14 days of spudding a new well or reentering a previously plugged well. [Reference 165:10-3-2]

(6) **Form 1002A - Well completion report:**Operator shall furnish a complete well record on Form 1002A within 30 days after completion of operations to drill, recomplete, re-enter, or convert to injection or disposal well. Effective for both dry hole and/or producer. If well is an oil or gas producer, list OTC assigned county and lease number. Gas-oil ratio must be shown when Form 1002A is filed. List on a 24-hour basis both oil and gas. [Reference 165:10-3-25]

(A) **Oil well:**GOR less than 15,000:1

(B) **Gas well:**GOR 15,000:1 or more

(7) **Form 1002B - Confidential Filing of Electric Logs:**Operator shall file Form 1002B within 60 days from the earlier of the date of completion of the well or the date of the running of the last formation evaluation type wire line log to hold logs confidential for one year period. Optional extension for six months may be requested by operator in writing to the Technical Services Department of the Conservation Division. [Reference 165:10-3-26]

(8) **Form 1002C - Cementing Report to accompany Well Completion Report:**Operator shall file Form 1002C with the Well Completion Report (Form 1002A) describing all cementing operations on surface, intermediate, and production casing strings, including multistage cementing jobs. The form shall be completed and signed by employees of both the operator and the cementing company. [Reference 165:10-3-4(i)]

(9) **Form 1003 - Plugging Record:** Operator will file Form 1003, in duplicate, within 30 days after plugging operations are completed. Both copies are to be mailed to the appropriate Conservation Division District Office. Form 1003 shall be completed and signed by employees of both the operator and the cementer. If a depleted producer, list OTC assigned county and lease number. [Reference 165:10-11-6 and 165:10-11-7]

(10) **Form 1003A - Notice of Temporary Exemption from Well Plugging:**Form 1003A shall be filed with the appropriate Conservation Division District Office. [Reference 165:10-11-3 and 165:10-11-9]

(11) **Form 1003A - Notice of Temporary Exemption from Well Plugging:**Form 1004 - Monthly Report of Unallocated Natural Gas Wells Production: Each operator of the required meter under 165:10-17-5 shall file a monthly well report on Form 1004 with the Commission of all natural gas volumes transferred through the meter for the preceding month, by the last day of the month following such transfer. List formation name plus OTC assigned county and lease number. If more than one meter, the operator of each shall file this form. [Reference 165:10-1-47]

(12) **Form 1004B - Notice of Gas Purchase Curtailments:** In any month wherein a first purchaser or first taker has a market demand/supply imbalance and must curtail purchases or takes in compliance with 165:10-17-12, Form 1004B shall be filed by said first purchaser or first taker with the Conservation Division. [Reference 165:10-17-12]

(13) **Form 1005 - Monthly Report of Purchasers** (Gas: subject to field rules): [Reference 165:10-1-47 and 165:10-15-1]

(A) **GAS:** Each operator of the required meter or meters under 165:10-17-5 shall complete computer-generated Form 1005, and return a copy to the Conservation Division indicating the gas amounts transferred through the meter for the preceding month on allocated and special allocated gas wells.

(B) **OIL:** Each first purchaser, or first taker of oil from wells and projects which are capable of producing in excess of their maximum assigned allowables, must complete computer-generated Form 1005 and return a copy to the Conservation Division indicating the amount of oil taken from each well or unit for the preceding month.

(14) **Form 1006 - Surety bond for oil, gas, injection, or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a surety bond ($25,000.00) or other present alternate surety, Form 1006A or 1006C. Operator must file the original copy only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. [Reference 165:10-1-10 and 165:10-1-12]

(15) **Form 1006A - Financial Statement for oil, gas, injection or disposal wells:** Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division a verifiable financial statement (minimum net worth $50,000.00 within the State of Oklahoma) or other present alternate surety, Form 1006 or 1006C. Operator must file an original copy on Form 1006A, which must be updated annually from the last filing date. [Reference 165:10-1-10 and 165:10-1-11]

(16) **Form 1006B - Operator Agreement to plug oil, gas, and service wells within the State of Oklahoma:**Operator shall agree to plug well(s) in compliance with the Commission rules. This agreement must accompany the operator's elective choice of surety (Form 1006, 1006A, or 1006C). The operator is required to file a Form 1006B with the Conservation Division once every twelve (12) months. [Reference 165:10-1-10, 165:10-1-11, 165:10-1-12, 165:10-1-13, and 165:10-1-14]

(17) **Form 1006BR - Recycling, Reclaiming Operator's Agreement to Close the Reclaiming Facility:**Prior to operating a recycling or reclaiming facility the operator shall file an agreement to close the facility in compliance with OCC rules. This agreement must accompany the application for certification (Form 1020A). [Reference 165:10-8-5]

(18) **Form 1006BR-A - Operator agreement to close hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file agreements with the Commission concerning closure of such facilities. [Reference 165:10-8-5]

(19) **Form 1006BR-B - Surety for closure of hydrocarbon recycling/reclaiming facility:** Operators of hydrocarbon recycling/reclaiming facilities are required to file surety with the Commission for closure and reclamation of such facilities. [Reference 165:10-8-5]

(20) **Form 1006C - Irrevocable commercial letter of credit:**Prior to drilling and/or operating a well, the operator shall furnish the Conservation Division an irrevocable commercial letter of credit ($25,000.00) or other present alternate surety, Form 1006A or 1006. Operator must file the original copy with the bank seal affixed. A letter of credit must be valid for at least a one year period. [Reference 165:10-1-10 and 165:10-1-13]

(21) **Form 1006D - Affidavit of well plugging costs:** An operator may submit an affidavit on Form 1006D to the Conservation Division concerning the operator's statewide plugging liability. The Commission may approve Category B surety in an amount less than $25,000.00 for an operator whose statewide plugging liability is less than $25,000.00. The Form 1006D must be properly executed by a duly licensed pipe pulling and well plugging

company and such Form must be acceptable to the Conservation Division. [Reference 165:10-1-10, 165:10-1-12, 165:10-1-13 and 165:10-1-14]

(22) **Form 1006S - Operator's agreement to plug seismic shot holes within the State of Oklahoma:**Prior to commencing seismic operations the operator shall file an agreement to plug shot holes in accordance with Commission rules. This agreement must accompany the financial surety guarantee. [Reference 165:10-7-31]

(23) **Form 1006SB - Surety bond for seismic shot hole plugging within the State of Oklahoma:**Before commencing any seismic operation that requires the drilling of shot holes, those companies actually doing the work in the field must secure a bond in the amount of $50,000.00. Seismic companies must file the original Form 1006SB only with a copy of the power of attorney from the bonding company. The name and address of the Oklahoma resident service agent shall be endorsed on the bond form. Form 1000S shall be filed with the bond. [Reference 165:10-11-6 and 165:10-7-31]

(24) **Form 1007A - IBM operator annual unallocated natural gas wells survey:**Annual Survey Form 1007A will be furnished to all operators at the end of each calendar year in duplicate. The form shall be updated by the operator as of December 31 notifying the Commission of any new wells, wells sold (to whom and address), or abandoned since the last 1007A was filed. Original only shall be forwarded to Conservation Division by February 15th for the previous year's activity. List OTC assigned county and lease number (if not imprinted). [Reference 165:10-17-16]

(25) **Form 1010 - Application for Cancelled Underage:**Operator shall file, within 30 days for oil, and six months for special allocated and allocated gas from the date of cancellation, to reinstate cancelled underage; stating reason for this request and notifying all offset operators. List OTC assigned county and lease number. [Reference 165:10-13-10 and 165:10-17-9]

(26) **Form 1011-Multi-Zone lease runs report:**If there are two or more common sources of supply that are produced through a well or wells on the same lease or drilling and spacing unit and that are not commingled, production from each common source of supply shall be separately produced, measured and/or accounted for to the Commission. If one or more of the zones produced are classified as oil for allowable purposes, the operator is required to submit to the Conservation Division a multi-zone report on Form 1011 showing the production from each oil-bearing common source of supply on or before the last day of the succeeding proration period. [Reference 165:10-13-7]

(27) **Form 1012 - Fluid Injection Report:**Operators shall file Form 1012 by April 1 of each year covering the previous calendar year (January 1 through December 31) on all enhanced recovery projects, pressure maintenance projects, salt water disposal wells, LPG storage wells, authorized waterfloods and gas repressuring projects (commercial disposal wells will report two times per year by January 31 and July 31 for the previous six-month period) for each UIC well. The completed form will list well identification including API number, the Commission order number, injection volume and pressure, etc., as required on the form. No UIC well is to be operated for injection or disposal unless the Form 1012 is filed by the above dates. [Reference 165:10-5-7].

(28) **Form 1013 - Application for adjusting an allowablefor an Excessive Water Exemption or Reservoir Dewatering Oil Spacing unit:**An operator in an unallocated oil pool may be permitted to produce at a full capacity allowable rate, provided that the water-oil ratio at the well is greater than or equal to 3:1 as an excessive water exemption. To qualify for the reservoir dewatering oil spacing unit allowable shown on Appendix J, the operator must provide data to show that the water - oil ratio is greater than 1:1. The operator shall submit a production test on Form 1013 to the Conservation Division. [Reference 165:10-15-1, 165:10-15-16, 165:10-15-17 and 165:10-15-18].

(29) **Form 1014 - Application for Permit to Use Earthen Pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with commercial disposal well surface facility:**The operator of a proposed off-site reserve pit, recycling/reuse pit, spill containment pit, remediation pit, noncommercial disposal or enhanced recovery well pit used for temporary storage of saltwater, or pit associated with a commercial disposal well surface facility must submit Form 1014 in duplicate to the appropriate Conservation Division District Office for approval before constructing or using the pit. [Reference 165:10-7-16, 165:10-7-20 and 165:10-9-3]

(30) **Form 1014A - Commercial facility report:** A report that operators of hydrocarbon recycling/reclaiming facilities, commercial pits, commercial soil farming sites and commercial recycling facilities are required to submit to the Manager of Pollution Abatement. [Reference 165:10-8-8, 165:10-9-1, 165:10-9-2 and 165:10-9-4]

(31) **Form 1014C - Chain of custody record/analysis request:** Form 1014C is available for use by Commission personnel when samples are collected for submission to and analysis by a laboratory certified by the Oklahoma Water Resources Board or operated by the State of Oklahoma.

(32) **Form 1014CA - Compliance agreement for land application:** Any person responsible for supervision of land application must submit a compliance agreement to the Commission. [Reference 165:10-7-19 and 165:10-7-26]

(33) **Form 1014CR - Application for commercial recycling facility construction:** After a Commission order is obtained, Form 1014CR must be submitted for approval to the Manager of Pollution Abatement prior to the construction of the commercial recycling facility authorized by the order. [Reference OAC 165:10-9-4]

(34) **Form 1014CS - Application for Commercial Soil Farming:** For a commercial soil farming site that has an order to operate, the operator shall submit a Form 1014CS

to the Pollution Abatement Department for approval prior to commencing soil farming. [Reference 165:10-9-2]

(35) **Form 1014D - Application for Surface Discharge or for reclaiming and/or recycling of produced water:** Each application for surface discharge of produced water or for reclaiming and/or recycling of produced water must be submitted to the appropriate Conservation Division District Office on Form 1014D in quadruplicate. Applications will be processed within five working days. [Reference 165:10-7-17 or 165:10-7-32]

(36) **Form 1014F - Application for permit to use flow back water pit with capacity in excess of 50,000 barrels:** The operator of a proposed flow back water pit with a capacity in excess of 50,000 barrels must submit the Form 1014F to and obtain the approval of the Manager of Field Operations or obtain the issuance of a Commission order before constructing or using the pit. [Reference 165:10-7-16]

(37) **Form 1014HD - Notice for Disposal of Hydrostatic Test Water:** Companies wishing to discharge water as required by OAC 165:10-7-17, used to test a pipeline, tank, etc. must submit a Form 1014HD to the appropriate Conservation Division District Office and the Pollution Abatement Department for prior approval. [Reference 165:10-7-17]

(38) **Form 1014L - Surface Owner Permission for Land Application:** Each application for land application must include an original Form 1014L, whereby the applicable surface owner gives permission for the applicant to land apply certain deleterious substances to a specific property. [Reference 165:10-7-17, 165:10-7-19 and 165:10-7-26]

(39) **Form 1014LA - Designation of land application agent:** A notarized affidavit designating any agent of an operator for land application must be submitted to the Commission. [Reference 165:10-7-17, 165:10-7-19 and 165:10-7-26]

(40) **Form 1014LC - Letter of credit for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(~~40~~41) **Form 1014N - Application for Commercial Pit Construction:** After a Commission order is obtained, Form 1014N must be submitted for approval by the Manager of Pollution Abatement prior to the construction of each commercial pit authorized by the order. [Reference 165:10-9-1]

(~~41~~42) **Form 1014P - Annual report for surface discharge:** An annual report is required to be submitted to the Commission by April 1 of each year on Form 1014P concerning surface discharges of produced water. Current (within three month) analyses of the produced water and soil from the discharge plot must be attached to the annual report. [Reference 165:10-7-17]

(~~42~~43) **Form 1014R - Post land application report**: A post land application report shall be submitted by the operator or the operator's agent to the Manager of Pollution Abatement within ninety (90) days of the completion of land application. [Reference 165:10-7-19 and 165:10-7-26]

(~~43~~44) **Form 1014S - Application for Land Application:** Each application for land application of materials must be submitted to the Pollution Abatement Department on Form 1014S. An original and three copies are required. The applicant must be the operator of the well or other operator responsible for generating the waste to be land applied, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure, and the Oklahoma Energy Resources Board or its contractor may apply in cases where there is no responsible party. The Form 1014S shall be processed within five working days of submission of all required or requested information. [Reference 165:10-7-19 and 165:10-7-26]

(45) **Form 1014SB - Surety bond for land application:** Persons who contract to land apply materials are required to file surety with the Commission. [Reference 165:10-7-10]

(46) **Form 1014T - Application for permit to use truck wash pit:** The operator of a proposed truck wash pit must submit Form 1014T in duplicate to the appropriate Conservation Division District Office and obtain a permit before constructing or using the pit. [Reference 165:10-7-33]

(~~44~~47) **Form 1014W - Application for waste oil or drill cuttings use by County Commissioners:** Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any Board of County Commissioners on Form 1014W. An original and one copy are required to be submitted to the appropriate District Manager. [Reference 165:10-7-22 and 165:10-7-28]

(~~45~~48) **Form 1014X - Application for waste oil or drill cuttings use by operators:** Application to apply waste oil, waste oil residue, crude oil contaminated soil or freshwater drill cuttings must be made by any operator on Form 1014X. An original and one copy are required to be submitted to the appropriate District Manager. [Reference 165:10-7-27 and 165:10-7-29]

(~~46~~49) **Form 1015 - Application for Administrative Approval to Dispose of or Inject Water into Well(s) or to amend existing orders authorizing injection for enhanced recovery, saltwater disposal or LPG storage well(s):** Applicant shall file an original of the application and one complete set of attachments with the Commission on Form 1015. When requesting approval to dispose of or inject water into wells, applicant will also furnish copies of the application on Form 1015 to the surface owner and with regard to injection or disposal wells with a requested injection rate of less than five thousand barrels per day to each operator of a producing spacing unit or well within one-half (1/2) mile of the proposed noncommercial injection or disposal well location, and to each operator of a producing spacing unit or well within one (1) mile of either a proposed noncommercial injection or disposal well

location with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well location within five (5) days of the filing of the application and applicant will submit an affidavit of delivery or mailing to the Commission not later than five days after the application is filed. In addition, if the application involves a proposed horizontal injection or disposal well, a copy of the application for approval shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of the proposed noncommercial injection or disposal well with a requested injection rate of less than five thousand barrels per day, and to each operator of a producing spacing unit or well within one (1) mile of the lateral of either a proposed noncommercial injection or disposal well with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well. Further, if the application involves a proposed commercial disposal well, a copy of the application for approval shall be served within five (5) days of the date the application is filed by regular mail or delivered to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well. Applicant shall file with the Commission proof of publication regarding the notice of application in an Oklahoma County newspaper and a county newspaper in which the well is located. [Reference 165:10-5-2, 165:10-5-5, 165:5-7-27 and 165:5-7-30]

(~~47~~50) **Form 1015SI - Application for Permit for Simultaneous Injection Well:** Operator shall file original and three copies with the Underground Injection Control Department on Form 1015SI. A copy of the form will also be supplied to the operator of any producing lease within one-half (1/2) mile of the proposed injection well. [Reference 165:10-5-15]

(~~48~~51) **Form 1015T - Application for Injection of Reserve Pit Fluids:** Each application for the on-site injection of reserve pit fluids (i.e., drilling mud fluids or fracture fluids) used in drilling or well completion shall be filed with the Underground Injection Control Department by the well operator on Form 1015T. The original and three copies of the application and one complete set of attachments shall be furnished to the Underground Injection Control Department. A copy of the application will also be supplied to the land owner and the operator of any producing lease within one-half (1/2) mile of the proposed well. [Reference 165:10-5-13]

(~~49~~52) **Form 1015U - Unit-wide application for Injection:** Optionally, the operator can file a unit-wide application for injection (Form 1015U) that fulfills all the requirements of 165:5-7-27 (b) through (e). Upon review and approval, the operator receives a unit-wide order that allows the operator to file an individual well application (Form 1015) and if it fits the unit-wide criteria, the UIC order can be issued immediately without an additional area of review, notice, or protest period. [Reference 165:5-7-27]

(~~50~~53) **Form 1016 - Back Pressure Test for Natural Gas Wells:** Operators and/or purchasers, on the Form 1016, will report all single-point and four-point potential tests as required by pool rule orders or general rules. List OTC assigned county and lease numbers and special allocated pool numbers, first date of sales, and complete flow data. [Reference 165:10-17-6 and 165:10-17-7]

(~~51~~54) **Form 1017 - Guymon-Hugoton Field Gas Well Deliverability Tests:** Operators and/or purchasers of gas in this field shall take deliverability tests between January 1 and August 31 of each year, and on the test sheet Form 1017 file the results with the Commission. List OTC assigned lease number for each well. [Reference Orders No. 17867 and 87291 and 165:10-17-9]

(~~52~~55) **Form 1019 - Guymon-Hugoton Field Acreage Statement for Gas Wells:** A fact statement as to acreage attributable to each well shall be filed with the Commission on Form 1019 within 30 days of the well completion with a plat or map showing location of the well. List OTC assigned county and lease number. [Reference Order No. 17867 and 165:10-17-9]

(~~53~~56) **Form 1020A - Application for Certification for the Recycling, Reuse of Deleterious Substances:** Applicant shall file an original Form 1020A with necessary attachments with the Pollution Abatement Department. Form 1020A is filed prior to construction of facility or change of operator. [Reference 165:10-8-1 through 165:10-8-11]

(~~54~~57) **Form 1021 - Application for Priority Hardship Classification:** The applicant shall file Form 1021 and the necessary attachments with the Technical Services Department for review prior to any hearing for priority one hardship classification. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

(~~55~~58) **Form 1021A - Application for limited deviation from the priority gas rules:** The applicant shall file Form 1021A and the necessary attachments with the Technical Services Department for review prior to any hearing for deviation from the priority gas rules. In addition, a formal application for hearing must be filed with the Court Clerk's Office of the Commission. [Reference 165:10-17-12]

(~~56~~59) **Form 1022 - Application to flare or vent gas:** Operator shall file one copy of Form 1022 with the Technical Services Department of the Conservation Division listing OTC assigned county lease number. [Reference 165:10-3-15]

(~~57~~60) **Form 1022A - Application to operate vacuum pump:** Operator shall file one copy of Form 1022A with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-3-31]

(~~58~~61) **Form 1023 - Application for multiple completion, multichoke assembly or commingle completion:** Operator will file the original and four copies of Form 1023 with the required attachments. List OTC assigned

county and lease number. [Reference 165:10-3-35; 165:10-3-39; 165:10-3-37]

(~~59~~62) **Form 1024 - Packer setting affidavit:** Operator will submit Form 1024 as required. [Reference 165:10-3-35 and pertinent field rules]

(~~60~~63) **Form 1025 - Packer leakage test:** Operator will submit Form 1025 as required. [Reference 165:10-3-35 and pertinent field rules]

(~~61~~64) **Form 1027 - Bottom hole pressure test:** Operator, on the pink sheet of Form 1027, shall take BHP tests in the manner and during periods prescribed by special field rules. List OTC assigned county and lease numbers. [Reference Special Field Rules and 165:10-13-3]

(~~62~~65) **Form 1028 - Application for discovery oil allowable:** Operator shall file Form 1028 with the required exhibits and tests within 30 days of completion of each new well in a discovery oil pool. [Reference 165:10-15-7]

(~~63~~66) **Form 1029A - Production or potential test - oil only:** Operator of each newly completed discovery oil well shall file a potential test Form 1029A not later than 30 days after completion of the well. All tests, if requested, shall be witnessed by another operator. [Reference 165:10-15-7].

(~~64~~67) **Form 1030 - Application for allowable adjustment:** Each operator or other interested parties desiring to adjust the allowable for a well or wells shall file Form 1030 for administrative review and approval. The allowable may be increased, decreased, or transferred as the evidence may indicate for the most efficient rate of production from the well or wells. [Reference 165:10-13-5, 165:10-13-8, 165:10-15-18 and 165:5-7-12]

(~~65~~68) **Form 1034 - Nominations and purchasers report:** [Reference 165:10-1-36, 165:10-1-37 and 165:10-1-46] **Oil:** Purchasers will furnish nomination data, actual runs from leases, stocks, and other information on Form 1034 to the Conservation Division not later than noon Friday of the week preceding each scheduled market demand hearing. On months in which no market demand hearing is held, Form 1034 shall be filed by the 20th of the month listing crude oil runs for the previous month on line 5 only. Any change in nominations from the previous hearing shall be so indicated on this monthly report.

(~~66~~69) **Form 1034-G - Gas nominations:** Operators of natural gas wells in special allocated gas pools where well allowable calculations according to special allocated field rules are in effect shall file their pool nominations on Form 1034-G no later than one week prior to the market demand hearing. [Reference 165:10-1-36, 165:10-1-37, 165:10-1-49 and 165:10-17-9].

(70) **Form 1036 - Complaint Notice:** Form 1036 may be issued by Commission personnel regarding alleged violations of Commission orders or rules, and specify a time period for compliance [Reference 165:10-3-17 and 165:10-7-7].

(71) **Form 1036A - Contempt Citation:** Form 1036A may be issued by Commission personnel regarding the categories of rule violations appearing in Appendices E and F to this Chapter [Reference 165:10-3-17, 165:10-7-7 and 165:10-7-9].

(~~67~~72) **Form 1040 - Monthly allocation schedule (gas):** Monthly gas schedule Form 1040 will be forwarded to operators by the Conservation Division indicating the status of special allocated gas wells and their current allowables. Operators will inform the Conservation Division of errors, if any, found in Form 1040 as promptly as possible. Additionally, purchasers will receive the monthly schedule and shall return the production from each well as requested. [Reference 165:10-1-47]

(~~68~~73) **Form 1055 - Application for Pipe Pulling and Well Plugging License:** No person shall contract to pull casing or plug oil, gas, injection, disposal, or other service wells, or contract to salvage casing therefrom, or purchase wells for the purpose of salvaging casing therefrom until a license has been secured from the Commission. [Reference 165:10-11-1]

(~~69~~74) **Form 1070 - Inventory of authorized existing enhanced recovery wells:** Operators shall file reporting Form 1070 before injecting into any enhanced recovery well. [Reference 165:10-5-3]

(~~70~~75) **Form 1071 - Inventory of authorized existing disposal wells:** Operators shall file the reporting Form 1071 before disposing into any disposal well. [Reference 165:10-5-3]

(~~71~~76) **Form 1072 - Notice of termination of injection:** Within 30 days of the termination of injection Form 1072 must be filed. [Reference 165:10-5-7]

(~~72~~77) **Form 1073 - Notice of transfer of well operatorship:** The new operator shall file Form 1073 to notify the Conservation Division of any change of operation of any oil or gas well within 30 days after transfer of the well. [Reference 165:10-1-15]

(~~73~~78) **Form 1073I - Notice of transfer of well operatorship:** The new operator shall file Form 1073I to notify the Underground Injection Control Section of any change of operation of any injection, disposal, enhanced recovery injection or hydrocarbon storage well within 30 days after transfer of the well. [Reference 165:10-5-10]

(~~74~~79) **Form 1075 - Mechanical integrity pressure test:** A pressure or monitoring test must be performed on new and existing enhanced recovery injection wells and disposal wells. Information must be submitted on Form 1075 and witnessed by a Field Inspector. Forms shall be submitted to the Conservation Division's Underground Injection Control Department. [Reference 165:10-5-6]

(~~75~~80) **Form 1081 - Mineral owners escrow account:** Operator shall file, in quadruplicate, Form 1081 annually on anniversary date of first pooling order issued after effective date of Senate Bill 299 (7-1-84) and shall include all applicable orders issued during the twelve-month reporting period. [Reference 165:10-25-1 through 165:10-25-10]

(~~76~~81) **Form 1085 - Complaint report:** Form 1085 is used by Commission personnel to report violations of General Rules of the Commission and to report progress

on ongoing remedial actions. Copies are sent to all parties concerned with investigation. Form 1085 combines and replaces old Forms 1034 and 1062. [Reference 165:10-7-7]

(~~77~~82) **Form 1139 - Application for gross production tax exemption:** Operators shall file one copy of Form 1139 with the required attachments with the Technical Services Department of the Conservation Division. [Reference 165:10-21-75 through 165:10-21-80]

(~~78~~83) **Form 1534 - Application for tax rebate:** Operators shall file one original of Form 1534 with the required attachments with the Technical Services Department of the Conservation Division. To obtain the tax exemption of the gross production tax, the operator shall forward a copy of the Commission approval to the Oklahoma Tax Commission, together with any other data required by that agency. [OTC Rule 10.030.03] [Reference 165:10-21-23, 165:10-21-37, 165:10-21-57, 165:10-21-67 and 165:10-21-82.2]

(~~79~~84) **Form 1535 - Application for classification of reservoir dewatering project for exemption of sales tax on electricity used for such operations and application for state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease:** Operators shall file one original of Form 1535 with the required attachments with the Technical Services Department of the Conservation Division. To obtain the exemption of sales tax on the sale of electricity and associated delivery and transmission used for reservoir dewatering operations, or for a state sales tax exemption for electricity sold for operations involving enhanced recovery methods on a spacing unit or lease, the operator shall contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194. [Reference 165:10-21-90 through 165:10-21-92 and 165:10-21-95 through 165:10-21-97]

(~~80~~85) **Form 2000BF - AAI Oversight Qualification:** The Applicant shall file one (1) original of Form 2000BF with the Brownfields Program of the Conservation Division listing the qualifications as per AAI of each Environmental Professional who will work on the site. [Reference 165:10-10-1 through 165:10-10-14]

(~~81~~86) **Form 2001BF - Brownfields Applicant Eligibility:** The applicant shall file one (1) original of Form 2001BF with the Brownfields Program of the Conservation Division. This Form is filed to demonstrate applicant's eligibility to be in the Brownfields program. [Reference 165:10-10-1 through 165:10-10-14]

(~~82~~87) **Form 2002BF - Consent to Entry:** The applicant shall file one (1) original of Form 2002BF with the Brownfields Program of the Conservation Division. This Form is the landowner's permission for applicant and their contractors to enter the property for assessment and cleanup work. Copies will be sent to all parties concerned with the assessment and/or cleanup. [Reference 165:10-10-1 through 165:10-10-14]

(~~83~~88) **Form 2003BF - Application for Brownfields Site Eligibility:** The applicant shall file one (1) original of Form 2003BF with the Brownfields Program of the Conservation Division for all sites applicant is entering into the program. This Form provides necessary information on the site. [Reference 165:10-10-1 through 165:10-10-14]

(~~84~~89) **Form 2004BF - Application for Brownfields Site Assessment:** The applicant shall file one (1) original of Form 2004BF with the Brownfields Program of the Conservation Division. This Form can be used by public, quasi-public, and non-profit entities to request a free Targeted Brownfields Assessment of a site that has been approved as eligible for the Brownfields program. [Reference 165:10-10-1 through 165:10-10-14]

(~~85~~90) **Form 2005BF - Brownfields Certificate of NFA:** The Form 2005BF will be issued by the Commission to the Brownfields Applicant, after the Brownfields staff has made a no further action (NFA) necessary decision. The applicant must file the Certificate of NFA in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

(~~86~~91) **Form 2006BF - Brownfields Certificate of Remediation Completion:** The Form 2006BF will be issued by the Commission to the Brownfields Applicant, after the Brownfields staff has made a final inspection of the site and review of the project following a remedial action. The applicant must file the Certificate of Completion and any land use restrictions in the office of the county clerk where the site is located, provide a copy to the landowner if the landowner is not the applicant, and submit a file-stamped copy to the Oklahoma Corporation Commission within 30 days. [Reference 165:10-10-1 through 165:10-10-14]

SUBCHAPTER 3. DRILLING, DEVELOPING AND PRODUCING

PART 3. COMPLETIONS

165:10-3-15. Venting and flaring

(a) **Conditioning a producing well without a permit.** An operator may blow down a producing well without a permit for a period not to exceed 72 hours if:

(1) Blowing down the well is necessary for efficient operation of the well or unexpected circumstances are encountered~~.~~;

(2) Blowing down the well will not damage any producing formation in the well~~.~~; and

(3)The operator complies with the H_2S requirements of 165:10-3-16.

(b) **Gas volumes less than or equal to 50 mcf/d.** An operator may vent or flare up to 50 mcf/d without a permit if:

(1) It is not economically feasible to market the gas~~.~~;

(2) A suitable stand, line, or stack is used to prevent a hazard to people~~.~~; and

(3) H_2S content of gas exceeds 100 ppm, then the gas must be flared.

(c) **Permit to vent or flare gas volumes in excess of 50 mcf/d.**

(1) The Conservation Division may administratively grant a permit to vent or flare on a daily basis gas volumes in excess of 50 mcf/d, if:

(A) The operator applies for the permit on Form 1022~~.~~;

(B) The application lists the location of the well and the maximum daily volume of gas to be ~~vent~~vented or flared~~.~~;

(C) It is not economically feasible to market the gas~~.~~; and

(D) A suitable stack, stand, or line will be used to prevent a hazard to people or property.

(2) The operator shall file an amended application in the event that the amount of gas to be vented or flared exceeds the permitted volume.

(d) **Temporary permit exemption for gas vented or flared during initial flowback from a newly completed or recompleted well.** Gas vented or flared during initial flowback from a newly completed or recompleted well shall be exempt from the permit requirements of subsection (c) for a period not to exceed 14 days, commencing with the first date gas flow is in excess of 50 mcf/d, if:

(1) Combustible gas flow greater than 50 mcf/d is flared;

(2) Gas with H2S content in excess of 100 ppm is flared;

(3) The operator gives at least 48 hours notice by electronic mail or facsimile to the appropriate Conservation Division District Office or Field Inspector regarding the time when the venting or flaring of gas pursuant to this subsection will begin;

(4) It is not economically feasible to market the gas; and

(5) A suitable stack, stand, or line will be used to prevent a hazard to people or property.

(e) **Gas flared after initial flowback from a newly completed or recompleted well.** Subsequent to the 14 day initial flowback period addressed in subsection (d), gas flared during flowback from a newly completed or recompleted well shall be exempt from the permit requirements in subsection (c) for an additional period not to exceed 30 days if:

(1) Gas volumes flared from the well are less than or equal to an average rate of 300 mcf/d over the 30 day period, and one or more of the following conditions applies:

(A) No appropriate takeaway structure exists;

(B) The well is an exploration well; or

(C) The quality of the gas to be flared is not pipeline acceptable.

(2) Gas with H2S content in excess of 100 ppm must be flared.

(3) A suitable stack, stand, or line must be used to prevent a hazard to people or property.

(4) The well operator is required to maintain a daily log of gas volumes flared from the well during the 30 day period. The daily log must be preserved for 3 years subsequent to the conclusion of the 30 day period. The log shall be produced upon request by an authorized representative of the Commission.

(5) If gas volumes greater than 300 mcf/d are to be flared during flowback from a newly completed or recompleted well subsequent to the initial 14 day period addressed in subsection (d), then the operator is required to obtain a permit as provided in subsection (c).

(~~d~~f) **Application for an order permitting venting or flaring.**

(1) If the Conservation Division denies a Form 1022 application for a well, the operator of a well may apply for an order permitting venting or flaring of gas.

(2) The application and notice shall be in accordance with OAC 165:5-7.

(3) Upon application, notice, and hearing, the Commission may grant or deny an application made pursuant to OAC 165:5-7.

165:10-3-17. Well site and surface facilities

(a) **Scope.** This Section shall be applicable to all operators and owners of oil and gas wells, leases, secondary recovery units, converted or newly drilled saltwater disposal or injection wells, and re-entries or reworkings of the above; however, this Section does not cover pits used in connection with oil and gas operations (see 165:10-7-16).

(b) **Removal of fire hazards.** Any material that might constitute a fire hazard shall be removed a safe distance from the well location, tanks, and separator. All waste oil shall be burned or disposed of in a manner to avoid creating a fire hazard.

(c) **Removal of surface trash.**

(1) All surface trash, debris, and junk associated with the operations of the property shall be removed from the premises. Equipment and material that may be useable and related to the operations of the property are not considered trash, debris and junk. With written permission from the surface owner, the operator may, without applying for an exception to 165:10-3-17(b), bury all nonhazardous material at a minimum depth of three feet; cement bases are included.

(2) The appropriate Conservation Division District Office or field inspector may issue a Form 1036 for any alleged violation of this subsection. If the operator fails to remove trash, debris, and junk after written notice, the Commission may fine the operator up to $1,000.

(d) **Required lease signs.** Within 30 days after the completion of any producing oil or gas well subsequent to the effective date of this Section, a sign shall be posted and maintained at the location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well and the operator's twenty-four hour emergency telephone number, name of the well, number of the well, ~~and~~ legal description of the well and API number; provided, however, where more than one well is producing on a lease, the operator may post

and maintain a sign at the principal lease entrance indicating no trespassing, no unauthorized personnel or similar language, the lease name, operator, the operator's twenty-four hour emergency telephone number, legal description, and number of wells, and on each well designate the number of the well and API number. Within 30 days after completion or recompletion of an enhanced recovery injection well or a disposal well subsequent to the effective date of this Section, a sign shall be posted and maintained at the well location indicating no trespassing, no unauthorized personnel or similar language, showing the operator of the well, the operator's twenty-four hour emergency telephone number, well name, well number, legal description of the well, API number and the Commission order number by which it was authorized. The legal description of each well completed on or after March 1, 1976, shall be posted at the well and shall describe the location of the well to the nearest quarter quarter quarter section and shall show the section, township, and range. On a 160-acre or larger drilling and spacing unit, a sign shall also be posted at the entrance to the well site. Upon the Commission's approval, after the effective date of this Section, of transfer to a new operator of a well completed or recompleted prior to the effective date of this Section, the operator must comply with all requirements in this Section. The appropriate Conservation Division District Office or field inspector may issue Form 1036A for failure to post a required sign. If an operator fails to post a sign as directed, the Commission may fine the operator $50.00 per violation; provided that total fines per incident shall not exceed $500.00 per lease.

(e) **Notice of fire or blowout.** In case of a fire or blowout, the well operator shall notify by telephone or electronic mail, as soon as possible, either the Conservation Division or the appropriate Conservation Division District Office.

(f) **OTC numbers on stock tanks for oil and condensate.**

(1) On all oil and gas producing leases, the first purchaser of crude oil or condensate shall print its name or affix the company logo and print or affix the OTC Gross Production Division Purchaser Reporting Number on at least one of the storage tanks from which marketable liquids are being delivered.

(2) On all oil and gas producing leases, the well operator shall print or affix the OTC Gross Production Division assigned Production Unit Number and the OTC Gross Production Division Operator Reporting Number on at least one of the tanks from which marketable liquids are being stored. In the case of an enhanced recovery or unitization operation where several OTC Gross Production Division assigned Production Unit Numbers exist for the wells in the unit, the word "unitized" shall be printed or affixed to one of the storage tanks from which marketable liquids are being delivered to the purchaser.

(3) The identification numbers required in this subsection shall always be clearly legible. All letters and numbers shall be a minimum of two inches in height. Any operator failing to post required information may be fined up to $50.00 per violation; provided that total fines per incident shall not exceed $500.00 per well.

(g) **OTC numbers on gas meter or meter house.**

(1) On all gas producing leases, the operator of the well site gas meter required under 165:10-17-5 shall print or affix its name and OTC reporting number on the outside of the meter house or on the outside of the meter itself if no meter house exists.

(2) The operator of the lease shall print its OTC lease number and operator reporting number on the meter house or on outside of the meter if no meter house exists.

(3) The identification required in this subsection shall always be clearly legible.

(h) **Valve and seals on stock tanks.** The operator shall install tank valves such that metal identification seals can be properly utilized. These seals shall be used on all delivery tank valves to lessen unauthorized movement of marketable products.

(i) **Man-ways on frac tanks.** Each frac tank used at the wellsite shall have protective man-ways to prevent persons from accidentally falling into the frac tank.

(j) **Guy line anchors.** All guy line anchors left buried for use in future operations of the well shall be properly marked by a marker of bright color not less than four feet in height and not greater than one foot east of the guy line anchor.

(k) **Well site cleared.** Within 90 days after a well is plugged and abandoned, the well site shall be cleared of all equipment, trash, and debris. Any foreign surface material is to be removed and the location site restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the location site is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the well.

(l) **Restored surface.** Within 90 days after a lease has been abandoned, surface equipment such as stock tanks, heater, separators, and other related items shall be removed from the premises. The surface shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the surface is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the lease.

(m) **Leasehold roads.** All leasehold roads shall be kept in a passable condition and shall be made accessible at all times for representatives and field inspectors of the Commission. At the time of abandonment of the property, the area of the road shall be restored to as near to its natural state as reasonably possible, except by written agreement with the surface owner to leave the surface in some other condition. If the road area is restored but the vegetative cover is destroyed or significantly damaged, a bona fide effort shall be made to restore or re-establish the vegetative cover within 180 days after abandonment of the property.

(n) **Extension of time.**

(1) An operator may request an extension of time required in (k), (l), and (m) of this Section for not more than six months by applying to the appropriate Conservation Division District Office and showing that there is no

imminent danger to the environment and that one of the following conditions exists:

(A) That an agreement with the surface owners is not possible.

(B) That adverse weather conditions exist or existed.

(C) That the equipment needed to conform to (k), (l), and (m) of this Section was not or is not available.

(2) If approved by the District Manager, the extension shall be granted and the surface owner shall be notified by the operator. Any extension beyond six months shall require application, notice and hearing pursuant to OAC 165:5-7-41.

PART 5. OPERATIONS

165:10-3-26. Well logs

(a) **60 days to submit well log(s).** All well logs required by this Section shall be submitted to the Conservation Division within 60 days from the earlier of the date of completion of the well or the date that the last formation evaluation type ~~wireline~~well log was run. An operator who fails to properly submit ~~wireline surveys~~formation evaluation type well logs, if run, ~~shall be subject to a warning with time limit and~~ may be fined up to $250.00.

(b) **~~Wireline~~Formation evaluation type well logs.** This Section does not require an operator to run a ~~wireline survey~~formation evaluation type well log. However, if an operator does run ~~wireline surveys~~formation evaluation type well logs, the operator shall only be required under this Section to submit a resistivity ~~type wireline~~ log and a porosity ~~type wireline~~ log, if available. Resistivity and porosity ~~type wireline~~ logs include but are not limited to spontaneous potential, induction, laterolog, density, ~~and~~ gamma ray, neutron and sonic logs.

(c) **Other logs to be available upon request.** ~~Dipmeter, velocity, and radioactive tracer logs,~~Any other well logs, if available, shall be submitted to the Technical Services Department upon Commission order or special request of the Conservation Division.

(d) **Requirements for submitting a copy of a log.** A copy of a log submitted under this Section~~, instead of the original log,~~ shall be in digital image or a legible finished paper copy, complete, in one piece and with the well's legal description noted on it. If there are separate runs for multiple casing strings, the operator shall submit the separate runs.

(e) **Obtaining confidential treatment of well log(s).**

(1) Unless the operator requests confidential treatment of a well log(s), any well log(s) submitted to the Conservation Division shall be available for public inspection.

(2) To obtain confidential treatment of a well log, the operator of the well shall:

(A) Place the well log(s) in a sealed envelope with a completed Form 1002B attached to the envelope.

(B) Submit to the Technical Services Department of the Conservation Division the envelope with the log(s) and Form 1002B within 60 days from the earlier of:

(i) The completion date of the well, or

(ii) The date that the last formation evaluation log was run.

(3) A confidential well log under (2)(B) of this Section, shall remain confidential for one year from the date the last log was run on the well. Upon written request, the Conservation Division may administratively extend the period of confidentiality for six months. Under no circumstances shall confidentiality be granted for a period in excess of 18 months from the date the last log was run on the well.

(f) **No allowable before submission of well logs.** The Conservation Division shall not assign an allowable to a well before the operator of the well submits to the Conservation Division any well log required to be submitted under (b) of this Section.

165:10-3-28. Horizontal drilling

(a) **Scope.** This Section affects a horizontal well with one or more laterals.

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

(1) **"Horizontal well"** shall mean a well drilled, completed, or recompleted with one or more laterals in a common source of supply in a manner in which, for at least one lateral, the horizontal component of the completion interval in the common source of supply exceeds the vertical component thereof and the horizontal component extends a minimum of 150 feet in the formation.

(2) **"Point of entry"** shall mean the point at which the borehole first intersects the top of the common source of supply.

(3) **"True vertical depth"** shall mean that depth at the point of entry perpendicular to the surface as measured from the elevation of the kelly bushing on the drilling rig.

(4) **"Terminus"** shall mean the end point of the borehole in the common source of supply.

(5) **"Completion interval"** shall mean, for open hole completions, the interval from the point of entry to the terminus and, for cased and cemented completions, the interval from the first perforations to the last perforations.

(6) **"Horizontal well unit"** shall mean a drilling and spacing unit established by the Commission, after application, notice, and hearing, for a common source of supply into which a horizontal well has been or will be drilled.

(7) **"Standard horizontal well unit"** shall mean a horizontal well unit that is a square 10-, 40-, 160-, or 640-acre tract or a rectangular 20-, 80-, or 320-acre tract in accordance with OAC 165:10-1-22.

(8) **"Non-standard horizontal well unit"** shall mean a horizontal well unit that is not a standard horizontal well unit.

(9) **"Conventional reservoir"** shall mean a common source of supply that is not an unconventional reservoir.

(10) **"Unconventional reservoir"** shall mean a common source of supply that is a shale or a coal bed. "Unconventional reservoir" shall also mean any other common source of supply designated as such by Commission order or rule.

(11) **"Directional survey"** shall mean that survey or report showing the location of any point of the wellbore as it relates to the surveyed surface location from the surface to the terminus of each lateral.

(12) **"Date of first production"** shall mean the date hydrocarbons are first produced from the horizontal well, whether or not production occurs during drilling, completion, or through permanent surface equipment.

(13) **"Vertical component"** shall mean the calculated vertical distance from the point of entry to the terminus of the lateral.

(14) **"Horizontal component"** shall mean the calculated horizontal distance from the point of entry to the terminus.

(15) **"Horizontal well unitization"** shall mean a unitization for a shale reservoir created pursuant to 52 O.S. § 87.6 et seq.

(16) **"Multiunit horizontal well"** shall mean a horizontal well in a shale reservoir wherein the completion interval of the well is located in more than one unit formed for the same shale reservoir, with the well being completed in and producing from such shale reservoir in two or more of such units.

(17) **"Associated common source of supply"** shall mean a common source of supply which is subject to a drilling and spacing unit formed by the Commission and located in all or a portion of the lands in which the completion interval of a horizontal well is located, and which is immediately adjoining the shale common source of supply in which the completion interval of the horizontal well is located, and which is inadvertently encountered in the drilling of the lateral of such horizontal well when such well is drilled out of or exits, whether on one or multiple occasions, such shale common source of supply.

(18) **"Shale reservoir"** shall mean a common source of supply which is a shale formation that is so designated by the Commission through rule or order, and shall also include any associated common source of supply as defined in this subsection.

(19) **"Lateral"** shall mean the portion of the wellbore of a horizontal well from the point of entry to the terminus.

(c) **General horizontal well requirements.**

(1) Within 30 days after completion of a horizontal well, the operator shall show that the location of the completion interval complies with the applicable general rule, location exception order, or other order of the Commission by submitting the following to the Technical Services Department:

(A) A directional survey run in the horizontal well.

(B) A plat constructed from the results of the directional survey showing the completion interval.

(2) The completion interval of a horizontal well shall be located not closer than the minimum distance as set out below from any other oil or gas well completed in the same common source of supply except as authorized by a special order of the Commission:

(A) Three hundred feet from any other oil or gas well completed in the same common source of supply, the top of which is less than 2,500 feet in true vertical depth.

(B) Six hundred feet from any other oil or gas well completed in the same common source of supply, the top of which is 2,500 feet or more in true vertical depth.

(C) This paragraph does not apply to horizontal wells drilled in a unit created for secondary or enhanced recovery operations pursuant to 52 O.S. § 287.1 et seq. or to horizontal wells drilled in a horizontal well unitization created pursuant to 52 O.S. § 87.6 et seq.

(d) **Horizontal well requirements in an unspaced common source of supply.** In a horizontal well drilled in a common source of supply in which the Commission has not established any drilling and spacing units or horizontal well units, the completion interval of a horizontal well may not be located closer to the boundaries of the applicable mineral estate, oil and gas leasehold estate, or voluntary unit than the minimum distance set out below except as authorized by a special order of the Commission:

(1) Not less than 165 feet when the top of the common source of supply is less than 2,500 feet in true vertical depth.

(2) Not less than 330 feet when the top of the common source of supply is 2,500 feet or more in true vertical depth.

(e) **Drilling and spacing units.**

(1) A horizontal well may be drilled on any drilling and spacing unit.

(2) A horizontal well unit may be created in accordance with 165:10-1-22 and 165:5-7-6. Such units shall be created as new units after notice and hearing as provided for by the Rules of Practice, OAC 165:5.

(3) The Commission may create a non-standard horizontal well unit covering contiguous lands in any configuration or shape deemed by the Commission to be necessary for the development of a conventional reservoir or an unconventional reservoir by the drilling of one or more horizontal wells. A non-standard horizontal well unit may not exceed 640 acres plus the tolerances and variances allowed pursuant to 52 O.S. § 87.1.

(4) A horizontal well unit may be established for a common source of supply for which there are already established non-horizontal drilling and spacing units, and said horizontal well unit may include within the boundaries thereof more than one existing non-horizontal drilling and spacing unit for the common source of supply. Upon the formation of a horizontal well unit that includes within the boundaries thereof one or more non-horizontal drilling and spacing units, the Commission ~~may provide that such horizontal well unit supersedes one or more of such non-horizontal drilling and spacing units or~~

~~may~~shall provide that such horizontal well unit exists concurrently with one or more of such non-horizontal drilling and spacing units~~.~~.~~In the event the Commission provides for the concurrent existence of a horizontal well unit and a non-horizontal drilling and spacing unit, as provided above,~~and each such unit may be concurrently developed.

(f) **Horizontal well location requirements for horizontal well units and horizontal well unitizations.**

(1) **Conventional reservoirs.** In a conventional reservoir, the completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20-, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80- or 160-acre horizontal well unit.

(C) Not less than 660 feet from the boundary of any 320- or 640-acre horizontal well unit.

(2) **Unconventional reservoirs.** In an unconventional reservoir, **t**he completion interval of a horizontal well in a horizontal well unit shall be located not less than the minimum distance from the unit boundary as follows:

(A) Not less than 165 feet from the boundary of any 10-, 20-, or 40-acre horizontal well unit.

(B) Not less than 330 feet from the boundary of any 80-, 160-, 320-, or 640-acre horizontal well unit.

(3) **Horizontal well unitizations.** The completion interval of a horizontal well in a horizontal well unitization shall not be located less than 330 feet from the unit boundary.

(g) **Alternative well location requirements.** The Commission may establish well location requirements different from those provided in subsection (f) of this Section when necessary to prevent waste and protect correlative rights. These requirements may be established in the order creating a standard or non-standard horizontal well unit or through a special rule of the Commission covering a conventional or unconventional reservoir in a designated geographic area. (see OAC 165:10, Subchapter 29, Special Area Rules).

(h) **Allowable.**

(1) Horizontal oil well allowables may be established administratively using the standard allowables provided in Appendix A (Allocated Well Allowable Table) supplemented by the additional allowables provided in Appendix C (Table HD) to this Chapter.

(2) The allowable for a horizontal gas well shall be computed in the manner prescribed for a non-horizontal gas well in the same common source of supply.

(3) The allowable for a horizontal well unit or horizontal well unitization with multiple horizontal gas wells shall be the sum of the allowables for the separate horizontal gas wells. For this summation, the allowable for each horizontal gas well will be calculated as if it were the only well in the unit.

(4) The allowable for a multiunit horizontal well shall be allocated to each affected unit using the allocation factors determined in accordance with 52 O.S. § 87.8(B)(1).

(i) **Pooling.** Horizontal well units, horizontal well unitizations and multiunit horizontal wells may be pooled as provided in 52 O.S. § 87.1, 52 O.S. § 87.6 et seq. and Commission Rules of Practice, OAC 165:5.

SUBCHAPTER 5. UNDERGROUND INJECTION CONTROL

165:10-5-5. Application for approval of enhanced recovery injection and disposal operations

(a) **Application.** Each application for the approval of a newly drilled or newly converted injection well, disposal well, or commercial disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) **Application.** The application for the approval of an enhanced recovery injection or disposal well(s) shall be accompanied by:

(1) **Plat.**

(A) **Noncommercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing spacing unit or well within one-half (1/2) mile of each enhanced recovery injection or disposal well with a requested injection rate of less than five thousand barrels per day, and each operator of a producing spacing unit or well within one (1) mile of each enhanced recovery injection or disposal well with a requested injection rate of five thousand barrels per day or more.

(B) **Commercial disposal well.** A plat showing the location and total depth of the well(s) and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing spacing unit or well within one (1) mile of each disposal well.

(2) **Completion Report.** If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) **Schematic diagram.** A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) **Proposed zone information.** Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) lf the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish to the Commission, sworn evidence and data in support of such findings. The Commission, when issuing an order approving fluid injection, shall consider the following:

(i) Maximum injection rate.

(ii) Maximum surface injection pressure.

(iii) lnjection fluid.

(iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) **Proposed operating data:**

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) **Application for approval.** A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to the following:~~owner of the surface of the land on which the injection or disposal well is to be located, and with regard to injection or disposal wells with a requested injection rate of less than five thousand barrels per day to each operator of a producing spacing unit or well within one half (1/2) mile of the proposed noncommercial injection or disposal well location, and to each operator of a producing spacing unit or well within one (1) mile of either a proposed noncommercial injection or disposal well location with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well location. In addition, if the application involves a proposed horizontal injection or disposal well, a copy of the application for approval shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to each operator of a producing spacing unit or well within one half (1/2) mile of the lateral of the proposed noncommercial injection or disposal well with a requested injection rate of less than five thousand barrels per day, and to each operator of a producing spacing unit or well within one (1) mile of the lateral of either a proposed noncommercial injection or disposal well with a requested injection rate of five thousand barrels per day or more or a proposed commercial disposal well. Further, if the application involves a proposed commercial disposal well, a copy of the application for approval shall be served within five (5) days of the date the application is filed by regular mail or delivered to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well.~~

(1) The owner of the surface of the land on which the proposed injection or disposal well is to be located;

(2) For a proposed commercial disposal well, to each surface owner and surface lessee of record on each tract of land adjacent and contiguous to the site of the proposed well;

(3) For a noncommercial injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of such proposed well;

(4) For a noncommercial injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of such proposed well;

(5) For a noncommercial horizontal injection or disposal well with a requested injection rate of less than five thousand (5,000) barrels per day, to each operator of a producing spacing unit or well within one-half (1/2) mile of the lateral of such proposed well; and

(6) For a noncommercial horizontal injection or disposal well with a requested injection rate of five thousand (5,000) barrels per day or more, or a horizontal commercial disposal well, to each operator of a producing spacing unit or well within one (1) mile of the lateral of such proposed well.

(d) **Notice of application.** Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each

county in which land embraced in the application are located. The notice shall include:

(1) UIC tracking number.
(2) Name and address of applicant.
(3) Location of proposed well to nearest 10 acre tract.
(4) Well name.
(5) The geological name of the injection formation.
(6) The top and bottom of the injection interval.
(7) Maximum injection pressures.
(8) Maximum BID or MCFID injection rate.
(9) The type of well (injection, disposal, commercial).

(e) **Written objection.** If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application on the pollution docket. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Underground Injection Control who shall sign the permit.

(f) **Surety requirements for commercial disposal well facilities.**

(1) Any operator of a commercial disposal well facility shall file with the Manager of Document Handling for the Conservation Division an agreement to properly plug the well and reclaim the site upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(2) The Commission shall establish the amount of surety in the order or permit for the authority to operate a commercial disposal well facility. The amount of surety shall be based on factors such as the depth of the well, dimensions of the facility, and costs of plugging the well, reclamation, monitoring, plugging of monitor wells, any pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by order or permit of the Commission. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(3) Operators of commercial disposal well facilities authorized prior to the effective date of this subsection must either comply with this subsection or close such facilities within one (1) year of the effective date of this subsection.

(g) In addition to the requirements listed above, the Manager of Underground Injection Control may request the applicant to submit the following information as a prerequisite to approval of the application:

(1) For those wells included in OAC 165:10-5-5(b)(1) which penetrate the top of the injection interval, a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.
(B) The present status of the wells.
(C) The identity of any abandoned well which was improperly plugged or remains unplugged.

(2) A list of the following information, if available, to the applicant:

(A) The shut-in bottom hole formation pressure in psi; or the stabilized shut-in surface pressure and fluid level in the proposed injection well.
(B) The permeability of the proposed injection zone expressed in millidarcies.
(C) The porosity of the proposed injection zone expressed as a percentage of pore volume.
(D) Documentation of the methods used to arrive at the data requested above.

(h) Authorization of an enhanced oil recovery injection well or a disposal well or a commercial disposal well will expire and become null and void if no well completion report (Form 1002A) is filed <u>or if no mechanical integrity test is performed pursuant to OAC 165:10-5-6</u> within six months from the date of completion or conversion of the well.

(i) In addition to the well construction requirements as set out in 165:10-3-1, commercial saltwater disposal wells shall comply with the following requirements:

(1) At a minimum, the well shall be constructed with a wellhead, surface casing, production casing, tubing, and packer.

(2) The surface casing shall be set and cemented at least fifty (50) feet below the base of the treatable water bearing zone. The production casing will not be allowed to also serve as the surface casing.

(3) The production casing must be set and cemented through the injection zone with the cement circulated behind the casing to a height at least two hundred fifty (250) feet above the disposal zone. A cement bond log showing quality and placement of the cement must be furnished to and approved by the Commission before the well may be used for injection or disposal. The Manager of Underground Injection Control may approve the Arbuckle Formation for open hole completion.

(4) The annulus between the tubing and the casing must be open from the surface to the packer to allow for pressure testing and monitoring of the injection tubing and packer and the annulus filled with a packer fluid that protects against corrosion.

(5) The packer must be set at least within seventy-five (75) feet of the top of the perforations.

(6) Adequate gauges shall be installed on each annulus to allow proper monitoring of the disposal operation.

(7) Tubing must be internally coated or lined to prevent corrosion from injected fluids. PVC, Plastic Coated, Stainless Steel or Fiberglass will qualify.

(8) The packer must be either internally coated or stainless steel.

(9) Commercial disposal wells authorized with a positive injection pressure must be equipped with a down hole shut-off device with a seal divider installed between the packer and the tubing. A Stainless Steel Profile Nipple and an "ON-OFF" Tool will qualify under this Section.

(j) No Commercial disposal well will be permitted whose injection pressure approaches or exceeds the demonstrated frac gradient of the injection zones(s).

(k) All permitted injection zones must be completed for injection. Authorization for any zones not initially completed as an injection zone will expire within 60 days following initial completion or recompletion date.

(l) In the event the Commission has evidence that an applicant for a commercial disposal well may not possess a satisfactory compliance history with Commission rules, the Director of the Conservation Division may seek an order of the Commission, issued after application, notice, and hearing, determining whether the applicant should be authorized to operate such commercial disposal well.

165:10-5-6. Testing and monitoring requirements for enhanced recovery injection wells and disposal wells

(a) **Mechanical integrity during injection.** The operator of an injection, disposal or commercial disposal well must maintain mechanical integrity in order to continue operation of the well.

(b) **Initial pressure test requirements for wells permitted on or after December 2, 1981.**

(1) **Mandatory initial mechanical test.** Before commencement of operation, each well authorized for enhanced recovery injection or disposal by a Commission order issued on or after December 2, 1981, must pass an initial pressure test of the casing tubing annulus according to the minimum testing standards of (2) of this subsection, unless a Commission order permits other test procedures of the mechanical integrity of the well. Any operator failing to comply with initial mechanical integrity testing and reporting requirements may be fined up to $500.00.

(2) **Minimum testing standards for initial tests.** For each initial test required by (1) of this subsection, the minimum testing standards are:

(A) **Witnessing of the test.** The test shall be witnessed by an authorized representative of the Conservation Division. It shall be the responsibility of the well operator to secure the presence of the Commission representative.

(B) **Down-hole equipment.** Injection and disposal shall be through adequate tubing and packer.

(C) **Aboveground extensions and fittings.** Adequate aboveground extensions shall be installed in each annulus in the well. In addition, the operator shall install a one-fourth (1/4) inch female fitting, with cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative using a gauge having a one-fourth (1/4) inch male fitting.

(D) **Packer setting depth under the order.** The mechanical packer shall be set within 40 feet of the packer setting depth prescribed by the order permitting the well for injection or within 75 feet of the perforations of the injection zone(s) opened.

(E) **Verification of packer setting depth.** The Commission District Manager may require the operator of the well to verify the packer setting depth by running a wireline or other method approved by the Manager of the Underground Injection Control Department.

(F) **Minimum testing pressure.** Noncommercial disposal and injection wells shall be tested as follows:

(i) If the maximum authorized injection pressure for the well is less than 300 psig under the order permitting the well for injection, the minimum testing pressure shall be 300 psig.

(ii) If the maximum authorized injection pressure is greater than 300 psig under the order permitting the well for injection, the minimum testing pressure shall be the lesser of 1000 psig or the maximum authorized injection pressure under the order permitting the well.

(G) **Thirty minute minimum testing period.** The minimum testing period shall be 30 minutes at the testing pressure.

(H) **Ten percent maximum permitted bleed-off.** The maximum permitted bleed-off during the testing period shall be ten percent of the maximum testing pressure used.

(I) **Test report on Form 1075.** The operators shall submit the results of the mechanical integrity test on Form 1075 within 30 days from the date the test is performed.

(J) **Cement circulated above injection zone.** The minimum cement height circulated above the injection or disposal zone in the annulus between the casing and the borehole shall be 250 feet.

(K) **Packer setting depth.** The packer must be set at a depth which is at least 50 feet below the depth of the top of cement behind the production casing.

(3) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a pressure increase of 250 psi on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department.

(4) **Use of fluid seal without a mechanical packer.** Use of a fluid seal without a mechanical packer is prohibited.

(c) **Initial pressure test requirements for wells permitted prior to December 2, 1981.**

(1) **Mandatory initial pressure test or monitoring test.**

(A) Each well authorized for enhanced recovery injection or disposal by Commission order issued prior to December 2, 1981, must pass an initial mechanical integrity test according to the minimum testing standards of (2) of this subsection.

(B) In lieu of casing test required in (A) of this paragraph, the operator shall monitor and record during actual injection the pressure in the casing-tubing annulus monthly and report the pressure annually on Form 1075. A measurable positive pressure must be maintained at the casing valve and be continuously measured to qualify.

(2) **Minimum testing standards for initial mechanical integrity tests.**

(A) **Wells with casing-tubing annulus.** The minimum testing standards of (b)(2) of this Section for an initial test of a well with a casing tubing annulus shall apply with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test on Form 1075.

(iii) The minimum testing pressure shall be 200 psig.

(B) **Wells without a casing-tubing annulus or wells with perforations above the packer.** The minimum testing standards for an initial test of a well without a casing-tubing annulus or wells with perforations above the packer are:

(i) **Witnessing of the test.** The test shall be witnessed by an authorized representative of the Conservation Division unless the District Manager for the Conservation Division waives the requirement of witnessing the initial test. It shall be the responsibility of the well operator to secure the presence of the commission representative for witnessing the test.

(ii) **Documentation for unwitnessed tests.** If the test is not witnessed, then the operator shall submit on Form 1075 documentation of the test to the Conservation Division within 30 days after the test.

(iii) **Aboveground extensions and fittings.** The operator shall install a one-fourth (1/4) inch female fitting, with cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative using a gauge having a one-fourth (1/4) inch male fitting.

(iv) **Setting depth for plug.** For purposes of the test, a mechanical packer, retrievable bridge plug, or seating nipple plug shall be placed in the injection string not more than 75 feet above the top of the injection interval.

(v) **Pressure testing of tubing string.** The well operator shall pressure test the tubing string for at least 30 minutes. The minimum testing pressure shall be the greater of 300 psig, or the maximum authorized injection pressure provided that the actual working injection pressure for the well may be used instead of the maximum authorized injection pressure when necessary to prevent damage to the casing or packer.

(vi) **Ten percent maximum permitted bleedoff.** The maximum permitted bleedoff during the testing period shall be ten percent of the maximum testing pressure used.

(vii) **Radioactive tracer survey.** A radioactive tracer survey shall be run demonstrating that the injected fluid is going into the authorized zone when there is no cement bond log or cementing reports to demonstrate sufficient cement behind pipe to isolate the injection zone or to insure the packer is properly set.

(viii) **Pressure test using a gas media.** In lieu of a pressure test using a liquid testing media, the UIC Department may approve a mechanical integrity test using a gas media if it conforms to a method previously approved by the EPA.

(ix) **Test report on Form 1075.** The operator shall submit the results of the mechanical integrity test on Form 1075 to the Conservation Division within 30 days after the test.

(d) **Subsequent mechanical integrity test requirements.**

(1) **Pressure ~~test~~tests~~every five years~~.**

(A) **Disposal wells permitted for injection at volumes equal to or greater than 20,000 barrels per day.** Unless a well has been approved by an order of the Commission for other testing procedures or monitoring, each disposal well permitted for injection at volumes equal to or greater than 20,000 barrels per day shall demonstrate mechanical integrity by using one of the following methods:

(i) Conduct a pressure test of the casing tubing annulus at least once every ~~five years~~year according to the minimum testing standards of (3) of this subsection, or

(ii) If a continuous pressure monitor is installed on the casing tubing annulus that will automatically notify the operator of a mechanical failure, then the well shall demonstrate mechanical integrity at least once every five years according to the minimum testing standards of (3) of this subsection.

(B) **Disposal wells permitted for injection at volumes less than 20,000 barrels per day and enhanced recovery injection wells.** Unless a well has been approved by an order of the Commission for other testing procedures or monitoring, each disposal well permitted for injection at volumes less than 20,000 barrels per day, and each enhanced recovery injection well permitted for injection shall demonstrate mechanical integrity at least once every five years according to the minimum testing standards of (3) of this subsection.

(C) **Penalty for noncompliance.** Any operator failing to comply with periodic mechanical integrity testing and reporting requirements may be fined up to $500.00.

(2) **Required retest if down-hole equipment is moved or replaced.** After a well passes a pressure test required by this Section, if the operator moves the packer or replaces either the packer or the tubing, then the operator shall retest the well according to the minimum testing standards of (3) of this subsection.

(3) **Minimum testing standards.**

(A) **Wells with casing-tubing annulus.** For a five year test or retest required by this subsection, the minimum testing standards of (b)(2) of this Section shall apply to wells with casing-tubing annulus with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test.

(iii) The minimum testing pressure shall be:

(I) 200 psig for a noncommercial well.

(II) 300 psig or the authorized injection pressure, whichever is greater, for commercial disposal wells.

(B) **Wells without a casing-tubing annulus or wells with perforations above the packer.** For a five year test or retest required by this subsection, the minimum testing reporting standards of (c)(2)(B) of this Section, shall apply to wells without a casing-tubing annulus or wells with perforations above the packer.

(C) **Wells with automatic monitoring of positive tubing-casing pressure.** Subsequent pressure tests will not be required if there is in place a pressure monitor on the annulus to demonstrate the maintenance of a certain, positive pressure. This monitor will be connected to an automatic alarm or a continuous chart recorder. Application for this alternative shall be made in writing to the Manager of the UIC Department. Monitoring records will be sent annually attached to Form 1012 to the UIC Department.

(e) **Monitoring requirements.**

(1) **Report on Form 1075.** In lieu of a mechanical integrity test every five years, the operator of a well permitted for injection or disposal may demonstrate the mechanical integrity by:

(A) Monitoring and recording the injection rate, volume, and casing-tubing annulus pressure monthly.

(B) Submitting to the Conservation Division the results of monthly monitoring for the calendar year on Form 1075 by the first day of April of the next calendar year.

(2) **Required positive casing-tubing annulus pressure.** A measurable positive pressure must be maintained at the casing valve and be continuously measured to qualify for mechanical integrity.

(f) **Testing requirements for commercial disposal wells.**

(1) **Before commencement of operation.** Before commencement of operation, each commercial disposal well must pass a pressure test of the casing tubing annulus.

(2) **Minimum testing standards.**

(A) The test shall be witnessed by an authorized representative of the Conservation Division.

(B) The well shall be tested at the maximum authorized injection pressure, but not less than 300 psig.

(C) The minimum testing period shall be thirty (30) minutes.

(D) The maximum allowable change in pressure during the testing period shall be ten percent (10%) of the testing pressure.

(E) The results of the test shall be submitted on Form 1075 within 30 days from the date of the test.

(3) **Subsequent mechanical integrity tests.**

(A) The well shall be tested a minimum of every twelve (12) months.

(B) After a well passes a pressure test required by this Section, if the operator moves the packer or replaces the packer or tubing, then the operator shall notify the Commission and retest the well according to the minimum testing standards of (2) of this subsection.

(4) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a pressure increase of 250 psig on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department.

165:10-5-7. Monitoring and reporting requirements for wells covered by 165:10-5-1

(a) **Scope.** This Section applies to:

(1) Notice of Commencement of Injection and Disposal Operations on Forms 1012 and 1075.

(2) Report of Injection Projects, saltwater disposal wells and LPG storage wells on Form 1012.

(3) Notice of Voluntary Termination of Operations on Form 1072.

(4) Notice of mechanical failure or down-hole problems on Form 1075.

(b) **Report of enhanced recovery injection projects, saltwater disposal wells and LPG storage wells.**

(1) **Submit Form 1012.** Each operator of a saltwater disposal well, LPG storage well or an authorized waterflood, pressure maintenance project, gas repressuring project, or other enhanced recovery project shall submit Form 1012 for every well to the Conservation Division as follows:

(A) Form 1012 shall be submitted by April 1st for the previous calendar year for all noncommercial wells.

(B) For commercial disposal wells Form 1012 shall be submitted by January 31 and July 31 for the previous six-month period.

(2) **Failure to submit Form 1012.** Any operator who fails to submit the report on Form 1012 as required by (b)(1) of this Section may be fined up to $500.00 and:

(A) Injection into the project is prohibited until the operator submits Form 1012 for each injection well.

(B) The order or permit is subject to termination.

(3) **Required ~~monthly~~ monitoring.**

(A) On a monthly basis, the operator of each enhanced recovery injection well and disposal well and LPG storage well shall monitor and record the injection rate and surface injection pressure for the well.

(B) On a daily basis, the operator of each well authorized for disposal into the Arbuckle formation shall monitor and record the volumes, the casing tubing annulus pressure and the surface injection pressure for the well. The operator must maintain the information required by this subparagraph for a minimum of three years. This information shall be produced upon request by an authorized representative of the Commission.

(4) **All UIC wells.** Saltwater disposal wells, injection wells and storage wells shall be reported on Form 1012 individually according to the order or permit authorizing disposal.

(c) **Monitoring requirements for commercial disposal well.**

(1) The operator of a commercial disposal well shall monitor and record the casing tubing annulus pressure and the injection pressure on a daily basis.

(2) The operator of a commercial saltwater disposal well shall make available upon request of the Commission a log of all loads of deleterious substances disposed at the well. The log shall be kept on file for a period of at least five (5) years. The log of record shall include at a minimum, the date and time the load was received, the volume, the legal description of the well and/or source, and the operator and/or owner of the source of the deleterious substance.

(d) **Notice of voluntary termination.**

(1) If an operator permanently terminates injection into a well, the operator shall submit to the Conservation Division Form 1072 within 30 days after termination of injection. Form 1072 shall state:

(A) The legal description of the well.

(B) The reason for termination.

(C) The status of other wells, if the well is in an enhanced recovery project.

(2) Submission of Form 1072 to permanently terminate injection shall terminate the authority under the order.

(e) **Notice of mechanical integrity problem.**

(1) **Notice of mechanical failure or down-hole problem.** When a mechanical problem occurs, then:

(A) The well operator shall notify the Field Inspector for Conservation within 24 hours after discovery of the problem.

(B) Within five days after discovery of the problem, the well operator shall submit to the Manager of Underground Injection Control written notice of the failure and a plan to repair and/or retest the well.

(C) Repair shall be reported on the annual Form 1012 for the well.

(D) Any operator failing to timely notify the Commission may be fined up to $1,500.00.

(2) **Shutdown.**

(A) **Administrative shutdown.** The Conservation Division may shut down a well if a mechanical failure or down-hole problem indicates that injected substances are not or may not be entering the injection interval authorized by order of the Commission.

(B) **Administrative authority to recommence injection.**

(i) If a well is shut down under (2)(A) of this subsection, the well operator shall be responsible for proving to the satisfaction of the Manager of Underground Injection Control:

(I) The mechanical integrity of the well for injection.

(II) That the injected substances are going into and are confined to the permitted injection interval.

(ii) Upon submission of proper proof of the satisfactory capability of the well for injection, the Manager of Underground Injection Control may authorize recommencement of injection.

(C) **Resolution of disputes by order of the Commission.** In the event of a dispute between the Manager of Underground Injection Control and any person as to the suitability of a well for injection, the affected person may seek relief by order of the Commission. Upon application, notice, and hearing meeting the requirements of 165:5-7-27(c) and (d) for protested applications, the Commission may issue an order determining whether or not the well should be used for further injection.

(3) **Notice of unreported repairs.** Any prior unreported repair of the well shall be reported on the next annual Form 1012 to be submitted to the Manager of the UIC Department.

SUBCHAPTER 7. POLLUTION ABATEMENT

PART 3. STORAGE AND DISPOSAL OF FLUIDS

165:10-7-33. Use of truck wash pits

(a) **Scope.** This Section shall apply to truck wash pits. A truck wash pit is a pit used for the temporary storage of fluids generated from the washing or cleaning of a motor vehicle, trailer or container used to transport or store deleterious substances. Truck wash pit operators shall comply with all applicable Commission rules in OAC 165:30 Motor Carriers.

(b) **Permit required.** Any truck wash pit sought to be approved after the effective date of this Section will require a permit issued by the Conservation Division. The operator of

the proposed pit shall submit Form 1014T in duplicate to the appropriate Conservation Division District Office for review and approval. For use of a truck wash pit without a permit, the operator may be fined up to $2,000.00.

(c) **Surety requirements.**

(1) Any operator of a truck wash pit shall file with the Manager of Document Handling for the Conservation Division an agreement to properly close the pit upon termination of operations. The agreement shall be on forms available from the Conservation Division and shall be accompanied by surety. The agreement shall provide that if the Commission finds that the operator has failed or refused to comply with Commission rules or take remedial action as required by law and Commission rules, the surety shall pay to the Commission the full amount of the operator's obligation up to the limit of the surety.

(2) The Commission shall establish the amount of surety in the permit for the authority to operate a truck wash pit. The amount of surety shall be based on factors such as the dimensions of the pit, and costs of reclamation, monitoring, plugging of monitor wells, pit closure, trucking of any deleterious substances, remediation and earth work. The amount may be subject to change for good cause. The surety shall be maintained for as long as monitoring is required. The type of surety shall be a corporate surety bond, certificate of deposit, irrevocable commercial letter of credit, or other type of surety approved by the permit. Any type of surety that expires shall be renewed prior to 30 days before the expiration date.

(d) **Site restriction.** No truck wash pit shall be constructed in any area that floods according to the Soil Conservation Service County Soil Survey (available for viewing at the Commission's Oklahoma City Office or appropriate Conservation Division District Offices).

(e) **Construction requirements.**

(1) **Splash pad/apron.** A splash pad/apron shall be constructed at the unloading area of any truck wash pit to the design and dimensions necessary to contain and direct all materials unloaded into the pit.

(2) **Pit specifications.** Any truck wash pit shall be constructed of concrete or steel or shall be lined with a geomembrane liner. The following specifications shall be met:

(A) Any concrete pit shall be steel-reinforced and have a minimum wall thickness of six inches.

(B) Any steel pit shall have a minimum wall thickness of three-sixteenths (3/16) inch. If a previously used steel pit is installed, it shall be free of corrosion or other damage.

(C) Any geomembrane liner shall meet these requirements:

(i) The geomembrane liner shall have a minimum thickness of 60-mils, shall be chemically compatible with the type of wastes to be contained, and shall have ultraviolet light protection.

(ii) The geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(iii) The geomembrane liner shall be continuous (may include welded or extruded seams) and shall cover the bottom and interior sides of the pit entirely. Sewing of seams is prohibited. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(3) **Certification of liner.** The operator of any truck wash pit that is constructed with a geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner, such as geomembrane liner specifications from the manufacturer, etc., and shall make them available to a representative of the Conservation Division upon request.

(4) **Monitor wells or leachate collection system.**

(A) Any truck wash pit shall be required to have a leachate collection system or a minimum of three monitor wells, one upgradient and two downgradient from the pit.

(B) No monitor well shall be installed more than 100 feet from a truck wash pit, nor shall any existing water well be used as a monitor well, unless written approval is given by the District Manager or Manager of Field Operations.

(C) All new monitor wells shall be drilled to a depth of at least ten feet below the top of the first free water encountered and shall be drilled and completed by a licensed monitor well driller. If documentation is submitted prior to drilling the monitor well to show that no free water will be encountered within a depth of 50 feet from the surface, the District Manager may require that monitor wells be drilled to a lesser depth.

(D) All new monitor wells shall meet the requirements as set out in rules established by the Oklahoma Water Resources Board, in addition to the following requirements:

(i) A removable and lockable cap shall be placed on top of the casing. The cap shall remain locked at all times, except when a well is being sampled. A key to each well shall be made available to the appropriate District Manager or Field Inspector upon request.

(ii) Within 30 days of installation, construction details for any leachate collection system or specific completion information for all monitor wells and a diagram of their locations in relation to the pit they monitor shall be submitted to the Manager of Field Operations.

(f) **Operation and maintenance requirements.**

(1) **Exclusion of runoff water.** No truck wash pit shall be allowed to receive runoff water.

(2) **Freeboard.** The fluid level in any concrete or steel truck wash pit shall be maintained at all times at least 6

inches below the top of the pit wall, unless otherwise specified on Form 1014T. Any geomembrane lined pit shall have a minimum of 24 inches freeboard at all times.

(3) **Sampling of monitor wells or leachate collection systems.**

(A) Sampling of monitor wells or leachate collection systems shall occur once every six months, during the months of January and July.

(B) The appropriate District Manager shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(C) Samples shall be collected, preserved, and handled by the operator according to EPA-approved standards (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September, 1986, pp. 99-107) and analyzed for pH, chlorides, Total Dissolved Solids (TDS) and Total Petroleum Hydrocarbons (TPH) by a laboratory certified by the Oklahoma Department of Environmental Quality or operated by the State of Oklahoma. Analysis of additional parameters may be required, as determined by the District Manager or Manager of Field Operations.

(D) If requested by the District Manager, each sample shall be split and an adequate portion (approximately one pint) properly labeled and delivered upon request or otherwise provided to the appropriate Conservation Division District Office or Field Inspector. A copy of each analysis and a statement as to the depth to groundwater encountered in each well or leachate collection system, or an affidavit that no water was encountered, shall be forwarded to the Manager of Field Operations, within 30 days of sampling.

(4) **Prevention of pollution.** All truck wash pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a truck wash pit, sufficient measures shall be taken to stop or control the loss of materials and reporting procedures in 165:10-7-5(c) shall be followed. Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division.

(5) **Oil film.** The operator of a truck wash pit shall be responsible for the protection of migratory birds. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil films, all pits containing fluid be kept free of hydrocarbons, or be protected from access to birds. [See Advisory Notice in 165:10-7-3(c).]

(g) **Closure requirements.**

(1) **Time limit.** Within 90 days of the cessation of operation of any truck wash pit, such pit shall be emptied of all contents and filled with soil. All monitor wells shall be plugged with bentonite or cement, unless exempt in writing by the District Manager or Manager of Field Operations. The site shall be revegetated within 180 days.

(2) **Burial.** If any concrete, steel, geomembrane, or other materials associated with a truck wash pit are to be left on-site, they shall be buried under a minimum soil cover of three feet, pursuant to 165:10-3-17.

(3) **Penalty for failure to meet closure requirements.** An operator who fails to meet the closure requirements set out in this subsection may be fined up to $2,000.00.

(h) **Additional requirements.** The requirements set forth in this Section are minimum requirements. Additional requirements may be imposed if the site has certain limitations or other conditions of risk exist.

(i) **Application to existing truck wash pits.** Operators of truck wash pits permitted prior to the effective date of this Section must either comply with subsections and paragraphs (c), (e)(1), (e)(4), (f), (g) and (h) of this Section or close such pits within one (1) year of the effective date of this Section. All truck wash pits permitted, but yet to be constructed as of the effective date of this Section, shall also be subject to the construction requirements in paragraphs (e)(2) and (e)(3) of this Section.

(j) **Variances.** A variance from the time requirements of paragraph (g)(1) of this Section may be granted by the District Manager or Manager of Field Operations for justifiable cause. A written request and supporting documentation is required.

[OAR Docket #14-479; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 15. FUEL INSPECTION

[OAR Docket #14-462]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Specifications, Standards, and Labeling for Motor Fuels
165:15-7-1. Applicability and general compliance [AMENDED]
Subchapter 9. Description of Motor Fuel
165:15-9-2. Display on pump [AMENDED]
Subchapter 13. Labeling of Tanks and Product Lines
165:15-13-1. General identification and color coding requirements [AMENDED]
Subchapter 19. Violations and Contempt
165:15-19-1. Penalty; violations and contempt [AMENDED]
Appendix A. Tolerances for Retail and Wholesale Devices [REVOKED]
Appendix A. Tolerances for Retail and Wholesale Devices [NEW]
Appendix C. Distillation Test Limits for Diesel Fuel [REVOKED]

AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321, 52 O.S. § 325; Oklahoma Corporation Commission.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
November 21, 2013 to January 24, 2014

PUBLIC HEARING:
February 6, 2014

ADOPTION:
February 6, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Fuel measurement, fuel component and standards for the same have evolved. The adopted rules update current practices to align with changes in the fuel industry.
CONTACT PERSON:
Jeff Southwick, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000, (405)522-4457, j.southwick@occemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. SPECIFICATIONS, STANDARDS, AND LABELING FOR MOTOR FUELS

165:15-7-1. Applicability and general compliance

(a) **Compliance.** All motor fuel sold in the State of Oklahoma and regulated by the Commission must comply with the standards of this Subchapter and with the National Institute of Standards and Technology (NIST) Handbook 130, "Uniform Engine Fuels and Automotive Lubricants Regulation," as adopted by the National Conference on Weights and Measures.

(b) **Removal from market.** Any motor fuel that does not meet the standards and specifications of the Commission must not be sold in Oklahoma.

SUBCHAPTER 9. DESCRIPTION OF MOTOR FUEL

165:15-9-2. Display on pump

(a) Every pump or delivery device regulated by the Commission used for sale of motor fuel to the public must legibly display the type of motor fuel offered for sale ~~or any specified lesser designation as stated in 165:15-7-2(b)(1) or (2)~~.

~~(1) **Liquefied petroleum gas.** For liquefied petroleum gas, the display on the pump must read: Propane or Propane LPG.~~

~~(2) **Compressed natural gas.** For compressed natural gas, the display on the pump must read: Compressed Natural Gas.~~

(b) Any motor fuel ~~or special motor fuel product~~ must be displayed in accordance with 16 CFR Part 306.0 through 306.12, including Appendices; and sold as provided for by ~~the~~ Commission rules and National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices".

~~(c) Grade No. 1-D Diesel fuel must be displayed as "DIESEL #1." Grade No. 2-D Diesel fuel must be displayed as "Diesel" or "DIESEL #2."~~

~~(d) Kerosene must be displayed as "KEROSENE" in a legible manner. The term, "1-k" or "k-1" may be added to the label of kerosene products if they meet the requirements of this Chapter.~~

SUBCHAPTER 13. LABELING OF TANKS AND PRODUCT LINES

165:15-13-1. General identification and color coding requirements

(a) All storage tanks subject to the rules of this Chapter must be marked with a tag, lettering, or other permanent marking on the fill neck and color coded on the overfill sump lids to identify the type, grade, or quality of motor fuel they contain in accordance with API Recommended Practice 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals".

(b) East of 99 degrees west longitude, color coded markings must be:

(1) Unleaded motor fuel, 91 octane or above: red.
(2) Unleaded motor fuel, 89 or 90 octane: blue.
(3) Unleaded motor fuel, 86 through 88 octane: white.
(4) Diesel motor fuel: yellow.
(5) Kerosene motor fuel: brown.

(c) West of 99 degrees west longitude, color coded markings must be:

(1) Unleaded motor fuel, 90 octane or above: red.
(2) Unleaded motor fuel, 88 or 89 octane: blue.
(3) Unleaded motor fuel, 86 or 87 octane: white.
(4) Diesel motor fuel: yellow.
(5) Kerosene motor fuel: brown.

(d) Products containing extenders (oxygenates) such as ethanol shall be designated by the addition of a black border around white symbols and a white border around other colored symbols.

(e) Vapor-recovery connections and manholes shall be marked with orange circles.

(f) Observation and monitoring wells shall be marked with a black triangle on a white background.

(g) At all facilities with more than one tank, the color coding applied to the fill cap or manhole cover shall extend beyond the edge of the cap or cover onto adjacent concrete or pavement.

(~~d~~h) The tag labeling and color coding must be waterproofed and fuel-proofed material so that the type, grade, or quality of the motor fuel~~, which must not be abbreviated,~~ is readily visible to persons adding to or taking a sample from the line or storage tank.

SUBCHAPTER 19. VIOLATIONS AND CONTEMPT

165:15-19-1. Penalty; violations and contempt

(a) The Commission, after notice and hearing, may fine or hold in contempt any person ~~for a sum not exceeding $500.00~~ for each of the following violations:

(1) Any person using a measuring device which does not meet the required tests, standards, and specifications.

(2) Any person who offers motor fuel for sale or resale within the State of Oklahoma and does not comply with the rules of this Chapter.

(3) Any person who tampers with or molests any sign, label, lock, or seal placed by the Fuel Specialist upon any pump, delivery device, receptacle, container, tank, or service station used in the sale of any motor fuel.

(4) Any person who aids any person in the violation of any rule of this Chapter.

(5) Any person who interferes in any way with the Fuel Specialists in the performance of their duties as provided by law of the State of Oklahoma and the rules of the Commission.

(6) Any person otherwise failing to comply with the rules, regulations, specifications, or standards of the Commission.

(b) Each day on which violation occurs will be deemed a separate and distinct offense.

APPENDIX A. TOLERANCES FOR RETAIL AND WHOLESALE DEVICES [REVOKED]

APPENDIX A. TOLERANCES FOR RETAIL AND WHOLESALE DEVICES [NEW]

Tolerances for Retail Devices

Indication	Maintenance Tolerance	Tolerance for new or newly reconditioned equipment	Tolerance requires shut-down of system	Maintenance Tolerance
U.S. Gallons	Cubic Inches	Cubic Inches	Cubic Inches	Hundredth of Gallon
5	6	3	15	0.03
100	65	35	91	
Metric Unit Liters	Cubic Centimeters	Cubic Centimeters		
19	116	58		
20	120	60		

Tolerances for Wholesale Devices

Indication	Maintenance Tolerance	Tolerance for new or newly reconditioned equipment	Tolerance requires shut-down of system	Maintenance Tolerance
U.S. Gallons	Cubic Inches	Cubic Inches	Cubic Inches	Hundredth of Gallon
5	6	3	15	0.03
100	65	35	91	
Metric Unit Liters	Cubic Centimeters	Cubic Centimeters		
19	116	58		
20	120	60		

APPENDIX C. DISTILLATION TEST LIMITS FOR DIESEL FUEL [REVOKED]

RECOMMENDED ADDITIONAL ALLOWABLE FOR HORIZONTAL OIL WELLS
BASED ON TRUE VERTICAL DEPTH AND COMPLETION INTERVAL

AVERAGE TRUE VERTICAL DEPTH OF COMPLETION INTERVAL IN FEET	ADDITIONAL ALLOWABLE IN BARRELS PER FOOT OF COMPLETION INTERVAL
TO 4,000	.2
4,001 TO 8,000	.3
8,001 TO 12,000	.4
GREATER THAN 12,000	.5

All oil produced and marketed during the drilling and completion operations shall be charged against the allowable assigned to the well upon completion. Effective date of the allowable shall be the date of first production.

[OAR Docket #14-462; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #14-463]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 9. Notification and Reporting Requirements
165:25-1-42. New tank systems [AMENDED]
165:25-1-48. Tank and line tightness testing [AMENDED]
Subchapter 2. General Requirements for Underground Storage Tank Systems
Part 1. Codes and Standards
165:25-2-4. Financial responsibility [AMENDED]
Part 5. Protection Against Corrosion
165:25-2-53. Frequency and criteria of inspections and tests [AMENDED]
Part 6. Piping
165:25-2-55.1. Underground storage tank piping materials [AMENDED]
Subchapter 3. Release Prevention and Detection Requirements
Part 3. Release Investigation Requirements
165:25-3-8. Release investigation and confirmation [AMENDED]
AUTHORITY:
Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 to January 24, 2014
PUBLIC HEARING:
February 6, 2014
ADOPTION:
February 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Experience has shown that certain rules need to be clarified to fully explain what type of notice is necessary; what type of facility layout must be documented; set forth all elements of financial responsibility; reinforce the need to use appropriately trained personnel; clarify the need for tank sumps and ball valves; and clarify in what instances a release case might be opened.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the OCC scheduling notification form. If events require a change in the date of installation, PSTD shall be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the OCC registration form must be submitted to PSTD with copies of required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days in order to receive a tank permit. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(c) Owners and Commission-licensed UST Installers must certify on the registration form that the installation of tanks and piping meet the requirements of this Chapter.

(d) If observation wells are the selected method of leak detection, the plans for their placement must be pre-approved by PSTD.

165:25-1-48. Tank and line tightness testing

(a) Tank and line tightness testing results in which any part of the tank system tested does not pass must be reported to the OCC within 24 hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of testing.

(b) Tank tests must include both the wetted portion and ullage portion of the tank.

(c) Hydrostatic line tightness tests and line leak detector tests must be conducted in accordance with and reported on the prescribed PSTD form.

(d) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

(e) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-4. Financial responsibility

(a) An owner/operator may satisfy the requirements of Title 40 Code of Federal Regulations (CFR), 280.90 through 280.111~~, in (b) above,~~ by use of the Petroleum Storage Tank Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 §350 et seq.) (ref: Okla. Stat. Tit. 17 §350 et seq.). A ~~deductible~~co-pay must be paid for which compliance may be demonstrated by use of any of the mechanisms outlined in 40 CFR 280.90 through 280.111, including, but not limited to Self-insurance, Guarantee, Insurance, Surety Bond, Letter of Credit, Trust fund or standby trust fund, Securities pledge, Cash or cash equivalent pledge~~and OAC 165:27-18-3~~. For releases that occurred before June 4, 2004 the ~~deductible~~co-pay is $5,000; for releases that occurred after June 4, 2004 the ~~deductible~~co-pay is 1% of fund expenditures not to exceed $5,000.

(b) Financial responsibility~~Regulations~~regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission."

PART 5. PROTECTION AGAINST CORROSION

165:25-2-53. Frequency and criteria of inspections and tests

(a~~1~~) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every 3 years thereafter.

(b~~2~~) Every 60 days impressed current cathodic protection systems must be inspected by the owner or owner's designated representative to ensure the equipment is working properly.

(c~~3~~) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP-0285.

(d) All personnel performing cathodic protection system testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with a certified course and applicable industry standards or codes.

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

(a) All new or replacement underground pressurized piping must be installed as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

(b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.

(c) Existing facilities that are replacing more than twenty feet (20') of underground piping must upgrade pursuant to (a) or (b) of this Section. If a metallic line fails due to corrosion, ~~the entire~~ all metallic product ~~line~~lines at the facility must be immediately removed, and cannot be repaired.

(d) Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant 165:25-3-6.29.

(e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.

(f) Existing facilities that are replacing underground storage tanks or making repairs ~~to a submersible pump~~over the top of the tank that requires excavation of dirt or concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.

(g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.

(h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.

(i) Ball valves must be installed on new safe suction lines to isolate lines for testing purposes.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the PSTD specifically waives any part of this Section in writing.

(b) Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners/operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners/operators must repair, remove or replace the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and chemical concentrations of regulated substances detected in soil or water are not the basis for suspicion of a release.

(C) Owners/operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners/operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed Remediation Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) ~~Levels~~Laboratory analysis of levels of chemical constituent concentrations that may be required to confirm a ~~release~~case are:

(1) Benzene
  (A) Native Soils - 0.5 mg/kg
  (B) Groundwater - 0.005 mg/l
(2) Toluene
  (A) Native Soils - 40.0 mg/kg
  (B) Groundwater - 1.0 mg/l
(3) Ethyl Benzene
  (A) Native Soils - 15.0 mg/kg
  (B) Groundwater - 0.7 mg/l
(4) Xylene
  (A) Native Soils - 200.0 mg/kg
  (B) Groundwater - 10.0 mg/l
(5) TPH
  (A) Native Soils - 50.0 mg/kg
  (B) Groundwater - 2.0 mg/l
  (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of PSTD.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which a remediation may be undertaken under the provisions of Chapter 29.

[OAR Docket #14-463; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #14-464]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 3. Scope of Rules
165:26-1-22. Exclusions [AMENDED]
Part 7. Notification and Reporting Requirements
165:26-1-42. New tank systems [AMENDED]
165:26-1-48. Tank and line tightness testing [AMENDED]
Subchapter 2. General Requirements for Aboveground Storage Tank Systems
Part 4. Requirements for Corrosion Protection Systems
165:26-2-42. Frequency and criteria of inspections and tests [AMENDED]
Part 5. Piping
165:26-2-55. Underground piping materials [AMENDED]
Subchapter 3. Release Prevention and Detection
Part 17. Release Investigation
165:26-3-171. Release investigation and confirmation [AMENDED]
Subchapter 16. Requirements for Aboveground Storage Tank Systems Utilized by Emergency Generators
Part 1. General Application and Compliance Provisions
165:26-16-1. Application [AMENDED]
165:26-16-2. Timeframes for registration and compliance with rules [AMENDED]
AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 to January 24, 2014
PUBLIC HEARING:
February 6, 2014
ADOPTION:
February 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Experience has shown that certain rules need to be clarified to fully explain what type of notice is necessary; what type of facility layout must be documented; reinforce the need to use appropriately trained personnel; clarify the need for tank sumps and ball valves; and clarify in what instances a release case might be opened.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. SCOPE OF RULES

165:26-1-22. Exclusions

(a) The following classes of aboveground storage tanks or systems are specifically excluded from all provisions of this Chapter:

(1) All tanks used in the exploration or production of oil and gas, including well service equipment and natural gas compression ~~facilities~~equipment. These activities are regulated by the Commission's Oil and Gas Conservation Division ~~and by the Pipeline Safety Department~~.
(2) All mobile or temporary tanks used at construction sites.
(3) All farm and ranch tanks.
(4) All tanks used by public utilities in the generation of electric power for public use.

(5) All tanks used by manufacturers in the production of goods.

(b) These exclusions do not extend to permanently located fuel storage tanks used to fuel company vehicles, even though the vehicles may be driven to production or construction sites.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-42. New tank systems

~~(a) Owners of all aboveground storage tanks regulated pursuant to this Chapter must notify PSTD of the existence of their tanks if the tanks are covered by these rules and have not already been registered. The notice must be on a form prescribed by PSTD (Form 7530 Registration for Petroleum Storage Tanks) and specify, at a minimum, the date of installation if known, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, type of secondary containment, and type of regulated substance being stored unless otherwise specified. Thereafter, owners must notify the PSTD of new tanks within 30 days of tank installations by application of Form 7530.~~

(~~b~~a) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give the PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form. If events require the owner to change the date of installation, the Division should be given 48 hours notice of the new date. Any removal associated with replacement of tanks or lines requires at least 14 day notification prior to the removal activity.

(~~c~~b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted with copies of ~~the~~required installation testing, photographs of the tank and piping system components before they are covered, an as-built drawing of the entire tank system, and manufacturer installation checklists within 30 days in order to receive a tank permit. No regulated storage tank system can be operated without a valid permit from the Corporation Commission.

(~~d~~c) Owners and AST Licensees must certify on the PSTD Registration form that the installation of tanks and piping meet the requirements of this Chapter.

165:26-1-48. Tank and line tightness testing

(a) Tank and line tightness test results in which any part of the tank system tested does not pass must be reported to PSTD within 24 hours by the owner, operator, their employees or agents, and also independently by the person or company performing the test. Complete test results must be submitted within 7 days of the testing.

(b) Hydrostatic line tightness tests must be conducted in accordance with and reported on the prescribed PSTD form.

(c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.

(d) All personnel performing tank and line testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with the testing equipment, manufacturer certification and applicable industry standards or codes.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-42. Frequency and criteria of inspections and tests

Cathodic protection systems must be inspected for proper operation by a qualified corrosion technician in accordance with the following requirements:

(1) Cathodic protection systems must be tested within 6 months of installation and/or repair, and at least once every 3 years thereafter by a qualified cathodic protection tester, who can demonstrate education and experience in the measurement of cathodic protection of buried or submerged metal piping systems and metal tanks.

(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner or operator (or owners designated representative) to ensure that the equipment is working properly.

(3) The criteria used to determine that cathodic protection is adequate must be consistent with a code of practice developed by a nationally recognized organization, such as the National Association of Corrosion Engineers (NACE).

(4) All personnel performing cathodic protection system testing must have the required education, experience, knowledge and competence to correctly perform testing services in accordance with a certified course and applicable industry standards or codes.

PART 5. PIPING

165:26-2-55. Underground piping materials

(a) All new underground product piping and ancillary equipment installed at a new facility or existing facility must have the following characteristics:

(1) Non-metallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser sumps must be installed and monitored with sensors as per 165:26-3-20.2.

(5) Piping transition sumps must be installed and monitored with sensors if the interstice area of connecting piping cannot be connected in an approved manner.

(b) ~~Existing facilities that have metallic piping that fails due to corrosion or are replacing the piping system must upgrade all piping per (a) above and come into full compliance with the rules of this Chapter and Subchapters. If the metallic line fails due to corrosion, the entire product line must be immediately removed, and cannot be repaired~~. Existing facilities that are replacing more than twenty feet (20') of underground piping must upgrade pursuant to (a) of this Section. If a metallic line fails due to corrosion, all metallic product lines at the facility must be removed, and cannot be repaired.

(c) ~~Existing facilities that have metallic or single walled nonmetallic piping and are relocating, or removing and replacing a fuel island must install dispenser sumps with sensors as per 165:26-3-20.2. Any additions to the metallic piping must be nonmetallic single or double walled piping.~~Existing facilities that are making any alteration to a fuel island when concrete removal is required must install dispenser sumps and monitor as pursuant to 165:25-3-6.29.

(d) ~~Existing facilities that are replacing dispensers where the fuel islands are not being relocated, removed or replaced may add to the existing piping using the same piping material. Dispenser sumps do not have to be installed.~~Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.

(e) Tracer locator wire is not required to be installed in existing piping trenches containing piping which otherwise meets the requirements in subsection (a) unless the trench is opened to repair, move, or replace the piping.

(f) Existing facilities that are replacing aboveground storage tanks ~~may re-use single walled non metallic piping~~must replace all single walled piping per (a) of this section.

~~(g) Existing facilities that are replacing a tank must replace underground steel piping if it has not been cathodically protected.~~

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 17. RELEASE INVESTIGATION

165:26-3-171. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the PSTD staff specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from PSTD, using the following steps or another procedure approved by PSTD:

(1) **System test.** Owners and/or operators must conduct tightness tests that determine whether a leak exists in the storage tank system.

(A) Owners and/or operators must repair, remove or replace the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the AST system in native soil or another location approved by PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD licensed Remediation Consultant.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) ~~Levels~~Laboratory analysis of levels of chemical constituent concentrations that ~~shall~~may be required to confirm a ~~release~~case~~at the direction of PSTD~~ are:

(1) Benzene
(A) Native Soils - 0.5 mg/kg
(B) Groundwater - 0.005 mg/l

(2) Toluene
(A) Native Soils - 40.0 mg/kg
(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene
(A) Native Soils - 15.0 mg/kg
(B) Groundwater - 0.7 mg/l

(4) Xylene
(A) Native Soils - 200.0 mg/kg
(B) Groundwater - 10.0 mg/l

(5) TPH
(A) Native Soils - 50.0 mg/kg
(B) Groundwater - 2.0 mg/l
(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil

shall be required to confirm a case at the direction of PSTD.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by PSTD, after which a remediation may be undertaken under the provisions of Chapter 29.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in aboveground storage tanks for use in emergency generators at facilities subject to SPCC rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112, (Oil Pollution Prevention).

(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-16-2. Timeframes for registration and compliance with rules

~~(a)~~ Tanks that are greater than 110 gallons and subject to regulation and rules specified in 165:26-16-1 that contain fuel for emergency generators must be registered with PSTD. The tanks must have come into compliance with the rules of this Chapter and Subchapter before July 15, 2005.

~~(b) There are emergency generators manufactured which have a fuel storage tank built into the unit. A manufactured unit will be accepted as being in full compliance with these rules if:~~

~~(1) The storage tank is double walled and installed according to the manufacturer's specifications or;~~

~~(2) The storage tank is single walled with secondary containment built into the unit and installed according to the manufacturer's specifications; or~~

~~(3) Its location does not pose a threat to people, property or the environment.~~

~~(c) If a manufactured unit has a single walled tank without built in containment, it must be installed in compliance with the containment provision of this Chapter.~~

~~(d) If the fuel storage tank is separate from the generator unit, it must meet and be installed according to this Chapter.~~

[OAR Docket #14-464; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND

[OAR Docket #14-465]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
165:27-1-2. Definitions [AMENDED]
165:27-1-3. Scope [AMENDED]
Subchapter 5. Qualifications for Reimbursement
165:27-5-2. Application for reimbursement [AMENDED]
165:27-5-3. Application for supplemental reimbursement [AMENDED]
Subchapter 7. Reimbursement
165:27-7-1. Reimbursable expenses [AMENDED]
165:27-7-2. Reimbursement [AMENDED]
165:27-7-7. Exclusions from reimbursement [AMENDED]
165:27-7-8. Withholding reimbursement [AMENDED]
165:27-7-9. The Pre-Approval Program [AMENDED]
165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions [AMENDED]
165:27-7-10. Pay-for-Performance procedures [AMENDED]
165:27-7-11. Purchase order procedures [AMENDED]
Appendix A. Request for Purchase Order [REVOKED]
Appendix B. Request for Acceptance of Changes in Approved Purchase Orders [REVOKED]

AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321; Corporation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
November 21, 2013 to January 24, 2014

PUBLIC HEARING:
February 6, 2014

ADOPTION:
February 6, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The Indemnity Fund was created in 1989, and the rules promulgated thereafter reflect the patchwork effort to align the rules to statutory amendments. Much the same is present here. Recent statutory enactments, novel claims against the Indemnity Fund and the presence of obsolete and inapplicable references necessitated the Agency to perform a top to bottom review of the Indemnity Fund rules.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-2. Definitions

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11,~~and~~ 165:26-1-2, and 165:29-1-11 the following words or terms, when used in this Chapter, are the Commission's interpretation of enabling statutes and shall have the following meaning unless the context clearly indicates otherwise:

"Actual physical damages" means those damages to real and personal property directly related to a release of petroleum from a Commission regulated storage tank system. Personal property damage is limited to the replacement value of the personal property less depreciation. Real property damages is limited to the lesser of the property value or diminution in property value directly associated with a release of regulated substances from a Commission regulated storage tank system. In no event will the Indemnity Fund reimburse speculative damages, inferred damages, unrealized damages or any other damages where damage costs are not actually incurred, paid, or otherwise established to the Commission's satisfaction. The burden of proof shall be upon the person seeking compensation from actual physical damages.

"Administrative Application" means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Allowable Costs" means costs that are reasonable, integral and necessary to corrective action.

"Assignment of Benefits" means a written directive from the ~~Application~~Applicant of ~~record~~Record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

"Assignment of Rights" (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

"Associated costs" means expenses that are not integral to the corrective action and not subject to reimbursement.

"Chemicals of Concern ("COC") means chemicals that may pose a threat to human health and the environment.

"Claim or Claims" means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the ~~deductible~~co-pay is paid.

"Closed file" means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

"Commission or OCC" means the Oklahoma Corporation Commission.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contamination" means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

"Disbursement" includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

"Dispenser" means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system. The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.

"Eligible Person" means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

"Eligible Release" means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Impacted Party" means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

"Investigation" means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

"Licensed Remediation Consultant" means an individual who has a current license issued by the PSTD.

"Medical injury(ies)" means actual physical injury to a person in which medical costs have been incurred in association with the diagnosis and treatment of a physical injury directly caused by a release of petroleum from a Commission regulated storage tank system.

"Pay for Performance (PFP)" means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

~~**"Person"** means any and all persons, including any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. It also includes a consortium, a joint venture, a commercial entity, and the United State Government.~~

"Petroleum storage tank system" means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

"PSTD" means Petroleum Storage Tank Division, or Division.

"Purchase Order" means a document that is submitted to PSTD to obtain pre-approval by PSTD of a scope of work and the costs associated with the scope of work.

"Reimbursement" means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

"Remedial Action Plan" means a plan implementing the required and approved remediation.

"Remediation" means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/ or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

"Site assessment" means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

"Site characterization" means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.

"Suspicion of Release" ("SOR") means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR is required.

"Work Plan" means a proposed scope of work to implement corrective action. This shall be submitted through a purchase order request and/or remediation plan.

165:27-1-3. Scope

This Chapter provides a basis that will allow the Indemnity Fund Program to organize and maintain itself, define eligible ~~parties~~persons, eligible releases, and eligible tank systems, allowable costs, methods, ~~limitation~~limitations of reimbursement, corrective action, completed work, and standards that will protect the health, safety and welfare of the state and its environment, and offers specific procedures and policies for ~~speedy~~prompt and timely reimbursement of allowable costs to eligible ~~parties~~persons.

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-2. Application for reimbursement

An application for PSTD Eligibility on a confirmed release shall be made to the Administrator of the Indemnity Fund Program on applicable forms and at a minimum include:

(1) A properly completed "Indemnity Fund Application" form with all requested information provided.

(2) A sworn Non-Collusion and Non-Ownership/Participation Affidavit executed by both the Applicant and the Licensed Consultant.

(3) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.

(4) ~~Non-Ownership/Participation Affidavit~~Contract.

(5) Assignment of Benefits.

(6) Damage Statement (I.A.).

(7) Other Financial Mechanisms allowable besides the Indemnity Fund (I.A.).

(8) Information deemed sufficient by PSTD staff to substantiate a claim as an impacted party or adjacent property owner and a sworn statement that no other financial mechanisms were in place at the time of discovery of the release. Applicant must submit any and all property insurance policies to the Indemnity Fund in place at time of release.

(9) Any other information requested by the PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of the PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.

165:27-5-3. Application for supplemental reimbursement

In order to be considered complete, a request for supplemental reimbursement shall at a minimum contain:

(1) Supplemental Indemnity Fund reimbursement request.

(2) A certified affidavit that incurred costs are true and correct, with invoice numbers, dates of invoices and amounts of invoices being submitted.

(3) Itemized original invoices, if requested by PSTD.

(4) Any other information as may be required by the Fund.

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

(1) ~~Integral~~Reasonable, integral and necessary costs ~~which are~~ directly related to the corrective action. These costs may include but are not limited to such items as waste disposal, soil and groundwater remediation

techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, etc.

(2) Backfill on active confirmed cases.

(3) Suspicion of release, and other costs deemed investigatory in nature.

(4) ~~Third Party property damages and medical costs as set forth in 17 O.S. 356.~~Costs that are reasonable, integral and necessary.

(5) Third Party property damage costs and medical costs that have been paid by Applicant as set forth in 17 O.S. 356.

165:27-7-2. Reimbursement

(a) Among other requirements an applicant for reimbursement is required to show:

(1) Allowable costs were incurred on or after December 23, 1988.

(2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.

(3) The eligible person has fully cooperated with PSTD in responding to the release.

(b) The Petroleum Storage Tank Division will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars ($5,000.00) but not more than:

(1) One million five hundred thousand dollars ($1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, (throughput to be established by clear and convincing documentary records that are deemed sufficient by PSTD staff) and

(A) Two Million Dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(B) Three million dollars ($3,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,

(2) Five hundred thousand dollars ($500,000.00) per occurrence providing the system is not used in petroleum marketing, or if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and

(A) Two million dollars ($2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,

(B) Three million dollars ($3,000,000.00) for owners with more than one hundred storage tank systems.

(c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable, integral and necessary.

(d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the $5,000.00 ~~deductible~~co-pay has been prepaid or a payment arrangement concerning the ~~deductible~~co-pay has been agreed to by PSTD and significant compliance with the payment agreement is achieved.

(e) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with unit cost pricing recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.

(f) All corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.

(g) If the technology is available, PSTD will accept online submissions of documents meeting PSTD rules and requirements.

165:27-7-7. Exclusions from reimbursement

(a) Tanks and/or systems owned or operated by ~~state and~~the federal ~~governments~~government are not eligible for reimbursement from the Fund.

(b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.

(c) No reimbursement shall be made by the Indemnity Fund to any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for the corrective action taken or to any person for the same cost.

(d) No reimbursement shall be made for loss of time.

(e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.

(f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.

(g) No reimbursement shall be made for attorney's or legal fees incurred by or rendered against an eligible person for any reason associated with the release case.

(h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.

(i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.

(j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved in advance by the PSTD.

(k) No reimbursement shall be made to an otherwise ineligible person, or for a release of regulated substances that cannot be tied back to an existing or former storage tank system, or for non-regulated petroleum storage tank system releases or releases of non-regulated substances.

(l) No reimbursement for corrective action costs will be made for the portion of PSTD-regulated releases commingled with non-regulated substances.

165:27-7-8. Withholding reimbursement

The Fund may withhold reimbursement payments in whole or in part if any of the following apply:

(1) Offsetting charges.

(2) Conflicting, duplicate or unclear assignments.

(3) Subrogation of reimbursements.

(4) Pending legal action pertaining to reimbursement or claims.

(5) Clarification of possible third party payors.

(6) Investigation or pending investigation of suspected illegal or improper activity.

165:27-7-9. The Pre-Approval Program

(a) The purpose of the Pre-Approval Program is to reduce, if not eliminate, disallowances of reimbursement for costs incurred and associated with corrective action, as well as to foster a spirit of cooperation between the Licensed Remediation Consultant, the PSTD and the ~~tank owner~~ responsible person.

(b) ~~With the above in mind, all parties~~Parties are ~~encouraged~~required to use either or both of the two pre-approval processes developed by PSTD. These two procedures are: Purchase Orders and Pay-For-Performance (PFP). ~~Simply put, these~~These procedures document the agreement that all parties have reached and must comply with. ~~These two procedures will be required for reimbursement.~~

(c) ~~The tank owner~~A responsible person may opt out of the pre-approval program if the responsible person elects, in writing ~~and~~ after consultation with the Administrator of the Indemnity Fund, not to participate in the pre-approval program and acknowledges in writing that the ~~tank owner~~ responsible person understands that all requests for reimbursement submitted without pre-approval will be subject to non-reimbursement of costs incurred which do not meet the statutory standards for reimbursement set forth in 17 O.S. § 350 et seq.

165:27-7-9.1. Pre-Approval for Emergency Responses - Exceptions

(a) Emergency abatements must ~~report~~be reported according to PSTD rules and requirements. ~~All~~ Reimbursement of costs incurred as a result of an emergency response are subject to Fund ~~discretion~~ review, and a determination by the Indemnity Fund~~of~~that there is sufficient information such costs are~~necessary,~~ reasonable, ~~and~~ integral~~,action~~and necessary.

(b) If an emergency response has been declared by the PSTD, immediate action is required.

165:27-7-10. Pay-For-Performance procedures

(a) Pay-For-Performance (PFP) Remediation Proposals are designed for pre-approval of work that is to be performed. Pay-For-Performances ~~will~~shall not be issued on work that has already been completed.

(b) Before a Pay-For-Performance (PFP) Remediation Proposal can be approved, a Remedial Action Plan which satisfies the criteria of OAC 165:29-3-80 must be approved by the PSTD.

(c) A Performance-based Remedial Action Plan must be submitted for review to the PSTD.

(d) The Performance-based Remedial Action Plan Proposal shall ~~included~~include the following information:

(1) Chronologic summary of site work with type, amount, and location of the release.

(2) General description of the site geology and hydrology with stratigraphic cross-section.

(3) Tier I/IA and 2 (if needed) report summary with proposed contaminant clean-up levels

(4) Description of the proposed remediation technology to be used.

(5) Schematics showing remediation system layout and remediation equipment.

(6) Description of performance monitoring methods and list of key monitoring wells.

(7) Total site remediation cost, contract terms, payment schedule, contract time frame, and warranty period.

(8) Base map with all well and soil boring locations.

(9) Detailed facility map with current benzene and TPH groundwater and soil plume maps.

(10) Detailed facility map with free product thickness, if present.

(11) Concentration maps of all other chemicals of concern that exceed Oklahoma Risk Based Corrective Action ("ORBCA") Site Specific Target Levels.

(12) The number of months that will be required to complete the remediation.

(13) The number of months that remediation will be warranted through continued operation in the event clean up levels have not been reached during the required clean up period.

(14) Other relevant information to explain the extent and type of the contamination, how the proposed performance based work plan will accomplish the clean up, types of monitoring to be used, and any risks that may be associated with the clean-up that should be addressed.

(e) All costs associated with the Performance-based Proposal must be included in the Performance-based Remedial Action Plan submitted to the PSTD.

(f) Any change order or re-design costs will be part of the original Performance-based Work Plan unless otherwise stipulated in the PFP contract.

(g) Costs associated with the closing of the site may or may not be included in the PFP but will be discussed prior to the execution of the PFP.

165:27-7-11. Purchase order procedures

(a) Purchase order proposals are designed for pre-approval of work that is to be performed. Purchase orders ~~will~~shall not be issued on work that has been completed without pre-approval.

(1) All purchase orders must use the appropriate standardized ~~form~~method for a particular scope of work.

(2) All purchase order proposals must be signed by the Licensed Remediation Consultant ~~or tank owner~~ and submitted as original documents using the PSTD designated forms and format.

(3) All purchase order proposals submitted to and receipted by PSTD will be reviewed and responded to within 30 days.

(4) If the purchase order proposal is approved as submitted, technical and accounting staff will sign the proposal and send ~~an~~ approved ~~copy~~copies to the Licensed Remediation Consultant ~~or tank owner~~and responsible person with the assigned purchase order number and a list of the required documents that will support the completed scope of work as described in the purchase order proposal at the agreed upon price.

(5) If the purchase order proposal is not approved as submitted, the PSTD Technical staff will contact the Licensed Remediation Consultant or ~~tank owner~~responsible person concerning the necessary changes required or will schedule a meeting, if needed.

(A) The Licensed Remediation Consultant or ~~tank owner~~responsible person will then make the agreed revisions and submit the final signed and dated purchase order to the PSTD.

(B) When PSTD Technical staff recommends revisions to the purchase order proposal, the Licensed Remediation Consultant or ~~tank owner~~responsible person will have 30 days from notification of revisions to respond and submit a final purchase order proposal. If the consultant or ~~tank owner~~responsible person does not respond within 30 days, the purchase proposal as originally submitted is void.

(C) Unless agreed upon by ~~both~~ PSTD, the responsible person and the Licensed Remediation Consultant, in writing, any purchase orders that have not been completed and submitted for payment within 120 days after the scope of work completion date are null and void.

(6) In the event the Licensed Remediation Consultant,~~or tank owner~~responsible person, and PSTD cannot agree upon reasonable terms, the purchase order proposal shall be void and the following shall apply:

(A) Work will then proceed on a Work Plan basis with documentation, as provided for in 17 O.S. § 356(D), required for reimbursement; and

(B) Multiple submissions of purchase orders for the same or similar scopes of work will only be considered at the discretion of the PSTD.

(7) The PSTD will review only one revision of a purchase order proposal.

(b) Change orders must be submitted prior to performing work not included in the scope of work set forth in the approved purchase order, which will require pre-notification to and pre-approval by the Technical staff, unless the total additional costs are less than 5% of the approved purchase order. Documentation will be required to explain additional work completed and to justify additional costs. All requests for reimbursement of costs not incurred in the approved purchase order will be reviewed at the discretion of the Fund.

(c) Reimbursement format and requirements for purchase orders include the following:

(1) All scope(s) of work described in the approved purchase order must be completed in full before reimbursement is requested, unless other payment terms are pre-approved by the PSTD and set forth with specificity in the purchase order.

(2) All purchase orders being submitted for reimbursement will contain:

(A) A copy of the approved purchase order.

(B) Required documentation.

(d) Reimbursement claims on purchase orders will be paid within 30 days of receipt.

(e) The Licensed Remediation Consultant, ~~tank owner operator,~~responsible person or both may make application for an Administrative Application for hearing to determine terms and conditions of purchase order approval.

APPENDIX A. REQUEST FOR PURCHASE ORDER [REVOKED]

Original _____ **Revision**_____ **Date**_____

Indemnity Fund: Attention _____

Purchase Order Tracking # _____
(For I.F. office use Only)

Technical Project Auditor (Hydrologist) _____

Case Number _____

Consultant _____

Total Amount of Proposal _____

Total Number of Pages _____

Signatures and Date:

Consultant _____

Technical Project Auditor (Hydrologist) _____

Environmental Process Auditor (Accountant) _____

Comptroller _____

FORM: PO-100

APPENDIX B. REQUEST FOR ACCEPTANCE OF CHANGES IN APPROVED PURCHASE ORDERS [REVOKED]

Oklahoma Corporation Commission Indemnity Fund
REQUEST FOR ACCEPTANCE OF CHANGES
IN APPROVED PURCHASE ORDERS

Property Address:	Case Number:
	Facility Number:
Date of Request:	Purchase Order #:

I hereby request the acceptance of the following changes in the approved purchase order for the above identified case. I DO____ DO NOT___ request an increase in the value of the approved purchase order amount, if these changes warrant such an increase.

I hereby request the acceptance of the following changes in the approved purchase order for the above identified case. I DO___ DO NOT ___ request a decrease in the value of the approved purchase order amount, if these changes warrant such a decrease.

Description	*Estimated effect on cost of each change*

FORM: CO-100

Oklahoma Corporation Commission Indemnity Fund
REQUEST FOR ACCEPTANCE OF CHANGES
IN APPROVED PURCHASE ORDERS

Property Address:	Case Number:
	Facility Number:
Date of Request:	Purchase Order #:

Date:_____ _____Consultant

DETERMINATION AS TO ACCEPTABILITY

Changes acceptable, provided that:_____

_____

_____

_____

Changes unacceptable due to:_____

_____

_____

_____

ENDORSEMENT TO PURCHASE ORDER (FOR INDEMNITY FUND USE ONLY)
This endorsement takes precedence over and specifically amends the outstanding purchase order as described above. Any condition stated on the outstanding purchase order, not specifically referred to and modified herein, remains in full force and effect until expiration of the validity period. Established reasonable value for task(s) completed are revised to: $_____.

Date:_____ _____Hydrologist

Date:_____ _____Technical Manager

FORM: CO-100

[OAR Docket #14-465; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 29. REMEDIATION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #14-466]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Release Prevention, Detection and Correction
Part 1. Release Prohibition, Reporting, and Investigation
165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting [AMENDED]
Part 5. Corrective Action Requirements
165:29-3-76. Tier 1A ORBCA [AMENDED]
AUTHORITY:
The Commission's statutory authority is found in 17 0.S. §§ 306, 307, 321; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 to January 24, 2014
PUBLIC HEARING:
February 6, 2014
ADOPTION:
February 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rules regarding a confirmed release were re-written to avoid confusion over what may constitute a confirmed release. The reduction of a monitoring well borehole from 4" to 2" accomplishes a variety of things: reduces drill time for each monitoring well; reduces the cost to drill and case the reduced diameter borehole; reduces the volume of water that must be purged from the borehole to assure a pristine sample and allows greater vertical fill of groundwater during drought conditions.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-3. Release investigation; confirmed release; suspected release; emergency suspected release and release reporting

(a) **Duty to inspect for release.** Owners and operators of storage tanks must routinely inspect and conduct necessary testing of their storage tanks to prevent spilling, overfilling, or leaking from a storage tank system into the native environment. The owner or operator of a petroleum storage tank system must take the following steps or use other procedures approved by the PSTD:

(1) **System test.** Owners or operators must conduct petroleum storage tank system tests that determine whether a leak exists in the portion of the tank that routinely contains regulated substances and the attached delivery piping. If the test results for the system, tank, or delivery piping indicate that a leak exists, the owner or operator must repair, replace, or upgrade the petroleum storage tank system and begin a site check. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release. However, the owner or operator must conduct a site check as described in (B) below if the test results for the system, tank and delivery piping do not indicate that a leak exists, but indicator chemical concentrations detected in soil or water are above action levels cited in (b) of this Section.

(2) **Site check.** The owner or operator must measure for the presence of a release where released regulated substances are most likely to be present at the petroleum storage tank system site. In selecting sample types, locations, depths and measurement methods, owners or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet from the outside of the petroleum storage tank system in native soil or another location approved by the PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles may be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the DEQ for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the petroleum storage tank system site confirm that a release has occurred, the owner or operator must begin the required corrective action in accordance with this Subchapter.

(B) If the test results for the native soil and/or groundwater or the petroleum storage tank system

site do not indicate that a release has occurred, further investigation is not required.

(b) **Confirmed release.** When a release is confirmed a case may be activated.

(1) When one or more of the following is present from a petroleum storage tank system, a release may be considered confirmed.

(A) Free product is found anywhere.~~.~~

(B) Contaminated groundwater is found outside the excavation zone.

(C) Contaminated "soil zone" is found outside the excavation zone.

(2) Any contamination from a regulated substance having concentrations determined by the PSTD to be harmful to human health or the environment.

(3) ~~Levels~~Laboratory analysis of levels of chemical constituent concentrations ~~determined by laboratory analysis~~ that may be required to confirm a ~~release~~case are:

(A) Benzene

(i) Native Soils - 0.5 mg/kg

(ii) Groundwater - 0.005 mg/l

(B) Toluene

(i) Native Soils - 40.0 mg/kg

(ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene

(i) Native Soils - 15.0 mg/kg

(ii) Groundwater - 0.7 mg/l

(D) Xylene

(i) Native Soils - 200.0 mg/kg

(ii) Groundwater - 10.0 mg/l

(E) TPH

(i) Native Soils - 50.0 mg/kg

(ii) Groundwater - 2.0 mg/l

(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ~~or~~ mg/kg may be required to confirm a case.

(c) **Suspected release.** When an owner, operator, or their agent has reason to believe that a release from a storage tank may have occurred, he or she must notify the PSTD within 24 hours and receive authorization from the Division prior to initiating any investigation for which subsequent payment from the Indemnity Fund may be sought.

(d) **Emergency suspected release.** Owners, operators, or their agent may begin investigation of suspected releases when the suspected release may cause immediate harm to the public health, safety, or welfare ~~or~~of the environment. The Petroleum Storage Tank Division will approve and reimburse expenses for an investigation after it has been performed and prior to the issuance of a Suspicion of Release by the Petroleum Storage Tank Division when the owner or operator has reasonably acted upon the belief that the suspected release gave rise to the need for immediate emergency action. The determination of whether or not action was reasonable is within the discretion of the PSTD.

(e) **Release reporting.** Within 20 days after the reporting of a release, the owner or operator must submit a report to the PSTD summarizing the steps taken under this Section and any resulting information. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted on PSTD-specified forms and no other abatement measures or site checks are required.

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-76. Tier 1A ORBCA

(a) Unless otherwise directed by the PSTD, the owner or operator must compile information in order to assess the site using the Risk-Based Corrective Action (RBCA) process described in the ORBCA Guidance Document. (The ORBCA Guidance Document is available at the offices of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.) The RBCA process must be implemented with a three-tiered approach that must involve an increase in the level of data collection and analysis from one tier to the next. Some conservative default parameters under the Initial Site Characterization Tier 1A process must be replaced with more site-specific parameters under the Tier 2 and Tier 3 process. PSTD will review the results and recommendations at the completion of the Tier 1A analysis and decide if a more site-specific tiered analysis is required by initiating a Tier 2 or Tier 3 process, or whether remedial action should be performed as provided for in this Subchapter.

(b) The PSTD will only accept and review reports, worksheets, checklists, closure reports or other relevant documents which incorporate the RBCA process, or any other acceptable risk analysis, from a Licensed Remediation Consultant.

(c) The RBCA Tier 1A process is as follows:

(1) Tier 1A: Non-site-specific risk-based screening method used to determine corrective action goals using limited site-specific data.

(A) Tier 1A establishes conservative cleanup goals called modified Risk-Based Screening Levels (RBSLs). Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the default Fate and Transport Parameters are indicated. The default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation. This evaluation must be performed using the models cited in Appendix C of the ORBCA Guidance Document. The modified RBSLs take into consideration regional characteristics, aesthetic criteria, and other appropriate standards such as Maximum Contaminant Levels (MCLs) for water. Tier 1A modified RBSLs are derived from standard exposure scenarios using current Reasonable Maximum Exposure (RME) toxicological parameters and conservative contaminant migration models. RBSL values are determined by the PSTD using 1 in 1,000,000 as a Target Risk Limit for carcinogens and a Hazard Quotient (HQ) not

greater than 1.0 as a Target Risk Limit for non-carcinogens. 1 in 10,000 is the acceptable Target Risk Limit for carcinogens for future potential receptors.

(B) The most likely Point of Exposure (POE) for current and potential future beneficial use of fresh groundwater should be determined. The concentration at this Point of Exposure for each Chemical of Concern (COC) must not exceed the Target Risk Limits cited in this Section.

(C) Unless otherwise directed by the PSTD under Tier 1A the owner or operator must drill and install a minimum of four (4) ~~four inch (4")~~two-inch (2") diameter monitoring wells outside of the UST pit or AST containment or product piping trench excavation zones. These wells must be located as follows:

(i) One well must be installed in an apparent upgradient location to any known potential source at the site on or as close to the release as possible.

(ii) One well must be installed in a location most likely to be contaminated.

(iii) One well must be installed in a location that will allow the determination of an accurate groundwater gradient.

(iv) One well must be installed in the direction of the nearest probable Point of Exposure either at the nearest property line or fifty (50) feet from the source of contamination, whichever is closer, or at another location as determined by the PSTD. This well will be the Point of Compliance (POC) well for the Tier 1A evaluation unless there is a Point of Exposure nearer to the source of contamination, in which case the Point of Exposure will also become the Point of Compliance. The concentration for each Chemical of Concern in the Point of Compliance well should not exceed the Tier 1A standards as calculated using the ORBCA Guidance Document. If a drinking water supply well has been identified within 330 feet of the site, groundwater MtBE must be tested at the Point of Compliance. 0.020 mg/L will be considered the level of concern for MtBE and may require further assessment and corrective action.

(2) Tier 1A: Risk-Based Screening Level corrective action goals developed using limited site-specific data.

(A) This evaluation must be performed using the same models as those which are cited in Appendix C of the Guidance Document.

(B) Only the Fate and Transport Parameters cited in the ORBCA Guidance Document may be replaced by site-specific information obtained through site investigation and assessment. Justification must be provided when changes in any of the Tier 1A default Fate and Transport Parameters are indicated. The Tier 1A default Exposure Factors cannot be modified, nor can degradation rates be used under a Tier 1A evaluation.

(3) Within 45 days of release confirmation, or according to a schedule established by the PSTD, the owner or operator must submit the information required in the Tier 1A evaluation as a report. This report must be submitted in a style and format as set forth in the ORBCA Guidance Document.

(d) The PSTD may re-evaluate a Tier 1A analysis of a site, for the purpose of closure, on a case-by-case basis.

[OAR Docket #14-466; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 30. MOTOR CARRIERS

[OAR Docket #14-467]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Registration Pursuant to the International Registration Plan
165:30-19-3. Registration [AMENDED]
165:30-19-9. Failure to pay additional fee assessments [AMENDED]
165:30-19-16. Application disapproval [AMENDED]
165:30-19-17. Temporary registration [AMENDED]
165:30-19-19. Trip permits and hunters permits [AMENDED]
Subchapter 26. Nonconsensual Wrecker and Towing Services [NEW]
Part 3. Response to Nonconsensual Towing Rate Complaints [NEW]
165:30-26-14. Nonconsensual towing rate complaints and audits [NEW]
AUTHORITY:
The Commission's statutory authority is found in 47 O.S. § 230.24; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
January 23, 2014 to February 24, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 5, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 26. Nonconsensual Wrecker and Towing Services
Part 3. Response to Nonconsensual Towing Rate Complaints
165: 30-26-14. Nonconsensual towing rate complaints; audits [NEW]
Gubernatorial approval of Emergency Rule:
September 10, 2013
Register publication:
31 Ok Reg 44
Docket number:
13-1196
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rules are necessary for a variety of reasons. The adopted rules provide for further identification of motor carriers responsible for safety to assure the motoring public that no gaps exist for safety training and other safety related responsibilities to exist. The adopted rules also expand the differing levels of discipline available for failure to pay additional fee assessments instead of the harsh cancellation of license plates. The adopted rules remove any confusion of the time frame for protesting an application denial.

The adopted rules strike language regarding wires for temporary registration. As this method is now obsolete. The adopted rules make certain non-substantive grammatical changes.

The adopted rules make permanent an emergency rule negotiated with regulated wrecker services that sets forth terms and conditions regarding progressive discipline based upon nonconsensual towing complaints and the duties and responsibilities of both the regulator and regulated.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-3. Registration

(a) **General requirements for registration.** Before a vehicle can be proportionally registered in the state of Oklahoma the applicant or registrant must:

(1) Have an established place of business located in Oklahoma. Absent an established place of business in any IRP jurisdiction, an applicant must satisfy the residency requirements in 165:30-19-6, prior to being allowed to base plate in Oklahoma.

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant:

(A) The application must include the mailing address and telephone number of the applicant. In addition to providing the applicant's telephone number, the applicant may provide the telephone number of a third party who has knowledge of the applicant's whereabouts and is able to contact the applicant within a reasonable period of time upon request. An applicant or registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone number under this Section.

(B) If the application is signed by someone other than the applicant or registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) If the applicant is leased to a motor carrier, the applicant must provide a copy of the lease to satisfy Oklahoma's financial responsibility requirements (47 O.S. § 7-602).

(7) Provide proof of ownership;

(8) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(9) Pay all applicable fees to complete registration. Continuous registration is required, therefore registration fees shall be assessed from the last vehicle registration date or the date of sale.

(10) Provide the USDOT number ~~of the registrant on the IRP application. Where the USDOT number of the registrant and the carrier responsible for safety are different, BOTH must be provided on the IRP application.~~ and the social security number, federal employee identification number or taxpayer identification number of the carrier responsible for safety of each vehicle in the apportioned application.

(11) Be the owner or the motor carrier responsible for safety.

(b) **Registration periods.** Application for registration may be made at any time during a registration year.

(c) **Where to make application.** Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (http://www.occeweb.com).

(d) **Incomplete applications.** No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

(e) **IRP Plan Compliance.** Since registration with the Plan can affect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.

(1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant 30 days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

(2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

165:30-19-9. Failure to pay additional fee assessments

Failure to pay any additional fees shall constitute cause for ~~cancellation of the license plates~~ denial, suspension or revocation of the registration and reciprocal privileges of the registrant, and notification to other IRP jurisdictions.

165:30-19-16. Application disapproval

(a) An application will be denied if it is not properly completed. It is the responsibility of the applicant or registrant to submit all information required by the application instructions and attach all necessary documentation.

(b) The applicant or registrant or his agent will be notified if an application is denied and the reasons therefore or if additional information is needed.

(c) An application that has been denied may be resubmitted by the applicant or registrant but will be processed as a new application upon receipt of the resubmission.

(d) If the applicant believes that the application was wrongfully denied, the applicant may, within thirty (30) days ~~of~~from the ~~mailing or hand delivery of the~~ notice of denial, file a written protest of the denial with the Transportation Division under the provisions of OAC 165:5.

(e) No extensions, temporary operating authority, or temporary credentials will be issued for vehicles listed on a denial application.

165:30-19-17. Temporary registration.

New fleet vehicles, or vehicles being added to any existing fleet, must have some form of temporary registration prior to operation if permanent IRP credentials have not been issued. All forms of temporary registration are valid for the period shown and will be honored by all IRP jurisdictions when properly completed and validated.

(1) **Temporary registration.** Temporary registration may be obtained directly from the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948. The temporary registration shall be completed in full by the applicant and validated by the IFTA/IRP Section at the time the application and appropriate fees are presented to the section. The temporary registration should be completed as follows:

(A) Enter the assigned Oklahoma IRP account number or leave a blank if no previous number has been assigned.

(B) Mark the appropriate section indicating the type of application on which the vehicle(s) is listed for registration and the date application was filed.

(C) List the vehicles being authorized by license plate number (leave blank if not assigned), equipment number, year model, make and the vehicle identification number. Unused vehicle listing spaces must be lined out.

(D) List jurisdictional weights for the vehicles. A separate form must be completed for vehicles which are not to be qualified at identical weights in the same jurisdiction. State with no entry must be lined out.

(E) Enter the registrant's name and business address as reported on schedule A or C application.

(F) Jurisdiction and weight information entered on the form must be consistent with those reported on the Schedule A or C form.

(G) Temporary registration for established accounts may also be obtained directly from any person that has entered into an agreement with Commission for distribution and issuance of temporary registration. This registration must be completed in the same manner described in paragraph (1) of this subsection. Misuse of any temporary registration may result in denial of temporary registration privileges.

(2) **Required payment of fees.** Temporary registration or credentials may only be issued to new accounts after all required fees are paid.

~~(3) **Wires of temporary registration.** Wires of temporary registration may be requested from the IFTA/IRP Section in the following manner:~~

~~(A) **Where to apply.** Wires of temporary registration may be requested through the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, during normal business hours, Monday through Friday.~~

~~(B) **Application procedure.** A properly completed and signed Schedule C application must be mailed to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, prior to issuance of the wire request. The applicant must contact the appropriate wire service agency to determine the proper amount of fees due and the location to remit the fees.~~

(~~4~~3) **Self-issue temporary registration.** Self-issue temporary registrations are available only to established Oklahoma-based IRP registrants, and may be used for vehicle(s) added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications to the registrant's account. Self-issue temporary registrations may not be used for renewal vehicles. Self-issue temporary registrations may not be issued by a registrant to another registrant or to an applicant or potential applicant for Oklahoma proportional registration.

(A) **Self-issue temporary registration.** Self-issue temporary registrations or authorizations may be issued up to a maximum of twenty-five percent (25%) of the registrant's fleet. Any registrant with a fleet of less than six (6) vehicles may be assigned one (1) self-issue temporary registration.

(B) **Application procedure.** Properly completed temporary registrations allow for immediate temporary registration for vehicles added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications. Upon issuance, a copy of the temporary registration should be placed in the vehicle, and one copy mailed immediately to

the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948. Within fifteen (15) days of issuance, another copy of the temporary registration must be submitted, along with a completed Schedule C.

(C) **Violations.** Misuse of the temporary registration or failure to maintain proper accountability may result in the Prorate Section's refusal to issue the registrant self-issue temporary registrations.

(~~5~~4) **Issuance of temporary registration.**

(A) The issuance of temporary registration creates a debt to the State of Oklahoma who is then indebted to the participating jurisdictions of the International Registration Plan. Registrants must pay registration fees for the remainder of the registration year for which a temporary registration is issued. The fees shall be calculated beginning with the effective date of the temporary registration, or the date determined by the Transportation Division, if earlier, and continue through the end of the registration year.

(B) In addition to collection actions, failure to pay the fees described in (A) above will cause the loss of apportioned registration privileges.

(C) The Transportation Division may withhold issuance of future temporary registration, to those registrants who have failed to timely file a registration application, or pay the registration fees associated with any vehicle, for which a temporary registration authorized by 47 O.S. § 1124.1 has been issued.

(D) The Transportation Division may revoke previously issued registration credentials and/or deny future registration privileges to registrants who use temporary registration issued under 47 O.S. § 1124.1 without paying registration fees.

165:30-19-19. Trip permits and hunters permits

(a) A 72-hour trip permit provides full registration to trucks, truck-tractors, trailers, semi trailers, and motorbuses, which are not registered in Oklahoma.

(1) The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.

(2) Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a 72-hour trip permit before proceeding through the State of Oklahoma.

(3) Trip permits are available from the Transportation Division of the Commission and Commission contracted wire services. The cost of the permit is set forth by 47 O.S. § 1124 (B). Trip permits obtained through ~~wire~~permit services may have additional fees associated with issuance. Once a trip permit is issued, no refunds will be allowed.

(4) An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.

(5) A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.

(6) Only one (1) copy of a 72-Hour permit receipt will be given to applicant.

(7) A trip permit effective date shall not be more than 72 hours from the time it is issued.

(b) An unladen permit, otherwise known as a hunters permit, provides temporary registration to an apportionable vehicle at the unladen weight of the vehicle for a period of forty-five (45) days.

(1) Hunters permits are typically obtained by a vehicle owner to move the vehicle, without any load, to another jurisdiction when apportioned registration credentials are no longer valid due to the severance of a lease with a motor carrier.

(2) A Hunters permit is recognized as valid registration in all IRP participating jurisdictions at a weight not to exceed the unladen weight of the vehicle or the combined unladen weights of the power unit and trailer, provided however, an unregistered trailer must obtain a separate permit.

(3) Hunters permits are available from the Commission at a fee as prescribed by 47 O.S. § 1124 (C). Once an unladen permit is issued, no refunds will be allowed.

(4) The operator of a motor vehicle possessing an expired, altered or undated hunters permit shall be deemed to be in violation of state statutes and the rules of this Commission and shall be subject to full registration and penalty.

(5) An unladen permit effective date shall not be more than 72 hours from the time it is issued.

SUBCHAPTER 26. NONCONSENSUAL WRECKER AND TOWING SERVICES

PART 3. RESPONSE TO NONCONSENSUAL TOWING RATE COMPLAINTS

165:30-26-14. Nonconsensual towing rate complaints and audits

(a) The Commission hereby establishes a progressive system of actions to be taken by the Commission, or its designee, to achieve compliance with a Commission nonconsensual towing order. Violations of a Commission nonconsensual towing order may be established as a result of a nonconsensual towing rate complaint investigation or an audit.

(b) For purposes of progressive actions, the date shown on the service invoice serves as the violation date. The dated written notice of a violation issued by the Commission, or its designee, serves as the Violation Notification.

(c) The following stipulations are in place for violations established as a result of a complaint investigation:

(1) A Violation Notification will contain instructions on the proper rate calculation procedure and will be provided to the wrecker service. The Violation Notification will list the violations and remediation requirements. The

Violation Notification may require the repayment of the overcharge to the person who paid for the services. The wrecker service shall comply with the written instructions within thirty (30) days of the Violation Notification.

(2) Each subsequent Violation Notification of the same provision of a Commission nonconsensual towing order within a twelve-month period will be treated as a progressive violation.

(A) A violation may progress to the next level only when the date of the second or succeeding Violation Notification is later than the previous violation date.

(B) Each progressive action may consist of a new remediation requirement as well as each of the preceding remediation action requirements.

(3) For the second Violation Notification of the same violation during a twelve-month period, a penalty may be assessed in accordance with (f) of this Section. In addition, the Commission or its designee may recommend the wrecker service be temporarily removed from the Oklahoma Department of Public Safety and/or other political subdivision's rotation log. Any such recommendation for removal will include the justification for such request.

(4) For the third and any subsequent Violation Notification of the same violation during a twelve-month period, the Commission or its designee may recommend to the Oklahoma Department of Public Safety that the license of the wrecker service license be suspended or revoked. Any political subdivision with which the wrecker service maintains a contract to provide nonconsensual wrecker or towing services may also be notified of the violation(s) along with the justification for such notification.

(d) Audits of wrecker services may be conducted with or without specific cause. Typically, audits are conducted as a normal part of rate determination and economic analysis, as a result of a nonconsensual towing rate complaint, as a referral from another political subdivision or as a follow up to a previously conducted audit. Audit periods cannot extend beyond the records retention period as required by the Department of Public Safety in OAC 595:25.

(e) Violations discovered as the result of an audit shall be reviewed by the Director of the Transportation Division or his designee. Progressive action remedies in addition to penalties in accordance with (f) of this Section may be assessed or the Commission may issue an order requiring that violations of this Subchapter be corrected. The order may include a fine up to a maximum of $500.00 for each violation.

(f) For violations established as a result of a nonconsensual towing rate complaint or as a result of an audit, the following penalties may be assessed by the Director of the Transportation Division:

(1) A penalty in an amount up to $175.00 for the second violation;

(2) A penalty in an amount up to $375.00 for the third violation; or,

(3) A penalty in an amount up to $500.00 for the fourth and subsequent violations.

[OAR Docket #14-467; filed 6-20-14]

TITLE 165. OKLAHOMA CORPORATION COMMISSION
CHAPTER 32. RAILROADS

[OAR Docket #14-468]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:32-1-6. Timetables and trackcharts [AMENDED]
Subchapter 3. Railroad Crossing Signal System Safety
165:32-3-1. Incorporation of federal regulations [REVOKED]
165:32-3-2. General provisions [AMENDED]
165:32-3-3. Changes in existing crossing warning devices [AMENDED]
165:32-3-6. Notice [AMENDED]
Subchapter 5. Track Clearances
165:32-5-1. Definitions [AMENDED]
165:32-5-3. Incorporation of ~~AREA~~AREMA Manual provisions [AMENDED]
165:32-5-5. Bridges [REVOKED]
Subchapter 7. Railroad Workplace Safety [REVOKED]
165:32-7-1. Scope; incorporation by reference [REVOKED]
Subchapter 9. Track Safety Standards [REVOKED]
165:32-9-1. Scope; incorporation by reference [REVOKED]
165:32-9-2. Exemptions [REVOKED]
AUTHORITY:
The Commission's statutory authority is found in Article IX §18, 17 O.S. §§81,84,91, 66 O.S. §§129, 130; Oklahoma Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
October 31, 2013 to December 6, 2013
PUBLIC HEARING:
December 13, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 20, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Provisions no longer required by the Commission need to be revoked and current language needs to be amended to clarify certain provisions.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:32-1-6. Timetables and trackcharts

~~(a) Railroads shall file existing operating timetables and trackcharts with the Commission and with the Oklahoma Department of Transportation within 30 days of the effective date of each issuance.~~

~~(b)~~ Upon request,~~Railroads~~ railroads shall provide the Commission and the Oklahoma Department of Transportation with train-volume and operating speed data ~~on an annual basis~~.

SUBCHAPTER 3. RAILROAD CROSSING SIGNAL SYSTEM SAFETY

165:32-3-1. Incorporation of federal regulations [REVOKED]

~~This Subchapter adopts and incorporates by reference all of the provisions for grade crossing signal system safety as published and promulgated by the U.S. Department of Transportation, Federal Railroad Administration in 49 CFR Parts 212 and 234, and as later amended.~~

165:32-3-2. General provisions

(a) **Specifications.** After the effective date of this Chapter, railroads shall install 12 inch signal heads during new or upgrade construction of crossing warning devices.

(b) **Crossbucks.** Railroads shall install and maintain one crossbuck on each roadway approach which complies with the minimum~~ requirements as described in the Oklahoma Department of Transportation standards and specifications, section 719.04, and as later amended~~standards of the Manual on Uniform Traffic Control Devices ("MUTCD") for highway crossing crossbuck signs.

(c) **Private crossings exempt.** Private crossings are exempt from the regulations contained in this Subchapter.

165:32-3-3. Changes in existing crossing warning devices

(a) **Notice.** No change, except in case of emergencies, shall be made in existing crossing warning devices at any grade crossing unless and until due notice thereof is given in writing to the Commission and the written approval of the Commission is obtained where such approval is required by this Section. This Section shall not apply to the erection of additional signs, consistent with Commission rules or Orders, nor prevent a railroad from making changes in circuits to accommodate changes, but cannot be reduced.

(b) **Exceptions.** Changes in the existing crossing warning devices may be made without specific authority first having been obtained, provided written communication identifying the location, extent and permanent or temporary nature of the changes is given to the Commission, if the changes consist of any of the following:

(1) Extending the hours of a flagman.

(2) Installing bells or additional light units on flashing light signals, or additional units to meet special conditions at crossings where flashing light signals are already established.

(3) Establishing new or additional lighting, either by flood light or by new or additional lamps placed on gates, signs or other warning equipment.

(4) Removal of any sign not provided for in the Manual For Uniform Traffic Control Devices (MUTCD) or required by order of the Commission.

(5) A temporary change, such as one made necessary by highway reconstruction work in progress, or the like.

(c) **Resolution.** Where a major change or reduction in existing crossing warning devices is proposed at any crossing within the limits of a city or town, the Commission may, at its discretion, require the applicant to file an appropriate resolution or other official act, if obtainable, indicating the attitude of the municipal authorities with reference to the proposed change.

(d) **Removal.** The railroad company shall not remove an automatic crossing device or reduce the hours during which any such device is maintained, or substitute any form of warning device for a form already maintained at any public crossing, unless the consent for such removal, reduction or substitution shall have been obtained from the Commission; provided, however, that a human flagman, assigned to temporarily warn the traveling public during an emergency, may be removed without such consent.

(e) **Damage.** Absence of crossing signals and signs, due to accidents or severe weather conditions, shall not be considered a violation of this Subchapter. This does not excuse the company from providing warning by train order or human flagmen in lieu of the missing or damaged sign or signal.

~~(f) **Project estimates.** Railroads or other persons, firms, or corporations operating over tracks within the State of Oklahoma, upon receipt of a formal request for a crossing project cost estimate, shall provide said estimate to the Oklahoma Department of Transportation within 120 days.~~

165:32-3-6. Notice

Railroads shall notify the ~~Oklahoma Department of Transportation (ODOT) and the local~~ entity having roadway maintenance jurisdiction (City, County or State), no less than 48 hours in advance of closing or detouring any roadway ~~over which ODOT has jurisdiction,~~ for railroad maintenance or construction, unless an emergency exists.

SUBCHAPTER 5. TRACK CLEARANCES

165:32-5-1. Definitions

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

"~~AREA~~AREMA Manual" means, the American Railway Engineering and Maintenance-of-Way Association's Manual.

"MUTCD" means, the Manual on Uniform Traffic Control Devices, which is the Federal Highway Administration ("FHWA") standard for signs, signals and pavement markings in the U.S.

"Track clearance" means, the shortest horizontal distance between the center lines of adjacent tracks.

165:32-5-3. Incorporation of ~~AREA~~ AREMA Manual provisions

This Subchapter adopts and incorporates by reference all of the provisions and standards pertaining to clearances, as are currently published in the ~~AREA~~ AREMA Manual, or as may be amended from time to time.

165:32-5-5. Bridges [REVOKED]

~~(a) **Clearance exceptions lower sections and structures.** Track affected handrails, water barrels, refuge platforms, water columns, oil columns, block signals, cattle guards, or any portion of each, which is 4 feet or less above top of rail on through bridges, may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and 5 feet 6 inches distant laterally from center line of track to a point 4 feet above top of rail and 8 feet distant laterally from center line of track.~~

~~(b) **Thru bridges.** Minimum clearances otherwise authorized in this Subchapter are not permitted on through bridges where the work of trainmen or yardmen would require them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead.~~

SUBCHAPTER 7. RAILROAD WORKPLACE SAFETY [REVOKED]

165:32-7-1. Scope; incorporation by reference [REVOKED]

~~This Subchapter adopts and incorporates by reference all of the provisions for railroad workplace safety as published and promulgated by the U.S. Department of Transportation, Federal Railroad Administration in 49 CFR Part 214, Sections 214.1 through 214.117, and as later amended.~~

SUBCHAPTER 9. TRACK SAFETY STANDARDS [REVOKED]

165:32-9-1. Scope; incorporation by reference [REVOKED]

~~This Subchapter adopts and incorporates by reference all of the provisions for track safety standards as published and promulgated by the U.S. Department of Transportation, Federal Railroad Administration in 49 CFR Part 213, Sections 213.1 through 213.241, and as later amended.~~

165:32-9-2. Exemptions [REVOKED]

~~Any owner of track to which this Subchapter applies may petition the Commission for exemption from any or all requirements prescribed in this Subchapter.~~

[OAR Docket #14-468; filed 6-20-14]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #14-519]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
165:35-1-1. Purpose, authority, and scope [AMENDED]
165:35-1-2. Definitions [AMENDED]
Subchapter 5. Rate, Tariff, and Map Filing Requirements
165:35-5-1. Filing of rate schedules, contracts, agreements, and rules [AMENDED]
165:35-5-5. Response to application for streamlined approval and subsequent pleading [AMENDED]
Subchapter 9. Extent of Service
165:35-9-1. Extent of service [AMENDED]
Subchapter 11. Allocation of Territories/Consumers; Changes in Service/Supplier
165:35-11-2. Change of service [AMENDED]
Subchapter 13. Disposition of Electric Energy
165:35-13-1. Resale of electricity [AMENDED]
Subchapter 15. Meter Requirements
Part 1. Installation, Reading, and Records
165:35-15-1. Meters [AMENDED]
165:35-15-2. Meter reading, meter reading records, cards, and charts [AMENDED]
Part 3. Meter Location, Testing, and Operation
165:35-15-10. Location of meters [AMENDED]
165:35-15-22. Adjustment of bills [AMENDED]
Subchapter 17. Frequency, Voltage, and Equipment Servicing Requirements
165:35-17-2. Voltage limits [AMENDED]
Subchapter 19. Consumer Data, Deposits, and Billing
Part 1. Consumer Records, Information, and Interruptions of Service
165:35-19-1. Consumers records [AMENDED]
165:35-19-1.1. Consumer electric usage data [NEW]
165:35-19-2. Consumer information [AMENDED]
165:35-19-4. Restoration of service [AMENDED]
Part 3. Deposits
165:35-19-10. Deposits and interest [AMENDED]
165:35-19-11. Interest on deposits required by cooperative [AMENDED]
Part 5. Billing
165:35-19-30. Information on bills [AMENDED]
165:35-19-32. Penalty or charge for late payment of bills and dishonored negotiable instruments [AMENDED]
Part 7. Application for Service and Tampering of Equipment
165:35-19-40. Failure to make application for electric service [AMENDED]
165:35-19-41. Tampering with measuring equipment or other property [AMENDED]
Subchapter 21. Disconnection of Service
Part 1. Disconnection of Service
165:35-21-1. Disconnection of service by a consumer [AMENDED]
165:35-21-3. Utilities encouraged to keep current lists of energy assistance programs [AMENDED]
Part 3. Special Provisions Regarding Residential Disconnection
165:35-21-10. Delays to disconnections of residential service [AMENDED]
165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities [AMENDED]
Part 5. Notice Requirements

165:35-21-20. Notice of disconnection of service [AMENDED]
Part 7. Exceptions and Reconnection Procedures
165:35-21-30. Disconnection of service without notice [AMENDED]
Part 9. Mediation and Commission Review
165:35-21-40. Mediation [AMENDED]
Subchapter 23. Service Requirements
165:35-23-3. Replacement of meters [AMENDED]
Subchapter 25. Operations Requirements for Utilities
Part 1. Operation Maintenance and Records
165:35-25-2. Extension of distribution systems [AMENDED]
165:35-25-3. Maintenance of plant, equipment, and facilities [AMENDED]
165:35-25-4. Daily record of generating plants [AMENDED]
Part 3. Reliability of Service and Reliability Program
165:35-25-14. Reliability program [AMENDED]
165:35-25-18. Performance levels [AMENDED]
165:35-25-20. Annual reliability report [AMENDED]
Part 5. Utility Scorecard
165:35-25-24. Utility performance scorecard [AMENDED]
Subchapter 27. Cost Reporting and Accounting
165:35-27-2. Municipal fees, taxes, and other exactions [AMENDED]
Subchapter 29. Electricity Purchases for Producers and Parallel Operation
165:35-29-1. Purchase of electricity from cogenerators or small power producers [AMENDED]
165:35-29-2. Parallel operation of generation facilities [AMENDED]
Subchapter 31. Affiliate Transactions and Financial Transactions of Utilities and Affiliates
165:35-31-3. Exemption for corporate and shared services [AMENDED]
Subchapter 33. Homeland Security and Critical Infrastructure
165:35-33-1. Purpose and scope [AMENDED]
165:35-33-3. Definitions [AMENDED]
Subchapter 34. Competitive Procurement
165:35-34-1. Purpose of this Subchapter [AMENDED]
165:35-34-4. Commodity fuel supply competitive bidding procurement process for a term greater than five years [AMENDED]
Subchapter 35. Prudence Reviews
165:35-35-1. Prudence reviews [AMENDED]
Subchapter 37. Integrated Resource Planning
165:35-37-4. Integrated resource plan reviews [AMENDED]
165:35-37-5. Procedure for subsequent integrated resource plans [AMENDED]

AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. § 152; Corporation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
November 21, 2013 through January 21, 2014

PUBLIC HEARING:
February 4, 2014 and February 20, 2014

ADOPTION:
February 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:
National Electrical Safety Code, 2012 edition

Incorporated rules:
165:35-25-3

Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Corporation Commission, Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105

ANALYSIS:
The proposed rules clarify definitional provisions, modify consumer notice requirements, and correct clerical and formatting errors. The proposed rules permit electronic communications to consumers in certain circumstances and also address consumer deposits and responsibility for installation and maintenance expenses for equipment.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:35-1-1. Purpose, authority, and scope

(a) The Electric Utilities rules and regulations of this Chapter were adopted by the Oklahoma Corporation Commission by virtue of Article IX, Section 18 et seq., of the Oklahoma Constitution and sundry enactments of the Oklahoma Legislature, which give the Commission the authority and responsibility to supervise, regulate, and control electric ~~companies~~utilities in Oklahoma, and to enact rules and regulations in connection therewith.

(b) Pursuant to such statutory authority, the Commission has adopted this Chapter and fixed the following standards for electric ~~service~~ utilities, to become effective upon publication as required by Article IX, Section 18 of the Oklahoma Constitution. General Order Nos. 689, 755, 2072, 16061, 13336, 104932, 109443, 110178, 135207, 147~~,~~881, 179618, 179219, and 186936 as applied to electric ~~service public~~ utilities in Oklahoma are revoked as of the effective date hereof. Service provisions, rules, standards, and/or terms and conditions of service of electric utilities in ~~the State of~~ Oklahoma, which have been approved by and filed with the Commission by the electric utilities to the extent of any conflict, are superseded by this Chapter.

(c) No tariff, special contract, agreement, rule, or terms and condition of service shall be filed with the Commission by electric utilities, after the effective date of this Chapter, which is in conflict with this Chapter except as provided for in OAC 165:35-1-3(f).

(d) Except as provided in OAC 165:35-1-3, any order of the Commission granting relief which would constitute an exemption from any provision of this Chapter shall not be superseded by this Chapter.

165:35-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common~~the~~ control ~~of~~

~~an~~with the entity ~~that is regulated by this Commission~~in question. Control includes, but is not limited to, the ~~direct or indirect~~ possession, directly or indirectly and~~of the authority to direct a direction of the management or policies of a person or entity,~~ whether ~~such authority is the result of~~ acting alone or in conjunction with others, of the authority to direct the management or polices of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"ANSI" means the American National Standards Institute.

"Capacity" means the quantity of electric power produced by a generating facility at ~~appoint~~ apoint in time, as measured in kilowatts or megawatts.

"Commission" means the Oklahoma Corporation Commission ~~and the Commission's Staff operating under its direction~~.

"Company submeter" means a kWh measuring device provided by the utility located on line beyond the point of delivery of electrical service providing service to another consumer. Usage from these meters are deducted from the meter at point of delivery.

"Competitive bidder" means any entity that submits a competitive bid in response to a request.

"Competitive bidding process" means a process to solicit offers to provide fuel supplies, electric generation service, fuel transportation services, and other goods or services related to a utility's provision of electric service to end users.

"Complaint" means an expression of dissatisfaction regarding the utility's billings, service procedures, or employee conduct which requests or requires some remedial or corrective action be taken by the utility. Complaints may be made by the consumer or other interested party. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

"~~Customer~~Consumer rate class" means a division of rates as provided by a utility's tariff for pricing electric service.

"~~Customer~~Consumer sector" means a major division of ~~ratepayers~~consumers, i.e., residential, commercial, or industrial.

"~~Customer~~Consumer submeter" means a kWh measuring device provided by the customer and located on line beyond the point of delivery of electrical service.

"Consumer" means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision of the United States, or the State of Oklahoma receiving electric service of any nature from a utility. Any reference to a "customer" or "end-user" or "ratepayer" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporation Commission" means the Oklahoma Corporation Commission.

"Corporate Support Services" or "Shared Services" means human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"Disconnection" means electric service has been discontinued by consumer request or by the utility.

"Economy energy" means electric energy that is purchased during the course of the day to take advantage of the opportunity to purchase power from unexpected surpluses on or available to the grid more cheaply than producing it oneself or purchasing power under existing contracts.

"Electric consuming facility" means anything that utilizes electric energy from a central station source.

"Electric energy" means the quantity of electric power that is generated over a specific interval of time, measured in kilowatt-hours or megawatt-hours.

"Electronic notification" means any automated communication received by e-mail, phone, text message or fax.

"Electric plant" means facilities and equipment owned or operated by a utility, including but not limited to generating stations, substations, transformers, towers, poles, conductors, transportation equipment, conduits, meters, motors, real estate, buildings, and dams.

"Electric service" means the supply of electricity, including generation, transmission, distribution and ancillary services (e.g. spinning and supplemental reserves) for ultimate consumption.

"Electricity" means electric power and energy produced, transmitted, distributed, or furnished by a utility.

"Energy" means a quantity of electricity produced over a given time, as measured in kilowatt-hours.

"FERC" means the Federal Energy Regulatory Commission.

"Filed" means to present a document and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"Fuel procurement plan" means a plan that (1) establishes the parameters of a fuel supply portfolio for a utility and (2) strikes an appropriate balance between fuel costs and the related risks to which ~~ratepayers~~consumers are exposed (e.g., fuel cost increases and supply disruptions) over the term of the resource plan.

"Fuel supplies" means the coal, oil, natural gas and other fuels that generation facilities consume to produce electricity and the transportation and transmission services used to deliver those fuels.

"Generation facility" means a machine or machines capable of producing capacity, energy or other electricity products.

"Generation service" means the production of energy, capacity and other electricity products to meet customer demands for electricity.

"Generation supplier" means an entity capable of providing generation service.

"Independent power producer" means any generation supplier that is not a utility or an affiliate thereof.

"Integrated resource plan" means a utility's plan as further defined and established in Commission rules found at OAC 165:35-37 to ensure that sufficient supply- and demand-side resources are available to meet its obligation to serve and to achieve public policy objectives, including those prescribed by law, rule, or Commission order.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers, or any other party involved in, or affected by, the provision of electric generation service.

"kW" means kilowatts, and **"kWh"** means kilowatt-hours.

"Legal holiday" means any day declared by law or proclamation of the Governor of Oklahoma to be a legal holiday or a day on which the United States Parcel Service does not deliver mail.

"Load" means the amount of electric power delivered or required at any specific point or points on an electric transmission and distribution system.

"Long-term" means longer than one year.

"Meter" means any device or devices used to measure or register electric power and energy.

"Meter shop" means a shop used for the inspection, testing, and repair of meters.

"Municipality" means an incorporated city or town in ~~the State of~~ Oklahoma.

"MW" means megawatts, and **"MWh"** means megawatt-hours.

"Planned interruption" means electric service has been suspended by the utility.

"Planning period" means the ten (10) year period that begins on the date that the utility files its integrated resource plan with the Commission.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where electric service is furnished to a consumer.

"Prudence review" means a comprehensive review that examines as fair, just, and reasonable, a utility's practices, policies, and decisions regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"Purchased-power procurement plan" means a plan that establishes the parameters of a purchased-power portfolio for a utility that meets the utility's planning objectives and strikes an appropriate balance between power supply costs and the related risks to which ~~ratepayers~~consumers are exposed (e.g., purchased-power cost increases and power supply disruptions) over the term of the resource plan.

"Records" means documentation maintained by the utility either in electronic or paper form.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer, or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Resources" means supply-side generating facilities including life extension and repowering projects for such facilities (and the output thereof), and non-supply side programs, including energy efficiency programs and demand response programs.

"RFP" means "request for proposal," the document that publicly opens a competitive bidding process by describing the utility's needs and seeking bids to fulfill those needs.

"Risk management plan" means a systematic method utilized by a utility to, among other things:

(A) Identify risks inherent in procuring and obtaining a supply portfolio;

(B) Establish the means by which the utility plans to address and balance or hedge the identified risks related to cost, price volatility and reliability; and

(C) Address the fuel, purchased-power and utility supply costs implicit in the utility's supply portfolio, and also energy efficiency and demand response programs as a potential hedge against risk.

"RUS" means the Rural Utilities Service.

"Special contract" means a written agreement between a utility and a consumer providing for furnishing electric service on terms different from those prescribed in approved tariffs.

"Stakeholder" means an interested party, as defined above.

"Statistical sampling" means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising for disposition.

"Submit" means to present a document to the Director of the Public Utility Division.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Tariff" includes every rate schedule, or provision thereof, and all terms, conditions, rules, and regulations for furnishing electric service.

"Unplanned or emergency interruption" means service has been suspended due to circumstances beyond the control of the utility.

"Utility" means any person, firm, partnership, or corporation furnishing electric service to the public in Oklahoma and subject to the regulatory jurisdiction of the Commission.

SUBCHAPTER 5. RATE, TARIFF, AND MAP FILING REQUIREMENTS

165:35-5-1. Filing of rate schedules, contracts, agreements, and rules

(a) It shall be unlawful for a utility to furnish, charge for, or receive payment for electric service, except strictly in accordance with a tariff, special contract, or rate schedule approved by and on file with the Commission.

(b) No jurisdictional tariff or rate schedule shall be instituted, added, deleted, changed, closed, or discontinued except pursuant to order of the Commission upon application, and after such notice and hearing as may be ordered by the Commission.

(c) A special contract or agreement other than a filed tariff under which electric service is furnished to a consumer shall be deemed a tariff for the purpose for which approved and for purposes of this Chapter. No special contract for electric service shall become effective until it has been filed with and approved by order of the Commission, after notice and hearing when directed by the Commission.

(d) The utility shall maintain the following in each business office or furnish to a member of the public on request:

(1) A copy of every tariff and rate schedule under which electric service is being furnished to consumers within the area serviced by that business office.

(2) A copy of the approved rules and regulations of the utility which govern the furnishing of electric service.

(3) A copy of this Chapter and all amendments thereto.

(e) An agency for collection of utility bills, not operated by utility employees, shall not be deemed a local office for purposes of this Section.

(f) A utility shall ~~file~~submit to~~with~~ the Public Utility Division ~~Commission~~ a copy of the following:

(1) Every franchise, contract, irrevocable permit, or similar agreement between a utility and a municipality.

(2) Each contract for the wholesale purchase of power or energy.

(3) Every electric power exchange agreement.

(4) Each rate schedule and contract approved by the FERC or the RUS applicable to purchases or sales of power and energy by the utility in Oklahoma.

165:35-5-5. Response to application for streamlined approval and subsequent pleading

(a) The tariff and/or terms and conditions of service will be effective pursuant to Commission order. If an objection to the streamlined application is filed within thirty (30) days of the original filing, the Commission may set the matter for hearing and shall issue an order approving, denying or modifying the application within sixty (60) days of the date the application was filed, unless otherwise ordered by the Commission.

(b) If an objection is not filed, the Commission shall issue an order approving, denying or modifying the application within forty-five (45) days of the date the application was filed, unless otherwise ordered by the Commission.

(c) Applicant shall respond to data requests for additional data or information within five (5) business days of receiving the request.

SUBCHAPTER 9. EXTENT OF SERVICE

165:35-9-1. Extent of service

(a) **Point of delivery.** The point of delivery of electrical service shall be the point at which the electrical supply system of the utility connects to the wiring system of the consumer.

(b) **Service at primary distribution voltage.** When the consumer accepts service at primary distribution voltage, the delivery point shall be at or near the property line or point of transformation.

(c) **Service at secondary voltage.**

(1) For overhead construction, the point of delivery is that point where the utility's overhead service drop connects to the consumer's service entrance conductors.

(2) For underground construction, the point of delivery is that point where the utility's service lateral connects to the consumer's service entrance conductors.

(d) **Installation and maintenance responsibility.**

(1) A utility shall furnish and install all transformation and/or conductors of proper voltage and adequate capacity and be responsible for maintenance of all electrical wiring and equipment up to the point of delivery for every bona fide applicant for service who has complied with this Chapter and the provisions of the utility's terms and conditions of service as approved by the Commission. Unless specifically designated in their terms and conditions to the contrary, a utility shall provide its standard size connectors and connect the consumer's service entrance conductors at the point of delivery.

(2) All standard metering equipment stocked by the utility shall be furnished and maintained by the utility. Meters shall be furnished, installed, and maintained by the utility. All meter bases, enclosures, and other associated equipment furnished by the utility shall be maintained by the utility and remain its property. Required installation of this equipment by the consumer shall be in compliance with this subsection. A consumer may locate submetering equipment beyond the point of delivery of electrical service and such equipment shall conform to the current version of ANSI (ANSI-C12) Standard, or equivalent ANSI standard as later amended.

(3) Subject to OAC 165:35-17-3, all electrical wiring and equipment including meter bases, enclosures, and other associated equipment furnished by the utility, except for the ~~metering equipment~~meter furnished by the utility, installed on the consumer's side of the point of delivery shall be at the consumer's expense and shall be installed and maintained by the consumer in accordance with the ~~current~~2012 Edition of the National Electrical Code as approved by the ANSI and with all requirements prescribed by the governmental authority having jurisdiction. In event of conflict between the National Electrical Code and an applicable municipal code, the latter shall prevail. The utility has no duty to conduct inspections of electric wiring and equipment except for such wiring and equipment which is installed, owned, or controlled by the utility.

(e) **Metering equipment at a point other than the point of delivery.** A utility may locate metering equipment at a point other than the point of delivery of electrical service. In such cases where the metering equipment is located on the consumer's side of the point of delivery, the utility may establish requirements for conductors and equipment to provide proper operation, accessibility and security.

(f) **Proper location of the point of delivery.** Either before, or during construction of the consumer's facility, the utility shall, upon request and, without charge, advise the consumer as to the proper location of the point of delivery. Whenever the consumer and the utility are unable to agree upon the point of delivery and equipment to be installed, the utility shall advise the consumer of the Commission's regulatory ability to resolve the dispute. The Commission, upon application of either, shall make a determination as to the appropriate location.

(g) **Permanent discontinuance of delivery of electric service.** When the utility permanently discontinues delivery of electric service to any consumer's premises, the utility shall have the right at any reasonable time thereafter, to enter upon the premises and remove its meter and any other property the utility has located there.

SUBCHAPTER 13. DISPOSITION OF ELECTRIC ENERGY

165:35-13-1. Resale of electricity

(a) Except as set forth in subsection ~~b~~(b) below, no utility shall knowingly furnish electricity under a retail tariff for purposes of resale, except pursuant to a tariff or special contract approved by and on file with the Commission.

(b) If it comes to the attention of the utility that any consumer is reselling electricity, it shall notify the Commission's Director of the Public Utility Division of the name and address of any consumer reselling electricity. Unless otherwise directed, the utility may continue to provide electric service pending review by the Commission's Director of the Public Utility Division.

SUBCHAPTER 15. METER REQUIREMENTS

PART 1. INSTALLATION, READING, AND RECORDS

165:35-15-1. Meters

(a) Except as provided in OAC 165:35-13-5, each utility shall provide and install at its own expense and shall continue to own, maintain, and operate proper and sufficient equipment for the accurate measurement of electricity delivered to each consumer.

(b) Where additional meters are furnished by the utility for the convenience of the consumer, a charge for such meters may be made in accordance with a tariff filed with and approved by the Commission.

(c) No meter shall be installed which is known to be ~~mechanically or electrically~~ defective, or to have incorrect constants or which has not been tested and adjusted, if necessary, in accordance with this Chapter. The ~~capacity of the~~ meter ~~and the index mechanism~~ shall be consistent with the electric requirements of the consumer.

165:35-15-2. Meter reading, meter reading records, cards, and charts

(a) **Meter reading records.** The meter reading records shall show:

(1) Consumer's name, address, and rate schedule symbol.

(2) Identifying number or description of the meter.

(3) Meter readings and dates thereof.

(4) If the reading has been estimated.

(5) Any applicable multiplier or constant.

(b) **Meter charts.** All charts taken from recording meters shall be marked with the date of record, the meter number, consumer's name and location, and the chart multiplier.

(c) **Meter constants or multipliers.** Each service meter shall clearly indicate the reading from which the charge is made to the consumer. In any case where the dial reading of a meter must be multiplied by a constant to obtain the units consumed, the proper constant to be applied shall be clearly marked on the face or dial of the meter.

(d) **Meter reading information.** Each service meter shall be read by the utility, or a utility may by its rules prescribe a procedure for reading of meters by consumers.

(1) **Meters read by the utility.** For each utility that regularly reads its own meters, each service meter shall be read at monthly intervals at least ten (10) times a year, weather permitting, on approximately the same day of each meter reading period. The utility may, if specified and approved in its tariffs, delegate the reading of the meter to the consumer; however, the reading must be verified by the utility every six (6) months. Whenever it is not possible, with reasonable diligence, to read a meter for a billing period, the utility may submit an estimated bill based upon previous usage and other available information, the amount of such estimated bill to be adjusted as necessary when the next actual meter reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility reading the meter. If it is necessary for the utility to estimate ~~mare~~more than two (2) bills per year due to the actions of the consumer regarding meter accessibility, and where the inaccessibility is beyond the control of the utility, it will be permissible for the utility to submit an ~~estimate~~estimated bill based on ~~customer~~consumer reading or past service records. The amount of such estimated bill will be adjusted as necessary when the next actual reading is obtained.

(2) **Meters read by the consumer.** For each utility whose normal procedure is to have its consumers regularly read their own meters, the procedure for meter reading by the consumer shall provide for meter reading at approximately monthly intervals or annually, if an annual rate applies. The utility shall verify such readings not

less than once every six (6) months. When the consumer fails to furnish meter readings, the utility may submit an estimated bill based on the consumer's previous usage and other available information, the amount of such estimated bill to be adjusted, as necessary, when the next actual reading is obtained. No more than two (2) consecutive estimated bills shall be rendered without the utility reading the meter. When by reason of a consumer's failure to furnish meter reading, the utility reads the meter, it may charge the service fee for reading the meter prescribed in its approved tariffs.

(3) **Access to meters and other property.** The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on a consumer's premises. Refusal on the part of the consumer to provide reasonable access for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility, after at least ten (10) days written notice. In the event the ~~customer~~consumer is a tenant, the utility should attempt to notify the property owner of the access violation and pending disconnection of service. Service will be reconnected after a method of permanent access on the meter reading date is agreed upon by the customer consumer and utility. If the consumer and/or property owner does not correct unsafe conditions or obstructions, including ~~dangerous~~aggressive animals, the utility may relocate the meter to a safe and accessible location at the expense of the consumer and/or property owner. The utility shall provide its employees with a means of identification ~~in order~~ to claim the right of access.

(4) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

(e) **Consumer submeter record information.** Consumer submeter records shall contain the information set forth in (a) and (c) of this Section and such meters shall be read within three (3) days of the applicable utility meter being read by the ~~electric~~ utility.

PART 3. METER LOCATION, TESTING, AND OPERATION

165:35-15-10. Location of meters

(a) **Outdoor meters.**

(1) Where a meter is installed outdoors, it shall be placed on the exterior of a building or on a support or pole in a location readily accessible to authorized utility representatives for meter reading, testing and maintenance; and shall not be subject to severe vibration, dust, vapors or corrosive liquids. The meter shall be the temperature compensating type.

(2) A meter shall not be placed in a location where it may be accidentally damaged or at a location on a building where it will cause inconvenience, either to the consumer or the utility's representative.

(3) An outdoor meter, except for unusual circumstances, shall not be more than five and one-half feet ($5\frac{1}{2}$') or less than two and one-half ($2\frac{1}{2}$') feet above ground level, measured from the center of the meter cover.

(b) **Indoor meters.**

(1) No residential meter shall be installed inside a residence after the effective date of this Chapter unless agreed upon by the utility and the consumer.

(2) Where a meter is installed indoors, it shall be located where it will be readily accessible to authorized utility representatives for meter reading, testing, and maintenance and shall not be subject to severe vibration or excessive dampness.

(3) A meter shall not be located in a hazardous location nor in a location where accessibility is difficult. A meter shall not be placed in any location where the visits of the meter reader will cause inconvenience either to the consumer or the utility.

(4) An indoor meter shall not be more than five and one-half feet ($5\frac{1}{2}$') or less than two and one-half ($2\frac{1}{2}$') feet above floor level, measured from the center of the meter cover.

(c) **Relocation of meters.** A utility may, at its option and at its expense, relocate any meter, except that in case of a relocation which is made necessary due to inaccessibility or hazardous location caused by the consumer, dangerous conditions, including ~~bad dogs,~~aggressive animals, or ~~in order~~ to prevent a recurrence of discovered tampering or unauthorized diversion of service, the utility may, at the consumer's expense, relocate the meter loop and service entrance facilities to a location agreeable to the utility and consumer; and if no location can be agreed upon, the Commission will designate the location upon request by either party.

165:35-15-22. Adjustment of bills

(a) **Fast meters.** Whenever any meter tested by the Commission or the utility is found to have an average error of more than two percent (2%) fast (or in favor of the utility), the utility shall refund to the consumer the overcharge based upon the previous test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the overcharge shall be computed from that date.

(b) **Slow meters.** Whenever a meter tested by the Commission or the utility is found to have an average error of more than two percent (2%) slow (or in favor of the consumer), the utility shall charge for the electricity consumed, but not included, in bills previously rendered, based upon the corrected meter reading, for a period equal to one-half (1/2) of the time elapsed since the last previous test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the charge shall be computed from that date.

(c) **Nonregistering meters.** If a meter is found not to register or to register intermittently for any period, the utility may charge for an estimated amount of electricity used, which shall be calculated by averaging the amounts registered over corresponding periods in previous years, or in the absence of such information, over similar periods of known accurate measurement preceding or subsequent thereto.

(d) **Incorrect register, connection of the meter, or multiplier on meters.** If a meter is found to have an ~~in cor rect~~incorrect register, connection, multiplier, or constant, the error shall be corrected. Where the error is adverse to the consumer, the utility shall refund the excess charged for the amount of electricity incorrectly metered for the period of time the meter was used in billing the consumer. Where the error is adverse to the utility, the utility shall charge the consumer the undercharge for the amount of electricity incorrectly metered for the period of time the meter was used in billing the consumer, and if necessary the utility shall receive payment in installments over a reasonable period of time.

(e) **Compliance.** This Section shall not apply to routine testing and replacement of meters.

(f) **Conformity.** Consumer submeters shall conform to the adjustments set forth in subsections (a) through (e) of this Section.

SUBCHAPTER 17. FREQUENCY, VOLTAGE, AND EQUIPMENT SERVICING REQUIREMENTS

165:35-17-2. Voltage limits

(a) **Secondary voltages.** The voltage at the utility's point of delivery, as installed for each consumer, shall be maintained within the limits specified in (1) through (4) of this subsection. If a utility adopts any standard voltage not included in the table in (4) of this subsection, it shall advise the Commission ~~in order~~ that the Commission may establish appropriate voltage limits. Where three-phase service is provided, the utility shall exercise reasonable care to assure that the phase voltages are balanced. The preferred and tolerable voltage ranges conform to the current version of ANSI Standard C84.1, or equivalent ANSI standard as later amended.

(1) **Preferred secondary voltages.** The secondary voltage described above shall normally be maintained within the preferred range specified in the table in (4) of this subsection.

(2) **Tolerable secondary voltage.** The secondary voltage described above will be permitted in the tolerable range specified in the table in (4) of this subsection under abnormal conditions if it is limited in frequency of occurrence and duration, providing that measures are initiated within a reasonable period of time to bring the voltage within the preferred range.

(3) **Emergency secondary voltages.** Voltages outside the limits specified in (4) of this subsection may infrequently occur due to:

(A) Addition of significant loads without proper notice to the utility.

(B) Adverse action of the elements.

(C) Failure of principal supply line or equipment necessitating use of alternate routes.

(D) Temporary separation of part of the system from the main system.

(E) Causes beyond the control of the utility.

(4) **Table.**

NORMAL VOLTAGE	PREFERRED VOLTAGE RANGE MINIMUM	PREFERRED VOLTAGE RANGE MAXIMUM	TOLERABLE VOLTAGE RANGE MINIMUM	TOLERABLE VOLTAGE RANGE MAXIMUM
120	114	126	110	
208Y/120	197Y/114	218Y/126	191Y/110	220Y/127
240/120	228/114	252/126	220/110	254/127
208	197	218	191	220
416Y/240	395Y/228	436Y/252	381Y/220	440Y/254
480/240	456/228	504/252	440/220	508/254
460Y/265	437Y/252	483Y/279	422Y/244	487Y/281
480Y/277	456Y/263	504/Y291	440Y/254	508Y/293
440	418	462	403	466
480	456	504	440	508
832Y/480	790Y/456	873Y/504	762Y/440	880Y/508
600	570	630	550	655

(b) **Primary voltages.** The following limits shall apply where the utility supplies service at primary voltage.

(1) **Industrial consumers.** For services rendered principally for industrial or power purposes, the voltage shall not exceed ten percent (10%) above or ten percent (10%) below the nominal voltage of the low side of the transformer.

(2) **Special contract extension.** The limitations in (1) of this subsection do not apply to special contracts in

which the consumer specifically agrees to accept service with a different voltage regulation.

SUBCHAPTER 19. CONSUMER DATA, DEPOSITS, AND BILLING

PART 1. CONSUMER RECORDS, INFORMATION, AND INTERRUPTIONS OF SERVICE

165:35-19-1. Consumer records

(a) The utility shall maintain such records of each consumer as may be necessary to reflect compliance with the Commission's rules, which shall be retained for the period prescribed in OAC 165:35-1-3.

(b) Records referred to in subsection (a) of this Section, where applicable, shall show, but not be limited to:

(1) KWH meter readings per billing period.

(2) KWH consumption per billing period.

(3) KW meter readings per billing period.

(4) KW measured demand per billing period.

(5) KW billing demand per billing period.

(6) Total amount of bill per billing period.

(7) Dates and amounts of payments by consumers.

(8) Adjustments of bills.

(9) In service performance meter and/or equipment test.

(10) Complaints by name and account number in accordance with OAC 165:35-23-2(a) that such records be maintained in a matrix format with the type (or category) of complaint listed across the top and the consumer's name or account number listed down the left hand side. However, if the account number only is utilized, a cross reference with the consumer's name must also be readily available.

(c) Consumers that utilize consumer submeters shall keep the following records pertaining to the parties affected by submetering:

(1) KWH meter readings per billing period.

(2) KWH consumption per billing period.

(3) Total amount of bill per billing period.

(4) Dates and amount of payments by parties.

(5) On request of a party affected by the submetering, consumer shall furnish a clear and concise statement of the actual consumption of electric energy for said party for each billing period during the prior year.

165:35-19-1.1. Consumer electric usage data

The standards for consumer electric usage data shall be governed by the Electric Usage Data Protection Act codified at 17 O.S. § 710.1 *et seq.*, and future amendments or supplements thereto.

165:35-19-2. Consumer information

(a) Each utility shall:

(1) Maintain maps, plans, or records of its transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective consumers and others entitled to the information as to the facilities available for serving in any locality.

(2) Transmit to each of its ~~electric~~ consumers ~~not~~no less frequently than once each year:

(A) A clear and concise summary of the existing rate schedules applicable to each of the major classes of its ~~electric~~ consumers for which there is a separate rate.

(B) An identification of any classes whose rates are not summarized.

(3) ~~On~~Upon request of ~~an~~a~~electric~~ consumer, but not more frequently than once each calendar year, provide ~~such consumer~~ a clear and concise statement of ~~the~~such consumer's actual consumption of electric energy ~~by such consumer~~ for each billing period during the prior year.

(4) Assist the consumer or prospective consumer in selecting the most economical rate schedule.

(5) Provide information to each new consumer at the time of application or by enclosure with the first month's bill or by separate mailing, or by electronic notification to customers who make an affirmative election to receive electronic notification of such information, prior to the first month's bill as to the correct method of reading watt hour meters.

(b) Where economically feasible, each electric utility shall provide an office, ~~or~~ agent, or authorized pay site in or convenient to each municipality serviced by it where the consumer may pay bills, which office,~~or~~ agency, or authorized pay site, shall be open for business during reasonable business hours at least five days per week, holidays excepted. Whenever service prescribed in this subsection is not furnished for economic reasons, the Commission may, upon application and after notice and hearing, prescribe the service to be furnished and conditions thereof.

(c) The utility shall provide, in each telephone directory covering any area it serves, a telephone listing of the number by which the utility can be notified at any time during a twenty-four (24) hour day of any utility service deficiency or emergency, or the information may be published in a regular newsletter or publication furnished to its subscribers.

(d) The utility shall advise its residential consumers through its consumer mailing or by electronic notification to customers who make an affirmative election to receive electronic notification of such information, no less than once a year, of the Commission rules regarding the following:

(1) Disconnection information which states the rights listed in the "Disconnect Notice," as outlined in OAC 165:35-21-20 *et seq*.

(2) Commission-approved deferred payment plans;

(3) Twenty (20) day government and/or private financial aid assistance deferral;

(4) Life Threatening Certificate and consumer responsibilities;

(5) Elderly/Consumers with Disabilities Notification;

(6) Average Monthly payment plans;

(7) The address and telephone number of the Commission's Consumer Services Division;

(8) The limitations for disconnection, including days or periods of time when service shall not be disconnected as outlined in OAC 165:35-21-10(c); and

(9) The availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:35-21-3.

(e) The utility shall provide the location of pay agents upon the consumer's request.

(f) The utilities are strongly encouraged to have bilingual customer service personnel available to assist non-English speaking consumers regarding disconnection and related matters.

165:35-19-4. Restoration of service

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each electric utility shall have a written restoration of service policy/plan, which shall include a telecommunication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility at least annually, and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each electric utility shall provide and keep current, the phone number of any 24-hour emergency operations center or a list with a minimum of two individuals having 24-hour contact numbers, by September 30 of each year, to the Commission's Director of the Consumer Services Division. The following items are guidelines to be addressed in the policy:

(1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of ~~customers~~consumers affected and the geographic extent of the service interruption.

(2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.

(3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration for the greatest number of consumers for the least expenditure of money, time, and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.

(4) Once electricity to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.

(5) Attempted notification of high-priority ~~customers~~consumers or major electric consuming facilities ~~who~~that are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of ~~customers~~consumers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:

(A) An initial contact to notify Staff of outages, which involve a major utility substation or facility; or which~~,~~ may cause a high degree of public interest or concern; or which have a duration of 4 hours or more and involve 1% or fifty (50) ~~customers~~ consumers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

PART 3. DEPOSITS

165:35-19-10. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (e), and (l).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application of new service. The utility plan may establish other relevant criteria which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit of more than one-sixth (1/6) the estimated annual bill. The utility may allow smaller deposits to be made, in conformance with relevant, objective

criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) A utility may require an advance deposit as a condition of service for consumers other than those addressed in (b) and non-residential ~~customers~~consumers.

(e) A residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) out of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months pursuant to OAC 165:35-21-2 or has presented a check subsequently dishonored.

(f) A non-residential consumer may be required to post a deposit as a condition of continued service if undisputed charges have become delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) ~~our~~out of the last twenty-four (24) billing periods or if the consumer has had service disconnected during the last twenty-four (24) months pursuant to OAC 165:35-11-11 or has presented a check subsequently dishonored.

(g) Interest on cash deposits shall be paid by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established on~~the 1st day of~~ January 1 of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established on ~~the 1st day of~~ January 1 of each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of the one (1) year Treasury Security, as referenced in (e) (1) of this Section, for the first year the deposit is held.

(3) Provided, however that after the interest rates are initially established pursuant to this subsection, the interest rate shall not change unless the application of the formula in (e) (1) and/or (2) results in a change in interest rate(s) that is/are greater than fifty (50) basis points.

(4) The Director of the Public Utility Division shall calculate the interest rate(s) as pursuant to (e)(1) and (2) of this Section, and shall mail notice to the electric utility companies by December 15~~th~~ of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (e), otherwise the current interest rate(s) will remain in effect.

(h) If refund of deposit is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(i) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(j) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument, or by credit against current billing, or by issuance of a bank card.

(k) Each consumer posting ~~a cash~~ deposit shall receive a nonassignable receipt in writing at the time of making the deposit, or within ten (10) days thereafter, or such deposit shall appear as a notation on the consumer's next bill. When a consumer pays a deposit as a portion of an electric service bill, payment of the bill shall serve as a receipt of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of his/her deposit or balance.

(l) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored.

(m) The utility shall automatically refund non-residential service deposits of less than $20,000, with accrued interest, after twenty-four (24) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twenty-four (24) month period. Non-residential consumers, who meet the above-referenced eligibility criteria, must have a minimum of five (5) years continuous service at the service location with the utility before a deposit will be refunded.

(n) The utility plan shall provide for the review of all deposits for residential service at least annually and deposits for non-residential service at least once every twenty-four (24) months and shall provide whether refunds will be paid by negotiable instrument, upon request of the consumer, provided the consumer's bill is not delinquent, or by credit against current billing.

(o) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of a discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(p) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument, or by credit against current billing, or by issuance of a bank card.

(q) The utility may withhold refund or return of the deposit, pending the resolution of a dispute with respect to charges secured by the deposit.

(r) The utility ~~company~~ shall keep records to show:

(1) The name, account number, and address of each depositor.
(2) The amount of the deposit and date received.
(3) Each transaction concerning the deposit.

(s) Such records shall be retained for two (2) years after the deposit and/or interest is refunded or applied.

(t) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file, with the application of transfer, a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(u) Deposits shall not include membership fees in cooperatives.

(v) The deposit made by the consumer with the utility at the time of application for electricity shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

165:35-19-11. Interest on deposits required by cooperative

A utility having provision in its bylaws for assignment of margins to members or consumers shall be required to pay interest on security deposits deposited after the effective date of this Chapter in compliance with OAC 165:35-19-10. [Order No. 326194, issued May 23, 1988]

PART 5. BILLING

165:35-19-30. Information on bills

The utility shall bill each consumer as promptly as possible following the reading of his/her meter. The bill shall show:

(1) The reading of the meter at the end of the period for which the bill is rendered.
(2) The date on which the meter was read, or the end of the billing period.
(3) The number and kind of units used for billing.
(4) The total amount due for electricity used.
(5) Items of tax separately billed, pursuant to OAC 165:35-27-2.
(6) The date by which the consumer must pay the bill ~~in order~~ to avoid addition of a penalty.
(7) The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.
(8) A distinct marking to identify an estimated bill.
(9) If there is a conversion from meter reading units to billing units, or any calculation to determine billing units from recording or other devices, or any other factors used in determining the bill, full information shall be furnished on request.
(10) In the case of a special form of billing, such as a level payment plan, any of the above information which is inappropriate may be omitted.
(11) The fuel adjustment or purchased power adjustment factor associated with the respective clauses on the consumer's bill.
(12) The electric bill submitted by the utility furnishing electric service to the consumer shall be allocated to the party(ies) affected by such consumer submeters in a manner approved by and on file with the Commission's Director of the Public Utility Division.
(13) Utilities that serve ~~one hundred fifty thousand~~150,000 Oklahoma ~~Customers~~ customers or more shall provide~~;the~~ historical usage information, e.g., a chart, table or graph, which shall be displayed prominently on each bill, and~~depicting~~depict the actual usage of the residential ~~customer~~consumer, at the place of service for which the bill is issued. Such historical usage shall be tracked and displayed over the previous twelve (12) month period.
(14) Utilities that serve less than ~~one hundred fifty thousand~~150,000 Oklahoma Customers consumers shall provide, in a conspicuous manner, notice on each residential ~~customer~~ consumer bill that historical usage information is available at no charge, upon the consumer's request.

165:35-19-32. Penalty or charge for late payment of bills and dishonored negotiable instruments

(a) **Meters read by the utility.** A utility may make a penalty charge in an amount not to exceed one and one-half percent (1.1/2%) for delay in receipt of payment by the utility past the due date of the bill. The due date shall be stated on the face of the bill and shall not be earlier than ten (10) days after the bill is mailed or provided by electronic notification to customers who make an affirmative election to receive electronic notification of such information, except that for residential consumers it shall not be earlier than twenty (20) days after the bill is mailed or provided electronically to consenting consumers.

(b) **Late payment penalty.** A utility shall clearly state upon the face of its bills the amount of any late payment penalty, and the date on or before which payment must be received in order to avoid paying the late payment penalty. In its billing, the utility shall not use the term "prompt payment discount" or other words of similar import which suggest that the consumer will receive a discount or reduction of charges for electric service for payment prior to a certain date. The late payment penalty may be applied to any unpaid balance due at each monthly billing period.

(c) **Meters read by the consumer.** A utility which allows its consumers to read their own meters may make a late payment charge on past due bills, not to exceed one and one-half percent (1.1/2%) of the amount due per billing period and, in such event, the due date stated on the bill shall not be earlier than twenty (20) days after the bill is mailed or provided by electronic notification to customers who make an affirmative election to receive electronic notification of such information.

(d) **Payment acceptance.** The utility shall not refuse to accept payment by check from any consumer unless the utility has, within the preceding twelve (12) months, received as tendered payment of the consumer's account two (2) or more negotiable instruments which were dishonored by the financial institution on which they were drawn. The utility may make a charge outlined in its tariffs for negotiable instruments which are dishonored.

PART 7. APPLICATION FOR SERVICE AND TAMPERING OF EQUIPMENT

165:35-19-40. Failure to make application for electric service

(a) A utility may elect not to disconnect electric service to a premises when an application or contract for service is terminated, provided the meter is read and the reading recorded when service is terminated and the meter is read and the reading recorded when initiating service to subsequent consumer. Such election does not constitute consent of the utility for a new occupant of such premises to use the service without making proper application or contract for service.

(b) Any person who uses electric service of the utility, but fails to make application or contract for such service of the utility, shall be liable to the utility for payment therefore under the applicable rate schedule. Proper notice as set forth in OAC 165:35-21-20(a) must be given prior to the utility making a disconnection. The utility may prorate the charge to this ~~customer~~consumer, based on the date of occupancy.

165:35-19-41. Tampering with measuring equipment or other property

(a) No regulating or measuring equipment, or other property or equipment owned by a utility, wherever situated, whether upon consumer's premises or elsewhere, shall be tampered with or interfered with, either for the purpose of adjustment or otherwise, except by representatives of the utility owning it; and official responsibility under authority of a municipal government shall not constitute an exception to this Section.

(b) If the ~~customer~~consumer tampers with the utility's equipment or receives the benefit of the tampered service, the utility may;

(1) Disconnect service.

(2) Charge a tampering fee in accordance with the utility's tariff.

(3) Charge a reconnect fee in accordance with the utility's tariff.

(4) Charge a deposit in accordance with the OAC 165:35-19-10 to be paid prior to restoration of service.

SUBCHAPTER 21. DISCONNECTION OF SERVICE

PART 1. DISCONNECTION OF SERVICE

165:35-21-1. Disconnection of service by a consumer

A consumer may be required to give up to five (5) days ~~written~~ notice, excluding legal holidays, Saturdays and Sundays, of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day ~~written~~ notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariffs.

165:35-21-3. Utilities encouraged to keep current lists of energy assistance programs

(a) **Compilation.** The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal energy assistance programs. The list should also include public/private charitable organizations offering or known to offer energy payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall ~~give~~provide a copy of this list to any consumer who asks for requests such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, ~~in order~~ for the utility to better assist its consumers. Failure of the consumer to gain funding in full or in part, from any of the proffered resources under this Section shall not result in any liability to the utility.

PART 3. SPECIAL PROVISIONS REGARDING RESIDENTIAL DISCONNECTION

165:35-21-10. Delays to disconnection of residential service

(a) **Limitations on disconnections.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees

Fahrenheit or less, the utility shall suspend its disconnection of service if the electric service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with wires, pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility ~~may~~ shall mail, or by electronic notification to customers who make an affirmative election to receive electronic notification of such, a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's gross income.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in amount.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness or any other relevant factors concerning the circumstances of the consumer, change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on electricity, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. If the life-sustaining equipment without a battery backup is prescribed by a licensed medical doctor, then it shall be considered life-sustaining equipment. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, range/stove, nebulizers that are battery-driven or hand-driven or self-contained, battery-driven sleep apnea monitors, battery-driven cardiac monitors.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend discontinuance of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household

should electric service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection.

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening situation. The form shall be provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum, the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for electric service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of electrical service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer, if eligible, to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the consumer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer or other permanent resident in the household by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not complete the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming life threatening situation once full payment of the account balance from a previous life-threatening claim is made and a Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility ~~in order~~ to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

165:35-21-11. Commission notification procedure for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility ~~in writing~~ that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's Consumer Services Division in writing or electronically at least ten (10) business days prior to disconnection.

(2) ~~Written~~The~~confirmation~~notification shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF", and "ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) The scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional days upon request of the Commission's Consumer Services Division.

(4) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they wish to be included in the Commission notification procedure available to them and who:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at anytime disconnection is imminent, of this additional notification procedure.
(c) The utility may require verification of the consumer's qualifications.
(d) The Commission notification procedure is in addition to the other requirements set forth in this Subchapter which the utility shall meet prior to disconnection of service.

PART 5. NOTICE REQUIREMENTS

165:35-21-20. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as provided in subsections (b), (c) and (f) of this Section and OAC 165:35-21-30, service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing and shall state the reason for the action, the amount due, if applicable, the company to contact in bold print, the contact telephone number, in bold print, and the telephone number of the Commission's Consumer Service Division.

(b) **First residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a required security deposit, the utility ~~company~~ shall give at least ten (10) days written notice from the date of mailing to the consumer (when the deposit is required as a condition of service, the ten (10) day notice is not required. Refer to OAC 165:35-21-30(4) Disconnection of service without notice). Said written notice shall be sent by first-class mail, address correction requested, by the utility ~~company~~ to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility ~~company~~, which shall not extend the ten (10) days written notice from the date of mailing to the consumer requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" or "CUT OFF NOTICE" in bold print no smaller than one-half inch (1/2") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility ~~company~~ where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility ~~company~~ regarding the disconnection, prior to contacting the Commission's Consumer Services Division.

(H) The address and telephone number of the Commission's Consumer Services Division, in print size which is smaller than the print size used for the ~~utility~~utility's ~~company's~~ telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/consumer with disabilities notification.

(K) A statement that advises the consumer of the life-threatening certificate.

(L) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(M) A statement that advises the consumer of the availability of a list of agencies providing assistance to consumers for their utility bills as outlined by OAC 165:35-21-3.

(3) The utility ~~company~~ shall provide to consumers, upon request, the name and address of the authorized payment agencies, other than the ~~utility~~utility's ~~company's~~ offices, where consumers may make payments.

(c) **Second residential notice.** During the time period of November 15 through April 15, the utility shall give a minimum of forty-eight (48) hours notice (at least two (2) business days) prior to disconnection of residential service that service will be disconnected unless the consumer enters into a deferred payment agreement as prescribed in OAC 165:35-21-10(e) or unless disconnection of service would create a life-threatening situation for the consumer or other permanent resident of the premises where the utility service is rendered. If the utility elects to give oral notice, it shall only be after it has complied with (b) of this Section. The second notice may be in writing, in person or by telephone.

(1) If the second residential notice is in writing, it shall be entitled "CUT OFF NOTICE" in bold letters of not less than one-half inch (1/2") in height and shall contain, in nontechnical language, the following information:

(A) The reason for service disconnection and the amount of the unpaid bills, if any.

(B) The date on or after which service will be disconnected unless the consumer takes appropriate action.

(C) The telephone number of the utility office, in bold print, where a consumer may call for assistance, make inquiries, enter into a deferred payment agreement, obtain information on utility assistance programs, pay the bill or notify the utility of a life-threatening situation.

(D) The telephone number of the Commission's Consumer Services Division.

(2) The utility ~~company~~ shall keep a written log of all oral communication with at least the following information when contact has been made:

(A) The date and time of call or personal visit and identity of utility ~~company~~ representative.

(B) The name of the individual and relationship to the account. If the contact is with a designated representative for the consumer, a statement of authority to represent the account should be included.

(C) The nature of the call and telephone number called.

(D) A narrative of the communication between the utility and the consumer.

(E) A statement that the consumer must notify the utility ~~company~~ on the day of payment, as to the place and method of such payment, when the bill is paid at a place other than the office of the utility ~~company~~.

(F) A statement that the consumer was advised of the telephone number of the Commission's Consumer Services Division.

(3) The oral communications log shall be maintained and retained in accordance with the record keeping requirements contained in this Chapter.

(4) A copy of the oral communications log shall be provided to the Commission or to the consumer and/or their designated representative upon oral or written request.

(5) Oral communications with the consumer shall not begin before 8:00 a.m. or continue beyond 9:00 p.m. during normal business days.

(6) Oral communications shall be deemed as not to have occurred, including but not limited to the following circumstances:

(A) When there is no answer, the telephone line is busy or no one is home.

(B) When a message is left on an answering device or made on a recording device.

(C) When the message or attempted message is left with an individual having a physical and/or mental impairment that impedes communication or mutual understanding.

(D) When the communication is with a minor under the age of eighteen (18), unless the minor is the consumer or the spouse of the consumer.

(E) When the communication is with an individual who is not either the consumer or the designated representative of the consumer.

(F) When the communication is with a consumer or consumer's designated representative whose primary language is other than English and the consumer or consumer's designated representative has a language barrier, unless the communication is made in the primary language of the consumer or the consumer's designated representative.

(7) Unless otherwise directed by the Consumer Services Division, the utility company shall not contact the consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(8) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the two (2) days written notice from the date of mailing to the consumer requirement above.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Nonresidential service shall be disconnected for nonpayment of all or any portion of an undisputed utility bill only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

PART 7. EXCEPTIONS AND RECONNECTION PROCEDURES

165:35-21-30. Disconnection of service without notice

Notwithstanding any other Section regarding disconnection of service, a utility may at any time disconnect service without notice and without delaying disconnection of service as prescribed in other Sections of this Part, if:

(1) It reasonably believes that such action is necessary to correct a condition that poses a health or safety hazard to the consumer, the general public, or the equipment of the utility. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification, ~~by~~ personal contact, or ~~by~~ notice left at the premises.

(2) For the purpose of essential repair, maintenance, or testing of utility equipment, the utility shall make such efforts as are reasonable under the circumstances to minimize the adverse effects of disconnection of service and to inform affected consumers prior to disconnection of service.

(3) The utility may disconnect for unauthorized use of electricity accomplished through bypassing of the utility's measuring equipment or tampering with wires, pipes, meters, or any other utility equipment or obtaining service without a contract. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification, ~~by~~ personal contact, or ~~by~~ notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay the following applicable charges before service is restored:

(A) The applicable charges for reconnecting service prescribed in the utility's approved tariffs.

(B) The amount due for unmetered or unpaid usage, if such usage can be determined exactly. If the exact usage ~~can not~~ cannot be determined, the utility may compute and charge for the previous six (6) months an estimated usage based on historical usage from the previous two (2) years billing period or billing information; and/or

(C) The cost associated with the testing, repair, or replacement of any damaged equipment.

(4) The utility may disconnect for failure by consumer to post deposit, when the deposit has been required as a condition of service. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, by personal contact, or by notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay applicable charges before service is restored.

PART 9. MEDIATION AND COMMISSION REVIEW

165:35-21-40. Mediation

(a) Whenever there is a dispute between the utility and the consumer as to the following, the matter may be brought by either party to the Commission's Consumer Services Division:

(1) The existence of or seriousness of a life-threatening situation.

(2) The existence of elderly or handicapped status.

(3) The question of financial assistance or guarantee of payment by a federal, state, or local social service agency.

(4) The provisions of a deferred payment agreement.

(5) The terms and conditions of payment of any part of a bill as rendered.

(6) The proper interpretation of this Section.

(7) Other issues ~~address~~addressed in this Chapter.

(b) The Commission's Consumer Services Division shall review the matter and issue an informal review decision in writing, setting forth the terms and conditions for continued service, disconnection of service, or deferred payment agreement (DPA). If it is the desire of the consumer, they may be represented by a third party, if the consumer is available for verification. If the dispute can be resolved by telephone with the party seeking review, the review decision need not be in writing unless requested by either party. During any period of time when a disconnection dispute is before the Commission or in mediation, the utility shall suspend disconnection procedures.

(c) If the Commission's Consumer Services Division is unable to resolve the dispute to the mutual satisfaction of the parties, either party may file a Complaint with the Commission for final determination.

(d) Whenever the consumer informs the utility that the consumer disputes a charge for service, the utility shall investigate the dispute promptly and thoroughly, and make a diligent effort to reach a mutually satisfactory settlement. If the consumer is dissatisfied with the decision of the utility, the consumer may report the dispute to the Commission's Consumer Services Division. Upon complaint by the consumer to the Commission, disconnection of service shall be held in abeyance provided the consumer pays the portion of the bill which is not in dispute.

SUBCHAPTER 23. SERVICE REQUIREMENTS

165:35-23-3. Replacement of meters

(a) A request from a consumer for replacement of the service meter on his/her premises because of alleged inaccuracy of the meter shall be deemed a request for the test of the meter, pursuant to OAC 165:35-15-20.

(b) The utility shall make no charge for initial connection of electric service for a consumer except the charges specified in the approved tariffs and rules of service of the utility; provided that for each disconnection and reconnection of service requested for the same consumer at the same location within twelve (12) months after the most recent connection of service, the utility may make a charge prescribed in its approved tariffs.

SUBCHAPTER 25. OPERATIONS REQUIREMENTS FOR UTILITIES

PART 1. OPERATION MAINTENANCE AND RECORDS

165:35-25-2. Extension of distribution systems

(a) **Free extension.** The utility shall extend its overhead distribution lines a distance of three hundred feet (300') to provide service to each bonafide application for residential service, without cost to the consumer. The utility may prescribe terms and conditions of extending service to applicants for other types of service, and for extensions for low load service such as wells, security lights, and fence charges, and for extension policy required by law or by the terms of a financing agreement; which provisions, when filed with and approved by the Commission, shall be deemed to constitute compliance with this Section.

(b) **Tariff requirements of extension.** A utility shall include in its filed tariffs, terms and conditions of furnishing underground service which shall provide for determining and recovery by the utility for the additional cost of providing underground service, and the responsibility for trenching and backfilling, and the method of calculating costs of construction.

(c) **Extension above free limit.** If the extension of the distribution system necessary to furnish service to an applicant or group of applicants is greater than specified in (b) of this Section, the utility shall require payment of the cost of the extension over the free limit before extending the distribution system.

(d) **Extension may be made above free limit when economically justified.** In lieu of making an extension pursuant to (a) and (b) of this Section, the utility may make an extension

above the free limit upon receipt of a lesser payment or no payment, when the gross anticipated annual revenue from the extension will provide the utility with adequate return upon its investment, pursuant to a formula approved by the Commission or contained in its approved terms and conditions of service.

(e) **Determination of the length and cost of an extension.** For purposes of measuring extensions under this Section, the distance shall be measured along lines of proper construction from the nearest point of connection to the point of delivery on the property to be served. A required advance for construction shall be calculated from the total construction cost of the extension from which there shall be deducted:

(1) Any cost incident to excess capacity above that required to serve the applicant or group of applicants.

(2) Any cost incident to future expansions or to continue a construction plan of the utility.

(3) The cost of the free extension to which the applicant would be entitled.

(f) **Extensions applicable to prospective real estate subdivisions.**

(1) In lieu of extensions pursuant to other provisions of this Section, the utility may require a developer desiring an extension to a prospective real estate subdivision to make an advance for construction equal to the estimated total cost of the project before construction or the extension is started, which advance for construction shall not draw interest. The term "project" includes the entire distribution construction necessary to serve the subdivision and all line extensions to serve the individual parcels of said subdivision. In no case shall the total amount refunded exceed the amount advanced for construction with the utility. Consumers locating on an extension made pursuant to this paragraph shall not be required to make an extension advance for construction.

(2) The utility may require the developer desiring service to a prospective real estate subdivision to make an advance for construction equal to the estimated cost of the distribution system without line extensions. In such cases no refund to the developer will be made upon connection of individual line extension within the subdivision.

(3) A utility may enter into a contract with a developer which shall be deemed a special contract governed by OAC 165:35-5-1(c).

(g) **Appeals to the Commission.** If the extension above the free limits is of such length and the future anticipated revenues therefrom so small that it is doubtful that the extension would ever make a fair return on the investment, the utility or any interested person may apply to the Commission for an appropriate order.

(h) **Property of extension.** Every extension shall at all times be the property of the utility, regardless of whether an advance for construction is made in aid of its construction. At the end of five (5) years, any unrebated portion of a contribution or advance for construction made subject to refund shall become the property of the utility.

(i) **Adoption of policy by utility.** The utility may adopt a policy for extension to be made for the purpose of serving irrigation wells and/or oil field water flooding projects and for advances for construction for payment of all or part of the cost thereof by such consumer, which policy shall be prescribed in its approved tariffs.

165:35-25-3. Maintenance of plant, equipment, and facilities

(a) **Safety of plant and system.** Each utility shall install, operate, and maintain its entire plant and system in such condition as will enable it to furnish safe and adequate service, subject only to emergency conditions beyond its control.

(b) **Accepted good practice.** The generating, transmission, and distribution system, including but not limited to generating plants and equipment, transmission lines, substations, overhead systems, underground systems, street lighting systems, service wires and attachments, transformers, meters and measuring equipment, and remote meter reading equipment shall be constructed, installed, maintained, and operated in accordance with accepted good practice up to and including the point of delivery to the consumer. "Accepted good practice" shall be defined by the applicable rules governing installation, operations, maintenance, and safety contained in the National Electrical Safety Code.

(c) **Compliance with the National Electrical Safety Code.** The Commission hereby adopts the minimum requirements of the ~~2002~~2012 Edition of the National Electrical Safety Code (NESC) adopted by the ANSI (ANSI-C2) as its rules and regulations governing safety of the installation and maintenance of electric utility systems.

(1) Only the specific minimum clearances required by the ~~2002~~2012 Edition of the NESC shall be required by this Chapter. Construction and facilities which meet the specific minimum clearances shall be deemed to meet the purpose of the NESC of the "practical safeguarding of persons." Any additional clearances provided will be at the discretion of the electric utility, or as directed by the Commission, and shall not be required or necessary to provide additional public safety.

(2) On all underground construction completed after the effective date of this Chapter, the utility shall place warning labels (of a Commission-approved design) at all locations where aboveground equipment and facilities are readily accessible to the public.

(d) **Reliability of supply.** The generating capacity of a utility's plant, supplemented by the electric power regularly available from other sources or firm contracts for electric power by a utility which operates no generating plants, must be sufficiently large to meet all normal demands for service and provide a reasonable reserve for emergencies.

(e) **Quality of service.**

(1) In the event that any consumer operates or connects any electrical device to his/her electric system which causes an interference, noise, distortion of the 60 Hz sine wave, or other disturbance on the system of the utility which results in a disruption, disturbance, or interference to the utility, its consumers, or a communication company or its consumers, the utility shall:

(A) Require the consumer causing the problem to take corrective measures by installing suitable or special equipment necessary to eliminate or reasonably limit such adverse effect, or

(B) Install, at the consumer's expense, equipment specifically designed to reasonably limit such adverse effect.

(2) The consumer causing the problem shall bear all expenses necessary to eliminate the adverse conditions or be subject to a discontinuance of service after written notice so that other consumers are not deprived of the quality of service provided prior to the existence of the problem. Where the utility believes the condition creates a hazard to the public, the utility, or the property, the disconnection may be made without prior notice. However, the utility shall notify the consumer as soon as practical after the disconnection.

(f) **Harmonics.** In 60 Hertz electric power systems, a harmonic is a sinusoidal component of the 60 Hertz fundamental wave having a frequency that is an integral multiple of the fundamental frequency. "Excessive harmonics," in this subsection, shall mean levels of current or voltage distortion at the point of common coupling (metering point) between the ~~electric~~ utility and the ~~customer~~consumer outside the levels recommended in the IEEE standard referenced in subsection (f)(1). Each ~~electric~~ utility shall assist every ~~customer~~consumer or communications provider affected with problems caused by excessive harmonics and ~~customers~~consumers or communications providers affected in exceptional cases as described in subsection (f)(5).

(1) **Applicable standards.** In addressing harmonics problems, the ~~electric~~ utility and the ~~customer~~consumer shall implement, to the extent reasonably practicable and in conformance with prudent operation, the practices outlined in IEEE Standard 519-1992, *IEEE Recommended Practices and Requirements for Harmonic Control in Electric Power Systems*, or any successor IEEE standard, to the extent not inconsistent with law, including state and federal statues, orders, and regulations, and applicable municipal regulations.

(2) **Investigation.** After notice by a ~~customer~~consumer or communications provider that it is experiencing problems caused by harmonics, or if ~~an~~ a ~~electric~~ utility otherwise becomes aware of harmonics conditions adversely affecting a ~~customer~~consumer or communications provider, the ~~electric~~ utility shall determine whether the condition constitutes excessive harmonics. If so, the ~~electric~~ utility shall investigate and determine the cause of the excessive harmonics.

(3) **Excessive harmonics created by ~~customer~~consumer.** If ~~an~~a~~electric~~ utility determines that a ~~customer~~consumer has created excessive harmonics that cause or are reasonably likely to cause another ~~customer~~consumer or communications provider to receive unsafe, unreliable or inadequate electric service, the ~~electric~~ utility shall provide written notice to the ~~customer~~consumer creating excessive harmonics. The notice shall state that the utility has determined that the ~~customer~~consumer has created an excessive harmonics condition and that the utility has explained the source and consequences of the harmonics problem. The notice shall give the ~~customer~~consumer two options to cure the problem.

(A) The ~~electric~~ utility may cure the problem by working on the ~~customer's~~ consumer's electric facilities at a mutually agreeable time and assess the investigation and repair costs to the ~~customer~~consumer.

(B) The ~~customer~~consumer may elect to cure the problem at its option and its cost, but the remedy shall occur within a reasonable time, which will be specified in the notice.

(4) **Failure of the ~~customer~~consumer to remedy the problem.** Failure of the ~~customer~~ consumer to remedy the problem may require the ~~electric~~ utility to disconnect the ~~customer's~~ consumer's service. The ~~electric~~ utility shall then remedy the excessive harmonics condition, or the ~~electric~~ utility may determine that the ~~customer~~consumer has remedied the condition within the time specified. In the event the ~~customer~~consumer refuses to allow the ~~electric~~ utility to remedy the problem and does not stop creating excessive harmonics within the time specified, the ~~electric~~ utility may disconnect the ~~customer's~~consumer's service. Before disconnecting pursuant to this subsection, the ~~electric~~ utility shall provide written notice of its intent to disconnect at least five working days before doing so, unless the ~~customer~~ consumer grants the utility access to its electric facilities or ceases creating excessive harmonics. The ~~electric~~ utility may disconnect the ~~customer~~consumer five working days after providing the notice, unless the ~~customer~~consumer grants the ~~electric~~ utility access to its electric facilities or ceases creating excessive harmonics.

(5) **Excessive harmonics created by ~~an~~a~~electric~~ utility or third party.** If ~~an~~a~~electric~~ utility determines that its operation or facilities, or the operations or facilities of a third party other than a ~~customer~~consumer, created excessive harmonics that causes, or is reasonably likely to cause, a ~~customer~~consumer or communications provider to receive unsafe, unreliable or inadequate electric service, the ~~electric~~ utility shall remedy the excessive harmonics condition at the earliest practical date.

(6) **Excessive total harmonic distortion created by two or more harmonic sources within IEEE 519 limits.** If, in its investigation of a harmonics problem, an electric utility determines that two or more ~~customers'~~consumer's harmonic loads are individually within IEEE 519 limits but the sum of the loads are in excess of the IEEE 519 limits, the ~~electric~~ utility may require each ~~customer~~consumer to reduce its harmonic levels below the limits specified in IEEE 519.

(7) **Cost responsibility.** Each ~~electric~~ utility or third party that created an excessive harmonics condition,

or that investigated or remedied an excessive harmonics condition created by a third party other than a ~~customer~~consumer, must bear the costs incurred in investigating and remedying the condition, and shall not assess any fees to the affected ~~customer~~consumer.

(g) **Power quality monitoring.** In addressing power quality monitoring, each ~~electric~~ utility shall implement, to the extent reasonably practicable and in conformance with prudent operation, the practices outlined in IEEE Standard 1159-1995, *IEEE Recommended Practice for Monitoring Electric Power Quality*, or any successor IEEE standard, to the extent not inconsistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations.

165:35-25-4. Daily record of generating plants

Each utility shall keep a daily record of the operation of each of its generating plants showing the energy generated, station use, net output of plant, length of time each unit is in operation, and cause and reason for any unexpected plant shutdown. A utility having only generating plants of 5,000 KW or less is exempt from this Section.

PART 3. RELIABILITY OF SERVICE AND RELIABILITY PROGRAM

165:35-25-14. Reliability program

(a) Each utility, to the maximum extent practicable, shall design and maintain a program to limit the frequency and duration of electric service interruptions and to maintain acceptable electric service reliability levels and to sustain that reliability over time. This program must address all the factors that impact the reliability of the distribution system, including, but not limited to:

(1) The age, distribution, and location of equipment on each circuit;

(2) The number, density, and location of customers on each circuit;

(3) The location and density of trees on the system;

(4) Annual vegetation management plan; and

(5) The impacts on distribution system reliability of animals, wind, storms, ice, and automobile accidents.

(b) The program shall include inspection, maintenance, repair and replacement standards that ensure timely and efficient service restoration as well as preventive and emergency maintenance. In establishing such standards it is imperative that the utility locate sufficient personnel, equipment, repair materials, and supplies strategically throughout its service territory ~~in order~~ to fully and adequately meet the reliability standards established herein.

(c) The program shall give special emphasis to the improvement of the worst-performing circuits in each region of the utility's service territory.

165:35-25-18. Performance levels

(a) **Utility's responsibility and indices used.** It shall be the utility's responsibility to maintain and compile the data necessary to compute System Average Interruption Duration Index(SAIDI)and System Average Interruption Frequency Index (SAIFI) (and to the maximum extent practicable, Momentary Average Interruption Frequency Index(MAIFI)). These indices shall be computed by the utility for each reporting year, or any sub-period thereof, as requested by the Commission. The data maintained and compiled for the computation of the indices shall conform strictly to their respective definitions as set forth in this Part. The indices shall be computed for the utility's entire service territory, for each region, and for each distribution circuit. Computation of the indices shall not include interruptions that have resulted from operating conditions that are beyond the utility's control (such as a major event, as that term is defined and used under this subchapter). Each utility shall maintain the raw interruption and duration date as well as the computation of the indices for each reporting year, for a period of not less than three years after the annual report filing deadline. The utility shall maintain all data necessary to compute SAIDI and SAIFI (and to the maximum extent practicable, MAIFI), for all major events but is not required to make such computations except as requested by the Commission.

(b) **Minimum performance level.** Upon receipt of the utility's annual report, the Commission will compare the indices computed for the utility's service territory to the minimum performance level. The minimum performance level shall represent the lower threshold of adequate service below which further review, analysis, and corrective action may be required. The minimum performance levels shall be reached when the SAIDI and SAIFI values of each ~~electric~~ utility's service are equal to or better than the minimum performance levels for these indices. The base performance level for SAIDI and SAIFI for the period January 2005 through December 2009~~,~~ shall be established through engineering and economic studies of historical performance and system operations prepared by each utility, in consultation with PUD Staff, and submitted as part of each utility's reliability report submitted March 1, 2005. This base performance level shall be recomputed by each utility every fifth (5th) year and submitted to the Commission in the next year's reliability report. After notice and hearing, the Commission may modify the minimum performance level of any utility. The minimum performance level for a utility with less than 100,000 customers shall be adjusted to account for variances in the rural nature or other special characteristics of their distribution system. The adjusted minimum performance level for a utility with less than 100,000 customers shall be determined by multiplying the annual minimum performance level by the ratio of miles of line per customer plus 1 for the reporting year. It will be the responsibility of the utility to determine the adjusted minimum performance level using this formula for each reporting year. The utility's average number of customers for the prior reporting year shall determine the standards to be applied to the current reporting year.

(c) **Objective performance level.** The objective performance level shall represent a fully adequate level of service that each utility should strive to achieve and maintain. It shall be reached when the SAIDI and SAIFI values of each utility's

service territory are for the year is within the bandwidth established based on the data gathered pursuant to the process described in OAC 165:35-25-18(b).

(d) **Commission Review.** In its review of a utility's cost of service and rate of return, the Commission may consider, in general rates cases, the utility's reliability reporting and levels for SAIDI, SAIFI, Customer Average Interruption Duration Index(CAIDI), and MAIFI.

(e) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

165:35-25-20. Annual reliability report

(a) Each utility shall submit an annual reliability report to the Commission by March 1st of each year, beginning March 1, 2005.

(b) The annual reliability report shall include the following:

(1) A description of all vegetation management it performed for the previous calendar year and the vegetation management it plans to perform for the current year.

(2) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for the entire service territory and displayed in tabular form. SAIDI and SAIFI events should be calculated using a sustained time of five (5) minutes or more for Root Mean Square (RMS) zero voltages; MAIFI events should be calculated using any time less than five (5) minutes for RMS zero voltages. Multiple interruptions within five (5) minutes are considered one momentary interruption event.

(3) SAIDI and SAIFI (and to the maximum extent practicable, MAIFI) values computed for each of the utility's regions and displayed in tabular form. SAIDI and SAIFI events should be calculated using a sustained time of five (5) minutes or more for RMS zero voltages; MAIFI events should be calculated using any time less than five (5) minutes for RMS zero voltages. Multiple interruptions within five (5) minutes are considered one momentary interruption event.

(4) A detailed report for each major event that is not included in the calculation of the reliability indices. The major event report shall include the interruption cause or causes, date, regional location, percentages of ~~customers~~consumers without service in that region as a result of the event, the time or time frame in which service was lost to 10% or more of that region, the time the last ~~customer's~~consumer's service was restored in that region, and any other details that the utility or the Commission believes will further justify the exclusion of the event from the calculations.

(5) A description of the program the utility has in place for analyzing and improving worst performing circuits and a summary of the results of the program for the reporting year.

(6) A description and map identifying the utility's service regions or operations divisions. Documentation and illustration of any changes in region boundaries as defined by the utility, and justification for such changes.

(7) For each utility with less than 100,000 ~~customers~~consumers, show the data used to calculate as well as the calculation of the rural adjusted minimum performance level.

(c) The Commission reserves the right to request additional data if necessary.

(d) **Limitations to technology.** Utilities that do not have the technological capability to maintain and compile all such data, shall maintain and compile such data that it has available and utilizes to define and identify system reliability levels as well as outline progress towards attainment of additional technologies.

PART 5. UTILITY SCORECARD

165:35-25-24. Utility performance scorecard

(a) Using the data submitted pursuant to OAC 165:35-25-20, the Commission shall annually prepare a scorecard for each utility covering the following areas:

(1) SAIFI;

(2) SAIDI;

(3) MAIFI (to the extent that this measure is utilized);

(4) Vegetation management; and

(5) Worst performing circuits.

(b) The scorecard shall be prepared such that the performance of utilities of differing sizes and number of ~~customers~~consumers can be directly compared.

(c) The Commission's utility performance scorecards will be published annually not later than May 1st.

SUBCHAPTER 27. COST REPORTING AND ACCOUNTING

165:35-27-2. Municipal fees, taxes, and other exactions

The aggregate amount of all franchise payments, or contributions or payments in lieu thereof, or other exactions imposed upon ~~electric~~ utilities or electric cooperatives by any municipality of this state for engaging in business within the municipality or for the use and occupancy of its streets and public ways is a matter between the municipality and the ~~electric~~ utility or electric cooperative. The amount of the exactions charged to and collected from the consumers by the utility shall be in accordance with the respective municipal ordinance or statute. The amount of such exactions shall be charged to consumers within said municipality pro rata in accordance with actual revenue associated with the provided service. The amount of such payments shall be separately stated as a line item on the regular billings to consumers as a dollar amount.

SUBCHAPTER 29. ELECTRICITY PURCHASES FOR PRODUCERS AND PARALLEL OPERATION

165:35-29-1. Purchase of electricity from cogenerators or small power producers

(a) Purchases under this Section shall be from cogenerators and small power producers (producers) as defined and qualified under Section 201 of the Public Utility Regulatory Policies Act (PURPA) of 1978. Producers shall not be utilities as defined elsewhere in the Chapter.

(b) Unless otherwise provided for by this Section and in an approved experimental purchase tariff, the utility's Terms and Conditions of Service shall apply to joint consumer producers.

(c) Each utility will maintain a list available to the Commission for all potential cogenerators and small power producers who have been in written contact with the utility and record the disposition of each such line of inquiry.

(d) Each utility will maintain an experimental purchase tariff on file applicable to purchases from certain facilities of 100 KW or less. This tariff will consist of a Purchase Agreement form prepared by the utility and approved by the Commission; ~~of~~ Purchase Rate Schedules for wind, photo-voltaic and stored water hydro power, which reflect the ~~utilities'~~ utility's avoided costs, as approved by the Commission; and ~~of~~ the experimental standard Terms and Conditions of Purchase of the Commission.

(e) Each utility will maintain on file for all other potential cogenerators a small power producers information sufficient to guide such parties in regard to avoided costs and procedures. Such information shall include, but not be limited to:

(1) The utility's response to avoided cost interrogatories as requested by the Commission.

(2) A copy of this Chapter.

(3) A copy of the experimental tariff.

(4) Such reports and analyses as shall be prescribed by the Commission.

(5) For investor owned utilities, the information required by Section 210 of the Public Utility Regulatory Policies Act (PURPA) of 1978.

(f) A cogenerator or small power producer has the right:

(1) To generate in parallel with the utility.

(2) To sell, at his/her option, his/her total generation or his/her generation net of electrical requirements.

(3) To receive for his/her generation a fair rate based on the costs avoided by the utility because of his/her delivery, reliability, dispatchability and other factors, as determined by the Commission.

(4) To other substantive rights granted by PURPA.

(5) To good faith negotiation by the utility.

(6) To bring complaint or dispute to the Commission for mediation, hearing or other resolution.

(g) Nothing in this Section will prevent a qualified producer from executing a special purchase contract with a utility, provided that the contract must be approved by the Commission prior to its effective date.

~~(h) The utility shall include in each contract with a cogenerator or small power producer the provision, and put the cogenerator and small power producer on actual notice ,that the Commission may, after proper notice and hearing, change the terms and otherwise finalize experimental purchase tariffs and special contracts.~~

165:35-29-2. Parallel operation of generation facilities

(a) This Section applies to any party (interconnected party) who wishes to operate or who is operating generation facilities in parallel with ~~an~~a~~electric~~ utility except the following:

(1) Other ~~electric~~ utilities subject to the rules of this Commission or FERC or its successor organization, if any.

(2) Parties qualifying under OAC 165:35-29-1, and who have not agreed with the utility to operate under this Section.

(3) Parties operating in parallel according to an agreement signed prior to March 20, 1981, who have not agreed with the utility to operate under OAC 165:35-29-1.

(b) As a condition of service, no interconnecting party may interconnect or operate generation facilities in parallel with ~~an~~a~~electric~~ utility without prior written approval by the utility of such parallel operation and for the interconnection facilities.

(c) Interconnection requirements shall be reasonable and all costs (over normal policies under the terms of service) shall be borne by the interconnecting party.

(d) Any party meeting the requirements in (a) through (d) of this Section shall have the right to operate in parallel with the utility using a detented service meter so that no credits are obtained for amounts returned to the utility system. The utility may establish buy back rates or enter into special contracts that are otherwise consistent with this Chapter.

(e) All agreements and contracts for such interconnection and parallel operation shall be submitted to the Commission for approval prior to interconnection, except as otherwise ordered by the Commission. In no event shall the terms of such agreement or contract be less favorable to the utility than those provided under OAC 165:35-29-1.

(f) Upon interconnection, the Director of the Public Utility Division ~~of this Commission~~ shall be notified by the utility of the date, name, and legal address of the interconnecting party, and the location and description of the facilities.

SUBCHAPTER 31. AFFILIATE TRANSACTIONS AND FINANCIAL TRANSACTIONS OF UTILITIES AND AFFILIATES

165:35-31-3. Exemption for corporate and shared services

Corporate and support services are exempt from asymmetrical pricing, to the extent that the affiliate information requirements in Chapter 70 and OAC 165:35-31-4 are satisfied.

SUBCHAPTER 33. HOMELAND SECURITY AND CRITICAL INFRASTRUCTURE

165:35-33-1. Purpose and scope

(a) The purpose of this Subchapter is to encourage utilities to take all reasonable measures necessary to protect their critical infrastructures from extended interruption of service from all extraordinary events, natural and man-made.

(b) The Corporation Commission encourages electric utilities to develop, implement, and maintain Homeland Security and Critical Infrastructure Plans according to the industry standards enumerated in sub-section (d) below.

(c) To the extent that a utility seeks to recover costs for security measures outside of a general rate review for the implementation of Homeland Security and/or Critical Infrastructure protections, the utility shall comply with all provisions of this Subchapter.

(d) Each electric utility serving Oklahoma jurisdictional ratepayers is encouraged to follow the most current North American Electric Reliability Corporation's~~Council's~~ (NERC's) Security Guidelines and Standards, as may be amended from time to time, for use as guidelines for protecting the utility's Critical Infrastructure from extended service interruption.

(e) Each electric utility seeking to recover costs for security measures from Oklahoma jurisdictional ratepayers outside of a general rate review shall develop, implement, and maintain a Critical Infrastructure and Security Plan as further set forth within this Subchapter.

(f) If the utility has implemented a Security Plan or process in accordance with the applicable industry guidelines but is not seeking or receiving cost recovery for security-related costs, the utility shall submit the Certification Letter required by OAC 165:35-33-7(f) and the Plan shall be subject to review pursuant to the Authorized Participation and Confidentiality provisions of OAC 165:35-33-10 and OAC 165:35-33-11. The utility is not otherwise required to comply with the provisions of this Subchapter.

(g) The Commission retains its jurisdictional and supervisory authority to address the reasonableness and/or prudence of any proposed security cost recovery.

(h) Nothing in this subchapter shall relieve any utility from any duty otherwise prescribed by the laws of the State of Oklahoma or this Commission's rules.

(i) Nothing in this Subchapter is intended to divest the utility of its right to object to any discovery requests from intervenors seeking access to "Highly Sensitive Confidential" materials.

(j) If any provision of this Subchapter is held invalid, such invalidity shall not affect other provisions or applications of this Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are declared to be severable.

165:35-33-3. Definitions

The following words and terms, when used in this Subchapter 33, shall have the following meaning, unless the context clearly indicates otherwise:

"Annual Report" means the Annual Report submitted by Commission Staff to the Commission beginning December 30, 2005 and by July 1 of each year thereafter, summarizing the results of Staff's review of each utility's Security Plan (and any Plan Update Reports), along with any recommendations that Staff may have regarding such Plan(s).

"Authorized Participant" means those persons authorized by the utility or as may otherwise be authorized by law and/or ordered by the Commission, to view highly sensitive confidential information. Such authorization shall be granted on a case-by-case basis and may extend to the utility, state government officials, persons having been granted intervenor status by the Commission and Commission authorized designees of the parties.

"Certification Letter" means the written certification to the Director of the Public Utility Division made by August 1, 2005 and on March 1 of each subsequent year thereafter, indicating that as of the date of the Certification Letter, the utility has a Plan or that it has updated the Plan and/or previous Plan Update Reports, has a Plan but is not seeking cost recovery or has no Plan in place.

"Critical Infrastructure" means the property of a utility located in the State of Oklahoma, comprised of either physical assets or computer software which, if severely damaged or destroyed, would have a significant impact on the ability of the utility to serve large numbers of customers for an extended period of time, would have a detrimental impact on the reliability or operability of the energy grid, or would cause significant risk to public health and safety.

"Highly Sensitive Confidential" means that the information is of such a sensitive nature that its public disclosure could be harmful to the security of a utility's critical infrastructure and as such it may only be viewed by those persons authorized by the utility or as may otherwise be ordered by the Commission.

"NERC" means the North American Electric Reliability Corporation~~Council~~.

"Plan" means a Homeland Security and Critical Infrastructure Plan including any subsequent Plan Update Reports that have been prepared with reference to the NERC GUIDELINES.

"Plan Update Report" means the written redlined changes made by the utility updating the Plan and/or previous Plan Update Reports. At the utility's option, changes will either be redlined or a history of changes may be maintained.

"Security Cost Rider" means the per billing unit rate mechanism whereby a utility may, upon approval and Order of this Commission, recover the costs of providing security for its Critical Infrastructure as defined under this Subchapter 33.

SUBCHAPTER 34. COMPETITIVE PROCUREMENT

165:35-34-1. Purpose of this Subchapter

(a) This Subchapter establishes a fair, just, and reasonable process that best serves the public interest of all electricity consumers and that will complement and improve the state's economic growth by, among other things, making the most efficient use of Oklahoma's coal, natural gas, and power generation and transmission assets and furthers the policy of the Commission that a competitive procurement process is among the most effective means to achieve these objectives. ~~In orderto~~To obtain a presumption of prudence, a utility shall employ the competitive bidding procedures set forth in this subchapter, when purchasing or self-building of new long-term electric generation, long term purchase power agreements, or

long-term fuel supply for self-generation of electricity as set forth in this subchapter. A utility may exercise managerial discretion and enter into contracts, fixed-priced or index-based, without seeking a presumption of prudence. However, if a utility does not employ the competitive bidding process set forth in this subchapter, there shall be no presumption of prudence and the determination of prudence will be decided during a subsequent Commission review. The competitive bidding process shall be open to Commission scrutiny, as are other regulated utility practices.

(b) It is the intent of the Commission to create an open, transparent, fair and nondiscriminatory competitive bidding process for the utility to meet its needs. It should not be construed that this Subchapter absolves or relieves any utility or competitive bidder from any duty prescribed by the laws of the State of Oklahoma or the United States including, but not limited to, the federal Public Utility Regulatory Policies Act (Public Law 95-617, as amended) and any other state or federal law regarding contractual rights and obligations, antitrust enforcement or liability, or laws against improper restraint of trade or "takings" of property.

(c) This Subchapter also establishes reasonable standards of conduct for transactions between utilities and their affiliates and standards for transactions between utilities and competitive bidders conducting business within the State of Oklahoma.

(d) This Subchapter shall not be applicable to a utility with no generation plant within the boundaries of Oklahoma and less than ten percent of its customers within the state.

(e) Wherever Independent Evaluator is referred to in this subchapter, it is understood that particular reference is only applicable if an Independent Evaluator has been retained by the Commission.

165:35-34-4. Commodity fuel supply competitive bidding procurement process for a term greater than five years

(a) **Pre-approval filing.** When a Utility contracts for commodity fuel supply for self-generation of electricity for a term greater than five years, and seeks a pre-determination of prudence, the Utility shall file an application and receive the Commission's approval of the Utility's proposed Request for Proposal (RFP) Competitive Bidding Procurement Process prior to the Utility issuing the RFP. The evaluation and approval of the RFP shall contain, but not be limited to, the proposed bidding process, the evaluation process, consistency with the Integrated Resource Plan (IRP), and a determination of need for the proposed fuel supply. The evaluation and approval of the RFP may contain a consideration of opt-out provisions. The process shall focus on and result in the lowest reasonable cost for ratepayers. The request shall be processed as follows:

(1) An Independent Evaluator may be utilized pursuant to 165:35-34-4(b);

(2) The soliciting Utility shall file a cause for pre-approval of the RFP and will provide notice to the Commission and Attorney General to engage in the RFP approval process at least 30 days before issuing a request for pre-approval of the proposed RFP;

(3) The soliciting Utility shall prepare the initial draft of the RFP documents that, to the extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule;

(4) In addition to the information required by (3) of this Section, the RFP, at a minimum, shall identify clearly:

(A) Term and Renewals;

(B) Types and quantity of fuel being solicited;

(C) All price and non-price evaluation factors to be considered;

(D) Respective weight for each price and non-price evaluation factor;

(E) The Utility's preliminary analysis of desired delivery points or options as appropriate; and

(F) The extent to which a consideration of hedging and price volatility mitigation has been included in the RFP; and

(5) A Commission order approving or disapproving the RFP shall be issued in no more than 180 days following the filing of the Utility's application.

(b) **Independent evaluator.**

(1) The Commission Staff or Office of the Attorney General may, at their discretion, file a request with the Commission for the assessment of specific costs, which shall be deemed recoverable costs associated with conducting the prudence review analysis, related to the retention of an Independent Evaluator to monitor the RFP and competitive bidding process. Notwithstanding the foregoing, the Commission, or the Attorney General shall retain an Independent Evaluator to monitor the RFP and competitive bidding process in the following instances: (i) when an affiliate of the Utility is anticipated to participate in the competitive bidding process; (ii) when the RFP and bid resulting there from is expected to have a material impact on the Utility's cost of providing electricity to its customers, or (iii) when it is anticipated that the Utility may participate as a bidder in the competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric Utility or affiliate thereof, complaining entity, and any potential bidder.

(2) The Independent Evaluator will report to the Commission or the Office of the Attorney General.

(3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting Utility about the winning bidder(s), the Independent Evaluator and Utility may attempt to resolve such differences. In the event the Independent Evaluator and Utility cannot resolve their differences, the soliciting Utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.

(4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use

of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting Utility in conjunction with the competitive bidding process.

(c) **Affiliate bidders' requirements.**

(1) Each soliciting Utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting Utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting Utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting Utility and bidding affiliate shall execute an acknowledgement that the Utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) **Evaluation of responses to the RFP.**

(1) The evaluation of the responses to the RFP will proceed as follows:

(A) The soliciting Utility will evaluate all timely submitted bids to determine the lowest reasonable cost for fuel supply that results in the lowest reasonable cost with consideration given to all other bid terms outlined in the RFP; and

(B) The Commission, Attorney General, Independent Evaluator, and non-competitive representatives will be included in the evaluation of all bids submitted to the soliciting Utility pursuant to the provisions of the Protective Order. The soliciting Utility shall include within the RFP the time and place for the opening of the bids so that the Commission, Attorney General, the Independent Evaluator and non-competitive representatives may attend and monitor the opening of bids. Bids shall be opened by the soliciting Utility at the time and place so indicated in the RFP whether or not any or all of those parties are in attendance.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. Bids will be evaluated on all relevant economic and non-economic factors. No bidder shall be permitted to unilaterally submit a refreshed bid prior to award unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting Utility, Commission, Attorney General, Independent Evaluator and non-competitive representatives may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting Utility, Commission, Attorney General, Independent Evaluator and non-competitive representatives and bidder should be conducted through an open process in which the Utility, Independent Evaluator, Commission, Attorney General and non competitive representatives are given adequate notice and an opportunity to attend.

(4) In conducting the evaluation of the responses, the soliciting Utility shall not: waive or otherwise modify any evaluation factor or evaluation weight for any bidder.

(e) **Bid award.**

(1) The Utility shall submit its decision, rationale and analysis concerning the successful bid with the Commission, non-competitive representatives, the Independent Evaluator, and the Attorney General within 24 hours of the selection. The utility shall provide the non-winning bidders notice that they were not selected as the winning bid.

(2) The Director of the Public Utility Division, any unsuccessful bidder, the Independent Evaluator, Intervenors, or the Attorney General shall have two (2) business days following submission of the successful bid decision to file with the Commission a complaint challenging the Utility's adherence to the approved RFP and the resulting bid award.

(3) In the event of the filing of such a complaint, after notice to all parties and hearing, the Commission shall determine whether the Utility's decision reveals a clear departure from the criteria stated in the previously obtained waiver or the RFP Document in which event the bid award may not be pre-approved by the Commission.

(4) The Commission shall endeavor to hear the complaint in camera within three (3) business days of the filing of the complaint.

(5) The Commission shall endeavor to enter a final order within 15 days of the initial bid award letter. If the Commission has not entered a final order within 15 days, the winning bidder may be allowed to refresh their bid pursuant to the provisions of the RFP.

(6) The Commission shall endeavor to enter a final order no later than 30 days after the initial bid award.

(7) Upon determination of the successful bidder, the Utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(8) The final order, if awarding a pre-determination of prudence, will provide as follows:

(A) Purchases made according to the terms of the contract shall be deemed prudent;

(B) Variances from the terms of the contract shall be subject to additional prudence review and determination.

(f) **Waiver.** Prior to a utility taking competitive procurement action other than the competitive procurement processes set forth in this Subchapter, such Utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission if the Utility will seek pre-approval.

SUBCHAPTER 35. PRUDENCE REVIEWS

165:35-35-1. Prudence Reviews

(a) The Commission shall conduct prudence reviews on all generation, purchased power and fuel procurement processes and costs. The first prudence review will be selected by March 31, 2006. Utilities serving four hundred thousand (400,000) ~~ratepayers~~consumers or more shall be reviewed at least once every two (2) years. Utilities serving fewer than four hundred thousand (400,000) ~~ratepayers~~consumers shall be reviewed at least once every three (3) years.

(b) All fuel and generation expenses, including purchased-power-related expenses, shall be reviewed by the Commission in adjudicatory proceedings to determine that such expenses were prudently incurred. The utility shall bear the burden of proof as to prudence. Additional prudence reviews shall be conducted when the Commission determines that circumstances warrant such review.

(c) The Commission may impose any corrective action or penalty allowed explicitly or implicitly by law, including refund, as the result of a prudence review.

(d) Nothing in this Subchapter shall diminish the authority of the Commission to review for prudence or other reasons any utility contract, decision or other action for the provision of electric power capacity or energy.

SUBCHAPTER 37. INTEGRATED RESOURCE PLANNING

165:35-37-4. Integrated Resource Plan Reviews

(a) Each utility shall submit to the Commission a proposed integrated resource plan. The utility's first ~~integrated~~integrated resource plan was due on October 1, 2006, and subsequent plans shall be due every three (3) years thereafter, unless otherwise ordered by the Commission. Subsequent plans shall be developed and submitted as provided by the procedure set forth in OAC 165:35-37-5. The proposed resource plan shall include, among other things, a fuel procurement plan, purchased-power procurement plans, a risk management plan, an environmental compliance plan, and other elements as described further in this Subchapter. This plan will be made available upon request by any person or entity to the soliciting utility, except any portions subject to a Commission protective order.

(b) Each utility shall have an ongoing obligation to monitor markets and inputs and to notify the Commission when material changes in planning assumptions occur. As the integrated resource plan changes from year to year, the utility shall submit updates to the Commission. The Commission may require the utility to submit an interim, updated integrated resource plan to reflect material change(s) in planning assumptions.

(c) The integrated resource plan shall include, at a minimum, a tabular summary of each of the following Sections:

(1) Schedule A: An electric demand and energy forecast;

(2) Schedule B: A forecast of capacity and energy contributions from existing and committed supply- and demand-side resources;

(3) Schedule C: A description of transmission capabilities and needs covering the forecast period;

(4) Schedule D: An assessment of need for additional resources;

(5) Schedule E: A description of the supply, demand-side and transmission options available to the utility to address the identified needs;

(6) Schedule F: A fuel procurement plan, purchased-power procurement plan, and risk management plan;

(7) Schedule G: An action plan identifying the near-term (i.e., across the first five [5] years) actions that the utility proposes to take to implement its proposed resource plan;

(8) Schedule H: Any proposed RFP(s), supporting documentation, and bid evaluation procedures by which the utility intends to solicit and evaluate new resources; and

(9) Schedule I: A technical appendix for the data, assumptions and descriptions of models needed to understand the derivation of the resource plan.

(10) Schedule J: A description and analysis of the adequacy of its existing transmission system to determine its capability to serve load over the next ten (10) years, including any planned proposed changes to existing transmission facilities.

(11) Schedule K: An assessment of the need for additional resources to meet reliability, cost and price, environmental or other criteria established by the Commission, the State of Oklahoma, the Southwest Power Pool, North American Electric Reliability Council, or the Federal Energy Regulatory Commission. This assessment should address both base line forecast condition and important uncertainties, including but not limited to load growth, fuel prices, and availability of planned supplies.

(12) Schedule L: An analysis of the utility's proposed resource plan and any alternative scenarios necessary to demonstrate how the preferred plan best meets the planning criteria. Technical appendices should be included to document the planning analysis and assumptions used in preparing this analysis.

(13) Schedule M: A description and analysis of the Utility's consideration of physical and financial hedging to determine the Utility's ability to mitigate price volatility for the term covered by the IRP.

165:35-37-5. Procedure for subsequent integrated resource plans

(a) A utility shall notify the Commission that it has prepared a proposed update of its integrated resource plan at least sixty (60) days prior to submission pursuant to 165:35-37-4.

(b) ~~In order to~~To allow all stakeholders the opportunity to review and provide input regarding utility objectives, assumptions, planning scenarios, and other information contained in the proposed updated integrated resource plan, after giving notice and prior to submitting the final integrated resource plan, the utility shall conduct at least one technical conference for all stakeholders. Stakeholders then may submit comments to the utility as to the strengths and weaknesses of the proposed plan.

(c) The utility shall make the proposed plan available prior to the technical conference to any person who requests it, except any portions subject to a Commission protective order or confidentiality agreement.

(d) The utility shall take into account any comments received prior to or at the technical conference and make such changes to the plan as seem reasonable.

(e) The utility shall provide a facilitator to coordinate and assist the stakeholders in their discussions at the technical conference. The facilitator provided by the utility shall prepare meeting minutes from the technical conference and prepare a summary of stakeholder input for inclusion as an exhibit in the final integrated resource plan.

(f) The Commission and/or the Attorney General may, at its discretion, retain third party consultants and/or expert witnesses to review the proposed plan and participate in the technical conference on its behalf. The utility shall be responsible for, and be allowed recovery of, the cost of such third party consultants and/or expert witnesses.

(g) The Commission may conduct similar technical conferences at its discretion concerning updates to the integrated resource plan as provided by OAC 165:35-37-4.

(h) After the above procedure has occurred, the utility shall present its final integrated resource plan at a public meeting held at the Commission.

[OAR Docket #14-519; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION
CHAPTER 35. ELECTRIC UTILITY RATES

[OAR Docket #14-520]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 41. Demand Programs
165:35-41-1. Purpose [AMENDED]
165:35-41-2. Goals [AMENDED]
165:35-41-3. Definitions [AMENDED]
165:35-41-4. Demand portfolio submission and implementation [AMENDED]
165:35-41-5. Commission consideration [AMENDED]
165:35-41-7. Reporting [AMENDED]
165:35-41-8. Incentives [NEW]
165:35-41-9. Stakeholder process [NEW]

AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. § 152; Corporation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
November 21, 2013 through January 21, 2014

PUBLIC HEARING:
February 4, 2014 and February 20, 2014

ADOPTION:
February 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
January 1, 2016

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed rules modify the demand response and energy efficiency provisions. The proposals clarify definitional provisions and modify the incentive standards and the annual reporting requirements. The proposed rules also establish expectations for demand programs to promote more consistent interpretation and application of the demand rules.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2016:

SUBCHAPTER 41. DEMAND PROGRAMS

165:35-41-1. Purpose

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementation of ~~energy efficiency and demand response programs~~Demand Programs

that may receive cost-recovery treatment from the Commission. The rules in this Subchapter shall apply to Demand Portfolios having program years that begin on January 1, 2016 and thereafter.

165:35-41-2. Goals

(a) The goals of ~~energy efficiency and demand response programs~~Demand Programs are to:

(1) Minimize the long-term cost of utility service, ~~and~~

(2) Avoid or delay the need for new generation, transmission, and distribution investment~~.~~, and

(3) Encourage and enable utility customers to make the most efficient use of utility capacity and energy and reduce wasteful use of energy.

(b) ~~As a part of the hearing process for approval of a utility's energy efficiency and demand response programs, the~~The Commission shall set specific savings goals for each utility to reduce the rate of growth of peak demand, energy usage, and capacity addition without adversely affecting customer comfort or state economic activity, based on market potential studies, integrated resource plans, or other evidence presented as part of the hearing process for approval of a utility's Demand Programs.

165:35-41-3. Definitions

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

"Administrative Cost" means the expenses incurred in controlling and supporting Demand Programs that are not tied to the marketing and delivery of those programs. These expenses include:

(A) reviewing and selecting Demand Programs in accordance with this section;

(B) providing regular and special reports to the Commission, including reports of Demand Program savings;

(C) a utility's costs for an annual review of Demand Programs or true-up proceeding for cost recovery mechanism;

(D) Supervisory functions performed by Demand Portfolio Manager that are related to supervision of employees and related human resource administration.

"Average customer bill" means the value derived from the sum of all ratepayer bills in a particular customer sector divided by the number of ratepayers in that sector; i.e., the arithmetic mean. A utility may provide average customer bills for customer rate classes rather than customer sectors if it chooses to do so and clearly identifies the choice.

"Barrier" means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes electricity user participation in ~~energy efficiency or demand response programs~~ Demand Programs. Barriers may include but are not limited to language, physical or mental disability, access to capital, educational attainment, utility meter type, economic status, property status, or geography.

"Base line" means kilowatt-hour energy use, trend in kilowatt-hour energy use, percentage of capacity use over time, trend in percentage of capacity use, and description of conditions affecting such uses and trends prior to implementation of a~~an energy efficiency or demand response program designed to affect particular uses and trends.~~Demand Program designed to affect particular uses and trends. When evaluating energy efficiency measures implemented or installed as a result of the Demand Programs, the base lines to be used in savings calculations shall be either the performance standard base line (the minimum efficiency prevailing in the market) or a customized, project specific base line. For Demand Programs that replace existing equipment before the end of its expected useful life, savings calculations must incorporate a two-part baseline. First, for the period of the remaining life of the replaced equipment, the baseline is the difference between the energy usage of new equipment and that of the replaced equipment. Second, for the remainder of the life of the new equipment that extends beyond the remaining life of the old equipment, the baseline is the difference between the new equipment and the standard equipment that otherwise would have been purchased at the end of the useful life of the old equipment.

"California Standard Practice Manual" means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001 edition, produced by the California Energy Commission and the California Public Utility Commission.

"Cost effective" and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers the most benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

"Customized opportunity" means ~~an energy efficiency or demand response program~~a Demand Program tailored to an individual electricity user's needs, including opportunities for high-volume electricity usage customers to self administer and self fund their own programs.

"Deemed savings" means an estimate of energy or peak demand savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

"Demand portfolio" means a collection of energy efficiency and demand response programs offered or proposed by an electric utility; for example, a residential weatherization program, a program to trade ordinary commercial fluorescent ballasts for ~~T-5 ballasts~~equipment with a higher efficiency rating, a general education program for energy efficiency, and a program to provide financial inducement for purchase of properly sized industrial motors is a demand portfolio.

"Demand portfolio administrator" means the utility employee responsible for supervising the utility's energy efficiency and demand response efforts as proposed in compliance with this subchapter.

"Demand program(s)" means the Energy Efficiency and Demand response programs offered or proposed by an electric

utility. Collectively, the Demand Programs make up the company's Demand Portfolio.

"Demand response" means any load management program in which a utility offers electricity users payments or other inducement to reduce their demand for electricity for specified periods of time.

"Education" means any formal program, training, or activity designed to raise awareness of, and participation in company specific Demand Programs or increase general knowledge concerning energy savings opportunities and efficiency topics. These programs may include communication efforts designed to reach customers with energy efficiency information through a variety of mediums, including but not limited to, television, radio, print and web-based media.

"Electricity user" means a real property freeholder or leaseholder at a specific location who consumes energy at that location, regardless of whether the consumer receives an energy bill directly from a utility.

"Energy efficiency" means reducing electricity consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

"Evaluation, measurement, and verification or EM&V" means a systematic, objective study conducted periodically to authenticate, assess, and report how well a ~~program~~Demand Program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

"EM&V Costs" means the costs associated with performance of studies and activities intended to determine the actual savings and other effects from Demand Programs.

"Free rider" means a program participant who would have implemented the program measure or practice in the absence of the Demand Program. A free rider can be total, in which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after which the program measure was implemented.

"Fuel switching" means changing from natural gas to electricity or from electricity to natural gas for a particular end-use service or installing electric heating devices in new construction where natural gas service is available or can be economically made available. It does not include installation of any device that relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

"Goal" means a target to be achieved by a utility's demand portfolio. A goal may be expressed in kilowatts, kilowatt-hours, percentage reduction or limitation, years that anticipated construction of utility plant is delayed, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

"Gross savings" means the values reported by an electric utility after the Demand Program activities have been completed, but prior to the time an independent, third-party evaluation of the savings is performed. As with projected savings estimates, these values may utilize results of prior evaluations and/or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Gross savings can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values.

"Hard-to-reach customers" means

(A) Residential electricity users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians,

(B) Commercial electricity users who rent their business property from persons other than the users' owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial electricity users who traditionally fail to engage in energy efficiency or demand response programs because of one or more severe barriers beyond those experienced by average residential or commercial customers in a utility's service area.

"High-volume electricity ~~usage~~user" means ~~consumption by~~ a ~~single~~ customer ~~in Oklahoma of more than~~within a utility company's service territory whose annual consumption is 15 million kWh of electricity or greater ~~per year,~~ regardless of the number of meters or service locations.

"Incentive" means a sum of money a utility may be allowed to recover--in addition to program costs and lost net revenues ~~which sum is designed to reward the utility for successful and appropriate energy efficiency and demand response program performance.~~Incentives shall be based on the utility's verified ~~achievements~~ savings from the Demand Portfolio for the previous program year and shall be calculated as described in 165:35-41-8.

"Inducement" means ~~any thing~~ anything of value offered by a utility to encourage an electricity user or trade ally to engage in ~~an energy efficiency or demand response program~~ Demand Programs approved pursuant to this subchapter. While inducements can include a variety of costs, direct payments to customers or trade allies on behalf of customers shall make up the majority of total inducement costs.

"Lost net revenue" means income from the retail sale of electricity forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales. Lost net revenue shall be calculated using verified net savings, shall exclude customer service charge revenues (non-volumetric revenues), and shall exclude revenues collected from riders with annual true-ups.

"Low-income customer" means a residential electricity user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Plan~~,~~ as provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

"Market potential study" means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

"Market transformation" means the strategic process of influencing customer population and trade ally's decision-making ~~to create~~that creates lasting change in customer behavior by removing barriers or exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

"Measure" means the equipment, materials, or actions that are installed or used within ~~an energy efficiency or demand response program that result~~a Demand Program that results in measurable or verifiable savings; for example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

"Net benefits" equal the difference between total benefits and total costs as calculated for cost-effectiveness. The economic objective of Demand Resource portfolios is to maximize net benefits. A Demand Portfolio is cost-effective if it yields positive net benefits.

"Net savings" means the total change in load that is directly attributable to a Demand Program or the Demand Portfolio. This change in energy and/or demand use shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net-to-gross" means a factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor may be made up of a variety of factors that create differences between gross and net savings, commonly considering the effects of free riders and spillover.

"Peak demand" means a utility system's maximum annual customer-driven electricity requirement, measured in kilowatts.

"Peak shaving" means reducing demand for electricity during high-use hours.

"Program" means an organized set of activities or measures directed toward the common purpose of energy efficiency or demand response that a utility undertakes or proposes to undertake to reduce peak demand or future growth in energy or capacity demand; for example, a general offer to assist homeowners in weatherizing their homes is a program.

"Program cost" means the expenditures, including expenditures paid to a third -party to deliver a program, incurred by a utility to achieve capacity, energy, and peak demand savings through ~~energy efficiency and demand response programs~~ Demand Programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's demand program costs are all Administrative Costs, Education costs, labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other program delivery expenditures incurred by the utility for operation of the ~~energy efficiency and demand response programs~~Demand Programs, regardless of whether the costs are expensed or capitalized.

"Program implementer" means the person who puts ~~an energy efficiency program~~a Demand Program into practical effect.

"Projected incentives" means the amount of estimated annual incentives calculated at the time the Demand Portfolio is submitted to the Commission for initial approval, or subsequent modification, of the Demand Portfolio.

"Projected savings" means the values reported by an electric utility prior to the implementation of the Demand Programs. These are typically estimates of savings prepared for Program and/or Demand Portfolio design or planning purposes. These values are based on pre-program or Demand Portfolio estimates of factors such as per-unit savings values, operating hours, Net-to-Gross ratios, installation rates, and savings persistence rates. These values can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. These values can also be indicated as Gross savings and/or Net savings. Projected savings are reflected in the goal reduction as set in this subchapter.

"Research and development" means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

"Savings" means a reduction in the rate of growth of energy use, as measured in kilowatt-hours, or capacity addition, as measured in kilowatts, or peak demand, as measured in kilowatts.

"Spillover" means the reductions in energy consumption and/or demand caused by the presence of a Demand Program beyond the Demand Program-related gross savings of the participants and without financial or technical assistance from the program. Spillover can be applied to participants, consumers directly participating in a Demand Program, and/or non-participants.

"Standard offer" means ~~an energy efficiency or demand response program~~a Demand Program available to a group of customers or customers generally on the same terms and without customization.

"Trade allies" means contractors, retailers, skilled laborers, service providers, and wholesale distributors who support ~~energy efficiency~~ programs Demand Programs through sale or installation of goods and services.

"Verified savings" means values reported by an electric utility after review by an independent third party evaluator. The

third party evaluator shall be chosen by the utility and such costs shall be determined to be a Program Cost. These values should reflect all adjustments, including corrections for any known data errors and actual installation rates, and should also be adjusted by revised values for known factors such as per-unit savings values, operating hours, savings persistence rates, and net to gross adjustments.

165:35-41-4. Demand portfolio submission and implementation

(a) All electric utilities under rate regulation of the Commission having more than 10,000 meters in the state of Oklahoma shall propose, at least once every three years, and be responsible for the administration and implementation of a ~~demand portfolio~~Demand Portfolio of ~~energy efficiency and demand responseprograms~~Demand Programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before July 1 prior to the year the programs will be effective. The application shall describe the ~~demand portfolio~~Demand Portfolio and contain the following information:

(1) A description of the intent of the ~~demand portfolio~~Demand Portfolio as a whole;

(2) A description of the intent of each ~~program~~Demand Program;

(3) A description and quantification of the target market of each ~~program~~Demand Program, differentiated by customer sectors;

(4) A base line describing the state of the market that each ~~program~~Demand Program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;

(5) A description of the barriers to investment in energy efficiency and demand response in the absence of each ~~program~~Demand Program and the ways each program Demand Program will reduce or eliminate these barriers;

(6) A description of research and public input that contributed to the development of the content of each ~~program~~Demand Program;

(7) A report of the cost-effectiveness of each ~~program~~Demand Program and the ~~demand portfolio~~Demand Portfolio, including program and measure-level supporting data which shall include, but not be limited to, cost-effectiveness screening assumptions of gross and net energy and demand savings, coincident demand factors, energy allocation factors for seasonal and for peak, off-peak and shoulder periods, non-electric resource benefits, non-resource benefits, participation and/or measure unit numbers, inducement levels, measure cost, and other non-inducement program costs;

(8) A detailed description of the derivation of the energy, generation, and transmission and distribution avoided costs, retail cost projections, reserve margins, discount rates, and average and peak line loss assumptions used in the cost-effectiveness calculations.

(9) A description of how each ~~program~~Demand Program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;

(~~9~~10) A plan for evaluation, measurement, and verification of performance and results of the demand portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate; provided that costs associated with the EM&V plan shall not exceed five percent (5%) of the total three-year Demand Portfolio budget;

(~~10~~11) A plan for evaluation of the market effects of each ~~program~~Demand Program or applicable group of programs;

(~~11~~12) A plan for evaluation of administration and implementation of each ~~program~~Demand Program or applicable group of programs;

(~~12~~13) A plan for ending a ~~program~~Demand Program, if applicable;

(~~13~~14) A process for amending a ~~program~~Demand Program;

(~~14~~15) An annual budget for each ~~program~~Demand Program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;

(~~15~~16) A report on how the ~~demandportfolio~~Demand Portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;

(~~16~~17) A report on how the ~~demandportfolio~~Demand Portfolio meets savings goals that may be in place at the time of filing;

(~~17~~18) An estimate of expected savings in peak demand, energy use, and capacity, with location information about the source of savings if savings are not expected to be evenly distributed throughout the utility system;

(~~18~~19) Detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment and calculation of lost net revenue, and additional incentives the utility proposes it requires to make the programs workable; and

(~~19~~20) Identification of the ~~demand portfolio~~Demand Portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number.

(b) Demand ~~portfolios~~Portfolios shall:

(1) Contain ~~programs~~Demand Programs for all customer sectors;

(2) Strike a balance among procuring peak demand reduction, procuring energy savings, procuring capacity savings, educating the public, and transforming markets for energy efficiency;

(3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;

(4) Contain customized opportunities for energy efficiency and demand response among larger customers;

(5) Not include programs or measures that promote fuel switching. For new construction, an electric utility shall not offer customer or builder ~~incentives~~inducements

for the use of specific electric equipment or appliances with the exception of programs or measures that promote renewable technologies such as geothermal, solar and other renewable resources;

(6) Be consistent with the utility's integrated resource plan;

(7) Have an implementation schedule of no more than three years;

(8) Address opportunities presented by new construction and renovation;

(9) Promote comprehensive energy efficiency and demand response in buildings;

(10) Address programs for low-income customers and hard-to-reach customers to assure proportionate ~~energy efficiency programs~~Demand Programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Demand Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other ~~programs~~Demand Programs; and

(11) Allow any ~~high volume electricity user~~High-Volume Electricity User, after the utility has a reasonable opportunity to contact and present customized opportunities to such user, to opt out of some or all ~~energy efficiency or demand response programs~~Demand Programs by submitting notice of such decision to the director of the Public Utility Division and to the electric utility that submits the ~~demandportfolio~~Demand Portfolio.

(A) High-Volume Electricity Users may opt out with thirty (30) days notice after the company has received final approval of the Demand Portfolio.

(B) High-Volume Electricity Users who chose to participate in Demand Programs shall remain as a participant for the Demand Portfolio period (three years) and shall pay their calculated contribution to the Demand Programs recovery for the Demand Portfolio period. This requirement does not apply to High-Volume Electricity Users who participate only in the demand response portion of the Demand Programs.

(C) High-Volume Electricity Users who chose to opt out may not opt back in unless they agree to pay their calculated contribution to the Demand Programs recovery for the Demand Portfolio period. This requirement does not apply to High-Volume Electricity Users who participate only in the demand response portion of the Demand Programs.

(D) Once a High Volume Electricity User has opted out of Demand Programs, none of the costs of any Demand Programs shall be charged to such User, including its affiliate or subsidiary listed on such User's opt out notice, unless and until the User chooses to opt back into the Demand Programs.

(c) Demand portfolios may:

(1) Integrate energy efficiency and demand response;

(2) Include research and development and pilot programs that would lead to effective ~~energy efficiency or demand response programs~~Demand Programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for ~~energy efficiency and demand response~~Demand Programs and the Commission finds the cost-effectiveness for the ~~demandportfolio~~Demand Portfolio remains sufficient;

(3) ~~Allow~~Encourage utility cooperation in state, regional and national programs that have the potential to save energy, reduce peak demand, or avoid capacity addition in Oklahoma; and

(4) ~~Allow~~Encourage utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance.

(5) Encourage utility cooperation in state, regional and national efforts to accelerate the development and improve the enforcement of building energy codes and product efficiency standards.

165:35-41-5. Commission consideration

(a) In reviewing ~~demand portfolios~~Demand Portfolios, the Commission will consider:

(1) The quality of the programs in all their elements relative to their program objectives;

(2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;

(3) The cost-effectiveness for each program and for the ~~demand portfolio~~Demand Portfolio; individual programs or individual measures for a specific program do not have to be cost-effective if their inclusion is expected to provide for greater comprehensiveness, customer or trade ally participation, or address Hard to Reach Customer participation

(4) The savings goals;

(5) The availability of programs to all customers;

(6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation and include stakeholder interests;

(7) The effect on rates, average customer bills, and total cost of service;

(8) Forecasts of utility plant that would be required absent savings from the energy efficiency and demand response programs;

(9) Consistency with the most recently filed integrated resource plan;

(10) The effect on the environment, to the extent of Commission authority; and

(11) Other evidence the Commission finds relevant.

(b) The Commission will endeavor to issue an order within ninety days of the filing of the application.

(c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one

another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.

(d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis~~; provided costs other than for inducement shall not exceed ten percent of program costs and all program costs shall not add more than $1.90 to the residential sector's monthly average customer bill; and provided further that cost of time-of-use devices and installation shall not be included in the caps provided herein.~~ , provided that:

(1) Administrative costs shall not exceed ten percent (10%) of portfolio costs;

(2) All Program Costs should not add more than $2.50 to the residential sector's monthly average customer bill unless benefits and rationale for exceeding cap can be proven; bill impacts on other classes of customers shall reflect allocated Demand Program cost recovery.

(3) The cost of time-of-use devices or other equipment required for billing purposes and their installation shall be specifically excluded from program costs (directly or indirectly);

(4) Tariffs covering rates or riders for Demand Programs shall be updated to be in compliance with this subchapter or in accordance with OAC165:35-1-3 (f).

(e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:

(1) The program is not terminated earlier than specified in the program; and

(2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.

(f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to, set a hearing before the Commission or an administrative law judge.

165:35-41-6. Evaluation, measurement, and verification

(a) Utilities are responsible for timely evaluation, measurement, and verification (EM&V) of their energy efficiency and demand response programs. The EM&V should be conducted by an independent third party evaluator chosen by the utility and cost of such EM&V shall be determined to be a Program Cost.

(b) The intent of the evaluation, measurement, and verification process is:

(1) To provide a reliable calculation of the net savings produced by energy efficiency and demand response programs;

(2) To assess the effects of programs on the market for energy efficient products and services and products and services that support demand response programs; and

(3) To assess the effectiveness of the administration and implementation of energy efficiency and demand response programs.

(c) Utilities shall prepare and maintain a program-tracking database.

(d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.

(e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.

(f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to energy efficiency and demand response programs will be included in the evaluation, measurement, and verification plan.

(g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

165:35-41-7. Reporting

(a) Each utility shall submit an annual report by ~~June 1~~July 1 of each year on the performance of ~~energy efficiency and demand response programs~~ the Demand Portfolio for the preceding program year and cumulative program performance which shall include the information enumerated in this section.

(b) The annual report shall be submitted with any true-up mechanism for cost recovery in order for the Public Utility Division to evaluate and review cost recovery, lost revenue and incentive calculations proposed to be recovered from consumers.

(c) Energy efficiency program results and demand response program results will be reported separately.

(d) The report shall contain ~~detail for a program~~a Demand Portfolio summary reflecting the scale of ~~the program~~each Demand Program as a part of the ~~demandportfolio~~Demand Portfolio and will include the following:

(1) ~~List~~Name of ~~all programs and the date eachprogram started~~Demand Program listed by customer category;

(2) ~~List of savings realized for each program and the methods used to measure and verify these savings~~The date each Demand Program was started or the date each Demand Program was revised;

(3) ~~The utility's annual growth in metered energy and peak demand for the previous three years, with a calculation of the average growth rate over that entire period~~The number of participating customers per Demand Program;

(4) ~~The most current information available comparing projected savings to reported savings for each of the utility's programs~~ By Demand Program, approved projected energy and demand savings;

(5) ~~The most current information available comparing reported savings and verified achieved savings and an explanation of how each was measured~~Gross energy and demand savings and performance of each Demand Program;

(6) ~~The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the~~

~~market~~Verified energy and demand savings by Demand Program and methods used to verify these savings;

(7) ~~A statement of funds expended by the utility for program administration, including evaluation, measurement, and verification~~For education programs, measurements of outreach efforts, including pre-program and post program results. Copies of evaluations, surveys, focus group results, and other measurement techniques used to gauge effectiveness of education efforts;

(8) ~~A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending~~Levelized cost per kWh for the Demand Portfolio, Demand Program, and levelized cost per kWh by customer sector including all assumptions used to make the calculation;

(9) ~~A list of programs or program categories by customer sector stating:~~

~~(A) Number of customers served by each program or program category;~~

~~(B) Program or program category expenditures;~~

~~(C) Verified energy and peak demand savings achieved by the program or program category, when available;~~

~~(D) A description of proposed changes in the program plans; and~~

~~(E) Any other information prescribed by the Commission~~Demand Portfolio funding as a percent of total annual electricity revenue;

(10) ~~A list of research and development activities included in the demand portfolio, their status, and a report on the connection between each activity and effective energy efficiency or demand response programs~~Demand Portfolio energy savings as a percent of total annual energy sales;

(11) ~~Identification of program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers; and~~The projected program costs.

(A) These costs should be separated into the following categories to allow review of spending:

(i) Administrative costs;

(ii) Inducements: direct payments and other inducements;

(iii) Education and marketing costs;

(iv) Program delivery costs;

(v) EM&V costs.

(B) Workpapers to allow review and reconciliation of accounting information:

(i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;

(ii) General Ledger: a copy of, or access to, the general ledger and subledgers; and

(iii) Comparative Trial Balances: a schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.

(12) The actual program costs.

(A) These costs should be separated into the following categories to allow review of spending:

(i) Administrative costs;

(ii) Inducements: direct payments and other inducements;

(iii) Education and marketing costs;

(iv) Program delivery costs; and

(v) EM&V costs.

(B) Workpapers to allow review and reconciliation of accounting information.

(i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;

(ii) General Ledger: a copy of, or access to, the general ledger andsubledgers; and

(iii) Comparative Trial Balances: a schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year;

(13) Projected lost revenues;

(14) Actual calculated lost net revenues, including workpapers and working spreadsheets (formulas, calculations, linkages, and assumptions) in sufficient detail to allow review of adjustments to verify energy and demand savings;

(15) Projected incentives, including project cost effectiveness tests;

(16) Actual calculated incentives, including workpapers and working spreadsheets(formulas, calculations, linkages, and assumptions) for updated cost effectiveness tests, in sufficient detail to allow review of cost effectiveness calculations;

(17) The utility's annual growth in metered energy and peak demand for the previous three (3) years, with a calculation of the average growth rate over that entire period by customer class or major customer class segments;

(18) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;

(19) The amount of reduced emissions and water consumption experienced by the utility, including all assumptions and calculations details, during the Demand Program period for the current program year;

(20) By Demand Program, a summary of spending including the following:

(A) Administrative costs;

(B) Inducements: direct payments and other inducements;

(C) Education and marketing costs;

(D) Program Delivery Costs; and

(E) EM&V costs;

(21) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;

(22) A detailed description of each Demand Program reflecting the scale of the program as a part of the Demand portfolio that includes the following:

(A) Number of customers served by each Demand Program or program category;

(B) Program or program category expenditures;

(C) Verified energy and peak demand savings achieved by the Demand Program or program category, when available; and

(D) A description of proposed changes in the Demand Program plans;

(23) A list of research and development activities included in the Demand Portfolio, their status, and a report on the connection between each activity and effective Demand Programs;

(24) Identification of Demand Program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers;

(25) The number of customers eligible for High-Volume Electricity User opt out, their aggregate load as a percentage of total energy sales, the number of such customers that have opted out, and the percentage of total energy sales that they comprise. The number of municipal or state customers that have opted out and the aggregated load this represents as percentage of total energy sales; and

(26) Identification of instances in new construction or renovation when a natural gas main served a location so a gas furnace or water heater could have been installed but the customer installed an electric device and an electric utility inducement was provided.

(d) After receiving the report, the Commission:

(1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing; and

(2) Will endeavor to act on the report within ~~sixty~~ninety (90) days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.

(e) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in program administration, delivery or planning.

165:35-41-8. Incentives

(a) Each utility shall be eligible to receive an incentive for successful implementation of their Demand Portfolio if:

(1) the Demand Portfolio achieves a minimum of 80% of the individual utility's goal ratio (Verified savings divided by the Projected savings);and

(2) the Demand Portfolio achieves a total resource cost test benefit/cost ratio (TRC:B/CR) that is greater than one; and

(3) the Demand Portfolio achieves a utility cost (UC) test benefit/cost ratio that is greater than 1.2.

(b) No incentive shall be allowed for performance of the Demand Portfolio if the Utility fails to pass all of these threshold measures (OAC 165:35-41-8(a)(1)and(2)).

(c) The Incentive will be calculated as follows:

(1) A maximum incentive of 15 percent of Net Benefits will be paid for achievement of 100 percent (100%) or greater of the total annual energy savings goal.

(A) The goal ratio (Verified savings divided by the Projected savings) must be 80 percent (80%) or greater to receive an incentive.

(B) Incentive for savings achieved between 80 and 100 percent of the savings goal will be determined by multiplying the goal ratio by the maximum incentive percentage.

(2) The Demand Portfolio costs to be included for review of achievement of Demand Portfolio shall include all costs incurred for implementation of Demand Programs including all program costs, education or outreach program costs, Administrative costs, and EM&V costs.

(3) Costs incurred for the implementation or reporting of the Demand Programs which are not directly incurred for a specific program are to be allocated to all Demand Programs and included as part of the Demand Program costs in determining Demand Portfolio cost effectiveness.

(d) The Incentive will be capped at 15 percent of Demand Portfolio costs inclusive of program delivery costs, education and/or marketing outreach costs, Administrative costs and EM&V costs.

165:35-41-9. Stakeholder process

(a) Each utility shall have, at a minimum semi-annual stakeholder meetings, one of which is to be held within 30 days of the submittal of the Annual Report, as set forth in 165:35-41-7. Notice of such meetings shall be made at least 30 days prior to the date of the stakeholder meeting.

(b) At each meeting the utilities will present their most current data as to savings goal attainment and budget expenditures at the Demand Portfolio, customer sector and Demand Program level. The utility will highlight any program changes implemented since the previous meeting and any planned changes that will occur prior to the next meeting.

(c) In the years in which a utility plans to file a Demand Portfolio application as required by OAC 165:35-41-4, the Public Utility Division shall use one of the semi-annual stakeholder meetings to obtain stakeholder feedback on the proposed application.

[OAR Docket #14-520; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION CHAPTER 40. STANDARD TERMS OF PURCHASES FROM PURCHASERS OF 100 KW OR LESS

[OAR Docket #14-517]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Installation and Parallel Operation

Part 1. Producer's Wiring and Interconnection

165:40-5-1. Producer's wiring and apparatus [AMENDED]

AUTHORITY:
Oklahoma Corporation Commission; Article IX, § 18 Okla. Const., 17 Okla. Stat. §34.1; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 through February 3, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
National Electric Code, 2014 Edition; Underwriters Laboratory (UL) 1741, 2d Revision; Institute of Electrical and Electronics Engineers (IEEE) 1547 "Standard for Interconnecting Distributed Resources with Electric Power Systems"
Incorporating Rule:
165:40-5-1
Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at Public Utilities Division, Oklahoma Corporation Commission, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105.
ANALYSIS:
Amendments to OAC 165:40-5-1 are intended to further standardize and modernize the provisions governing wiring and apparatus interconnection between cooperatives/utilities and certain producers of electric energy.
CONTACT PERSON:
Eric Davis, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, Telephone: (405-522-8954).

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INSTALLATION AND PARALLEL OPERATION

PART 1. PRODUCER'S WIRING AND INTERCONNECTION

165:40-5-1. Producer's wiring~~: National Electric Code~~ and apparatus

(a) Interconnection agreements between an electric utility and a producer must include provisions which address subsections (b), (c) and (d) below:

(~~a~~b) All apparatus and electrical wiring~~ and apparatus~~ connected or to be connected to the cooperative/utility's distribution system point of delivery shall be at the producer's expense, and shall be installed and maintained in accordance with the requirements of the 2014 National Electrical Code, as adopted by the Commission in OAC 165:35, to the extent consistent with law, including state and federal statutes, orders, and regulations, and applicable municipal regulations, and with all requirements prescribed by governmental authority having jurisdiction thereof. In the event of a conflict between the National Electrical Code and an applicable municipal code, the latter shall ~~govern.~~

~~(b)~~ ~~The~~govern. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any wiring or apparatus which does not meet the requirements in ~~(a)~~(b) of this Section, and the cooperative/utility may, without advance notice, discontinue purchase from any producer when a defective condition of wiring or equipment upon the premises of the producer is discovered.

~~(c)~~ In the event a producer desires to change the size of his electrical equipment and maintain his status, he shall notify the cooperative/utility in writing sufficiently in advance so that its meter and other equipment may be enlarged to properly handle the increased load or generation.

(c) Power inverter based apparatus utilized in the system to be connected to the cooperative/utility's distribution system point of delivery shall be UL 1741 listed or certified by a nationally recognized testing laboratory as being compliant with Underwriters Laboratory (UL) 1741, 2nd Revision standards before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (c) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(d) All relevant apparatus utilized in the system to be connected with the cooperative/utility's distribution system point of delivery shall be certified by a nationally recognized testing laboratory as compliant with the Institute of Electrical and Electronics Engineers (IEEE) 1547 *Standard for Interconnecting Distributed Resources with Electric Power Systems* before the system is connected to the cooperative/utility's distribution system point of delivery. Proof of this certification must be provided at the producer's expense. The cooperative/utility reserves the right to refuse to connect at the point of delivery to any apparatus which does not meet the requirements in (d) of this Section, and the cooperative/utility may, without advance notice, discontinue connection with any producer when a defective condition of equipment upon the premises of the producer is discovered.

(e) Beginning December 31, 2014, and annually thereafter, each utility shall submit a Certification Letter to the Director of the Public Utility Division certifying that as of the date of the Certification Letter, the utility's interconnection agreements meet the requirements in (b), (c) and (d) of this Section, or if the interconnection agreements do not meet the requirements in (b), (c) and (d) the reason therefor.

[OAR Docket #14-517; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION
CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #14-516]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:45-1-2. Definitions [AMENDED]
Subchapter 11. Customer Service
Part 3. Disconnection of Service
165:45-11-10. Discontinuance of service by a consumer [AMENDED]
165:45-11-12. Utilities encouraged to keep current lists of energy assistance programs [AMENDED]
165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities [AMENDED]
165:45-11-14. Delays to disconnection of residential service [AMENDED]
165:45-11-18. Exceptions to Section regarding discontinuance of service [AMENDED]
Part 7. Bills
165:45-11-42. Penalty or charge for late payment and payment by negotiable instrument [AMENDED]
Subchapter 19. Downstream Services
165:45-19-3. Downstream service unbundling plan [AMENDED]
AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. §§151, 152, and 160.1; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 through January 21, 2014
PUBLIC HEARING:
February 4, 2014 and February 27, 2014
ADOPTION:
February 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments and additions to existing Commission rules in Chapter 45 were needed to clarify the rules, make necessary clerical corrections, and to create additional customer notification options for the gas utilities.
CONTACT PERSON:
Judith L. Johnson, Senior Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Boulevard, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 522-0482.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:45-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"Aggregation point" means any Commission approved interconnection point of more than one citygate at which gas can be aggregated for the purposes of supplying reliable and least cost natural gas services for more than one city or municipality.

"ANSI" means the American National Standards Institute, Inc.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Citygate" means the interconnection point between the local distribution facilities which are located downstream of such interconnection point and the transmission lines and/or other facilities located upstream of such interconnection point at a point in time to be determined by the Commission during the unbundling plan hearing, or as otherwise ordered by the Commission.

"Citygate gas service(s)" means any one or more of the services of natural gas supply, gathering, storage or transmission of natural gas upstream of the citygate or other delivery point acquired by a gas utility at the citygate or other delivery point pursuant to the competitive bidding procedures in Subchapter 17 of this Chapter in order to provide natural gas service to end-users on its local distribution facilities.

"Competitive bid" means a response provided based on a public competitive bidding process.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral or written communication by an interested party requesting an investigation or corrective action regarding the provision of natural gas services. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of natural gas service. Any reference to a "customer" or "end-user" or "ratepayer" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporate Support Services" or "Shared Services" are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a gas utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

"Corporation Commission" means the Oklahoma Corporation Commission.

"Customer rate class" means a division of rates as provided by a utility's tariff for pricing natural gas service.

"Customer sector" means a major division of consumers, i.e., residential, commercial, or industrial.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives natural gas from a transmission system, gathering line, or other natural gas supply source for service to one or more consumers.

"Distribution" or "Distribution service" means the downstream transportation of natural gas services from the citygate to end-users through a utility's local distribution facilities unbundled from all citygate gas services, but generally bundled with any one or more of the services of billing, metering, customer service and similar services.

"Downstream (or "merchant" or "retail") service" means any one or more of the citygate(s) service(s) of natural gas supply, gathering, storage or transmission of natural gas marketed downstream by an entity at the retail or merchant level to end-users rather than through the competitive bidding process pursuant to Subchapter 17 of this Chapter, and which entity uses the local distribution facilities of a utility, rather than bypass for ultimate delivery of such downstream or merchant or retail service to the end-user.

"Electronic notification" means any automated communication received by e-mail, phone, text message, or fax.

"End-user" means any consumer receiving natural gas service of any nature.

"FERC" means the Federal Energy Regulatory Commission.

"Filed" means to present a document and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"Gas" means manufactured gas, natural gas, other hydrocarbon gas, or any mixture of gases produced, transmitted, distributed or furnished by a utility unless otherwise specifically designated.

"Gas supply source" means gas from the wellhead, any type of storage, processing plant, or other provider of gas.

"Gathering line" means a pipeline that transports gas from a production facility within a gathering system.

"Gathering system" means a pipeline system bringing gas from the wellhead to an aggregation point or transmission line or other gas handling facility.

"Gas utility" means natural gas utility as defined in this Chapter.

"Independent producer" means, for purposes of this Chapter only, any person who produces natural gas and is not engaged in marketing natural gas except for its own account or for other working interest owners in operated wells or who derives a majority of his or her oil or natural gas related income from working interests.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of natural gas services.

"Intrastate pipeline" means a common carrier transmission pipeline as defined in 52 O.S. § 24 and as applied in this Chapter.

"Legal holiday" means any day declared to be a legal holiday by law or proclamation of the Governor of Oklahoma, or a day on which mail the United States Postal Service does not deliver mail.

"Local distribution company" means the utility distributing natural gas, delivered to its citygate from a transmission pipeline or gathering system, to residential, commercial and industrial end-users over a local geographic area.

"Local distribution facilities" means facilities whose function is the local distribution of natural gas to residential, commercial and industrial consumers and which facilities are characterized by a system of pipes, meters, stations, valves and other equipment for distributing natural gas among consumers within a particular local community or in smaller diameter lines at lower pressures in contrast to movement in larger diameter lines at higher pressures characteristic of transmission, unless otherwise ordered by the Commission.

"Meter" means any device that measures the quantity of gas transferred from one party to another.

"Meter shop" means a shop used for the inspection, testing and repair of meters.

"Municipality" means an incorporated city or town in the State of Oklahoma.

"Natural gas services" means any of the services in the natural gas industry, including, but not limited to, local distribution, transmission, gathering, storage, and gas supply, and as specified in Subchapter 17 of this Chapter.

"Natural gas utility" means a natural gas utility as defined in 17 O.S. § 151 *et seq*., and that includes all utility affiliate assets which the Commission has determined to be included in ratebase.

"P.s.i.a." means pounds per square inch absolute.

"Pipe" means any tubing used in the gathering, transmission or distribution of gas which meets the specifications of the U.S. Department of Transportation (U.S.D.O.T.).

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where gas service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect

maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"Public competitive bidding process" means a gas utility process to solicit from all entities offers to provide natural gas services upstream of the citygate as provided in Subchapter 17 of this Chapter.

"Regulator" means a device used to reduce the gas pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Request for bid" means a gas utility's request for proposals to provide natural gas services at a Commission approved gas utility's designated citygate or aggregation point.

"Service line" means a line that branches off a distribution main or distribution line in order to transport gas from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Shipper" means any person, firm or corporation engaged in the intrastate or interstate transmission of natural gas for third parties.

"Special contract" means a written Commission-approved agreement between a utility and a consumer for the provision of gas service on terms and conditions which are different from those authorized by a tariff.

"Statistical sampling" means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

"Storage" means an underground natural or man-made facility used to store natural gas for extended periods of time.

"Stranded costs" means those prudent and verifiable costs and investments incurred by a natural gas utility, which were "used and useful" to meet the needs of its end-users, including but not limited to, its upstream capacity and supply commitments that cannot be avoided or mitigated or recovered from end-users under an existing tariff which have been caused as a result of the restructuring of the natural gas industry which were incurred prior to February 19, 1997, the date of issuance of Commission Order No. 409563, which closed the Notice of Inquiry, Cause No. PUD 960000133, and which ordered the promulgation of rules to restructure the natural gas service industry, such date being the date the gas utilities were placed on notice of the Commission's intent to restructure natural gas utility service(s). Prior to or during the utilities' stranded cost hearing, this date may be modified by order of the Commission, after notice and hearing. Stranded costs may include prudent and verifiable transition costs.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

"Submit" means to present a document to the Director of the Public Utility Division.

"Subsidize" means to furnish financial support by the utility to the affiliate.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing gas service filed with the Commission and approved by the Director of the Public Utility Division.

"Therm" means 100,000 British thermal units of heat.

"Transition costs" means those prudent and verifiable costs and investments incurred by a public gas utility after February 18, 1997, in implementing the Commission's gas utility restructuring rules and to restructure its facilities, contracts and operation. Such costs as determined by the Commission may include education for the public related to the natural gas industry restructuring.

"Transmission or transmission service" means the upstream transportation of natural gas through pipelines and/or other facilities from a well-head, gathering line or other receipt point to a local distribution facilities or an end-user located on the transmission pipeline.

"Transmission pipeline" means a pipeline, either a gas utility owned transmission line or an intrastate pipeline, other than a gathering system that transports gas from a gathering system, interstate pipeline or storage facility to a citygate, aggregation point, storage facility or other delivery point.

"Unbundling" means the identification and separation of natural gas services and/or products and the associated costs to provide each such service and/or product which have been part of the "bundled" complement of services provided by a public gas utility.

"Unbundling plan" means a public utility's proposal(s) to separate its previously bundled services offered upstream of the citygate and to price these services individually.

"Uniform System of Accounts (USOA)" means the system of accounts as currently prescribed the Federal Energy Regulatory Commission (FERC), those accounting systems as published by the National Association of Regulatory Utility Commissioners (NARUC) or other accounting methods approved by the Commission.

"Upstream of the Citygate" means all natural gas services provided at the gas utility's citygate or other point of delivery to local distribution facilities which are necessary to serve end-users.

"Upstream related entity" means an affiliate of a gas utility or that portion of a gas utility which provides citygate gas services.

"U.S.D.O.T." means the United States Department of Transportation.

"Utility" means a natural gas utility as defined in this Chapter.

SUBCHAPTER 11. CUSTOMER SERVICE

PART 3. DISCONNECTION OF SERVICE

165:45-11-10. Discontinuance of service by a consumer

A consumer may be required to give up to five (5) business days ~~written~~ notice of intention to have service disconnected or to have the account closed and shall be responsible for all charges for service until the expiration thereof. This 5-day ~~written~~ notice provision may be waived by the utility. Such disconnection or closing of the account does not relieve the consumer of obligations incurred prior to disconnection. At the time the consumer requests disconnection or closing of the account, the utility will advise the consumer of any reconnection and or service fees, if any reconnection and or service fee applies pursuant to the utility's approved tariff.

165:45-11-12. Utilities encouraged to keep current lists of energy assistance programs

(a) **Compilation.** The utilities are strongly encouraged to compile a list with the names, addresses, and phone numbers of known payment assistance programs, including information regarding any bilingual services offered, that are applicable to each service area within the utility's areas of operation. The list should include but is not limited to: local, state, federal, and tribal energy assistance programs and public/private charitable organizations offering or known to offer energy payment assistance, which have given prior consent to their inclusion on this list. The utilities are encouraged to use due diligence in compiling this information and updating this information, with updates to occur on an annual basis. However, the Commission encourages the addition of new assistance programs to the list, as the information becomes available.

(b) **Availability.** The utility shall give a copy of this list to any consumer who asks for such assistance.

(c) **Liability.** The offer of any such list under this Section is meant as an informative resource only, ~~in order~~ for the utility to better assist its consumers. Failure of the consumer to gain funding in full or part, from any of the proffered resources under this Section shall not result in any liability to the utility.

165:45-11-13. Commission notification procedures for the elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility ~~in writing~~ that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's Consumer Services Division in writing <u>or by electronic notification</u> at least ten (10) business days prior to disconnection.

(2) ~~Written~~<u>The</u> confirmation shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF", AND "ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) Scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional business days upon request of the Commission's Consumer Services Division.

(4) Elderly and/or consumers with disabilities are those consumers who have notified the utility in writing that they wish to be included in the Commission's notification procedure available to them and who:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

(d) The Commission's notification procedure is in addition to the other requirements set forth in this Part which the utility shall meet prior to disconnection of service.

165:45-11-14. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service used or needed for the primary heating or cooling source.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the gas service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local

social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency is provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed pursuant to (e) of this Section.

(5) Under no conditions is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. The utility ~~may~~may mail or provide electronic notification to customers who make an affirmative election to receive electronic notification of such information a confirmation of the terms of the deferred payment agreement if it is made orally. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's gross income.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in size.

(3) The consumer shall initiate renegotiation prior to breach of the deferred payment agreement if the consumer's financial conditions change, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection period as provided in OAC 165:45-11-11(c) on the first and second notice has not been passed. If the disconnection period has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of the Commission apply.

(f) **Life-threatening situation.**

(1) For purposes of this Section, a life-threatening situation is defined as one where the consumer or other permanent resident of the household is dependent upon equipment that is prescribed by a physician, operates on gas, and is needed to sustain the person's life. Examples of life-sustaining equipment would be: kidney dialysis machine, iron lung, oxygen concentrators and certain other oxygen machines, cardiac monitory, heating and air conditioning equipment, or any other equipment that is prescribed by a licensed medical doctor. The following are not considered to be life-sustaining equipment: hot water heater, refrigerator, and range/stove.

(2) When a consumer to whom service is provided is unable to pay the account in full, the utility shall suspend disconnection of service, or reconnect if disconnected, if the consumer notifies the utility that disconnection of service will give rise to a life-threatening condition for the consumer or other permanent resident of the household should gas service be terminated, and within thirty (30) calendar days of the initial notification, the consumer shall return the Medical Certificate described in (3) of this subsection

(3) The consumer shall use a Medical Certificate Form which verifies the existence of a life-threatening condition. This form is provided by the utility at no cost to the consumer. The form shall provide certification by a licensed medical doctor or osteopath. The consumer may choose the appropriate medical personnel. At a minimum the Medical Certificate Form provided by the utility shall contain, substantially, the information in the form as set forth in Appendix A to this Chapter. The service account name holder shall sign the Medical Certificate Form at the appropriate space, indicating knowledge that a permanent resident of the household is applying for the life-threatening situation certificate and further acknowledging the responsibility for payment of bills rendered for gas service.

(4) Completion of (2) and (3) of this subsection will suspend disconnection of gas service to the specified residence for a period of thirty (30) days from the initial notification. This 30-day period allows the consumer to pay the account in full or enter into a deferred payment agreement with the utility and/or make alternative arrangements for

the person(s) named on the certified form as having the life-threatening condition. After thirty (30) days, normal collection action will resume. The 30-day period may be extended by the utility at the request of the service account name holder for one (1) additional contiguous 30-day period, but only if necessitated by the life-threatening condition (as indicated on the Medical Certificate Form). The request for the additional 30-day extension must be made before the end of the initial 30-day period. The utility is not required to furnish service to the customer beyond a total of sixty (60) days for the life-threatening condition without full payment of the account or acceptable payment arrangements on any unpaid balance.

(5) Verification of the medical condition of the consumer by the utility may include the following:

(A) Utility personnel may visit the consumer's residence with the consumer's permission to verify that life-sustaining equipment is being used.

(B) Utility personnel may verify the doctor's signature and clarify the medical terms of the diagnosis which is the reason for the life-threatening certificate.

(6) This collection abeyance in no way absolves the consumer from full responsibility for the payment in full of the utility services rendered, and is intended for the purpose of providing the consumer an opportunity to maintain utility service during the life-threatening situation within the prescribed time frames.

(7) Failure of the service account name holder to fully comply with this subsection may result in denial of life-threatening status and renewed collection activities of the utility, to include termination of service to said residence.

(8) Any consumer who uses this subsection to avoid disconnection or for reconnection of service and does not fulfill the required documentation will be subject to disconnection.

(9) A consumer is not prohibited from claiming a life-threatening situation once full payment of the account balance from a previous life-threatening claim is made and a valid Medical Certificate Form signed by a licensed medical doctor has been received by the utility.

(g) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, life-threatening situation or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(h) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

165:45-11-18. Exceptions to Section regarding discontinuance of service

Notwithstanding any other Section regarding disconnection of service, a utility may at any time disconnect service without notice and without delaying disconnection of service as prescribed in other Sections of this Part, if:

(1) It reasonably believes that such action is necessary to correct a condition that poses a health or safety hazard to the consumer, the general public, or the equipment of the utility. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, electronic notification to customers who make an affirmative election to receive electronic notification of such information, ~~by~~ personal contact, or ~~by~~ notice left at the premises.

(2) For the purpose of essential repair, maintenance, or testing of utility equipment, the utility shall make such efforts as are reasonable under the circumstances to minimize the adverse effects of disconnection of service and to inform affected consumers prior to disconnection of service.

(3) The utility may disconnect for unauthorized use of gas accomplished through bypassing of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without a contract. Prior to or immediately upon disconnection of service, the utility shall make a good faith effort to notify the consumer of the reason for disconnection either by telephone, ~~by~~electronic notification to customers who make an affirmative election to receive electronic notification of such information, personal contact, or ~~by~~ notice left at the premises. If service is disconnected under this paragraph, the utility may require the consumer to pay the following applicable charges before service is restored:

(A) The applicable charges for reconnecting service prescribed in the utility's approved tariffs.

(B) The amount due for unmetered or unpaid usage, when such usage can be determined exactly. If the exact usage ~~can not~~cannot be determined, the utility may compute the charge for the estimated usage based on historical usage from the date the consumer became an occupant or user or began unauthorized use.

(C) The cost associated with the disconnection, testing, repair, or replacement of any damaged equipment.

PART 7. BILLS

165:45-11-42. Penalty or charge for late payment and payment by negotiable instrument

(a) **Late payment penalty.** A utility may make a penalty charge in an amount not to exceed one and one-half percent of the charges for gas service for delay in receipt of payment by the utility past the due date of the bill. If a utility, prior to the effective date of the 1996 amendments to this Section, is charging a penalty in excess of one and one-half percent of the charges for gas service, such utility will be allowed to continue to collect the previously approved percentage until such time as its rates are next reviewed by the Commission. The due date shall be stated on the face of the bill and shall not be earlier than ten (10) calendar days after the bill was ~~mailed,~~mailed

or provided electronically to customers who had made an affirmative election to receive electronic notification of such information, except that for residential consumers, the due date shall not be earlier than twenty (20) calendar days after the bill is mailed~~.~~, or provided electronically to customers who had made an affirmative election to receive electronic notification of such information. If no late charge is imposed, the due date of a bill shall not be less than fourteen (14) calendar days after the date a bill is mailed. The late payment penalty may be applied at any time after the due date to any unpaid balance due at the time of assessment.

(b) **Delay of monthly bill.** Utilities offering billing programs that delay issuing the monthly bill (i.e., summary billing, preferred due date billing, etc.) may request an earlier due date.

(c) **Payment by negotiable instrument.** The utility shall not refuse to accept payment by check from any consumer unless the utility has, within the preceding twelve (12) months, received as tendered payment of the consumer's account two (2) or more negotiable instruments which were dishonored by the financial institution on which they were drawn. If payment by a negotiable instrument is given in response to a disconnect notice, the utility may contact the financial institution involved for verification of sufficient funds in the account to cover the negotiable instrument. If the account does not contain sufficient funds for payment, the utility may reject the offered negotiable instrument. The utility may make a charge outlined in its tariffs for negotiable instruments which are dishonored.

SUBCHAPTER 19. DOWNSTREAM SERVICES

165:45-19-3. Downstream service unbundling plan

(a) No later than September 1, 1998, each Class A utility with 25,000 or more customers shall commence a collaborative process wherein a downstream unbundling plan shall be developed. Interested parties, including, but not limited to, downstream service providers (marketers), the Attorney General, and the Commission's Public Utility Division, may participate in the collaborative process. The downstream unbundling plan should include but not be limited to the following requirements:

(1) The unbundling of all downstream natural gas services for all classes of customers.

(2) The establishment of an appropriate cost allocation and rate design for the downstream unbundled services.

(3) Standards of conduct for transactions between the utility and its affiliate.

(4) Tariffs reflecting all of the natural gas services that will provide open access to the utility's system by entities desiring to provide downstream services, establish interconnection requirements and that will allow end-users a choice to obtain natural gas services from entities other than the utility. Each tariff shall identify the terms and conditions under which such service will be made available to any end-user and the maximum rate which the utility may charge for such service.

(5) That transportation shall be provided on a firm and interruptible basis to all end-users on a non-discriminatory basis. Therefore, unless otherwise ordered by the Commission, the transportation proposal should:

(A) Eliminate volume restrictions.

(B) Remove alternate fuel requirements.

(C) Permit aggregation, where operationally and administratively feasible, for the purpose of making small consumer transportation viable; including nomination and imbalance provisions suitable for economically serving such customers.

(D) Specify under what conditions "returning" customers will be accepted and how they will be charged.

(6) Storage and balancing shall be provided as a separately priced service for customers interested in using storage and/or balancing services. This may include options keyed to varying conditions and/or time periods, wherein, each will be separately priced.

(7) Standby shall be provided as a separately priced service for transportation customers who have had their capacity or commodity curtailed.

(8) The utilities should clearly define if, when and how additional metering is required to provide additional services. The utility should be ready to demonstrate that the proposed metering requirements are not discriminatory and are truly necessary for operational reasons.

(9) The utility should propose a mechanism for notifying in-state customers of available interstate capacity. The proposal should include creditworthiness standards, bidding criteria and recall rights for such capacity. The aim of the capacity release program should be to provide the greatest contribution to the system's fixed capacity costs, while maintaining reliability for the firm sales customers.

(10) Curtailment plans should be updated in light of Order No. 636. Transportation customers should not be arbitrarily interrupted. The utilities should consider an operational condition that requires an interruption of load and also consider ways of interrupting only customers in those constrained areas. A pro-rata cutback arrangement may be put in place to relieve capacity constraints. If the utility finds that it is economical, it should arrange for the emergency/peak period use of customer owned gas under prearranged conditions and for a prescribed rate of compensation.

(11) Rate schedules should reflect the appropriate costs to provide each of the above services. Rate structure should be supported by work papers and a description of the methodology employed.

(12) Standards to allow customers to aggregate.

(b) To ensure that the public interest is best served by the restructuring of the natural gas industry, the Commission may implement a consumer education program of its own design. The Commission may seek the assistance of those parties directly or indirectly involved.

(c) The foregoing are intended as guidelines for a competitive rate and tariff structure. Utilities may find that one or more aspects of these guidelines are not practical for various reasons. Where this is the case the utilities may request an exemption from complying with that part of the guidelines. In such cases

the utility should provide substantial documentation to support an exemption.

(d) Any interested party may by August 1, 1998, file a statement with the Commission, with a copy mailed to the utility and the Attorney General, giving its notice of intent to participate in the collaborative process set forth in subsection (a).

(e) Each collaborative process set forth in subsection (a) shall establish financial performance standards and appropriate consumer protection measures and safeguards.

(f) On or before April 1, 1999, the utility shall file with the Commission an application for approval of the proposed downstream unbundling plan that was developed as a result of the collaborative process set forth in subsection (a). The Commission shall conduct an examination and review of the utility's application. It is intended that the collaborative process continue between the applicant utility, the entity(ies) desiring to provide the downstream service, the Attorney General and any other party granted intervention status.

(g) The Commission shall conduct a public hearing on the utility's application for approval of its downstream unbundling plan and shall issue an order on or before June 1, 1999.

(h) Upon issuance of the Commission order, the utility shall begin implementation of the approved downstream unbundling plan for an in service date of October 1, 1999.

(i) It is recognized that the unbundling of the downstream system of a currently regulated utility may have potential tax implications. It is, therefore, contemplated that this subsection is subject to modification by the legislature or the Commission regarding tax implications, if any, and that the dates set forth herein may be modified by Commission order as appropriate to address tax issues.

(j) The Commission will, from time to time, reconvene the collaborative group(s) formed in response to subsection (a) for the purposes of monitoring the progress of the unbundling implemented pursuant to this Subchapter and refining, as necessary, the terms, conditions, and rates adopted as a result of those collaborative discussions. New parties may join the collaborative group at any time by giving notice of their intent to participate to a collaborative group as it then exists.

(k) The dates, stated herein, may be reestablished by order of the Commission for utilities with less than 25,000 customers.

(l) In lieu of the requirements of this Subchapter, a utility that has not begun implementation of a downstream unbundling plan as of July 1, 2014, shall submit a statement annually, detailing the basis for which implementation has not occurred, to the Director of the Public Utility Division.

[OAR Docket #14-516; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES

[OAR Docket #14-518]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. Demand Programs
165:45-23-1. Purpose [AMENDED]
165:45-23-2. Goals [AMENDED]
165:45-23-3. Definitions [AMENDED]
165:45-23-4. Demand portfolio submission and implementation [AMENDED]
165:45-23-5. Commission consideration [AMENDED]
165:45-23-6. Evaluation, measurement, and verification [AMENDED]
165:45-23-7. Reporting [AMENDED]
165:45-23-8. Incentives [NEW]
165:45-23-9. Stakeholder process [NEW]
AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. §§151, 152, and 160.1; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 through January 21, 2014
PUBLIC HEARING:
February 4, 2014 and February 27, 2014
ADOPTION:
February 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
January 1, 2017
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments and additions to OAC 165:45-23 are needed to clarify the rules pertaining to the Demand Programs, to promote consistency in the application and interpretation of the Demand Program rules, and to promote program goals.
CONTACT PERSON:
Judith L. Johnson, Senior Attorney, Office of General Counsel, Oklahoma Corporation Commission, 2101 N. Lincoln Boulevard, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 522-0482.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF JANUARY 1, 2017:

SUBCHAPTER 23. DEMAND PROGRAMS

165:45-23-1. Purpose

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementing ~~energy efficiency programs~~Demand Programs that may receive cost-recovery treatment from the Commission. The rules in this Subchapter shall apply to Demand Portfolios having program years that begin on January 1, 2017 and thereafter.

165:45-23-2. Goals

(a) The ~~goal of energy efficiency programs is~~goals of Demand Programs are to minimize the long-term cost of utility service~~.~~, to encourage and enable utility customers to make the

most efficient use of energy, and to discourage the inefficient and wasteful use of energy.

(b) ~~As a part of the hearing process for approval of a utility's energy efficiency programs, the~~The Commission ~~may~~shall set specific savings goals for each utility to ~~reduce natural gas~~achieve Net Source Energy ~~usage~~Usage Savings~~and/or the rate of growth of natural gas usage generally,~~ without adversely affecting customer comfort or state economic activity, based on market potential studies, base line studies, gas supply portfolios, risk management plans, or other evidence~~.~~presented as part of the hearing process for approval of a utility's Demand Programs.

165:45-23-3. Definitions

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

"Administrative Cost" means the expenses incurred in controlling supporting Demand Programs that are not tied to the marketing and delivery of those programs. These expenses include:

(A) reviewing and selecting Demand Programs in accordance with this section;

(B) providing regular and special reports to the Commission, including reports of Demand Program savings;

(C) a utility's costs for an annual review of Demand Programs or true-up proceeding for cost recovery mechanism;

(D) Supervisory functions performed by Demand Portfolio Manager that are related to supervision of employees and related human resource administration.

"Average customer bill" means the value derived from the sum of all consumer bills in a particular customer sector divided by the number of consumers in that sector; i.e., the arithmetic mean. A utility may use the average customer bills for the customer rate classes rather than the customer sectors if it chooses to do so and clearly identifies the choice.

"Barrier" means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes natural gas user participation in ~~energy efficiency programs.~~Demand Programs. Barriers may include but are not limited to language, physical or mental disability, access to capital, educational attainment, utility meter type, economic status, property status, or geography.

"Base line" means natural gas use, trend in natural gas use, and description of conditions affecting such uses and trends prior to implementation of ~~an~~energy efficiency program designed to affect particular uses and trends.Demand Program designed to affect particular uses and trends. When evaluating energy efficiency measures implemented as a result of non-fuel switching Demand Programs, the base line to be used in savings calculations shall be either the performance standard base line (the minimum efficiency available in the market), or a customized, project specific base line. When evaluating energy efficiency measures implemented as a result of fuel switching or non-prescriptive Demand Programs, the base line to be used in calculations shall be the replaced equipment efficiency.

"California Standard Practice Manual" means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001 edition, produced by the California Energy Commission and the California Public Utility Commission.

"Cost effective" and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers a benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

"Customized opportunity" means an energy efficiency program tailored to an individual natural gas user's needs.

"Deemed savings" means an estimate of natural gas savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

"Demand portfolio" means a collection of energy efficiency programs, or as defined in this subchapter, Demand Programs including fuel switching programs offered or proposed by a natural gas utility; for example, a residential weatherization program and a program to trade tankless water heaters for tank water heaters ~~is~~or a general education program for energy efficiency may be contributors to a demand portfolio.

"Demand portfolio administrator" means the utility employee responsible for supervising the utility's energy efficiency efforts as proposed in compliance with this subchapter.

"Demand Program(s)" means the Energy Efficiency programs offered or proposed by a natural gas utility. Collectively, the Demand Programs make up the company's Demand portfolio.

"Education" means any formal program, training, or activity designed to raise awareness of, and participation in company specific Demand Programs or increase general knowledge concerning energy savings opportunities and efficiency topics. These programs shall include communication efforts designed to reach customers with energy efficiency information through a variety of mediums including but not limited to television, radio, print and web-based media.

"Energy efficiency" means reducing natural gas consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

"Evaluation, measurement, and verification" or "EM&V" means a systematic, objective study conducted periodically to authenticate, assess, and report how well a Demand program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

"EM&V Costs" means the costs associated with performance of studies and activities intended to determine the actual savings and other effects from Demand Programs.

"Free rider" means a program participant who would have implemented the program measure or practice in the absence of the Demand Program. Free riders can be total, in

which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after the time the program measure was implemented.

"Fuel switching" means changing from rate regulated natural gas to rate regulated electricity or from rate regulated electricity to rate regulated natural gas for a particular end-use service. It does not include installation of any device that relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

"Goal" means a target to be achieved by a utility's ~~demand~~Demand ~~portfolio~~Portfolio. A goal may be expressed in thousand cubic feet, dekatherms, percentage reduction or limitation, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

"Gross savings" means the values reported by a gas utility after the Demand Program activities have been completed, but prior to the time an independent, third-party evaluation of the savings is performed. As with projected savings estimates, these values may utilize results of prior evaluations and/or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Gross savings can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values.

"Hard-to-reach customers" means:

(A) Residential natural gas users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians;

(B) Commercial natural gas users who rent their business property from persons other than the users' owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial natural gas users who traditionally fail to engage in ~~energy efficiency programs~~Demand Programs because of one or more barriers beyond those experienced by average residential or commercial customers in a utility's service area.

"Incentive" means a sum of money a utility may be allowed to recover, in addition to program costs and allowed lost net revenues~~, which sum is designed to reward~~. Incentives shall be based on the ~~utility~~utility's verified savings from the Demand Portfolio for ~~successful and appropriate energy efficiency and demand response~~the previous program ~~performance.~~year and shall be calculated as described in 165:23-45-8.

"Inducement" means ~~any thing~~anything of value offered by a utility to encourage natural gas users or trade allies to engage in ~~an energy efficiency program~~a Demand Program approved pursuant to this subchapter.

"Lost net revenue" means income from the retail sale of natural gas forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales. Lost net revenue shall be calculated using verified savings, shall exclude customer service charge revenues (non-volumetric revenues), and shall exclude revenues collected from riders with annual true-ups.

"Low-income customer" means a residential natural gas user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Plan, as provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

"Market potential study" means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

"Market transformation" means the strategic process of influencing customer population and trade ally's decision-making ~~to create~~that creates lasting change in customer behavior by removing barriers or exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

"Measure" means the equipment, materials, or actions that are installed or used within ~~an energy efficiency program~~a Demand Program that ~~result~~results in measurable or verifiable savings; for example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

"Natural gas user" means a real property freeholder or leaseholder at a specific location who consumes natural gas at that location, regardless of whether the consumer receives a gas bill directly from a utility.

"Net benefits" equal the difference between total benefits and total costs as calculated for cost-effectiveness. The economic objective of Demand Resource portfolios is to maximize net benefits. A portfolio is cost-effective if it yields positive net benefits.

"Net savings" means the total change in load that is directly attributable to a Demand Program or the Demand Portfolio. This change in energy and/or demand use shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net Source Energy Usage Savings" means the total change in source energy usage that is directly attributable to a Demand Portfolio. This change in source energy usage will reflect the pre-treatment source energy usage of a device or

process less the post-treatment source energy usage of a device or process and shall include, implicitly or explicitly, consideration of appropriate factors. These factors shall include free ridership, participant and non-participant spillover and induced market effects.

"Net-to-gross" means a factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor shall be made up of a variety of factors that create differences between gross and net savings, and commonly consider the effects of free riders and spillover.

"Program" means an organized set of activities or measures directed toward the common purpose of energy efficiency that a utility undertakes or proposes to undertake to reduce future natural gas usage or growth in natural gas usage; for example, a general offer to assist homeowners in weatherizing their homes is a program.

"Program cost" means the expenditures including expenditures paid to a third-party to deliver a program, incurred by a utility to achieve natural gas savings through ~~energy efficiency programs.~~Demand Programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's Demand Program~~program~~ costs are all Administrative Costs, Education costs, labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other ~~expenditures~~program delivery expenditures incurred by the utility for operation of the ~~energy efficiency programs,~~Demand Programs, regardless of whether the costs are expensed or capitalized.

"Program implementer" means the person who puts ~~an energy efficiency~~a Demand ~~program~~Program into practical effect.

"Projected incentives" means the amount of estimated annual incentives calculated at the time the Demand Portfolio is submitted to the Commission for initial approval, or subsequent modification, of the Demand Portfolio.

"Projected savings" means the values reported by a natural gas utility prior to the implementation of the Demand Programs. These are typically estimates of savings prepared for Demand Program and/or Demand Portfolio design or planning purposes. These values are based on pre-program or Demand Portfolio estimates of factors such as per-unit savings values, operating hours, Net-to-Gross ratios, installation rates, and savings persistence rates. These values can be indicated as first year, annual energy savings, and/or lifetime energy values. These values can also be indicted as Gross savings and/or Net savings. Projected savings are reflected in the goal reduction as set in this Subchapter.

"Research and development" means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

"Savings" means a reduction in the use of natural gas or rate of growth of natural gas use, as measured in dekatherms or thousand cubic feet.

"Spillover" means the reductions in energy consumption caused by the presence of a Demand Program, beyond the Demand Program-related gross savings of the participants and without financial or technical assistance from the program. Spillover can be applied to participants, consumers directly participating in a Demand Program, and/or non-participants.

"Standard offer" means ~~an energy efficiency program~~a Demand Program available to a group of customers or customers generally on the same terms and without customization.

"Trade allies" means contractors, builders, developers, retailers, skilled laborers, service providers, and wholesale distributors who support ~~energy efficiency programs~~Demand Programs through sale or installation of goods and services.

"Transportation Customer" means any customer who buys gas on the open market from any provider, and engages a regulated utility's pipeline to transport the gas to the customer's facility.

"Verified savings" means values reported by a natural gas utility after review by an independent third-party evaluator. The third party evaluator shall be chosen by the utility and such costs shall be determined to be a Program cost. These values should reflect all adjustments including corrections for any known data errors and actual installation rates, and should also be adjusted by revised values for known factors such as per-unit savings values, operating hours, savings persistence rates, and net to gross adjustments.

165:45-23-4. Demand portfolio submission and implementation

(a) All natural gas utilities under rate regulation of the Commission having more than 25,000 meters in the state of Oklahoma shall propose, at least once every three years, and be responsible for the administration and implementation of a ~~demand~~Demand ~~portfolio~~Portfolio of ~~energy efficiency programs~~Demand Programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before ~~April~~May 1 of the year the programs will be effective. The application shall describe the ~~demand~~Demand~~portfolio~~Portfolio and contain the following information:

(1) A description of the intent of the ~~demand~~Demand~~portfolio~~Portfolio as a whole;

(2) A description of the intent of each ~~program;~~Demand Program;

(3) A description and quantification of the target market of each ~~program~~Demand Program, differentiated by customer sectors;

(4) A base line describing the state of the market that each program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;

(5) A description of the barriers to investment in energy efficiency in the absence of each ~~program~~Demand Program and the ways each ~~program~~Demand Program will reduce or eliminate these barriers;

(6) A description of research and public input that contributed to the development of the content of each ~~program~~Demand Program;

(7) A report of the cost-effectiveness of each ~~program~~Demand Program and the ~~demand portfolio~~Demand Portfolio, including program and measure-level supporting data which shall include, but not be limited to, cost-effectiveness screening assumptions of gross and net energy savings, participation and/or measure unit numbers, inducement levels, measure cost, and other non-inducement program costs;

~~(8) A description of how each program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;~~

(8) A detailed description of the derivation of the energy, generation, and transmission and distribution avoided costs, retail cost projections, reserve margins, discount rates, and average and peak line loss assumptions used in the cost-effectiveness calculations;

(9) A description of how each Demand Program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;

(~~9~~10) A plan for evaluation, measurement, and verification of performance and results of the ~~demand portfolio~~Demand Portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate; provided that costs associated with the EM&V plan shall not exceed five percent (5%) of the total three-year Demand Portfolio budget;

(~~10~~11) A plan for evaluation of the market effects of each ~~program~~Demand Program or applicable group of programs;

(~~11~~12) A plan for evaluation of administration and implementation of each ~~program~~Demand Program or applicable group of programs;

(~~12~~13) A plan for ending a ~~program~~Demand Program, if applicable;

(~~13~~14) A process for amending a ~~program~~Demand Program;

(~~14~~15) An annual budget for each ~~program~~Demand Program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;

(~~15~~16) A report on how the ~~demand portfolio~~Demand Portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;

(~~16~~17) A report on how the ~~demand portfolio~~Demand Portfolio will meet savings goals that may be in place at the time of filing and or that are otherwise proposed in the filing;

(~~17~~18) An estimate of the expected savings in natural gas usage, with location information about the source of savings, if savings are not expected to be evenly distributed throughout the utility system;

(~~18~~19) A detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment of lost net revenue, and any additional incentives the utility proposes it requires to make the programs workable;

(~~19~~20) Identification of the ~~demand portfolio~~Demand Portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number; and

(b) Demand ~~portfolios~~Portfolios shall:

(1) Contain ~~programs~~Demand Programs for all customer sectors;

(2) Strike a balance among procuring natural gas savings, educating the public, and transforming markets for energy efficiency;

(3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;

(4) Contain customized opportunities for energy efficiency among larger customers;

(5) Not include programs or measures that promote fuel switching, with the exception of:

(A) programs or measures that promote renewable technologies such as biomass-derived methane, geothermal, solar and other renewable resources; or

(B) in the event after notice and hearing, such programs or measures are shown to promote the goals of the Commission pursuant to this Subchapter and/or otherwise to be in the public interest;

(6) Have an implementation schedule of no more than three years;

(7) Address opportunities presented by new construction and renovation;

(8) Promote comprehensive energy efficiency in buildings; and

(9) Address programs for low-income customers and hard-to-reach customers to assure proportionate ~~energy efficiency programs~~Demand Programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other programs.

(c) Demand portfolios may:

(1) Include research and development and pilot programs that would lead to effective ~~energy efficiency programs~~Demand Programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for ~~energy efficiency programs~~Demand Programs and the Commission finds the cost-effectiveness for the ~~demand portfolio~~Demand Portfolio remains sufficient;

(2) ~~Allow~~Encourage utility cooperation in state, regional and national programs that have the potential to save natural gas in Oklahoma; ~~and~~

(3) ~~Allow~~Encourage utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance~~.~~; and

(4) Encourage utility cooperation in state, regional and national efforts to accelerate the development and improve the enforcement of building energy codes and product efficiency standards.

(d) Natural gas utilities having fewer than 25,000 meters in this state are exempt from filing application requirements in subsections (a) through (c); however, each qualifying natural gas utility shall submit to the director of the Public Utility Division for review, evidence of why it is not economically feasible to file the application requirements in subsections (a) through (c), and shall submit the following as evidence to further the goals of this Subchapter:

(1) A description of the ~~programs~~Demand Programs that are economically feasible to implement; and

(2) The target market of each ~~program~~Demand Program.

(e) Transportation customers shall not be subject to ~~energy efficiency programs~~Demand Programs and related ~~program~~Program costs implemented pursuant to this Subchapter.

165:45-23-5. Commission consideration

(a) In reviewing ~~demand portfolios~~Demand Portfolios, the Commission will consider:

(1) The quality of the ~~programs~~Demand Programs in all their elements relative to their program objectives;

(2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;

(3) The cost-effectiveness for each program and for the ~~demand portfolio~~Demand Portfolio; individual programs or individual measures for a specific program do not have to be cost-effective if their inclusion is expected to provide for greater comprehensiveness, customer or trade ally participation, or address Hard to Reach Customer participation;

(4) The savings goals;

(5) The availability of programs to all customers;

(6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation and include stakeholder interests;

(7) The effect on rates, average customer bills, and total cost of service;

(8) The effect on the environment, to the extent of Commission authority; and

(9) Other evidence the Commission finds relevant.

(b) The Commission will endeavor to issue an order within ninety days of the filing of the application.

(c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.

(d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis; provided ~~costs other than for inducement shall not exceed ten percent of program costs and all program costs shall not add more than $1.33 to the residential sector's monthly average customer bill.~~that:

(1) Administrative costs shall not exceed ten percent (10%) of program costs;

(2) All program costs should not add more than $1.60 to the residential sector's monthly average customer bill, unless benefits and rationale for exceeding cap can be proven; bill impacts on other classes of customers should be reviewed and adjusted to reflect allocated Demand Program cost recovery; and

(3) Tariffs covering rates or riders for Demand Programs shall be updated to be in compliance with this Subchapter or in accordance with OAC 165:45-1-4(b) and (f).

(e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:

(1) The program is not terminated earlier than specified in the program; and

(2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.

(f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to, set a hearing before the Commission or an administrative law judge.

165:45-23-6. Evaluation, measurement, and verification

(a) Utilities are responsible for timely evaluation, measurement, and verification (EM&V) of their ~~energy efficiency programs~~Demand Programs. The EM&V should be conducted by an independent third party evaluator chosen by the utility and cost of such EM&V shall be determined to be a Program Cost.

(b) The intent of the evaluation, measurement, and verification process is:

(1) To provide a reliable calculation of the net savings produced by ~~energy efficiency programs~~Demand Programs;

(2) To assess the effects of ~~programs~~Demand Programs on the market for energy efficient products and services; and

(3) To assess the effectiveness of the administration and implementation of ~~energy efficiency programs~~Demand Programs.

(c) Utilities shall prepare and maintain a program-tracking database.

(d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.

(e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.

(f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to ~~energy efficiency programs~~Demand Programs will be included in the evaluation, measurement, and verification plan.

(g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

165:45-23-7. Reporting

(a) Each utility shall submit an annual report by ~~April~~May 1 of each year on the performance of ~~energy efficiency programs~~Demand Portfolio for the preceding program year and cumulative program performance which shall include the information enumerated in this section.

(b) The annual report shall be submitted with Verified savings information in order for PUD to evaluate incentives levels to be recovered from consumers. PUD will provide Company with written notification of incentive levels, confirming or identifying disputed amounts with rationale for dispute by September 1. Any undisputed incentives may be included in recovery according to formula rate or other tariff terms. Any disputed incentives amounts will be resolved during the subsequent formula rate filing or other tariff recovery reviews. True-up mechanisms and recovery for all other Demand Program Costs shall be included with formula rate filings or other tariff recovery mechanisms.

(c~~b~~) The report shall contain ~~detail for a program~~a Demand Portfolio summary reflecting the scale of ~~the~~each program as a part of the ~~demand portfolio~~Demand Portfolio and ~~shall~~will include the following:

~~(1) A list of all programs and the date each program started;~~

~~(2) A list of savings realized for each program and the methods used to measure and verify these savings;~~

~~(3) The utility's annual growth or reduction in metered natural gas for the previous three years, with a calculation of the average growth or reduction rate over that entire period;~~

~~(4) The most current information available comparing projected savings to reported savings for each of the utility's programs;~~

~~(5) The most current information available comparing reported savings and verified achieved savings and an explanation of how each was measured;~~

~~(6) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;~~

~~(7) A statement of funds expended by the utility for program administration, including evaluation, measurement, and verification;~~

~~(8) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;~~

~~(9) A list of programs or program categories by customer sector stating:~~

~~(A) The number of customers served by each program or program category;~~

~~(B) The program or program category expenditures;~~

~~(C) The verified energy savings achieved by the program or program category, when available;~~

~~(D) A description of proposed changes in the program plans; and~~

~~(E) Any other information prescribed by the Commission;~~

~~(10) A list of research and development activities included in the demand portfolio, their status, and a report on the connection between each activity and effective energy efficiency programs;~~

~~(11) Identification of program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers; and~~

~~(12) Identification of instances in new construction or renovation when an electric furnace or water heater could have been installed but the customer installed a natural gas device and a natural gas utility inducement was provided.~~

(1) The name of Demand Program listed by customer category;

(2) The date program was started or date the Demand Program was revised;

(3) The number of participating customers per Demand Program;

(4) By Demand Program, approved projected energy savings (in decatherms) as approved;

(5) The gross energy savings (in decatherms) and performance of each Demand Program;

(6) The verified energy savings (in decatherms) by Demand Program and methods used to verify;

(7) For Education programs measurements of outreach efforts, including pre-program and post-program results and copies of evaluations, surveys, focus group results, and other measurement techniques used to gauge the effectiveness of education efforts;

(8) The levelized cost per decatherm for the Demand Portfolio, Demand Programs, and by customer sector, including all assumptions used to make the calculation;

(9) The amount of reduced emissions and water consumption experienced by the utility, including all assumptions and calculations details, during the Demand Program period for the current program year;

(10) The Demand Portfolio funding as a percent of total annual gas revenue;

(11) The Demand Portfolio Net source energy savings as a percent of total gas annual usage;

(12) The projected program costs;

(A) These costs should be separated into the following categories to allow review of spending:

(i) Administrative costs;

(ii) Inducements: direct payments and other inducements;

(iii) Education and marketing costs;
(iv) Program delivery costs; and
(v) EM&V costs.
(B) Workpapers to allow review and reconciliation of accounting information:
(i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;
(ii) General Ledger: A copy of, or access to, the general ledger and subledgers; and
(iii) Comparative Trial Balances: A schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
(13) The actual program costs;
(A) These costs should be separated into the following categories to allow review of spending;
(i) Administrative costs;
(ii) Inducements: direct payments and other inducements;
(iii) Education and marketing costs;
(iv) Program delivery costs; and
(v) EM&V costs.
(B) Workpapers to allow review and reconciliation of accounting information:
(i) Utilities shall provide workpapers with working formulas, calculations, and linkages to support all costs;
(ii) General Ledger: A copy of, or access to, the general ledger and subledgers; and
(iii) Comparative Trial Balances: A schedule of, or access to, comparative trial balances detailed by account for the test year and the first preceding year.
(14) Projected incentives - including projected cost effectiveness tests;
(15) Actual calculated incentives - including workpapers and working spreadsheets (formulas, calculations, linkages, and assumptions) for updated cost effectiveness tests, in sufficient detail to allow review of cost effectiveness calculations;
(16) The utility's annual growth in metered energy for the previous three years, with a calculation of the average growth rate over that entire period by customer class or major customer class segments;
(17) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;
(18) By Demand Program, provide a summary of spending, including the following:
(A) Administrative costs;
(B) Inducements, including direct payments and other inducements;
(C) Education and marketing costs;
(D) Program Delivery Costs; and
(E) EM&V costs.
(19) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;
(20) A detailed description of each Demand Program reflecting the scale of the program as a part of the Demand Portfolio that includes the following:
(A) Number of customers served by each Demand Program or program category;
(B) Program or program category expenditures;
(C) Verified energy and peak demand savings achieved by the Demand Program or program category, when available; and
(D) A description of proposed changes in the Demand Program plans.
(21) A list of research and development activities included in the Demand Portfolio, their status, and a report on the connection between each activity and effective Demand Program; and
(22) Identification of Demand Program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers.
(d~~c~~) After receiving the report, the Commission:
(1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing; ~~and~~
(2) Will endeavor to act on the report within ~~sixty~~ninety days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.
(e~~d~~) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in ~~program~~Demand Program administration, delivery or planning.

165:45-23-8. Incentives

(a) Each utility shall be eligible to receive an incentive for successful implementation of their Demand Portfolio if:
(1) The Demand Portfolio achieves a minimum of 80% of the company's goal ratio (Verified savings divided by Projected savings);
(2) and the Demand Portfolio achieves a total resource cost test benefit/cost ratio (TRC:B/CR) that is greater than one; and
(3) No incentive shall be allowed for performance of the Demand Portfolio if the Utility fails to pass all of these threshold measures (OAC 165:45-23-8(a)(1) and (2)).
(b) The Incentive will be calculated as follows:
(1) A maximum incentive of 15 percent of Net Benefits will be paid for achievement of 100 percent (100%) or greater of the Utility's total annual Net Energy Source savings goal.
(A) The goal ratio (Verified savings divided by the Projected savings) must be 80% or greater to receive an incentive.
(B) Incentive for savings achieved between 80 and 100 percent of the savings goal will be determined by

multiplying the goal ratio by the maximum incentive percentage.

(2) The Demand Portfolio costs to be included for review of achievement of Demand Portfolio shall include all costs incurred for implementation of Demand Programs including all program costs, education or outreach program costs, Administrative costs, and EM&V costs.

(3) Costs incurred for the implementation or reporting of the Demand Programs which are not directly incurred for a specific program are to be allocated to all Demand Programs and included as part of the Demand Program costs in determining Demand Portfolio cost effectiveness.

(c) The Incentive will be capped at 15 percent of Demand Portfolio costs inclusive of program delivery costs, education, and/or marketing outreach costs, Administrative costs and EM&V costs.

165:45-23-9. Stakeholder process

(a) Each utility shall have, at a minimum semi-annual stakeholder meetings, one of which is to be held within 30 days of the submittal of the Annual Report, as set forth in 165:45-23-7. Notice of such meetings shall be made at least 30 days prior to the date of the stakeholder meeting.

(b) At each meeting the utilities will present their most current data as to savings goal attainment and budget expenditures at the Demand Portfolio, customer sector and Demand Program level. The utility will highlight any Demand Program changes implemented since the previous meeting and any planned changes that will occur prior to the next meeting.

(c) In the years in which a utility plans to file a Demand Portfolio application as required by OAC 165:45-23-4, the Public Utility Division shall use one of the semi-annual stakeholder meetings to obtain stakeholder feedback on the proposed application.

[OAR Docket #14-518; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION CHAPTER 55. TELECOMMUNICATIONS SERVICES

[OAR Docket #14-514]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:55-1-4. Definitions [AMENDED]
Subchapter 13. Operating and Maintenance Requirements
Part 3. Service Standards
165:55-13-14.1. Tribal Land Link-Up Program [AMENDED]
Subchapter 23. Wireless Eligible Telecommunications Carrier
Part 1. General Provisions
165:55-23-17. Link-up program on Tribal Lands [AMENDED]
AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. §§ 131 et seq.; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
February 14, 2014, through February 26, 2014
PUBLIC HEARING:
February 5, 2014, February 21, 2014, and March 4, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments and deletions to existing Commission rules in Chapter 55 were needed to clarify the Commission's rules and remove language that was made obsolete by changes to federal law, Lifeline Reform Order, 27 FCC Rcd 6656, 6766-67, ¶ ¶ 250, 253.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:55-1-4. Definitions

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

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to and/or from the public switched network.

"Access service" means any tariffed wholesale service provided by one LEC to another LEC, CLEC, interexchange carrier certificated by the Commission or an end-user that allows for access to the local exchange telecommunications network, excluding local interconnection arrangements.

"Applicant for telecommunications service" means any person, partnership, cooperative corporation, corporation, or lawful entity requesting service(s) from a telecommunications service provider.

"Authorized carrier"means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service with the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Base rate area" means the developed area within each exchange service area designated in the tariffs of the telephone company or if not so designated, an area within one-half (1/2) mile radius of the serving central office.

"Basic local service" means all residential and business telecommunications voice and/or relay service which meets the standards set forth in 165:55-13-10, including lines beyond the first line into a residence or business.

"Billing agent" means an entity which provides bills to an end-user for services received from a telecommunications service provider.

"Billing and collection service" means the wholesale service provided by a TSP or IXC for the processing and delivery of customer bills, on behalf of a third party.

"Bona Fide Request" means a written request delivered to a telecommunications service provider requesting services and interconnection provided for in this Chapter.

"CIC" means carrier identification code which identifies a provider of toll services by a three- or four-digit number.

"Campus" means multiple buildings located on a single tract or area of land or on adjacent and abutting tracts of land where all the buildings and land are subject to majority ownership by the same person. A campus may be intersected or traversed by public thoroughfares provided that the segments created would be continuous in the absence of the thoroughfare. A tract or tracts of land used for farming and/or ranching shall not be considered a "campus."

"Carrier of last resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Central office" means an operating unit of a telecommunications service provider by which connections are established between end-users' lines and between end-users' lines and trunks or toll lines.

"Circuit" or **"Channel"** means one communication path between two (2) or more points suitable for transmitting information.

"Class of service" or **"Customer class"** means a description of service furnished to an end-user in terms of type of rate, location, and use.

"CLEC" means a Competitive Local Exchange Carrier.

"Clear and conspicuous" means notice that would be apparent to the reasonable consumer.

"Commission" means the Oklahoma Corporation Commission.

"Competitive Local Exchange Carrier" (**"competitive LEC"**) means, with respect to an area or exchange(s), a telecommunications service provider that is certificated by the Commission to provide local exchange services in such area or exchange(s) within the State of Oklahoma after July 1, 1995.

"Competitive Provider" means an entity providing the same or equivalent services through the use of its own or leased facilities including resellers. The service must satisfy the Commission's rules of minimum service standards regardless of whether the provider is regulated by the Commission.

"Competitive service" means a telecommunications service determined by the Commission to be subject to effective competition for a relative geographic and service(s) market, after notice and hearing.

"Competitive Test" means an evaluation by the Commission to determine after notice and hearing, for a particular service on an exchange by exchange basis, the existence of competition among an ILEC, a non-affiliated facilities based Competitive Provider, and one (1) other non-affiliated Competitive Provider. Such exchanges shall be the same as those on file with the Commission on the date of approval of the Transition Plan.

"Competitively neutral" means not advantaging or favoring one person over another.

"Cramming" means the placement of unauthorized, misleading, or deceptive charges on a customer's telephone bill for products or services that were never ordered by the customer.

"Customer" means any person, firm, partnership, cooperative corporation, corporation, or lawful entity that receives regulated telecommunications services supplied by any telecommunications service provider or IXC.

"Customer trouble report" means any oral or written report given to a telecommunications service provider's repair service by an end-user of telephone services relating to a physical defect or difficulty or dissatisfaction with the provision of the telecommunications service provider's regulated services. Each trouble report shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the telecommunications service provider's regulated services.

"Demarcation point" means the physical location at which responsibility for operating and maintaining facilities passes from one person to another.

"Deniable charge" means a charge for those regulated services for which nonpayment may result in a disconnection of basic local service.

"Dialing parity" means that a person that is not an affiliate of a telecommunications service provider is able to provide telecommunications services in such a manner that end-users have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the end-user's designation from among two (2) or more telecommunications service providers.

"Directory" means the published listing of all telephone numbers, other than those requested by the end-user not to be published, for all end-users in a service area regardless of the local exchange telecommunications service provider selected by the end-user.

"Disconnection of service" means an arrangement made by the end-user or TSP for permanently discontinuing service by terminating the contract and/or removing the telephone service from the end-user's premises.

"Eligible telecommunications carrier" (**"ETC"**) means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29 and 47 U.S.C. §§ 254 and 214(e).

"End-user" means the customer to whom a telephone number is assigned.

"Enhanced service" means a service that is delivered over communications transmission facilities that: (1) change the content, format, code or protocol of transmitted information; (2) provide the customer new or restructured information; or (3) involve end-user interaction with information stored in a computer.

"Exchange" means a geographic area established by an incumbent LEC as filed with and/or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs. It may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

"Executing carrier" means any telecommunications carrier that effects a request that an end-user's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

"Facilities" means all the plant and equipment of a telecommunications service provider including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"Facilities-based provider" means an entity providing telecommunications services predominately through the use of its own facilities, including UNEs, and other technologies capable of meeting all local telecommunications service requirements while complying with the Commission's quality of service rules.

"FCC" means the Federal Communication Commission.

"Filed" means to present a document to and have it accepted by the Office of the Court Clerk of the Oklahoma Corporation Commission.

"Incumbent Local Exchange Company" (**"incumbent LEC"**) means, with respect to an area or exchange(s), any telecommunications service provider furnishing local exchange service in such area or exchange(s) within the State of Oklahoma on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"ILEC" means an Incumbent Local Exchange Company.

"Individual Case Basis" (**"ICB"**) means a condition, pursuant to the provisions of the tariff, in which the rates and charges for an offering are developed based on the circumstances of each customer.

"Initial Tariffs" means the first tariffs approved after, or in conjunction with, the granting of a Certificate of Convenience and Necessity.

"Interexchange telecommunications carrier" (**"IXC"**) means any person, firm, partnership, corporation, or other entity, except incumbent LECs, resellers, or OSPs engaged in furnishing regulated interexchange telecommunications services under the jurisdiction of the Commission.

"Interexchange telecommunications service" means telecommunications service provided between locations within different certified telephone exchange service areas.

"InterLATA call" means any call which is originated in one LATA and terminated in another LATA.

"Interstate call" means any call which is originated in one state and terminated within the boundaries of another state.

"IntraLATA call" means any call which is originated and terminated within the boundaries of the same LATA, regardless of whether such call crosses LATA boundaries prior to reaching its termination point.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for Internet service that is in addition to the access connection charge.

"Intrastate call" means any call which is originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call crosses state boundaries prior to reaching its termination point.

"LATA" means Local Access and Transport Area as defined in the Code of Federal Regulations, Title 47 Part 53.3.

"Less than Minimum Service Provider" means a CLEC which offers local exchange service that does not meet all minimum service standards, as set forth in OAC 165:55-13-10.

"Letter of Agency" (**"LOA"**) means the written authorization that gives permission to change the customer's telecommunications services and/or the customer's provider or to share that customer's network information with representatives or associates of the telecommunication company or telecommunications carrier.

"Local Exchange Service" means a switched and/or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local interconnection arrangements" means a contract for interconnection, including resale, as governed by section 251 of the Communications Act of 1934 (47 U.S.C. § 251), as amended, the Federal Communication Commission rules and the rules of the Commission.

"Local operator services" means the automatic or live assistance provided to a customer, which enables the customer to arrange for billing or completion of a local call. Local operator services may include, but are not limited to, line status verification, busy line verification, emergency interrupt, and calls to emergency numbers (e.g., 911).

"Long run incremental cost" (**"LRIC"**) means the long run forward-looking additional cost caused by providing all volume-sensitive and volume-insensitive inputs required to provide the total demand associated with a service or network element offered as a service, using economically efficient current technology efficiently deployed. LRIC also equals the cost avoided, in the long run, when a service or network element offered as a service is no longer produced. LRIC excludes costs directly and solely attributable to the production of other services or network elements offered as services, and unattributable costs which are incurred in common for all the services supplied by the firm. The long run means a period long enough so that the cost estimates are based on the assumption that all inputs are variable.

~~**"Near reservation"** means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner of Indian Affairs upon recommendation of~~

~~the local Indian Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner of Indian Affairs shall designate each area and publish the designations in the Federal Register.~~

"Network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including end-user numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service.

"Network interface" means the normal demarcation point separating the telecommunications service provider's regulated facilities and equipment from the unregulated facilities, equipment, or systems provided by the end-user. The provision of the network interface is the responsibility of the telecommunications service provider.

"New service provider" means a service provider that did not bill the end-user for service during the service provider's last billing cycle. This definition excludes service providers which bill the customer solely on a per transaction basis.

"New services" means any service(s), except access services or interconnection services, for which a rate element does not presently exist, which does not replace an existing service, and that enlarges the range of service options available to end-users.

"Nonbasic service" means any telecommunication service not included in basic local service, local interconnection arrangements and/or access service.

"Non-deniable charge" means a charge for those not-regulated services for which nonpayment shall not result in a disconnection of basic, local service.

"Not-regulated service" means the offering of service(s) where the rates and/or terms and conditions for such service(s) are not-regulated by the Commission. These would include any interstate services offered FCC tariffs or rules, and any taxes, fees and surcharges applicable to those services, as well as any intrastate services that are not regulated by the Commission.

"Number Portability" means the ability of end-users of telecommunications services to retain, within the same wire center, their existing telecommunications number without impairment of quality, reliability or convenience when switching from one telecommunications service provider to another.

"Oklahoma Plan" means an alternative regulation plan which conforms to Part 11 of Subchapter 5 of this Chapter.

"Packaging" means the sale of two or more services offered by or in conjunction with the services of a TSP to a customer of a TSP for a single price.

"Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

"Rates" means all charges assessed by a TSP or IXC.

"Regulated telecommunications service" means the offering of telecommunications service(s) directly to the public where the rates and/or terms and conditions for such service(s) are regulated by the Commission. These would include services offered from intrastate tariffs approved by the Commission including any taxes, fees and surcharges applicable to those services, and interstate services when the Commission is enforcing the FCC slamming rules.

~~**"Reservation"** means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.~~

"Rural telephone company" means a LEC to the extent that such entity:

(A) Provides telecommunications service to any local exchange study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the U.S. Bureau of Census; or,

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the U.S. Bureau of Census as of August 10, 1993.

(B) Provides local exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides local exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(D) Has less than fifteen percent (15%) of its access lines in communities of more than 50,000 on the date of enactment of the Federal Telecommunications Act of 1996.

"RUS" means the Rural Utility Services.

"Service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Service shall not include the provision of nontelecommunications services, including but not limited to the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment and billing and collection, nor does it include the provision of mobile telephone service, enhanced services and other not-regulated services.

"Service interruption" means service outage, total failure, or complete loss of service due to a trouble condition in the facilities of a telecommunications service provider.

"Service provider"means any entity that offers a product or service to a customer, the charge for which appears on the bill of the billing agent. This definition shall include only providers that have continuing relationships with the end-user

that will result in periodic charges on the end-user's bill, unless the service is subsequently canceled.

"Service territory" means a geographic area served by a telecommunications service provider.

"Slamming" means the unauthorized switching of an end-user's telecommunications service provider or presubscribed IXC.

"Submit" means to present a document to the Director of the Public Utility Division.

"Submitting carrier" means any telecommunications carrier that requests on the behalf of an end-user that the end-user's telecommunications carrier be changed and seeks to provide retail services to the end-user. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

"Supported Services" means services identified in 47 CFR part 54, OAC 165:55-13-10 or OAC 165:59, as amended from time to time, for which a wireless ETC receives support from the federal USF, OUSF or OLF, or as otherwise may be ordered by the Commission.

"Suspension of service" means an arrangement made at the initiative of the TSP for temporarily discontinuing service without terminating the contract or removing the telephone service from the customer's premises.

"SWBT" means Southwestern Bell Telephone Company, L.P. d/b/a SBC Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which offered and the charges therefore, which have been filed with and approved by the Commission.

"Telecommunications" means the transmission, between or among points specified by the user of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications carrier or Company" means a telecommunications service provider (**"TSP"**) or an interexchange telecommunications carrier ("IXC").

"Telecommunications service provider" (**"TSP"**) means all authorized providers of local exchange service, whether an incumbent LEC or a competitive LEC.

"Telephone bill" means a billing agent's invoice, issued in compliance with this Chapter, for products or services rendered by itself and by a service provider(s), if any.

"Telephone company" or **"Company"** means any person, firm, partnership, corporation, or other entity engaged in furnishing regulated local exchange telephone services under the jurisdiction of the Commission on July 1, 1995, pursuant to a Certificate of Convenience and Necessity or grandfathered authority.

"Terms of Service" means rates, charges and terms and conditions for regulated services that a TSP or IXC elects to post, in a searchable format, on a publicly availability website.

"Transitional commitments" means the commitments made by an ILEC in the State of Oklahoma pursuant to Part 9 or Part 11 of Subchapter 5 of this Chapter.

"Tribal Land" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), Indian allotments; Hawaiian Home Lands-areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et.seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in 47 CFR §54.412.

"Unauthorized carrier" means any telecommunications carrier that submits a change, on behalf of an end-user, in the end-user's selection of a provider of telecommunications service but fails to obtain the end-user's authorization verified in accordance with the procedures specified in this Chapter.

"Unauthorized change" means a change in an end-user's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Chapter.

"Unbundled network element" (**"UNE"**) means a component of the ILEC's telecommunications network utilized to provide telecommunications services.

"Unbundling" means to provide to any telecommunications service provider nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory.

"Unfilled application" means a firm application by an end-user for new service or a different class of service which has not yet been accomplished.

"Wire Center" means a geographic area normally served by a central office.

"Wireless Telecommunications Carrier" means a Commercial Mobile Radio Service provider as defined by the FCC, including 47 CFR §20.3, as may be amended from time to time.

"Zone" means a service territory described as such by an incumbent LEC.

SUBCHAPTER 13. OPERATING AND MAINTENANCE REQUIREMENTS

PART 3. SERVICE STANDARDS

165:55-13-14.1. Tribal Land Link-up program

(a) Each telecommunications service provider who has been designated as an ETC and is receiving high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file tariffs or post Terms of Service which offer a Tribal Land Link-up assistance program. This program shall offer:

(1) ~~For a qualifying low income end-user who is not a resident of reservation or near reservation lands, a reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at an end-user's principal place of residence. This program will offset one half of the initial~~

~~hook-up fee or $30.00, whichever is less. Eligibility criteria for this program shall be the same as OAC 165:59-9-3.~~

~~(2)~~ For an eligible resident living on ~~or near a reservation~~ Tribal land, a reduction ~~of up to $70.00, in addition to the reduction in (1) above to cover 100% of the charges between $60.00 and $130.00 for installation of initial service for the end-user's principal place of residence. These charges shall include facilities-based charges associated with the extension of lines or construction of facilities needed to initiate service.~~ consistent with 47 CFR §54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

(~~3~~2) A deferred payment ~~plan for the charges assessed for initiating service for which the end-user does not pay interest. The interest charges not assessed to the end-user shall be for connection charges up to $200.00 that are deferred for a period not to exceed one year. Charges~~schedule consistent with 47 CFR §54.413(a)(2) may be offered to the subscriber. The charge assessed for initiating service ~~include any charges that the telecommunications service provider customarily assesses to connect end-users to the network. These charges do not include any security deposit requirements~~ shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

(b) A qualifying low-income end-user ~~who is a resident of reservation or near reservation lands~~ living on Tribal land may choose one of both of the programs set forth in (a)(1) and (a)(2) above of this Section. ~~An eligible resident living on or near a reservation may participate in the programs set forth above~~.

(c) A telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Tribal land Link-up assistance was provided previously.

(d) An eligible telecommunications service provider, who has been designated as an ETC and is receiving federal high-cost support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall publicize the availability of Link-up support throughout their designated ETC service area in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Tribal land Link-up shall be the same as the criteria established for Lifeline in accord with OAC 165:59-9-3.

SUBCHAPTER 23. WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER

PART 1. GENERAL PROVISIONS

165:55-23-17. Link-up program on Tribal Lands

(a) Each wireless ETC providing service on Tribal Land and receiving High Cost Support on Tribal lands, pursuant to 47 CFR Part 54, Subpart D, shall file informational tariffs that offer a Link-up assistance program. This program shall offer:

(1) For an eligible resident living on Tribal Land, a reduction ~~of up to 100% of the first $100 in charges for installation of initial service billed at the end-user's principal place of residence.~~ consistent with 47 CFR §54.413(a)(1). The charge from which the reduction is made shall not exceed the customary charge for commencing telecommunications service for a single telecommunications connection by customers initiating non-Lifeline service with the wireless ETC.

(2) A deferred payment ~~plan for the charges assessed for initiating service for which the end-user does not pay interest. The interest charges not assessed to the end-user shall be for connection charges up to $200.00 that are deferred for a period not to exceed one year. Charges~~schedule consistent with 47 CFR §54.413(a)(2). The charge assessed for initiating service may include any charges that the wireless ETC customarily assesses to connect end-users~~. These charges do~~,but may not include any security deposit requirements.

(b) A qualifying low-income end-user who ~~is a resident of a reservation or resides near reservation lands~~resides on Tribal land may choose one or both of the programs set forth in (a)(1) and (a)(2) above of this Section. ~~An eligible resident living on or near a reservation may participate in the programs set forth above.~~

(c) A wireless ETC that is receiving federal High-cost support on Tribal land, pursuant to 47 CFR Part 54, Subpart D, shall allow an end-user to receive the benefit of the Link-up program for a second or subsequent time only for service billed at a principal place of residence with an address different from the residence address at which the Link-up assistance was provided previously.

(d) A wireless ETC shall publicize the availability of Link-up support throughout its designated service area, in a manner reasonably designed to reach those likely to qualify for the support.

(e) The end-user qualification criteria for Link-up shall be the same as the criteria established for Lifeline in ~~accord~~accordance with OAC 165:59-9-3.

[OAR Docket #14-514; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION CHAPTER 59. OKLAHOMA UNIVERSAL SERVICE

[OAR Docket #14-515]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
165:59-1-4. Definitions [AMENDED]

AUTHORITY:
Article IX, § 18 Okla. Const., 17 Okla. Stat. §§ 131 et seq.; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
February 14, 2014, through February 26, 2014
PUBLIC HEARING:
February 5, 2014, February 21, 2014, and March 4, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments and additions to existing Commission rules in Chapter 59 were needed to better define certain terms.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:59-1-4. Definitions

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

"Access line" means the facility provided and maintained by a telecommunications service provider which permits access to or from the public switched network.

"Administrator" means the person(s) or entity(ies) responsible for administering the Oklahoma Universal Service Fund and/or the Oklahoma Lifeline Fund.

"Bona fide request" means a written request delivered to a telecommunications carrier requesting services provided for in this Chapter.

"Carrier of Last Resort" means a telecommunications service provider as designated by the Commission pursuant to OAC 165:55-17-29.

"Commercial mobile radio service provider" means a carrier who provides wireless telecommunications services.

"Commission" means the Oklahoma Corporation Commission.

"Competitive local exchange carrier" (**"Competitive LEC"** or **"CLEC"**) means, with respect to an area or exchange, a telecommunications service provider that is certificated by the Commission to provide local exchange services in that area or exchange within the State of Oklahoma after July 1, 1995.

"Competitively neutral" means not advantaging or favoring one person over another.

"Customer" or **"Subscriber"** means any person, firm, partnership, cooperative corporation, corporation or lawful entity that receives telecommunications services.

"Eligible healthcare entity" means a not-for-profit hospital; county health department; city-county health department; not-for-profit mental health and substance abuse facility as defined in this Section; and federally qualified health center in Oklahoma. Eligible healthcare entity also includes telemedicine services provided by the Oklahoma Department of Corrections at facilities identified in 57 O.S. § 509.

"Eligible local exchange telecommunications service provider" means any incumbent LEC that was designated as an eligible local exchange telecommunications service provider pursuant to OAC 165:55-17-29 and any telecommunications service provider that has been determined to be an eligible local exchange telecommunications service provider pursuant to OAC 165:59-3-14.

"End-User Common Line Charge" means the flat rate monthly interstate access charge required by the Federal Communications Commission that contributes to the cost of local service.

"Enhanced service" means a service that is delivered over communications transmission facilities and that uses computer processing applications to:

(A) Change the content, format, code, or protocol of transmitted information;

(B) Provide the customer new or restructured information; or,

(C) Involve end-user interaction with information stored in a computer.

"Enhanced service provider" means a provider of enhanced service.

"Exchange" means a geographic area established by an incumbent local exchange telecommunications provider as filed with or approved by the Commission for the administration of local telecommunications service in a specified area which usually embraces a city, town, or village and its environs and which may consist of one or more central offices together with associated plant used in furnishing telecommunications service in that area.

"Facilities" means all the plant and equipment of a telecommunications service provider, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the regulated business of any telecommunications service provider.

"FCC" means the Federal Communications Commission.

"Federally Qualified Health Center ("FQHC")" means an entity which

(A) is receiving a grant under section 330 of the Public Health Service Act (PHS) [42 U.S.C. 254b], or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of such Act [42 U.S.C. 254b]; or

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary of the Department of Health and Human Services ("HHS") to meet the requirements for receiving such a grant; or

(C) was treated by the Secretary, for purposes of part B of Section 330, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

"Free of Charge" means 100% discount off the amount of the tariffed rate or charge, recurring and nonrecurring, directly attributable to the telecommunications line or wireless connection, used to provide the Special Universal Service. All applicable taxes and regulatory fees shall apply to the undiscounted rate or charge, but shall not be recoverable from the OUSF.

"High cost area" means an area where actual costs exceed Commission- or Legislatively-authorized rates for Primary Universal Services.

"Hospital" means a healthcare entity that has been granted a hospital license by the Oklahoma Department of Health for that particular location.

"Incumbent local exchange telecommunications service provider" or **"Incumbent local exchange carrier"** or **"ILEC"** means, with respect to an area or exchanges, any telecommunications service provider furnishing local exchange service in such area or exchanges within this state on July 1, 1995, pursuant to a certificate of convenience and necessity or grandfathered authority.

"Internet" means the international research-oriented network comprised of business, government, academic and other networks.

"Internet Subscriber Fee" means any fee that is paid to a telecommunications service provider for internet service that is in addition to the access connection charge.

"Lifeline Service Program" means the federal and state program designed to keep low-income subscribers on the telecommunications network.

"Local exchange telecommunications service" means a regulated switched or dedicated telecommunications service which originates and terminates within an exchange or an exchange service territory. Local exchange telecommunications service may be terminated by a telecommunications service provider other than the telecommunications service provider on whose network the call originated. The local exchange service territory defined in the originating provider's tariff shall determine whether the call is local exchange service.

"Local exchange telecommunications service provider" or **"telecommunications service provider"** or **"TSP"** means a company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service.

"Network" includes a telecommunications service provider's or telecommunication carrier's facilities used to originate and terminate traffic.

"Not-for-profit hospital" means:

(A) A hospital located in this state which has been licensed as a hospital at that location pursuant to Section 1-701 et seq. of Title 63 of the Oklahoma Statutes for the diagnosis, treatment, or care of patients in order to obtain medical care, surgical care or obstetrical care and which is established as exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), or

(B) A ~~not-for-profit~~ hospital located in this state which is licensed as a hospital at that location pursuant to Section 1-701 et seq. of Title 63 of the Oklahoma Statutes and is owned by a municipality, county, public trust, or the state, that is primarily funded by county, state or federal support, ~~located in this state, that is devoted primarily to the maintenance and operation of facilities~~ for the diagnosis, treatment, or care of patients ~~admitted overnight or longer~~ in order to obtain medical care, surgical care or obstetrical care.

"Not-for-profit mental health and substance abuse facility" means facilities operated by the Oklahoma Department of Mental Health and Substance Abuse Services ("ODMHSAS"), or certified by the ODMHSAS, as a Community Mental Health Center (OAC 450:17), Community Based Structure Crisis Center (OAC 450:23) or Community Comprehensive Addiction Recovery Center (OAC 450:24).

"Oklahoma High Cost Fund" or **"HCF"** means the fund established by the Commission in Cause Nos. PUD 950000117 and 950000119.

"Oklahoma Lifeline Fund" or **"OLF"** means the fund established and required to be implemented by the Commission pursuant to 17 O.S. ~~Supp. 1997~~ § 139.105.

"Oklahoma Universal Services" means Primary Universal Service and Special Universal Services as defined herein.

"Oklahoma Universal Service Fund" or **"OUSF"** or **"Fund"** means the fund established and required to be implemented by the Commission pursuant to 17 O.S. § 139.106.

"OneNet" means statewide Internet and technology provider operated by the Oklahoma State Regents for Higher Education for the purpose of meeting the mission critical technology needs of Oklahoma's education, research, healthcare and public service communities.

"Person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character, or any other entity.

"Primary Universal Service" means an access line and dial tone provided to the premises of residential or business

customers which provides access to other lines for the transmission of two-way switched or dedicated communication in the local calling area without additional, usage-sensitive charges, including:

(A) A primary directory listing;

(B) Dual-tone multifrequency signaling;

(C) Access to operator services;

(D) Access to directory assistance services;

(E) Access to telecommunications relay services for the hearing impaired;

(F) Access to nine-one-one service where provided by a local governmental authority or multijurisdictional authority; and,

(G) Access to interexchange long distance services.

"Public library" means a library or library system that is freely open to all persons under identical conditions, and which is supported in whole or in part by public funds. Public Libraries shall not include libraries operated as part of any university, college, school museum, the Oklahoma Historical Society or county law libraries.

"Public school" means all free schools supported by public taxation, and shall include grades kindergarten through twelve.

"Public school building wherein classrooms are contained" means a building owned, leased or rented with public funds and accredited by the Oklahoma State Department of Education as a public school, which contains one or more classrooms utilized for student instruction for kindergarten through twelfth grade, and where internet access is utilized for student instruction.

"Regulated telecommunications service" means the offering of telecommunications for a fee directly to the public where the rates for such service are regulated by the Commission. Regulated telecommunications service does not include the provision of nontelecommunications services, including, but not limited to, the printing, distribution, or sale of advertising in telephone directories, maintenance of inside wire, customer premises equipment, and billing and collection service, nor does it include the provision of wireless telephone service, enhanced service, and other unregulated services, including services not under the jurisdiction of the Commission, and services determined by the Commission to be competitive.

"Reimbursement" means remuneration from the OUSF pursuant to OAC 165:59-3-60 for Primary Universal Services and OAC 165:59-7 for Special Universal Services. Reimbursement also means remuneration from the Oklahoma Lifeline Fund pursuant to OAC 165:59-9, for the Lifeline Service Program.

"Service territory" means a geographic area served by a telecommunications service provider.

"Special Universal Services" means:

(A) One incoming, toll-free phone number and up to a total of five access lines, provided free of charge to a not-for-profit hospital, public school building wherein classrooms are contained, public library, or county seat, in order to allow incoming, toll-free calls from any location within the geographic area of Oklahoma served by said entity.

(B) One access line, with the ability, to connect to an Internet service provider in accordance with 17 O.S. §139.109(C)(4), provided free of charge to a public school or a public library within the State, as set forth in 17 O.S. § 139.109 and Subchapter 7 herein.

(C) One telecommunications line or wireless connection, provided free of charge to an eligible healthcare entity within the State, sufficient for providing such telemedicine services as the healthcare entity is equipped to provide.

"State" means the State of Oklahoma.

"Tariff" means all or any part of the body of rates, tolls, charges, classifications, and terms and conditions of service relating to regulated services offered, the conditions under which such services are offered and the charges for services, which have been filed with the Commission and have become effective.

"Telecommunications" means the transmission, between or among points specified by the user, of voice or data information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications Act of 1996" means the Federal legislation cited as 47 U.S.C. Section 151 et. seq.

"Telecommunications carrier" means a person that provides telecommunications service in this state.

"Telecommunications service" means the offering of telecommunications for a fee.

"Telemedicine" means the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine, nor does it include administrative applications such as billing, contracted non-clinical services, or security systems.

"U.S.C." means United States Code.

"Universal service area" or **"service area"** means a geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the FCC and the Commission, after taking into account recommendations of a Federal-State Joint Board instituted under 47 U.S.C. Section 410(c), establish a different definition of service area for such company.

"Unregulated services" means telecommunications services not regulated by the Commission.

"Wire center" means a geographic area normally served by a central office.

[OAR Docket #14-515; filed 6-24-14]

TITLE 165. CORPORATION COMMISSION
CHAPTER 65. WATER SERVICE UTILITIES

[OAR Docket #14-513]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:65-1-1. Purpose [AMENDED]
165:65-1-2. Definitions [AMENDED]
165:65-1-5. Relief from rules of this Chapter and rules by utilities [AMENDED]
Subchapter 3. Plant, Equipment, and Facilities
165:65-3-2. Extent of system in which utility shall maintain service [AMENDED]
165:65-3-5. Sale or disposal of facilities by utility [AMENDED]
165:65-3-5.1. Acquisition, control, or merger of domestic public water utilities [AMENDED]
Subchapter 5. Water Quality, Testing, and Pressure
165:65-5-2. Water analyses and records [AMENDED]
Subchapter 7. Meter Requirements and Testing
Part 1. General Provisions
165:65-7-1. Meter requirements and testing [AMENDED]
165:65-7-2. Adjustment of bills [AMENDED]
165:65-7-4. Information as to reading of meters [AMENDED]
Part 3. Testing
165:65-7-14. Replacement meters [AMENDED]
Subchapter 9. Records, Reports, and Filing Requirements
165:65-9-1. Retention, location and availability of records; contact persons [AMENDED]
165:65-9-2.1. Restoration of service [AMENDED]
165:65-9-4. Records of service complaints; investigation [AMENDED]
165:65-9-7. Filing of rate schedules, contracts, agreements, and rules [AMENDED]
165:65-9-10. Accounting [AMENDED]
165:65-9-11. Relief from rate increase requirements [AMENDED]
Subchapter 11. Customer Service
Part 1. Deposits and Billing
165:65-11-1. Information on bills [AMENDED]
165:65-11-3. Deposits and interest [AMENDED]
Part 3. Disconnection of Service
165:65-11-13. Notice of disconnection of service [AMENDED]
165:65-11-14. Commission notification procedure for elderly and/or consumers with disabilities [AMENDED]
165:65-11-15. Delays to disconnection of residential service [AMENDED]
Subchapter 13. Promotional Policies and Practices
165:65-13-5. Advertising expenditures permitted [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; Article IX, § 18 Okla. Const., 17 Okla. Stat. §151 *et seq.*; Corporation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 21, 2013 through February 6, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments and additions to existing agency rules in Chapter 65 were needed to allow for electronic notification in certain circumstances, to offer flexibility to water utilities whose size makes it cost prohibitive to keep an office open in all service areas five days per week, to allow water utilities additional time to comply with certain reporting requirements, to allow small water utilities an opportunity to increase their rates by 15% without the expense of filing a more extensive application, to alter how interest on consumer deposits is calculated, to standardize legal citations to the Oklahoma Administrative Code, and to make other non-substantive changes.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

165:65-1-1. Purpose

The rules in this Chapter are intended to define good business practice under normal conditions~~,~~ to ~~insure~~ensure safe, adequate and reliable service~~, and to ensure~~as well as fairness to the public and to the utility.

165:65-1-2. Definitions

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

"Affiliate" means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct a direction of the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

"Attorney General" means the Oklahoma Attorney General.

"Business day" means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Commission" means the Oklahoma Corporation Commission.

"Complaint" means an oral, electronic or written communication by an interested party requesting an investigation or corrective action regarding the provision of water services.

"CSD" means the Consumer Services Division of the Oklahoma Corporation Commission.

"Consumer" means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of water service. Any reference to a "customer" or "end-user" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

"Corporation Commission" means the Oklahoma Corporation Commission.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Distribution" or "Distribution service" means the transportation of water services through a utility's distribution facilities bundled with any one or more of the services of billing, metering, customer service and similar services.

"Distribution main" means a distribution line that serves as a common source of supply to service lines.

"Distribution system" means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives water from any water supply source for service to one or more consumers.

"Electronic notification" means any automated communication received by e-mail, phone, text message or fax.

"Gallon" means one U.S. Standard gallon, containing 231 cubic inches and weighing 8.333 pounds.

"Interested party" means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of water services.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered or banks are closed, such as Columbus Day.

"Meter" means any device that measures the quantity of water transferred from one party to another.

"Pipe" means any tubing used in the gathering, transmission or distribution of water which meets the specifications of the DEQ.

"Premises" means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where water service is furnished to a consumer.

"Prudency review" means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

"P.s.i.g." means pounds per square inch gauge.

"PUD" means the Public Utility Division of the Oklahoma Corporation Commission.

"Regulator" means a device used to reduce the water pressure.

"Residence" means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

"Service line" means a line that branches off a distribution main or distribution line in order to transport water from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

"Subdivision" means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

"Tariff" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Temporary service" means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing water service filed with the Commission and approved by the Director of the Public Utility Division.

"Uniform System of Accounts (USOA)" applicable to water utilities published by the National Association of Regulatory Utility Commissioners (NARUC) or other uniform system acceptable to the Commission may be adopted by a utility.

"Utility" means and includes any corporation, association, company, individual, and the trustees, lessees, or receivers, successors or assigns of any of them, (but shall not include a city, town or other body politic) that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, for the transmission and distribution of water by pipeline.

165:65-1-5. Relief from rules of this Chapter and rules by utilities

(a) Whenever compliance with any of the rules requirement in this Chapter would result in unreasonable hardship or excessive expense to the utility or the consumer, the Commission may waive or modify the requirements of this Chapter, consistent with federal and/or state law, upon application of any interested party and after notice and hearing. Such application shall set forth the specific rule or rules sought to be waived and the reasons for requesting such waiver.

(b) A utility may decline to serve a consumer or prospective consumer until ~~he~~ such person has complied with all applicable state and municipal regulations governing water service and this Chapter.

(c) A utility may prescribe rules and regulations for furnishing service not inconsistent with this Chapter. No such rules shall be valid until filed with and approved by the Commission. A utility may refuse or discontinue service for noncompliance with its service rules only in cases where its rules as approved specifically so provide. Service shall not be refused to a consumer where a balance is owed by a previous consumer at the same location.

(d) For good cause shown, the Commission may grant temporary relief from the requirements of this Chapter pending hearing.

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:65-3-2. Extent of system in which utility shall maintain service

(a) Each utility shall operate and maintain in safe, efficient, and proper condition all the facilities and instrumentalities used in connection with the transmission, distribution, regulation, measurement, and delivery of water to any consumer up to and including the point of delivery into the piping owned by the consumer.

(b) A water utility may operate and maintain any privately owned lines utilized by the utility for transmission and distribution of water, if granted such permission by the owner of the private line.

(c) No residential meter shall be installed inside a residence.

(d) The meter shall be set at the nearest feasible point to the property or curb line of the consumer.

(e) All mains, water lines, pipes, and equipment owned by the consumer from the outflow side of the meter shall be maintained in a safe, efficient, and proper condition by and at the expense of the consumer. The utility shall have the right to inspect a new installation prior to furnishing service and the right to inspect an existing installation under reasonable conditions. Service may be refused or discontinued until the provisions of this Chapter are complied with.

(f) Each water utility, for each locality which it serves, shall provide contact information for an office or agent where the consumer may pay bills and conduct any other necessary business with a representative of the utility. Such office or agent shall be ~~open for business~~available to the consumer during reasonable business hours at least five (5) days per week.

(g) The utility shall provide in the telephone directory for each area it serves a telephone listing by which the utility personnel can be notified at any time during a twenty-four (24) hour day period of any utility service deficiency or emergency. If utility personnel are not available to accept the call and the call is recorded, the utility shall contact the consumer to confirm receipt of the call within two (2) hours.

165:65-3-5. Sale or disposal of facilities by utility

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a water utility's jurisdictional plant or operating system or the transfer of some or all of a water utility's customers to a person or entity that is not an affiliate of such utility, shall, at least ninety (90) days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with OAC 165:5-7-1, with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Department of Environmental Quality. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing water service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

(1) The names of the parties to the transaction and the addresses of their respective principal places of business;

(2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;

(3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;

(4) A narrative description of how the transferred customers will continue to receive safe and reliable water service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;

(5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;

(6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide water service to the transferred customers after the effective date of the transaction;

(7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for the Public Utility Division and the Consumer Services Division and who will be primarily responsible for:

(A) Customer service issues;

(B) Repair and maintenance issues;

(C) Customer complaint issues;

(D) Authorizing and furnishing refunds to customers;

(E) Tariff issues; and

(F) Receiving notices related to causes docketed at the Commission;

(8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;

(9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;

(10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial

ability to provide safe and reliable water utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;

(11) The information required by OAC 165:65-11-3(o) and (q) and an affirmation that the records and reports required by OAC 165:65-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to OAC 165:65-9 and OAC 165:65-11-3(o) and (q), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is, fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for water service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to OAC 165:65-9-7, reflecting the changes or additions to rates and/or terms of service to the Public Utility Division for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to OAC 165:65-1-5.

(i) This section does not apply to transactions that involve discontinuance of service pursuant to OAC 165:65-11-10 or 165:65-11-11 or routine retirement or replacement of facilities.

165:65-3-5.1. Acquisition, control, or merger of domestic public water utilities

(a) An original and eight (8) copies of an application for approval, consistent with OAC 165:5-7-1, shall be filed with the Commission's Office of the Court Clerk no less than forty-five (45) days prior to the effective date of any of the following transactions:

(1) acquisition of all or any controlling interest in a domestic public utility,

(2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Department of Environmental Quality. The application shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such

acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application;

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore; and

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic water utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) days after the conclusion of such hearing, entered its order approving the merger or other acquisition.

SUBCHAPTER 5. WATER QUALITY, TESTING, AND PRESSURE

165:65-5-2. Water analyses and records

(a) The result of all tests made by the DEQ and tests made by the utility shall be kept on file in the office of the utility <u>and made available</u> for public inspection for a period of at least three (3) years. These records shall show when, where, and by whom the test was made. The standard methods of testing specified by the DEQ shall govern the collection and examination of the water tested.

(b) Whenever tests disclose the presence of bacillus coli, or any bacterial count, the utility must immediately take all steps necessary to make its water supply comply with the water quality standards prescribed by the DEQ.

(c) The water supply system, including wells, pumping equipment, treatment works, mains, and service pipes shall be maintained at all times in a sanitary condition.

(d) No physical connection between the water distribution system of a utility and that of any other water supply or system shall be permitted, unless each water supply and the inter-connection thereof is approved by the DEQ.

(e) The growth of algae in the water at the source of supply in reservoirs or other basins, and in the water mains shall be controlled by proper treatment.

(f) Any driven or drilled well furnishing water for domestic purposes shall be equipped with suitable casing and well head equipment, and the utility shall maintain the tightness of the

well at the surface of the ground sufficient to prevent the infiltration of any water other than that produced from the water bearing strata tapped by the well in accordance with the rules of the DEQ.

(g) The utility shall follow all DEQ rules, except where the Commission rules provide a higher standard.

SUBCHAPTER 7. METER REQUIREMENTS AND TESTING

PART 1. GENERAL PROVISIONS

165:65-7-1. Meter requirements and testing

(a) No service water meter shall be allowed in service which has an incorrect gear ratio or dial train, or is in any way mechanically defective, or shows an average error in measurement in excess of two percent (2%), plus or minus, when registering water at stream flow equivalent to approximately one-tenth (1/10), one-half (~~$\frac{1}{2}$~~1/2), and full normal rating under average service pressure. When adjustment is necessary, such adjustment shall be made as accurately as practicable for average rate of flow under actual conditions of installation.

(b) For purposes of application, the average error of a water meter is defined as one-third (1/3) of the algebraic sum of the errors when tested in accordance with (a) of this Section.

165:65-7-2. Adjustment of bills

(a) **Allowable error in adjustment of charges.** Whenever any water meter is tested by the Commission or the utility at the request of the consumer to determine the accuracy with which it has been registering in service, it may be considered correct if found to have an average error of no more than two percent (2%) and no adjustment of charges shall be required unless the error is greater than two percent (2%).

(b) **Fast meters.** Whenever any water meter tested by the Commission or the utility is found to have an average error of more than two percent (2%) fast, (or in favor of the utility), the utility shall refund to the consumer the overcharge based upon the corrected meter reading for a period equal to one-half (1/2) the time elapsed since the last previous test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the overcharge shall be computed from that date.

(c) **Slow meters.** Whenever any water meter tested by the Commission or the utility is found to have an average error of more than two percent (2%) slow, (or in favor of the consumer), the utility may charge for the water consumed, but not included in bills previously rendered, based upon the corrected meter reading for a period equal to one-half (1/2) of the time elapsed since the last previous test, but not to exceed six (6) months, unless it can be established that the error was due to some cause, the date of which can be fixed with reasonable certainty, in which case the charge shall be computed from that date.

(d) **Non-registering meter.** If a meter is found not to register or to register intermittently for any period, the utility may charge for an estimated amount of water used, by averaging the amounts registered over corresponding periods in previous years, or in the absence of such information, over similar periods preceding or subsequent thereto.

(e) **Incorrect register on meter.** If a meter is found to have an incorrect register, the error shall be corrected. Where the error is adverse to the consumer the utility shall refund to the consumer the excess charged for the water incorrectly metered for the period of time the meter was used in billing the consumer. Where the error is adverse to the company, the utility may charge the consumer the undercharge for the water incorrectly metered for the period of time the meter was used in billing the consumer, and if necessary the utility may receive payment in installments over a reasonable period of time.

(f) **Inaccurate usage amount.** Bills rendered to the consumer by the utility with inaccurate usage shall be adjusted with the next succeeding bill. The utility shall advise the consumer of the error prior to the next bill being rendered. However, the utility may make a special reading without charge to the consumer and render a corrected bill to the consumer.

(g) **Exception.** This Section shall not apply to routine testing and replacement of meters pursuant to OAC 165:65-7-11.

165:65-7-4. Information as to reading of meters

(a) **Meter reading records.** The meter reading records shall show:

(1) Consumer's name, address, and rate schedule symbol.

(2) Identifying number or description of the meter.

(3) Meter readings and dates thereof.

(4) If the reading has been estimated.

(5) Any applicable multiplier or constant.

(b) **Information to customers.** Each utility supplying metered service shall adopt a means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, by distributing booklets or folders describing the method, or by notice to the effect that the method will be explained ~~at the office of~~by contacting the utility ~~upon application~~. Meter reading information shall be sent at least annually to each consumer.

(c) **Meter reading information.** Each service meter shall be read by the utility.

(1) **Information required.** Each service meter shall indicate clearly the number of gallons of water registered by the meter. Where water is measured in cubic feet or where the quantity is determined by calculation from recording devices, the utility upon request shall supply the consumer with sufficient information to make clear the method by which the quantity is determined.

(2) **Meter reading.** Each service meter shall be read by the utility at approximate monthly intervals at least ten (10) times a year on approximately the same day of each meter reading period. If for reasons beyond the control of the utility it is impossible to read a meter for two (2) successive monthly billing periods, it will be permissible for the utility to submit an estimated bill based upon past

service records the amount of such estimated bill to be adjusted as necessary when access to the meter is obtained.

(3) **Access to meters and other property.** The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on the consumer's premises for purpose of meter reading and maintenance. Refusal on the part of the consumer to provide reasonable access for the purpose of meter reading shall be deemed sufficient cause for discontinuance of service on the part of the utility, after notice as provided in this Chapter for discontinuance of service for nonpayment of bills. The utility shall provide its employees with a means of identification in order to claim the right of access.

(4) **Alternative reading periods.** Upon application of the utility and after notice and hearing, the Commission may authorize the reading of meters less frequently than monthly and prescribe conditions and procedures therefore.

(5) **Special meter reading request.** Whenever a special meter reading is required following a request by a consumer, the utility shall not make a charge for the special meter reading, whether or not its applicable tariff authorizes a charge for a special meter reading, unless the consumer has requested and received special meter reading within the previous twelve (12) month period.

PART 3. TESTING

165:65-7-14. Replacement meters

(a) A request from a consumer for replacement of the service meter on his premises shall be deemed a request for the test of the meter pursuant to OAC 165:65-7-12.

(b) The utility shall make no charge for initial connection of water service for a consumer except the charges specified in the approved tariffs and rules of service of the utility; except that for each disconnection and reconnection of service for the same consumer at the same location within twelve (12) months after a previous connection of service, the utility may make a charge prescribed in its approved tariffs or Rules of Service.

SUBCHAPTER 9. RECORDS, REPORTS, AND FILING REQUIREMENTS

165:65-9-1. Retention, location and availability of records; contact persons

(a) **Record retention.** Unless otherwise specified herein, all records required by the rules in this Chapter shall be preserved by the utility in the form and for a period of time not less than two (2) years and shall be available for examination by the Commission or its representatives.

(b) **Record location.** All records required by this Chapter shall be kept within Oklahoma at the office or offices of the utility and shall be open for examination by the Commission or its representatives; provided that if the general office of the utility is located outside of Oklahoma, the records may be kept at the general office. Each utility shall maintain records in such detail that the cost of property located and business done in the State of Oklahoma can be accurately and readily ascertained, and the utility shall make available any such records for examination by the Commission or its authorized representative. Each utility shall notify the Commission as to the location of the office or offices at which the various classes of records are kept and shall file with the Commission such reports as the Commission may from time to time require.

(c) **Submetering records.** In the event of the use of submetering, all submetering records shall be retained for a period of two (2) years and shall be available for inspection by the Commission, the affected consumer and/or duly interested person or entity at a location accessible to the consumer affected by submeters.

(d) **Contact persons.** Each utility shall report to the CSD the name, title, address, and telephone number of the person who should be contacted in connection with general management duties, consumer relations and complaints, engineering operations, meter tests and repairs and emergencies during ~~non-office~~non-business hours. This information shall be furnished applicable to each operating district, town or any segment of the utility so that the CSD will be able to reach the responsible person at any time. The utility shall report any changes in the above promptly.

165:65-9-2.1. Restoration of service.

This Section establishes general parameters to ensure timely communication to the Commission, of the utility's implementation of its restoration of service plan, following an unplanned service interruption. Each water utility shall have a written restoration of service policy/plan, which shall include a communication plan to be followed during unplanned or emergency interruptions, with a current copy filed by September 30 of each year with the Director of the Commission's Consumer Services Division. This policy shall be reviewed by the utility at least annually and updated as deemed necessary and appropriate. A statement detailing all changes from the previous edition shall be filed with the Commission and included at the front of the policy on file. Each water utility shall provide and keep current, the phone number of any 24 hour emergency operations center or a list with a minimum of two individuals with 24-hour contact numbers to the Commission's Director of the Consumer Services Division. The following items are guidelines to be addressed in the policy:

(1) Assessment of the extent of the service interruption and what resources (equipment, materials, and labor) will be required to restore service. The utility should also attempt to determine the number of customers affected and the geographic extent of the service interruption.

(2) Determination as to whether or not the service restoration can be accomplished by use of in-house personnel only, or if contractors (personnel obtained from other utilities or third-party entities) will be required. The objective is to have service restored as soon as possible.

(3) Identification of priorities for service restoration, based upon emergency needs and upon ease of restoration

for the greatest number of consumers for the least expenditure of money, time and effort. Priority shall be given to any life-threatening situations known or discovered during restoration of service.

(4) Once water to installations affected with the interest of public health and safety has been restored (such as hospitals, fire and police departments, and 911 centers), service shall be restored to schools as quickly as feasible, during such time of the year that school is in session.

(5) Attempted notification of high-priority customers or major water consuming facilities who are affected by the service outage, when possible. Radio and/or television should be utilized to notify larger numbers of customers as to the type of service outage, extent of the service outage, and the expected time to restore service. Other means of notification may also be utilized, so long as the result is mass notification on an efficient, effective, and timely basis.

(6) Commission notification through the Director of the Consumer Services Division to implement the process outlined in paragraphs A through C below. The Commission notification process to the designated Consumer Services Division individual(s) may be accomplished by one or more of the following methods: business telephone and/or e-mail address during the business hours of 8:00 a.m. through 4:30 p.m. Monday through Friday, or emergency cellular telephone number after normal business hours, weekends and holidays. The notification shall consist of the following:

(A) An initial contact to notify Staff of outages which involve a major utility substation or facility, may cause a high degree of public interest or concern, or which have a duration of four (4) hours or more and involve one percent (1%) or fifty (50) customers or more, whichever is greater, of the utility's meter count.

(B) Intermediate contact to provide status reports, as deemed necessary by the utility, or as may be requested by Commission Staff.

(C) A conclusory contact detailing the results and completion of the restoration of service plan implementation.

165:65-9-4. Records of service complaints; investigation

(a) Each utility shall make a full and prompt investigation of every complaint made to it by a consumer, either directly or through the Commission. It shall keep a record of all such complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof. This record shall be open at all times for inspection by the Commission or its representatives.

(b) In the event of a dispute between the consumer and the utility respecting the accuracy of a metering device, the utility shall make such investigation as shall be required by the particular case, and report the result thereof to the consumer. In the event that the complaint is not reconciled, the utility or the consumer may make application to the Commission for review of the complaint.

(c) When a utility has been notified that a complaint regarding meter accuracy has been referred to the Commission, the questioned meter set assembly shall not be changed in any manner without prior authorization of the Commission. Violation of this provision will be considered as substantiation of the complainant's contentions.

(d) Whenever a special meter reading is required following a complaint by a consumer the utility shall not make a charge for the special meter reading whether or not its tariff authorizes a charge for a special meter reading.

(e) The utility shall provide each consumer a local telephone number and mailing address where either oral or written complaints may be received by the utility. If the utility utilizes ~~an~~ electronic ~~mailing address communication~~ notification~~, such as e-mail and/or fax machine, that~~any such address(es) shall also be provided to all consumers of the utility.

165:65-9-7. Filing of rate schedules, contracts, agreements, and rules

(a) It shall be unlawful for a utility to furnish, charge for, or receive payment for water service except strictly in accordance with a tariff or rate schedule on file with and approved by the Commission~~ on the effective date of this Chapter~~.

(b) No tariff or rate schedule shall be added, deleted, changed, closed or discontinued after the effective date of the rules in this Chapter except pursuant to order of the Commission upon application of the utility and after notice and hearing.

(c) A utility shall not demand or accept payment for service of any kind of a sum greater or less than specified in an approved tariff.

(d) A special contract or agreement other than a filed tariff under which water service is furnished to one or more consumers shall be deemed a tariff for purposes of this Section. From and after the effective date of the rules in this Chapter, no service shall be furnished pursuant to such a contract which has not been filed with and approved by the Commission. Any special contract for water service made after the effective date of the rules in this Chapter shall not become effective except after approval by order of the Commission.

(e) The utility shall maintain ~~in each local office, or~~and furnish to a member of the public on request:

(1) A copy of every tariff and rate schedule under which water service is being furnished to consumers within the area serviced by that local office or agent.

(2) A copy of the approved Water Service Utilities rules.

(3) A copy of this Chapter, and all amendments thereto.

(f) A certified copy of every franchise, agreement or permit granted a utility by any municipality shall be filed with the Commission.

(g) A utility shall not sell water to any consumer for resale, except pursuant to a tariff on file with and approved by the Commission which authorizes resale and the consumer has on file with and approved by the Commission tariffs, rate schedules rules and regulations covering such resale or is exempt by law from such requirement.

165:65-9-10. Accounting

(a) The "Uniform System of Accounts" applicable to water utilities published by the National Association of Regulatory Utility Commissioners (NARUC) or other uniform system acceptable to the PUD shall be adopted by a utility.

(b) All water utilities have multi-state operations shall maintain records in such detail that the costs of property located and business done in the State of Oklahoma in accordance with geographic boundaries can be accurately and readily ascertained.

(c) No change in or departure from the system used by the utility will be permitted except upon order of the Commission after notice and hearing.

(d) Every water utility shall file with the PUD an annual report on a form furnished by the PUD, the amount of property, revenues, expenses, taxes, depreciation, etc., utilized in or incurred from the furnishing of utility service in the State of Oklahoma. Any cost allocations necessary in developing results of operations for the State of Oklahoma separately shall be accomplished on a basis acceptable to the PUD. The annual report form may be changed by the Director of the Public Utility Division or designee upon notice being given by posting on the Commission's website the proposed changes, provided such changes must be posted no later than December 31 of the year for which the proposed changes are to be effective.

(e) The results of operations reported by each water utility in its annual report to the PUD shall be reconciled with the results of operations shown on its books, records, and in its other reports to the Commission.

(f) Each utility shall report to the PUD at the end of the utility's fiscal year, on summary sheets furnished or approved by the PUD, the book value of its utility plant. These reports and annual reports required by (d) of this Section shall be delivered to the PUD not later than ~~ninety (90)~~one-hundred twenty (120) days after the end of the fiscal year, provided that the PUD may grant an extension for good cause shown.

(g) Each utility shall make special reports at such time and in such form as the PUD may from time to time require.

165:65-9-11. Relief from rate increase requirements

(a) Class C or D water utilities, having less than $250,000 in annual gross revenue within the state, shall not be subject to the requirements of OAC 165:70-7-4 rate regulation as prescribed in Chapter 70, the general rate regulation requirements, unless a water utility proposes an increase in rates and charges which exceeds a ~~ten~~ fifteen percent ~~(10%)~~ (15%) annual increase in revenue, based on the previous twelve (12) months gross revenue generated by the existing water usage rates.

(b) A water utility may not submit more than two (2) consecutive annual submissions using the provisions of this Subchapter, nor may a water utility submit more than three (3) submissions within the most recent five (5) year period using the procedures set forth in this Subchapter.

(c) Each water utility desiring to increase its water rates pursuant to this section shall provide notice to its water customers in no less than two (2) billing cycles with the second notice being given at least sixty (60) days before the effective date of the proposed rate increase. Notice shall be made by regular mail or personal service and be included with each customer's regular bill. Notice to the water utility's customers shall include the following:

(1) Existing rate and proposed rate;

(2) Average dollar increase per customer per rate class;

(3) Percentage of total company regulated revenues increase; and

(4) The procedure necessary for a customer to petition the Commission to examine and determine the reasonableness of the proposed rate increase, pursuant to Section (h) of this Subchapter.

(d) Each water utility desiring to increase its water rates pursuant to this section shall notify the Commission at least seventy-five (75) days before the effective date of the proposed rate increase. Notice to the Commission shall include the following:

(1) A copy of the notice to be provided to its customers;

(2) Verified statement showing the total number of customers of the water utility as of the date of the most recent billing;

(3) Verified statement showing the water utility's total gross revenue for the previous twelve (12) months;

(4) The date of the water utility's last rate increase, the cause number and the final order number, if ~~available~~applicable;

(5) Any anticipated growth or decline in the water utility's customers which is expected to occur during the first twelve (12) months following the proposed rate increase;

(6) The types of customers the water utility serves;

(7) A copy of the water utility's approved tariff sheet showing the existing rates and proposed new rates:

(8) The date of the most recent annual report in accordance ~~to~~with OAC 165:65-9-10(d)-(g).

(e) If, thirty (30) days prior to the effective date of this proposed increase in rates and charges, the Commission has received petitions from fewer than fifteen percent (15%) of the affected customers, requesting that the Commission examine the proposed increase in rates and charges, the Commission shall notify the water utility that the rate increase may be implemented on the proposed effective date and shall apply to all bills normally rendered on and after the effective date.

(f) If, thirty (30) days prior to the effective date of the proposed increase in rates and charges, the Commission has received petitions from fifteen percent (15%) or more of the affected customers, then the Commission shall notify the water utility that it will examine and determine the reasonableness of the proposed increase in rates and charges and the rate increase may not be initiated until the Commission has completed its determination.

(g) A water utility shall not increase its rates and charges under this Section more than once in any twelve (12) month period. If a water utility is eligible to increase its rates and/or charges pursuant to this Section and desires to increase its rates and/or charges above that which is allowed under this Section, it shall file an application pursuant to the Commission's applicable rules, unless otherwise allowed by law.

(h) A petition submitted to the Director of the Public Utility Division requesting the Commission to examine and determine

the reasonableness of a water utility's proposed increase in rates and charges shall be in substantially the following form:

(1) Form: The petition shall be headed by a caption, which shall contain:

(A) The name of the utility seeking an increase in rates and charges; and

(B) The relief sought.

(2) Body: The body of the petition shall contain the following:

(A) All allegations of facts, without unnecessary detail, explaining why the customers oppose the increase in rates;

(B) A reference that the petition is submitted pursuant to OAC 165:65-9-11;

(C) The name, address, telephone number, and signature of each petitioning customer;

(D) A copy of the notice provided by the water utility and received by one of the customers signing the petition shall be attached to the petition.

(i) Petitions may be signed only by the affected customers of the water utility. Only one signature per meter shall be counted to determine if the fifteen percent (15%) threshold has been met.

SUBCHAPTER 11. CUSTOMER SERVICE

PART 1. DEPOSITS AND BILLING

165:65-11-1. Information on bills

The utility shall bill each consumer as promptly as possible following the reading of his meter. The consumers shall receive their bills by mail, or by electronic notification to consumers who make an affirmative election to receive electronic notification of such information. In no event shall there be a charge for providing a bill through the United States Mail or though different means. The bill shall show:

(1) The reading of the meter at the end of the period for which the bill is rendered.

(2) The date on which the meter was read.

(3) The number and kind of units metered.

(4) The applicable rate schedule or identification of the applicable rate schedule. If the actual rates are not shown, the bill shall carry a statement to the effect that the applicable rate schedule will be furnished on request.

(5) The total amount due for water used. In the case of prepayment meters, the amount of money collected shall be shown.

(6) The date by which the consumer must pay the bill in order to avoid addition of a penalty.

(7) The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall not be used where a penalty is added for nonpayment within a designated period.

(8) A distinct marking to identify an estimated bill.

(9) Any conversions from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors used in determining the bill.

165:65-11-3. Deposits and interest

(a) Each utility shall prepare and submit a plan containing criteria for deposits to the Commission for approval. The plan shall include criteria for residential and nonresidential consumers with residential being defined in each utility's tariff.

(1) The residential plan shall conform to all subsections of this Section.

(2) The nonresidential plan shall conform to all subsections of this Section except (b), (c), (d), and (j).

(b) No utility shall require a deposit of a residential consumer who has received the same or similar type and classification of service for twelve (12) consecutive months and service was not terminated for nonpayment nor was payment late more than twice nor was a check for payment dishonored. The twelve (12) month service period shall have been within eighteen (18) months prior to the application for new service. The utility plan may establish other relevant criteria which will qualify the consumer for nonpayment of a deposit.

(c) No utility shall require a deposit more than one-sixth (1/6) of the estimated annual bill. The utility may allow smaller deposits to be made, in conformance with relevant, objective criteria written in the utility's plan. The utility plan may allow consumers to pay deposits in installments.

(d) A utility may require an advance deposit as a condition of service for consumers other than those consumers addressed in (b).

(e) A present consumer may be required to post a deposit as a condition of continued service if undisputed charges have became delinquent, with delinquent meaning a payment not received on or before the due date as posted on the bill, in two (2) of the last twelve (12) billing periods or if the consumer has had service disconnected during the last twelve (12) months or has presented a check that has been subsequently dishonored.

(f) Interest on cash deposits shall be paid by the utility at no less than the rate calculated as follows:

(1) For all consumer deposits returned within one (1) year or less, the interest rate shall be established on the 1st day of January of each year to equal the average of the weekly percent annual yields of one (1) year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point.

(2) For all consumer deposits held by the utility for more than one (1) year, the interest rate shall be established the 1st day of January for each year to equal the average of the weekly percent annual yields of 10 year U.S. Treasury Securities for September, October, and November of the preceding year. The interest rate shall be rounded to the nearest basis point. The utility may pay the average of one (1) year Treasury Security, as referenced in (f)(1) of this Section, for the first year the deposit is held.

(3) Provided, however, that after the interest rate is initially established pursuant to this subsection, the interest rate(s) shall not change unless the application of the formula in (f)(1) and/or (2) results in a change in interest rate(s) that is/are greater than ~~two hundred (200)~~fifty (50) basis points.

(4) The Director of the Public Utility Division shall calculate the interest rate(s) as pursuant to (f)(1) and (2) of this Section, and shall mail notice to the utility company by December 15th of each year, only if a change in the rate(s) is/are necessary pursuant to subsection (f), otherwise the current interest rate(s) will remain in effect.

(g) If refund of deposits is made within thirty (30) days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than thirty (30) days, payment of interest shall be made retroactive to the date of deposit. No interest shall accrue on a deposit after discontinuance of service.

(h) The deposit shall cease to draw interest on the date it is returned or credited to the consumer's account.

(i) The utility plan shall provide the date of payment of interest and whether the interest shall be paid by negotiable instrument or by credit against current billing.

(j) Each consumer posting a cash deposit shall receive a nonassignable receipt in writing at the time of making the deposit or within the ten (10) days thereafter. When a consumer pays a deposit as a portion of a water service bill, payment of the bill shall serve as a receipt of the deposit. If the deposit is not paid by the due date, the amount of the deposit will become a part of the past due amount owed and monies paid shall be applied to the oldest past due amount. The utility plan shall provide reasonable means whereby a depositor who applies for the return of his/her deposit, or any deposit to which he/she is entitled, but who is unable to produce the original receipt may not be deprived of his/her deposit or balance.

(k) The utility shall automatically refund the deposit for residential service, with accrued interest, after twelve (12) months' satisfactory payment of undisputed charges and where payment was not late more than twice; provided, however, that service has not been disconnected within the twelve (12) month period. Payment of a charge shall be deemed satisfactory if received on or prior to the date the bill is due. Payment of a charge shall be deemed not satisfactory if made by a check subsequently dishonored. The utility plan shall provide for the review of all deposits at least annually and shall provide whether refunds will be paid by negotiable instrument, upon request of the consumer, provided, the consumer's bill is not delinquent, or by credit against current billing.

(l) The amount of the deposit, with accrued interest, shall be applied to any unpaid charges at the time of the discontinuance of service. The balance, if any, shall be returned to the consumer within thirty (30) days following the settlement of the consumer's account, either in person or by mailing it to the consumer's last known address.

(m) The utility shall provide payment of accrued interest for all consumers annually by negotiable instrument or by credit against current billing.

(n) The utility may withhold refund of return of the deposit, pending the resolution of a dispute with respect to charges secured by such deposit.

(o) The utility company shall keep records to show:

(1) The name, account number and address of each depositor.

(2) The amount of the deposit and date received.

(3) Each transaction concerning the deposit.

(p) Such records shall be retained for two (2) years after deposit and/or interest is refunded or applied.

(q) Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the application for transfer a verified list of all consumers from whom a deposit is being held, the date such deposit was made, the amount thereof, and the unpaid interest thereon. The information provided shall be treated as confidential and shall not be available for public inspection unless ordered by the Commission after notice and hearing.

(r) Deposits shall not include membership fees in cooperatives.

(s) The deposit made by the consumer with the utility at the time of application for water service shall not constitute an advance payment to cover service bills, but for all purposes it is to be considered as security for the payment of monthly bills or other proper charges.

PART 3. DISCONNECTION OF SERVICE

165:65-11-13. Notice of disconnection of service

(a) **Twenty-four hour notice.** Except as otherwise specifically provided for in this Subchapter (OAC 165:65-11-11), service shall be disconnected only after at least twenty-four (24) hours written notice has been given to the consumer by leaving a copy of such notice with the consumer or by leaving a copy of such notice in a conspicuous place at the premises where service is provided. This notice shall be in writing and state the reason for the action, the amount due, if applicable, the company to contact in bold print, the contact telephone number, in bold print, and the telephone number of the CSD.

(b) **Residential notice.** When service to a residential consumer is to be disconnected for nonpayment of a bill for utility service or failure to make a security deposit after a reasonable time, the utility company shall give at least ten (10) days written notice from the date of mailing to the consumer. Said written notice shall be mailed by the utility company to the consumer's billing address, unless the mail is returned from that address as undeliverable, in which case the notice may be delivered to the premises at which the service was rendered.

(1) Notice will be deemed delivered to the consumer three (3) business days after mailing by the utility company, which shall not extend the ten (10) days written notice from the date of mailing to the consumer written notice requirement above.

(2) A notice of disconnection shall contain the following information:

(A) The words "DISCONNECTION NOTICE" OR "CUT OFF NOTICE" in bold print no smaller than one-fourth inch (1/4") tall.

(B) The name and address of the consumer.

(C) A statement of the reason for the proposed disconnection of service.

(D) The date on or after which service will be disconnected unless appropriate action is taken.

(E) The telephone number in bold print of the utility company where the consumer may make an inquiry.

(F) The approved charges for reconnection.

(G) A statement that the consumer must contact the utility company regarding the disconnection, prior to contacting the Commission's CSD.

(H) The address and telephone number of the Commission's CSD, in print size which is smaller than the print size used for the utility company's telephone number.

(I) A statement that advises the consumer of the availability of a deferred payment agreement.

(J) A statement that advises the consumer of the elderly/handicapped notification.

(K) A statement that advises the consumer of the availability of the 20-day financial aid assistance delay.

(L) A statement that advises the consumer there are agencies providing assistance to consumers for their utility bills as well as provide the location of pay agents upon the consumer's request.

(3) The utility company shall notify the consumers in writing, at least annually, of the name and address of the authorized payment agencies, if other than the utility company's offices, where consumers may make payments.

(c) **Commission as intermediary.** Unless otherwise directed by the CSD, the utility company shall not contact the consumer regarding the consumer's account after the Commission has notified the utility company of a complaint or inquiry from the consumer. The Commission shall be the intermediary between the utility and the consumer until the resolution of the problem has been completed.

(d) **Third party notice.** A utility shall permit residential consumers to designate a consenting individual or agency to receive the applicable notice of disconnection.

(e) **Tenant notice.** Where a master metered apartment complex, building, or trailer court is subject to disconnection, the written notice to the consumer shall also be posted in a common area of the premises at least ten (10) days prior to disconnection of service. The utility may contract with tenants for residential service.

(f) **Commercial or business notice.** Service of nonresidential customers or other water systems shall be disconnected for nonpayment of all or any portion of an undisputed utility bill or failure to comply with the provisions of a deferred payment agreement only after at least five (5) business days written notice has been mailed to the consumer by the utility or after the notice is left in a conspicuous place at the premises where service is provided.

165:65-11-14. Commission notification procedure for elderly and/or consumers with disabilities

(a) At any time prior to disconnection of service, the Commission notification procedure shall be available to those elderly and/or consumers with disabilities who have notified the utility in writing that they wish to be included in the following Commission notification procedure:

(1) A utility shall notify the Commission's CSD by telephone at least five (5) days prior to disconnection.

(2) Such notification shall be confirmed in writing by the utility and mailed, e-mailed, or faxed to the Commission's CSD the same day as the telephone notification. Written confirmation shall contain at a minimum:

(A) The name, address, telephone number, and account number of the involved parties.

(B) The words "NOTICE", "SERVICE SUBJECT TO CUTOFF" AND "ELDERLY and/or CONSUMER WITH DISABILITIES" should be conspicuously placed on the notice in bold, capitalized letters.

(C) The scheduled date for disconnection.

(D) The unpaid balance amount.

(E) The name and telephone number of a contact person at the utility.

(3) The utility shall delay disconnection of service to the elderly and/or consumers with disabilities for five (5) additional days upon request of the Commission's CSD.

(4) Elderly and/or consumers with disabilities are those consumers who have notified
the utility in writing that they wish to be included in the Commission notification procedure available to them and who:

(A) Have a permanent impairment which substantially limits the disabled consumer's ability to pay for utility service; or

(B) Are sixty-five (65) years of age or older.

(b) The utility shall notify the consumer or other person responsible for the bill, during the initial application for service, annually thereafter, and at any time disconnection is imminent, of this additional notification procedure.

(c) The utility may require verification of the consumer's qualifications.

(d) The Commission notification procedure is in addition to the other requirements set forth in this Subchapter, which the utility shall meet prior to disconnection of service.

165:65-11-15. Delays to disconnection of residential service

(a) **Limitations on disconnection.** After notice and hearing, the Commission may issue an order that may include limitations on disconnection of residential utility service.

(b) **Temporary ban on disconnections.** The Commission shall have the authority to order a temporary ban on any or all disconnections during periods of extremely severe weather or when circumstances exist such that disconnection could create a situation dangerous to the life or health of consumers or to property.

(c) **Severe weather.**

(1) If the high temperature is actually, or predicted to be, 32 degrees Fahrenheit or below on the day of disconnection or the nighttime low is predicted to be 20 degrees Fahrenheit or less, the utility shall suspend its disconnection of service if the water service is used for heating purposes.

(2) If the service is utilized for cooling and the temperature is actually, or predicted to be, 101 degrees heat index or higher on the day of disconnection, the utility shall suspend its disconnection of service activity.

(3) Nothing in this Section shall prohibit a utility from establishing a higher temperature threshold for residential heating purposes below which it will not discontinue utility service or from establishing a lower temperature threshold for residential cooling purposes above which it will not discontinue utility service. The utility may continue to disconnect utility service for unauthorized use of the utility's measuring equipment or tampering with pipes, meters, or any other utility equipment or obtaining service without contract.

(d) **Financial assistance delay.** When a residential consumer has applied for and is awaiting financial assistance, including social security income, from a federal, state, or local social service agency, and the utility has initiated written notice of disconnection, it shall delay disconnection of service for a period of at least twenty (20) days from the date when such notice was either delivered or mailed to the premises where service is rendered, provided:

(1) The reason for disconnection is for nonpayment of the utility bill.

(2) The consumer has notified the utility that the consumer has applied for and is awaiting financial assistance.

(3) Verification from the involved agency must be provided in a form as prescribed by the utility upon its request.

(4) If the expected financial assistance is less than the amount owed for services, the utility may require the consumer to enter into a deferred payment agreement as prescribed in (e) of this Section.

(5) Under no condition is the utility required to furnish service to the consumer unless there is reasonable expectation of payment for such service except where other rules of this Commission apply.

(e) **Deferred payment agreement.** The utility shall be required to offer a deferred payment agreement before disconnecting service for any bill or account balance in excess of fifty dollars ($50.00) when a residential consumer is unable to pay an account in full. The utility shall not disconnect service for nonpayment of a bill if the consumer enters into a deferred payment agreement with the utility. ~~The utility may mail a confirmation of the terms of the deferred payment agreement if it is made orally.~~If the terms of the deferred payment agreement are agreed to orally, the utility may send confirmation of such agreement by mail or by electronic notification to consumers who make an affirmative election to receive electronic notification of such information. A deferred payment agreement may be entered into by the consumer up to, but not including, the day of disconnection. Except where payment assistance for the total amount of the bill is pending, the utility may require a reasonable partial payment in accordance with paragraph one (1) of this subsection, at the time the deferred payment agreement is made.

(1) Deferred payment agreement means a just and reasonable agreement offered by the utility and agreed to by the consumer which provides for the payment of all future bills during the period of agreement by the due date and the payment of the balance of any outstanding bills in reasonable installments based upon:

(A) Consideration of the consumer's gross income less employer deductions.

(B) Size of the delinquent account.

(C) Consumer's ability to pay.

(D) Consumer's payment history with the utility.

(E) Length of time and reasons why the debt has not been paid.

(F) Other extraordinary expenses of the consumer.

(G) Loss of income through unemployment or illness.

(H) Any other relevant factors concerning the circumstances of the consumer.

(2) The payments under such an agreement need not be equal in amount.

(3) The consumer shall initiate a renegotiation prior to breach of the deferred payment agreement. The deferred payment agreement shall be renegotiated if financial circumstances, such as loss of income through unemployment or illness, or any other relevant factors concerning the circumstances of the consumer, change during the payment period.

(4) If a consumer fails to comply with the terms of the deferred payment agreement, the consumer will be subject to disconnection without further notice, so long as the disconnection date on the first and second notice has not been passed. If the disconnection date has passed, the utility shall provide at least twenty-four (24) hours notice of disconnection to the consumer.

(5) Under no condition is the utility required to furnish service to the consumer unless there is a reasonable expectation of payment for such service except where other rules of this Commission apply.

(f) **False information.** If a consumer provides false or misleading information to the utility in order to avail the consumer of the provisions applicable to the financial assistance delay, deferred payment agreement, or Commission notification procedure for elderly and/or consumers with disabilities, the false information shall be grounds for disconnection of service by the utility.

(g) **Consumer liability.** Reconnection or continuance of service under this Section shall not in any way relieve the consumer of the consumer's liability incurred for utility service.

SUBCHAPTER 13. PROMOTIONAL POLICIES AND PRACTICES

165:65-13-5. Advertising expenditures permitted

The following expenditures for advertising shall be permitted without limitation as to amount:

(1) Consumer advertising, which is advertising designed primarily to inform the consumer of available rates for utility service, benefits for prompt payment, deposit and billing practices, safety inspection and meter reading practices, and similar terms and conditions of service to consumers; procedures to be followed in emergencies, proper use of equipment and appliances, safety precautions, and similar matters of benefit to customers; and other services and benefits available to the consumer in connection with utility service; provided that advertising designed to attract new customers, or to encourage greater consumption, or to encourage the use of one form of energy in preference to another, which advertising is prohibited by ~~this~~OAC 165:65-13-4 shall not be permitted by this Section.

(2) Conservation advertising, which is advertising designed primarily to inform the consumer of means whereby energy may be conserved and energy consumption reduced, and urging the adoption of those means by consumers.

[OAR Docket #14-513; filed 6-24-14]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-707]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
175:1-1-1 [AMENDED]
175:1-1-2 [AMENDED]
Subchapter 3. Board Structure and Agency Administration
175:1-3-1 [AMENDED]
175:1-3-2 [AMENDED]
Subchapter 5. Rules of Practice
175:1-5-1 [AMENDED]
175:1-5-5 [AMENDED]
175:1-5-6 [AMENDED]
175:1-5-9 [AMENDED]
175:1-5-14 [NEW]
AUTHORITY:
59 O.S. § Section 199.3 (A); State Board of Cosmetology and Barbering
SUBMITTED TO GOVERNOR AND CABINET SECRETARY:
January 30, 2014
COMMENT PERIOD:
December 16, 2013 to January 17, 2014
PUBLIC HEARING:
January 20, 2014
ADOPTION:
January 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 30, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
House Bill 1467 was passed during the 2013 legislative session and became effective November 1, 2013. The legislation combined the Barber Advisory Board with the Board of Cosmetology. The Board proposed these rules and added new rules in order to continue the regulation of the two professions and to ensure the protection of the public when cosmetology and barbering services are performed on the public by regulating sanitation and sanitation and safety procedures which is the mission of the Board as in [Title 59 O.S. 199.3 A, B (1)].
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

175:1-1-1. Purpose

This chapter provides information pertinent to member qualifications, agency structure and responsibilities of the Board of Cosmetology and Barbering.

175:1-1-2. Definitions

The terms and phrases defined in the Oklahoma Cosmetology and Barbering Act shall have the same meaning when applied in the rules which are herein set forth in this Chapter to substantiate the Cosmetology and Barbering Law. The following rules and terms shall have the same meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Cosmetology and Barbering Act.

"Apprentice" means a person who is engaged in learning the practice of cosmetology or barbering in a cosmetology or barber Establishment~~salon~~; [Title 59 O.S. Section 199.1]

"Assigned practice or clinic work" means demonstrations and lesson practice in which services may be performed on patron, student or model on clinic floor in classroom for the benefit of student observation, notes, etc. The practice or demonstration shall be assigned by or with approval of the instructor in charge and materials/supplies used for the education demonstration are the responsibility of the school.

"Barber/Barber Stylist" means any person who engages in the practice of barbering.

"Barber Establishment" means an Establishment or place of business where one or more persons are engaged in the practice of barbering but shall not include barber schools or colleges.

"Barbering" means any one or combination of practices done upon the upper part of the human body for cosmetic purposes and when done for payment either directly or indirectly for the general public, constitutes the practice of barbering, to wit: shaving or trimming the beard or cutting the hair; giving facial or scalp massages or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances; singeing, shampooing or applying lighteners or color to the hair or applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body; and removing superfluous hair from the face, neck or upper part of the body.

"Barber school or college" means an Establishment operated for the purpose of teaching barbering.

"Board" means the State Board of Cosmetology and Barbering.

"Clock hour" means a measure of time determined to be sixty (60) minutes that a student spends in an educational or training activity.

"Cosmetic studio" means any place or premises where demonstrators give demonstrations, without compensation, for the purpose only of advertising and selling cosmetics;

"Cosmetician" means a person licensed by the Board to perform patron services limited to hair arranging and application of make-up, including, but not limited to using hairstyling tools and products. Services must be performed in a licensed establishment ~~limited to photo studios and cosmetic studios~~.

"Cosmetologist" means any person who engages in, follows or performs any of the practices of cosmetology;

"Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauticians, beauty culturists, beauty operators, cosmeticians, cosmetologist, or hairdressers, or any other person holding himself or herself out as practicing cosmetology by whatever designation and within the meaning of the Oklahoma Cosmetology and Barbering Act and in or upon whatever place or premises. Cosmetology shall include, but not limited to, any one or combination of the following practices: bleaching, cleansing, curling, cutting coloring, dressing, removing, singeing, styling, waving, or similar work upon the hair of any person by any means, whether with hands or mechanical or electrical apparatus or appliances. Nothing in the Oklahoma cosmetology and Barbering Act shall be construed to prohibit the use of hands or mechanical or electrical apparatus or appliances for the nonpermanent removal of hair from the human body without puncturing of the skin or the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, or massaging, cleansing stimulating, exercising, beautifying, or similarly working the scalp, face, neck, arms, or the manicuring of the nails of any person, exclusive of such of the foregoing practices as are within the scope of practice of the healing arts as provided by law;

"Cosmetology Establishment" means an Establishment or place of business where one or more persons are engaged in the practice of cosmetology but shall not include barber schools or colleges.

"Cosmetology or Barber school" means a ~~cosmetology~~ school or cosmetology department that is approved by the Board to conduct and provide cosmetology and/or barber training and education in Oklahoma. It means any place or premises where instruction in any orall the practices of cosmetology and or barbering are given. Any person, firm, institution or corporation, who holds himself, firm, institution or corporation who shall teach and train any other person or persons in any of the practices of cosmetology and/or barbering is hereby declared to be engaged in operating a cosmetology and/or barbering school, and shall be operating cosmetology and/or barbering school, and shall be subject to the provisions of the Oklahoma Cosmetology and Barbering Act. Licensed cosmetology and barbering schools may offer education to secondary and post secondary students in this state.

"Credit hour" means a unit of value awarded to a student for successful completion of a program, course or course lesson and credit to clock ratio is as recognized by the United States Department of Education or a regional or national accreditation entity recognized by the United States Department of Education~~is determined by using the ratio of thirty (30) clock hours equal to one (1) credit hour~~.

"Demonstrator" means a person who is not licensed in this state as a Cosmetologist, Barber or Instructor and who demonstrates any cosmetic preparation. The person shall be required to obtain a Demonstrator license from the Board before making any such demonstrations.

"Dry sanitizer" means a clean, dry, closed (covered) cabinet, drawer, chest or other type container used in cosmetology/barber Establishment~~establishment cosmetology salon~~ or school for the purpose of storing clean, dry sanitized combs, brushes and other implements without fumigant after the articles have been cleaned and sanitized in a wet sanitizer (or by other approved method in the case of metal implements).

"Emergency circumstances" means a serious injury, illness or death in the immediate family of applicant for registration, examination, licensure, etc.

"Establishment" means a place or premises, cosmetology salon or barber shop, cosmetic of other specialty shop/salon where any one or combination of cosmetology or barbering practices are performed by the public except that the term shall not include a cosmetology or barber school.

"Esthetician/Facialist/Facial Operator" means a person licensed by the Board to perform skin care, make-up and hair removal services to the public provided the hair removal services shall not include electrolysis.

"Facial/Esthetics Instructor" means a person licensed by the Board as a qualified teacher of the art and science of skin care theory and practice.

"Hairbraiding Technician" means a person licensed by the Board to perform hairbraiding, hairweaving techniques, and hair extensions in a licensed cosmetology Establishment.

"Hybrid learning" means courses that combine face-to face classroom instruction with on-line computer based learning.

"Manicurist/Nail Technician" means a person licensed by the Board to perform nail care services to the public in a place licensed by the Board where nail care/manicuring/pedicuring services may be performed.

"Manicurist/Nail Technician Instructor" means a person licensed by the Board as a qualified teacher of the art and science of nail technology theory and practice.

"Master Barber Instructor" means a person licensed by the Board who gives instructor in barbering or any practices thereof and trained in a school after November 1, 2014.

"Master Cosmetology Instructor" means a person licensed by the Board as a qualified teacher of cosmetology theory and practice.

~~**"Operator/Cosmetologist"** means a person licensed by the Board to perform cosmetology services to the public in a place licensed by the Board where cosmetology practice(s) may be performed.~~

"Post secondary institution" means a school licensed to teach students according to prescribed curriculum as in Title 59 O.S. § 199.7 (F) 1 Board rule 175:10-3-34(a).

~~**"School"** means a cosmetology or school or cosmetology department that is approved by the Board to conduct and provide training and education in Oklahoma.~~

"Secondary institution" means a school licensed to teach students eligible for credit of 500 hours of related subjects as prescribed in Title 59 O.S. § 199.7 (F) 2 and in Board rule 175:10-3-34 (b).

"Student" means a person who is enrolled in a cosmetology or barber school and appropriately registered with the Board for the purpose of being educated and trained in the practice of cosmetology or barbering.

"Unassigned practice or clinic work" means a personal service or cosmetology or barber practice (on student on another etc.); which shall be elective practice which one student chooses to perform or to receive (routine shampoo not included); and in which school supplies may be used (i.e. bleach/color/perm, etc.); and which practice and service is not assigned by the instructor and/or performed for the benefit of a group of students who have been scheduled to observe as a classroom or clinic demonstration; and for which a reasonable cost for supplies used in the practice may be charged to the student receiving the unassigned services.

"Wet sanitizer" means a large, pan-type covered container which shall contain a liquid chemical sanitizing agent used in a ~~cosmetology~~ school or Establishment~~establishmentsalon~~ for the purpose of sanitizing and disinfecting combs, brushes and other non-metal tools and implements used in ~~cosmetology~~ training and practice.

SUBCHAPTER 3. BOARD STRUCTURE AND AGENCY ADMINISTRATION

175:1-3-1. Composition, powers and duties of Board

(a) The Board is composed of eleven (11)~~nine (9)~~ members appointed by the Governor to four (4) year staggered terms. Six (6) cosmetologist members are appointed, one (1) from each of six (6) congressional districts of the state. One (1) member is appointed to represent public cosmetology schools, one (1) to represent privately owned cosmetology schools, one (1) to represent privately owned barber school, and one (1) is appointed as a lay/public member, one (1) barber member is appointed at large.

(b) The Board shall employ an Executive Director who shall be in charge of the Board office.

(1) The Executive Director shall devote entire time to the duties of the agency.

(2) The Executive Director shall hold a current Oklahoma Master Instructor license.

(3) The Executive Director must be qualified by education and experience.

(c) The Board elects a chair and vice chair from its membership in July each year.

(1) The chair presides over all Board meetings.

(2) The chair has the authority to call meetings if the need arises.

(d) An Assistant Attorney General is assigned to the agency as liaison and serves as the Board's legal advisor.

(e) In order to safeguard and protect the health and general welfare of the people of the State of Oklahoma, the Board has the power and duty to carry out the provisions of the Cosmetology and Barber Act 59 O.S. Section 199.1 et. seq. and to make and enforce all reasonable and necessary rules and regulations for that purpose. In addition to the general powers, the Board shall have the following powers and duties:

(1) The Board shall promulgate rules relating to the standards of sanitation which shall be observed and practiced by all cosmetology and barber Establishments and schools~~ and salons~~.

(2) Conduct examinations for licensure at such times and places determined by the Board.

(f) The Board may exercise its official powers at any location in the State of Oklahoma.

175:1-3-2. Agency administration; description of agency

(a) The State Board of Cosmetology and Barbering shall create positions, make appointments and fix salaries of officials and employees necessary to carry out the purposes of the Cosmetology and Barbering Act [59 O.S. Sections 199.1 et. seq] and the administration thereof.

(b) The Board's Executive Director is in charge of the office and directly supervises all employees.

(c) The office of the State Board of Cosmetology and Barbering is located at 2401 N.W. 23rd Street, Suite 84, (Shepherd Mall) in Oklahoma City, Oklahoma 73107. Phone number (405) 521-2441. Fax number (405) 521-2440.

(d) Board office hours are from 7:30 a.m. to 4:00 p.m. Monday through Friday inclusive except legal holidays established by statute or proclamation by the Governor. With Board approval, office hours are subject to change.

(e) All application and other forms and instructions which pertain to a permit or license, shall be available at the Board's principal office during regular business hours.

(f) All Board meetings are conducted at the Board's office location. Rule making and disciplinary hearings may be held in other locations if additional space is needed or if considered necessary for other legal valid reasons.

SUBCHAPTER 5. RULES OF PRACTICE

175:1-5-1. Setting hearings; hearing officer; Attorney General assistance

(a) The State Board of Cosmetology and Barbering may hold a hearing on any alleged violations of the Cosmetology and Barber Act [59 O.S. Section 199.1 et seq]. All hearings shall be conducted pursuant to the Administrative Procedures Act [75 O.S. 250 et seq.].

(b) The Chair of the Board shall preside at all hearings and shall rule on all motions. If the Chair is unable to participate in the hearing, then the Vice-Chair shall preside. If the Vice-Chair is unable to participate in the hearing, the Board shall elect from its membership an acting Chair solely for the purpose of conducting the hearing.

(c) The Board may request the Assistant Attorney General assigned to the Board to take part in the hearing proceedings as the Board deems necessary.

175:1-5-4. Board sanctions

(a) If it is proven that violations of the Oklahoma Cosmetology and Barber Act and Board rules and regulations have occurred, sanctions available to the Board are:

(1) Revocation of license; or
(2) Suspension of license; or
(3) Refusal to issue license; or
(4) Placing licensee on probation.
(5) Fines for citations for violations of the Cosmetology and Barber Act or Board rules as in Rule 175:1-5-14

(b) Such matters of violation may be referred to the District Attorney or to the Attorney General for injunctive or other relief.

175:1-5-5. Complaint procedures; forms

(a) Complaint against any licensee and/or non-licensed person alleged to be practicing cosmetology or barbering shall be signed by person or persons making complaint or allegation. Complaint forms are available from the office of the Board. Complaint shall include the following information:

(1) Name and address of person(s) against whom complaint is filed.
(2) Detailed explanation of offense committed.
(3) Name and address of person(s) filing complaint.

(b) All or portions of the information in complaints may in fact be privileged information.

(c) Board staff may investigate anonymous complaints to the extent required to protect public health and safety.

(d) Members of the public may obtain a consumer complaint form from the Board upon request.

175:1-5-6. Investigation of alleged violation

(a) Alleged violations are investigated by State Cosmetology/Barber~~Cosmetology~~ Inspector/Examiners and findings are confirmed by written reports and depositions and other records. One or more Inspector/Examiners may be assigned to complete the investigatory process.

(b) All investigative files shall be confidential pursuant to 51 O.S. Sec 24A.12. However, the Board may provide information in the files to the following:

(1) Any Board of Cosmetology/Barbering~~Cosmetology~~ or other Board of any state which exercises authority and licensing over those persons involved in the teaching or practicing of cosmetology or barbering.
(2) Any law enforcement agency which makes a proper showing that such information is necessary to conduct a pending investigation.
(3) Any person who has filed a complaint against a licensee, registrant, or other person may be notified of the final disposition of the matter upon request.

(c) Reports are reviewed by the agency attorney and Executive Director. The Executive Director shall determine, in accordance with pertinent cosmetology and barber law and Board rules and regulations, whether sufficient evidence exists to issue a formal Complaint and call for a disciplinary hearing before the Board.

(d) It is the Board's responsibility to attempt an informal resolution of the matter, or terminate the investigation if it is determined that a violation of the Cosmetology and Barbering Act [Title 59 O.S. Section 199.1 et. seq] or the Board's rules has not occurred, or if there is insufficient evidence to support the allegations in the complaint.

175:1-5-9. Appeals

Appeals from orders/actions of the State Board of Cosmetology and Barbering may be taken pursuant to the provisions of Section 199.3 (a) (b) (H) of 59 O.S., the Cosmetology and Barbering Act, and the State's Administrative Procedures Act and other applicable law.

[OAR Docket #14-707; filed 7-10-14]

TITLE 175. STATE BOARD OF COSMETOLOGY AND BARBERING CHAPTER 10. COSMETOLOGISTS, BARBERS AND RELATED ESTABLISHMENTS

[OAR Docket #14-708]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
175:10-1-1 [AMENDED]
Subchapter 3. Licensure of Schools
Part 1. Initial School Licensing
175:10-3-1 [AMENDED]
175:10-3-2 [AMENDED]
175:10-3-3 [AMENDED]
175:10-3-4 [AMENDED]
Part 3. Student Registration and Entrance Requirements
175:10-3-16 [AMENDED]
Part 5. Equipment and Curriculum Requirements
175:10-3-30 [AMENDED]
175:10-3-31 [AMENDED]
175:10-3-33 [AMENDED]

175:10-3-34 [AMENDED]
175:10-3-37 [AMENDED]
175:10-3-38 [AMENDED]
175:10-3-39 [AMENDED]
175:10-3-40 [AMENDED]
175:10-3-41 [AMENDED]
175:10-3-42 [AMENDED]
175:10-3-43 [AMENDED]
175:10-3-44 [AMENDED]
175:10-3-45 [NEW]
175:10-3-46 [NEW]
Part 7. General Operations and Licensing Requirements
175:10-3-51 [AMENDED]
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175:10-3-56 [AMENDED]
175:10-3-60 [AMENDED]
175:10-3-62 [AMENDED]
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175:10-3-71 [AMENDED]
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175:10-3-75 [AMENDED]
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Subchapter 5. Licensure of Cosmetology and Barber Establishments
175:10-5-1 [AMENDED]
175:10-5-2 [AMENDED]
175:10-5-4 [AMENDED]
175:10-5-5 [NEW]
Subchapter 7. Sanitation and Safety Standards for Cosmetology and Barber Establishments, Salons and Schools
175:10-7-1 [AMENDED]
175:10-7-2 [AMENDED]
175:10-7-3 [AMENDED]
175:10-7-4 [AMENDED]
175:10-7-5 [AMENDED]
175:10-7-6 [AMENDED]
175:10-7-7 [AMENDED]
175:10-7-12 [AMENDED]
175:10-7-17 [AMENDED]
175:10-7-18 [AMENDED]
175:10-7-19 [AMENDED]
175:10-7-20 [AMENDED]
175:10-7-25 [AMENDED]
175:10-7-29 [AMENDED]
Subchapter 9. Licensure of Cosmetologists, Barbers and Related Occupations
Part 1. Apprenticeship
175:10-9-1 [AMENDED]
175:10-9-2 [AMENDED]
175:10-9-3 [AMENDED]
175:10-9-5 [AMENDED]
Part 3. State Board Examination
175:10-9-25 [AMENDED]
175:10-9-26 [AMENDED]
175:10-9-28 [AMENDED]
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175:10-9-32 [AMENDED]
175:10-9-33 [AMENDED]
Part 5. Demonstrators; Cosmetic Studios; Trade Shows; Guest Artists; Wig Dressing
175:10-9-50 [AMENDED]
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175:10-9-54 [AMENDED]
175:10-9-55 [AMENDED]
Subchapter 11. License Renewal, Fees and Penalties
175:10-11-1 [AMENDED]
175:10-11-2 [AMENDED]
Subchapter 13. Reciprocal and Crossover Licensing
175:10-13-1 [AMENDED]
175:10-13-2 [AMENDED]
Subchapter 15. Inspections, Violations and Enforcement
175:10-15-2 [AMENDED]
Subchapter 17. Emergency Cosmetology and Barbering Service
175:10-17-1 [AMENDED]

AUTHORITY:
59 O.S. § Section 199.3 (A); State Board of Cosmetology and Barbering

SUBMITTED TO GOVERNOR AND CABINET SECRETARY:
January 30, 2014

COMMENT PERIOD:
December 16, 2013 to January 17, 2014

PUBLIC HEARING:
January 20, 2014

ADOPTION:
January 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 30, 2014

APPROVED BY GOVERNORS DECLARATION:
Approved by Governors Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
November 1, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
House Bill 1467 was passed during the 2013 legislative session and became effective November 1, 2013. The legislation combined the Barber Advisory Board with the Board of Cosmetology. The Board proposed these rules and added new rules in order to continue the regulation of the two professions and to ensure the protection of the public when cosmetology and barbering services are performed on the public by regulating sanitation and sanitation and safety procedures which is the mission of the Board as in [Title 59 O.S. 199.3 A, B (1)].

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

175:10-1-1. Purpose

The rules of this Chapter are established and herein set forth for the protection of the health and welfare of the general public as relates to sanitary and safety practices in cosmetology and barber Establishments~~establishments~~ and schools.

SUBCHAPTER 3. LICENSURE OF SCHOOLS

PART 1. INITIAL SCHOOL LICENSING

175:10-3-1. Application for initial and renewal of school license

In order to be in compliance with current Cosmetology and Barbering Act as pertains to public and privately owned

cosmetology and barber school and license issuance to cosmetology and barber schools, the application procedures for an initial (new) cosmetology and barber school are as follows:

(1) **Privately owned schools.** Any person, corporation or company, who proposes to provide cosmetology or barber training courses designed to qualify persons who complete courses for a professional license to practice cosmetology or barbering, shall be required to obtain a license for the private post secondary school from the Board.

(A) **Letter of intent.** The applicant shall first submit a letter of intent to the Board of Cosmetology and Barbering and shall request Cosmetology or Barber School license application forms from the Board. The letter of intent shall state at least the full name, address and phone number of the applicant and the city where the proposed school is to be located. If the applicant proposes to assume ownership of an existing ~~cosmetology~~ school, the letter of intent shall specify the name and address of the existing ~~cosmetology~~ school.

(B) **Application form.** The license application form shall be completed in fullmaking note whether the school intends to operate as a secondary/post secondary establishment and returned to the Board and shall contain the following information:

(i) A bona fide list of the names and addresses of no less than twenty-three (23) students who fully intend to enroll and attend cosmetology or barbering classes in the proposed school at such time as school is appropriately licensed. The Board may require that the list be accompanied by a signed and notarized affidavit stating that the prospective student fully intends to enroll in, sign student contract with and regularly attend ~~cosmetology~~ classes in the proposed ~~cosmetology~~ school. The affidavit shall also state that the student fully intends to appropriately register with the State Board of Cosmetology and Barbering prior to attending classes and that the student fully intends to complete the course requirements. Any advertisement for recruitment of students must state school is proposed to be open and shall not contain deceptive or misleading language and shall state that school has applied for licensure.

(ii) Proposed name and location (city, street and number), and a brief description of the building.

(iii) Name, address and phone number of the proposed owner(s). If a corporation, the name, address and phone number(s) of the officers and principal stockholders are required to be submitted.

(iv) Names of Oklahoma ~~cosmetology~~ license held and the file numbers of the persons to be the instructors of the proposed school and that of the manager, if other than the owner.

(C) **Initial license fee; expiration date.** Each initial public and privately owned cosmetology or barber school shall be required to pay to the Board, the initial license fee of $400.00. Each public and privately owned ~~cosmetology~~ school shall also pay the annual license renewal fee of $125.00. Each ~~cosmetology~~ school license shall expire annually on June 30th. No provision is made for pro rata of any cosmetology license fee.

(D) **Surety bond.** A surety bond in the amount of two thousand dollars ($2,000.00) for the first instructor and one thousand dollars ($1,000.00) for each additional instructor is required to be submitted for cosmetology or barber school license. The bond shall be in an amount sufficient to meet bonding requirements for all staff instructors and for each substitute instructor for the specific school in which license application is made.

(E) **Financial statement.** A current financial statement of the license applicant, prepared by a Public Accountant or a Certified Public Accountant, is required to be submitted to the Board. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall reflect the applicant's total property inventory, assets and liabilities which shall show a net worth of at least one hundred thousand dollars ($100,000.00) for each school owned. This amount must be sufficient to insure the safe and adequate training of the minimum number of twenty-three (23) students. Intangible assets will not be considered in net worth.

(F) **Proof of building lease or ownership.** Applicant must obtain a lease of at least one year or be owner of building in which school is proposed to operate. Month to Month lease is not acceptable. Applicant must submit a copy of lease agreement.

(2) **Public schools.** Any public school wherein administrator or other authorized person proposed to provided course(s) in ~~cosmetology~~ training and education designed to qualify a person who shall complete the public post secondary course(s) for examination and licensure, shall follow instructions for license application procedures in (1) of this Section as may be applicable in requesting ~~cosmetology~~ school license application and approval from the Board.

(A) Names, address and phone number(s) of Public School Administrator and other supervisory person (Principal, Assistant Principal, Coordinator or Counselor), of school/department and of each instructor proposed to teach in the school shall be submitted to the Board. File ~~Cosmetology file~~ number of the instructor(s) shall be submitted.

(B) Applicant shall provide to the Board a notarized affidavit stating source of sufficient bond coverage and that building wherein the ~~cosmetology~~ school is proposed to be conducted is publically owned.

(C) Applicant shall provide phone numbers of public school main campus and ~~cosmetology~~ school facility and a brief general description of the facility location within campus and other building training sections and parking areas.

(3) **Privately owned school license renewal.** A privately owned ~~cosmetology~~ school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Private school license renewal application, forms and instructions are mailed annually to schools by the Board. Forms include a surety bond renewal form, power-of-attorney and verification form.

(B) Fee of $125.00 is required for school license renewal.

(4) **Public school license renewal.** A public school license shall expire annually on June 30th. Renewal must be received by June 30th each year.

(A) Public school license renewal application and invoice is mailed annually to schools.

(B) Fee of $125.00 is required for school license renewal.

175:10-3-2. Initial inspection

(a) **Request for initial inspection.** Applicant must submit a written request for an initial Board consultation and inspection for approval of the location, building, parking, electrical facilities, plumbing facilities, construction and building codes for the proposed school. Applicant must provide city inspection certificate, fire department, electrical and plumbing certificates as applicable for the city or county where proposed school is located and other applicable zoning or construction documents the Board may require for approval.

~~(b) **Interview.** At the time of initial inspection consultation, the proposed owner(s) or the person(s) proposed to instruct and/or other person(s) who may be designated to manage the proposed cosmetology~~or barber~~ school will be interviewed. The person(s) will be requested to respond in writing to interview questionnaire for evaluation by the Board's authorized representative. Interview questionnaire will pertain to State Board of Cosmetology~~ and Barbering~~ rules, regulations and Cosmetology~~ and Barber~~ law regarding school operations and record keeping. Response to the questionnaire and the personal interview is used by the Board as one indicator for determination regarding qualifications of the individual(s) to manage and/or teach cosmetology courses of study as prescribed in the Oklahoma Cosmetology~~ and Barber~~ Act and Board regulations.~~

(b~~c~~) **Space/building requirements.** At the initial inspection, the Board's representative will consult with the proposed owner(s), instructor(s) and other person(s) designated by the license applicant as responsible for the proposed ~~cosmetology~~ school regarding the requirements necessary to the physical arrangements of the proposed building and space.

(1) **Lighting, ventilation, floors, available parking requirements.** Adequate lighting and ventilation; cleanable floor surfaces; parking facilities, and other building appointments as applicable in the specific plans and location, will be addressed in the initial consultation.

(2) **State and federal fire and safety codes compliance.** The proposed ~~cosmetology~~ school space must meet federal, state and local construction, electrical, plumbing, fire and safety codes. Proposed owner must show the Inspector proof of certification of compliance with applicable codes upon request. At least two point of ingress/egress for the building are required. In the event of multiple stories or building levels, fire escape(s) must be approved and appropriate exit signs must be posted for safe exit from the building.

(3) **Minimum building and student work space.**

(A) The proposed ~~cosmetology~~ school building space must contain a minimum of twenty-two hundred (2,200) square feet of floor space. The Board considers a working are of 5' X 8' (40 square feet) per student as necessary and adequate for the safe operation of the required minimum equipment approved for the conducting of cosmetology orbarber courses of training. Space allotted to reception area, restrooms, lockers, vending machines, cosmetic and wig displays, supply and storage and break room(s) are not included in the 5' X 8' work area required for each student.

(B) The proposed building space plans shall contain separate classroom setting large enough to accommodate at least fifteen (15) students in one group, one (1) mannequin table, one (1) chalk or marker board, three (3) manicure tables or one (1) narrow (18 inch) folding table satisfactory for manicure practice.

(C) The proposed ~~cosmetology~~ school plans shall contain a facial and skin care room designed to provide maximum sanitation methods and privacy to patrons. ~~The space plans must include dressing rooms, student lounge and locker space (one locker student) and separate restroom facilities for male and female students.~~

(D) The space plans must include, break area and locker space (one locker per student) and separate restroom facilities for male and female students.

(4) **Dispensary, drinking fountain, school reception area, wall and floor covering requirements.**

(A) A sanitary drinking fountain or water cooler shall be provided, maintained and in good repair at all times.

(B) Each ~~cosmetology~~ school shall have a dispensary room equipped with a sink plumbed with hot and cold water.

(C) A school shall provide space for a reception area with seating capacity of no less than ten (10) persons.

(D) Interiors of schools shall be maintained in a clean, sanitary condition, and in good repair.

(i) Floors in work areas (shampoo and styling areas) shall be covered with hard, cleanable surface of vinyl, linoleum or other impervious floor

covering. Carpet is prohibited for use in cosmetology school work areas.

(ii) Walls and woodwork to a height of five (5) feet shall be painted or covered with easily cleaned and washable material.

175:10-3-3. Second inspection

(a) A second Board inspection is in order once~~:~~ the name of the school, location and space are approved.

~~(1) the name of the school, location and space are approved.~~

~~(2) the prospective school owner(s), instructor(s) and/or other person(s), as applicable, have appropriately and satisfactorily responded to the inspector's interview and questionnaire as pertains to the State Board of Cosmetology law, rules and regulations.~~

(b) The second inspection set forth in (a) of this Section will be conducted at such time as the Board is notified in writing that:

(1) the school has all equipment including student kits equipped with required minimum tools for training;

(2) approved textbooks,~~and~~ library reference materials and educational materials are obtained;

(3) the minimum equipment is installed and operable; and

(4) the school license applicant is prepared to begin classes in compliance with Board rules, regulations and law.

(c) Student kits shall be prepared and ready for approval at the second inspection.

(d) All enrolled students shall be present and in appropriate uniform at time of second inspection and if all student registrations are complete, students may accumulate hours for the date of inspection provided all other license requirements are met.

175:10-3-4. Issuance of initial school license

(a) An initial ~~cosmetology~~ school license may be issued upon satisfactory second inspection report and school bond in a form approved by the Office of the Attorney General.

(b) Once the initial ~~cosmetology~~ school license is issued the school is approved to conduct ~~cosmetology~~courses~~course~~ in accordance with Board rules, regulations and cosmetology and barber law.

PART 3. STUDENT REGISTRATION AND ENTRANCE REQUIREMENTS

175:10-3-16. Student entrance requirements

Student entrance requirements for the Basic Cosmetologist, Manicurist/Nail Technician, Cosmetician, Hairbraiding Technician, ~~and~~ Esthetician/Facialist/Facial Operator, Barber and Barber Instructor courses are as follows:

(1) The student must:

(A) be at least 16 years of age by November 1st of the current year.

(B) submit completed student registration application accompanied by a fee of $5.00 before attending classes.

(C) submit a copy of the completed student/school contract with the student registration application. The contract shall state cost of kit and how and when it is considered paid for and becomes the sole property of the student. If kit provision is a rental-depreciation or other agreement, contract will provide details of the agreement.

(D) submit proof of at least eighth grade education or equivalency or submit proof of having satisfactorily passed an ability to benefit exam.

(E) submit, if under 18 years of age, a photocopy of birth certificate or other legal proof of age.

(F) submit 2"X3" current full-face photograph of the applicant as requested on registration form. A current photograph is one taken within the last six months.

(2) Each student shall be registered with the ~~State~~ Board ~~of Cosmetology~~ before attending school.

(3) Each student shall be provided with an approved textbook or manual upon commencing training.

(4) Each student must be provided a kit with minimum content requirements before commencing clinic training.

(5) All applicants who register with the Board as students or who apply for a cosmetology license will be considered without regard to race, sex, creed, color, religion, or national origin provided they have met all requirements of cosmetology and barber law and rules of the Board. All students shall be considered for enrollment in a ~~cosmetology~~ school. Admission to public schools is governed by applicable state and federal laws.

PART 5. EQUIPMENT AND CURRICULUM REQUIREMENTS

175:10-3-30. Required library copies of cosmetology law/rules

(a) At least six (6) copies of the Oklahoma Cosmetology/Barbering ~~Cosmetology~~ Law and Board rule book must be maintained in library of each ~~cosmetology~~ school and available to students. The books will be provided by the Board at a current cost of printing and delivery to each ~~cosmetology~~ school.

(b) Reference manuals or other material shall be kept current by replacement or supplement as pertains to all areas of the curriculum. Other library and reference books shall include a Collegiate Dictionary and an American Medical Dictionary. Each school shall maintain a quality reference library addressing various major subjects as pertain to the total field of cosmetology or barbering.

175:10-3-31. Training equipment requirements.

(a) The following minimum equipment is considered by the Board to be adequate for the appropriate and safe training of

no more than thirty-seven (37) students. The minimum equipment shall be required for one (1) to and including thirty-seven (37) students.

(1) One (1) school seal

(2) One (1) Chart of Anatomy to include:

(A) bones

(B) muscles

(C) nerves

(D) circulatory system

(E) skin

(3) One (1) blackboard

(4) Three (3) large wet sanitizers (pan-type with covers)

(5) One (1) large dry sanitizer with airtight cabinet (without fumigant) to keep instruments, combs, and brushes after they have been taken from wet sanitizer

(6) One (1) small dry sanitizer for each student (closed dry cabinet, drawer or other covered box-type container)

(7) One (1) container with cover for each student to store soiled brushes/combs etc. until such time as all items shall be cleaned and sanitized according to approved rules and methods

(8) Four (4) shampoo basins equipped with shampoo sprays and connected with hot and cold water (one shampoo basin for each additional 15 students or major fraction thereof)

(9) Four (4) shampoo chairs (one for each additional 15 students or major fraction thereof)

(10) Two (2) facial chairs, considered adequate for patron service; reclining, styling or shampoo are acceptable for student practice (one for each additional 15 students or major raction thereof)

(11) One (1) facial supply cabinet (one for each additional 15 students or major fraction thereof)

~~(12) One (1) therapeutic lamp with red lights installed for free use of hands.~~

(13~~13~~) (12) Four (4) hair dryers - chair type (one for each additional 15 students or major fraction thereof)

(14~~13~~) Twelve (12) blow-dryers (one for each additional 15 students or major fraction thereof)

(15~~14~~) Twelve (12) curling irons (one for each additional 15 students or major fraction thereof)

(16~~15~~) One (1) mannequin for each student

(17~~16~~) Four hundred (400) permanent wave rods and other permanent wave supplies as necessary

(18~~17~~) Twenty (20) work/styling stations with mirrors (one for each additional 5 students)

(19~~18~~) Twenty (20) styling chairs (one for each additional 5 students)

(20~~19~~) Five (5) covered waste receptacles

(21~~20~~) One (1) large closed cabinet for clean towels

(22~~21~~) Four (4) large covered receptacles for soiled towels (one for each additional 15 students or major fraction thereof)

(23~~22~~) One (1) large dispensary cabinet

(24~~23~~) Four (4) manicure tables and chairs considered adequate for patron service. A long narrow (18") folding table is acceptable for student practice. This is a requirement for a cosmetology school and not a barber school.

(25~~24~~) One (1) covered hair pin or clippie container for each student. This is a requirement for a cosmetology school and not a barber school.

(26~~25~~) Subscriptions to at least three (3) professional cosmetology related periodicals (electronic perio dicals are acceptable)

(27~~26~~) Four (4) heaters and irons and/or four (4) electric pressing combs

(28~~27~~) Five (5) head forms

(29~~28~~) Five (5) wigs

(b) Other additional equipment shall be required if the Board's Inspector shall show evidence that the need for additional equipment is necessary to the appropriate and safe training in all phases of cosmetology and barbering to each student enrolled in the school.

175:10-3-33. Required textbooks

Textbooks must be approved by the Board that adequately covers the prescribed curricula and prepares students for State Board testing. Other textbooks and reference material may be used to enhance the ~~cosmetology~~ course of study.

175:10-3-34. Basic Cosmetologist course curriculum for privately owned and public schools

(a) **Privately owned cosmetology school.** The 1500 clock hour ~~or 50 credit hour~~ curriculum (pure cosmetology) is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Theory (must be coordinated with each practical practice subject as is appropriate
throughout the course of training) 150 clock hours

~~(A) Clock hours - 150~~

~~(B) Credit hours - 5~~

(2) Manicuring and pedicuring (including sculptured nails and tips and other artificial nail application procedures and care) 90 clock hours

~~(A) Clock hours - 90~~

~~(B) Credit hours - 3~~

(3) Facials (skin care training includes make-up, waxing and/or other methods for non-permanent hair removal) 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(4) Scalp treatments 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(5) Shampooing/conditioning rinses 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(6) Hairstyling, including finger waving, the dressing of wigs, thermal and blow drying 390 clock hours

~~(A) Clock hours - 390~~

~~(B) Credit hours - 13~~

(7) Hair color tints and bleaching and other color treatments 120 clock hours

~~(A) Clock hours - 120~~

~~(B) Credit hours - 4~~

(8) Hair cutting and hair shaping with shears and thinning shears (scissors) razor and clipper (includes beard) 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(9) Lash and brow tinting and arching 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(10) Personality, shop management and unassigned hours for review, examinations, etc. 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(11) Hair restructuring/permanent waving and chemical hair relaxing 240 clock hours

~~(A) Clock hours - 240~~

~~(B) Credit hours - 8~~

(12) Total cosmetology hours 1500 hours

~~(A) Clock hours - 1500~~

~~(B) Credit hours - 50~~

(b) **Public cosmetology school.** The 1500 clock hour or ~~50 credit hour~~ curriculum (1000 hours pure cosmetology plus 500 hours of cosmetology related high school subjects) is prescribed for public school students in the following situations: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Cosmetology students that are currently attending high school

(2) Persons that did not otherwise complete their cosmetology training while registered as a cosmetology student in high school.

(A) Students who shall qualify for training in this matter must complete 1000 clock hours ~~or 33 credit hours~~ in a Basic cosmetology course and 500 hours of approved related subjects. The official high school transcript shall serve as documentation for the 500 hours of related instruction. The transcript must show passing grades in related subjects and completion of at least the first semester of the twelfth (12th) grade. Related subjects shall run concurrently with and shall be in no instance older than three (3) years at time of enrollment in a cosmetology school course. The curriculum as follows has a recommended completion time of two (2) school years.

(B) Adult students registered in a cosmetology school are not eligible to train under the 1000 hours pure cosmetology plus 500 hours of cosmetology related high school subjects unless qualified under (b) (1) and (2) of this rule. (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(3) Theory (must be coordinated with each practical practice subject as is appropriate throughout the course of training) 150 clock hours

~~(A) Clock hours - 150~~

~~(B) Credit hours - 5~~

(4) Manicuring and pedicuring (including sculptured nails and tips and other artificial nail application procedures and care) 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(5) Facials (skin care training includes make-up, waxing and/or other methods for non-permanent hair removal) 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(6) Scalp treatments 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(7) Shampooing/conditioning rinses 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(8) Hairstyling, including finger waving, the dressing of wigs, thermal and blow drying 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(9) Hair color tints and bleaching and other color treatments 90 clock hours

~~(A) Clock hours - 90~~

~~(B) Credit hours - 3~~

(10) Hair cutting and hair shaping with shears and thinning shears (scissors) razor and clipper (includes beard) 120 hours

~~(A) Clock hours - 120~~

~~(B) Credit hours - 4~~

(11) Lash and brow tinting and arching 30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(12) Personality, shop management and unassigned hours for review, examinations, etc. 100 clock hours

~~(A) Clock hours - 100~~

~~(B) Credit hours - 3~~

(13) Hair restructuring/permanent waving and chemical hair relaxing 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(14) Cosmetology related subjects 500 clock hours

~~(A) Clock hours - 500~~

~~(B) Credit hours - 17~~

(15) Total cosmetology hours 1500 clock hours

~~(A) Clock hours - 1500~~

~~(B) Credit hours - 50~~

(c) **Minimum student kit contents for private and public schools.**

(1) A Basic Cosmetology student kit minimum equipment is required as follows:

(A) one (1) approved text on theory of cosmetology

(B) one (1) razor-type hair shaper and shaper blades or razor hone

(C) one (1) pair each hair cutting shears and thinning shears
(D) one (1) cuticle nipper for finger nails and one (1) nipper for toe nails
(E) one (1) cuticle scissors
(F) one (1) nail brush
(G) one (1) nail file or package of emery boards
(H) one (1) tweezer
(I) six (6) assorted ~~twelve (12)~~ hair brushes
(J) twelve (12) ~~hard rubber~~ combs ~~or other good quality combs~~ (including~~shall include~~ rat-tail, color, regular and/or barber-type)
(K) one (1) box~~two (2) boxes~~ of curl clips (100 per box)
(L) one (1) shampoo cape
(M) twelve (12) dozen hair styling rollers
(N) one (1) kit or tray to contain student personal training equipment

(2) In addition to the list of equipment in (1) of this Section the school shall immediately have available for student training:
(A) appropriately sanitized set of manicuring implements for student training use on each patron
(B) toe nail clipper
(C) permanent wave rods
(D) other hair restructuring supplies
(E) an adequate supply of applicator bottles
(F) an adequate supply of protective gloves (disposable)
(G) an adequate supply of neck strips
(H) an adequate supply of hair clippers
(I) an adequately supplied products dispensary to appropriately train students in cosmetology classes
(J) visual aid equipment in addition to the chalk or marker board

175:10-3-37. Master cosmetology instructor course entrance and curriculum requirements

(a) **Entrance requirements.**
(1) Student registered in the master instructor course must:
(A) hold an Oklahoma Cosmetologist license or be registered for the Basic Cosmetologist examination. If any person enrolled prior to examination shall fail to appear or fail to pass Basic Cosmetologist, he/she shall immediately cease master cosmetology instructor training until such time as he shall again register for and show proof of achieving a passing score on the cosmetologist examination.
(B) hold a High School Diploma or General Education Development Certificate.
(C) file registration application for master cosmetology instructor course including fee of $5.00 with the Board.

(2) Each student shall be provided with an approved textbook or manual before commencing training.

(b) **Curriculum requirements.** The 1000 clock hour ~~or 34 credit hour~~ Master Cosmetology Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)
(1) Orientation 60 clock hours
~~(A) Clock hours - 60~~
~~(B) Credit hours - 2~~
(2) Introduction to teaching and curriculum 120 clock hours
~~(A) Clock hours - 120~~
~~(B) Credit hours - 4~~
(3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours
~~(A) Clock hours - 330~~
~~(B) Credit hours - 11~~
(4) Board rules, regulations and statutes ~~Cosmetology Law~~, cosmetology school management and record keeping 90 clock hours
~~(A) Clock hours - 90~~
~~(B) Credit hours - 3~~
(5) Teaching - assisting in the classroom and clinic 150 clock hours
~~(A) Clock hours - 150~~
~~(B) Credit hours - 5~~
(6) Practice teaching - classroom and clinic 250 clock hours
~~(A) Clock hours - 250~~
~~(B) Credit hours - 9~~
(7) Total hours 1000 clock hours
~~(A) Clock hours - 1000~~
~~(B) Credit hours - 34~~

(b) Master Cosmetology Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by master instructor students will be in the Basic, Manicurist/Nail Technician, Cosmetician, Hairbraiding Technician and/or Esthetician/Facialist/Facial Operator course. Practice teaching must be supervised by a licensed master cosmetology instructor.

(c) A master cosmetology instructor student is not allowed to perform patron services. The master cosmetology instructor student shall only demonstrate for or otherwise assist student under his supervision.

(d) **Minimum student kit contents.** A master cosmetology instructor minimum kit equipment is required as follows:
(1) textbook or manual
(2) workbook
(3) Board Statute, Rules and Regulations Book

175:10-3-38. Manicurist/Nail Technician course entrance and curriculum requirements

(a) **Entrance requirements.** Manicurist/nail technician course entrance requirements are the same as for a Basic course student.
(1) Each student shall be provided an approved textbook before commencing classroom training.

(2) A manicurist/nail technician student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours ~~or 2 credit hours~~ of practice and classroom instruction under the direct supervision of a licensed instructor.

(3) Kit is required on or before completion of classroom training.

(4) If a licensed manicurist/nail technician registers for the Basic course, credit of 224 clock hours ~~or8 credit hours~~ is allowed.

(b) **Curriculum requirements.** The 600 clock hour ~~or 20 credit hour~~ curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Bacteriology, sterilization and sanitation 40 clock hours

~~(A) Clock hours - 40~~

~~(B) Credit hours - 1~~

(2) Nail structure, composition, disorders and diseases 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(3) Manicuring and pedicuring (includes waxing or other non-permanent hair removal) 160 clock hours

~~(A) Clock hours - 160~~

~~(B) Credit hours - 6~~

(4) Artificial nails

~~(A) Clock hours - 160~~

~~(B) Credit hours - 6~~

(5) Nail art 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(6) Salon development (includes business administration and law; insurance; professional ethics; record keeping; business telephone techniques; salesmanship; displays and advertising; hygiene and public health) 80 clock hours

~~(A) Clock hours - 80~~

~~(B) Credit hours - 2~~

(7) Board rules, regulations and statutes~~Cosmetology law, rules and regulations~~40 clock hours

~~(A) Clock hours - 40~~

~~(B) Credit hours - 1~~

(8) Total hours 600 clock hours

~~(A) Clock hours - 600~~

~~(B) Credit hours - 20~~

(c) **Minimum student kit contents.**

(1) A Manicurist/nail technician minimum kit equipment is required as follows:

(A) one (1) textbook or manual

(B) one (1) cuticle nipper for finger nails and one (1) nipper for toe nails

(C) one (1) cuticle scissor

(D) one (1) cuticle pusher

(E) one (1) nail brush

(F) one (1) nail file or package of emery boards

(G) artificial nail product and tools

(H) one (1) kit or tray to contain student personal training equipment

(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:

(A) appropriately sanitized set of manicuring implements for student use on each patron

(B) an adequate supply of protective gloves (disposable)

(C) visual aid equipment in addition to the chalk or marker board

175:10-3-39. Esthetician/Facialist/Facial Operator course entrance and curriculum requirements

(a) **Entrance requirements.** Esthetician/Facialist/Facial Operator course entrance requirements are the same as for a basic course student.

(1) Each student shall be provided an approved textbook before commencing classroom training.

(2) An esthetician/facialist/facial operator student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours ~~or 2 credit hours~~ of practice and classroom instruction under the direct supervision of a licensed instructor.

(3) Kit is required on or before completion of classroom training

(4) If a licensed esthetician/facialist/facial operator registers for the basic cosmetologist course, credit of 224 clock hours ~~or 8 credit hours~~ is allowed.

(b) **Curriculum requirements.** The 600 clock hour ~~or 20 credit hour~~ curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Bacteriology, sterilization, sanitation and safety 80 clock hours

~~(A) Clock hours - 80~~

~~(B) Credit hours - 3~~

(2) Sciences: Histology, dermatology and physiology of the skin (includes structure and function of skin and glands; color and morphology) 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(3) Facials: (includes draping, manipulations, cleaning and toning; chemistry and light therapy and make-up 200 clock hours

~~(A) Clock hours - 200~~

~~(B) Credit hours - 7~~

(4) Non-permanent hair removal: (includes methods and procedures and arching) 40 clock hours

~~(A) Clock hours - 40~~

~~(B) Credit hours - 1~~

(5) Salon development: (includes business administration and law; insurance; professional ethics; record keeping; business telephone techniques; salesmanship;

displays and advertising; hygiene and public health) 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(6) Board rules, regulations and statutes ~~Cosmetology law, rules and regulations~~40 clock hours

~~(A) Clock hours - 40~~

~~(B) Credit hours - 1~~

(7) Total hours - 600 clock hours

~~(A) Clock hours - 600~~

~~(B) Credit hours - 20~~

(c) **Minimum student kit contents.**

(1) An esthetician/facialist/facial operator kit equipment is required as follows:

(A) one (1) textbook or manual

(B) make-up with disposable applicators

(C) one (1) set of five (5) make-up brushes

(D) one (1) comb-out cape

(E) one (1) tweezer

(F) one (1) kit or tray to contain student personal training equipment

(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:

(A) an adequate supply of protective gloves (disposable)

(B) an adequately supplied dispensary with skin care products

(C) visual aid equipment in addition to the chalk or marker board

175:10-3-40. Curriculum and training requirements for cosmetology and barbering ~~all~~ courses

(a) Curriculum training shall include the study of electricity, safety measures and chemistry and must be carried through all classes in which it is used. Mannequin practice must be given to each student.

(b) A student who has completed the training in the Basic courses ~~course~~ in a cosmetology and/or barbering school or as an apprentice who completed the course in an Establishment ~~a salon~~, must have had required amount of patron practice by working under actual cosmetology/barbering Establishment~~cosmetology salon~~ conditions to that he should be able to:

(1) perform any ordinary operation satisfactorily and in the same amount of time customarily allotted to that operation in anEstablishment~~establishmenta cosmetology salon~~.

(2) conduct a consultation on any ordinary cosmetology or barbering subject and prescribe proper treatment.

(3) mix any preparation used in an Establishment~~a cosmetology salon~~.

(c) Salon~~Cosmetology salon~~ management must include purchasing, price determination, selling, appointment scheduling, dispensing of supplies and personal management.

(d) The teaching of wig styling and hairpieces shall consist of training in the proper fitting, dressing, styling and arranging of wigs or hairpieces.

(e) State Cosmetology and Barbering Law and Board rules and regulations must be taught in all courses.

(f) A school owner shall maintain an adequate dispensary room with supplies necessary for school operation and student training.

(g) A student enrolled in a school shall not be allowed to work on the public until such time as he has received at least 150 clock hours or equivalent number of~~5~~ credit hours of training spent in classroom theory and in mannequin or student practice under the direct supervision of a licensed instructor.

(h) A Basic Cosmetology or Barber student who fails to complete the course and registers in the Manicurist, Cosmetician, Hairbraiding Technician or Facialist course may be credited with 10% of the previously accumulated hours. A Manicurist, Cosmetician, Hairbraiding Technician, Facialist or Barber student who fails to complete the course and registers in the Basic Cosmetology or Barber course may be credited with 10% of the previously accumulated hours.

(i) Cosmetology and Barber schools must teach the curriculum for each course approved by the Board. A copy of current curriculum must be on file with the Board. The curriculum must be proven by a schedule which must be posted, followed and made available to students. The schedule may be interrupted for a period not to exceed more than eight (8) hours per month for assembly purposes.

(j) If a school stays open more than eight (8) hours per day, a curriculum and schedule must be submitted to the Board covering extra hours.

(k) An evening school cannot be approved unless information as to the instructors in charge and a curriculum and schedule for each course to be taught is submitted to the Board before beginning evening classes. A student may attend both day and evening classes provided the entire time does not exceed eight (8) hours daily. A schedule must be submitted to each student training in such manner.

(l) Each manager, instructor or other person shall exercise the greatest care in keeping his person, all instruments used in school in the cleanest possible condition. Each must be knowledgeable of the more communicable diseases and the techniques necessary to prevent the transmission of disease.

175:10-3-41. Cosmetician course entrance and curriculum requirements

(a) **Entrance requirements.** Cosmetician course entrance requirements are the same as for a Basic course.

(1) Each student shall be provided an approved textbook or manual before commencing classroom training.

(2) A Cosmetician student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours ~~or 2 credit hours~~ of practice and classroom instruction under the direct supervision of a licensed instructor.

(3) Kit is required on or before completion of practice and classroom instruction hours.

(4) If a licensed Cosmetician registers for the Basic course, credit of 224 clock hours or ~~8 credit hours~~ is allowed.

(b) **Curriculum requirements.** The 600 clock hour ~~or 20 credit hour~~ curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Bacteriology, sterilization and sanitation 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(2) Make-up application (includes application of make-up, lipstick, eye shadow, eyeliner, mascara and rouge) 200 clock hours

~~(A) Clock hours - 200~~

~~(B) Credit hours - 7~~

(3) Hair arranging (includes arranging of the hair using curling irons, hot rollers, combs, brushes and any necessary product and accessories) 200 clock hours

~~(A) Clock hours - 200~~

~~(B) Credit hours - 7~~

(4) Salon development (includes business administration and law, insurance, professional ethics, record keeping, business telephone techniques, salesmanship, displays, advertising, hygiene and public health) 90 clock hours

~~(A) Clock hours - 90~~

~~(B) Credit hours - 3~~

(5) Board rules, regulations and statutes~~Cosmetology rules, regulations and law~~50 clock hours

~~(A) Clock hours - 50~~

~~(B) Credit hours - 1~~

(6) Total hours 600 clock hours

~~(A) Clock hours - 600~~

~~(B) Credit hours - 20~~

(c) **Minimum student kit contents.**

(1) A Cosmetician minimum kit equipment is required as follows:

(A) textbook or manual

(B) make-up with disposable applicators

(C) lipstick with disposable applicators

(D) eye shadow with disposable applicators

(E) mascara with disposable applicators

(F) eyeliner with disposable applicators

(G) rouge/blush with disposable applicators

(H) 1 set of five (5) make-up brushes

(I) hairspray

(J) minimum of twelve (12) combs

(K) minimum of twelve (12) hairbrushes

(L) disposable make-up sponges

(M) hot rollers

(N) curling iron

(O) one (1) kit or tray to contain student personal training equipment

(P) one (1) comb-out cape

(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:

(A) an adequate supply of protective gloves (disposable)

(B) an adequate supply of neck strips

(C) visual aid equipment in addition to the chalk or marker board.

175:10-3-42. Facial/Esthetics Instructor course entrance and curriculum requirements

(a) **Entrance requirements.**

(1) Student registered in the facial esthetics instructor course must:

(A) hold an Oklahoma facial/esthetician license or be registered for the facial/esthetician examination. If any person enrolled prior to examination shall fail to appear or shall fail to pass facial test, he/she shall immediately cease facial/esthetics instructor training until such time as he shall again register for and show proof of achieving a passing score on the facial/esthetician examination.

(B) hold a high school diploma or General Education Development Certificate.

(C) file registration application for facial/esthetician instructor course including fee of $5.00 with the Board.

(2) Each student shall be provided with an approved textbook or manual before commencing training.

(3) A person licensed as a Manicurist/Nail Technician Instructor and holds a current esthetician license may be eligible for Facial/Esthetics Instructor licensure by registering and passing the Facial/Esthetics Instructor practical examination.

(b) **Curriculum requirements.** The 1000 clock hour ~~or 33 credit hour~~ Facial/Esthetics Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Orientation 60 clock hours

~~(A) Clock hours - 60~~

~~(B) Credit hours - 2~~

(2) Introduction to teaching and curriculum 120 clock hours

~~(A) Clock hours - 120~~

~~(B) Credit hours - 4~~

(3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing and administering and grading examinations 330 clock hours

~~(A) Clock hours - 330~~

~~(B) Credit hours - 11~~

(4) Board rules, regulations and statutes~~Cosmetology Law~~, cosmetology school management and record keeping 90 clock hours

~~(A) Clock hours - 90~~

~~(B) Credit hours - 3~~

(5) Teaching - assisting in classroom and clinic 150 clock hours

~~(A) Clock hours - 150~~

~~(B) Credit hours - 5~~

(6) Practice teaching - classroom and clinic 250 clock hours

~~(A) Clock hours - 250~~

~~(B) Credit hours - 8~~

(7) Total hours 1000 clock hours

~~(A) Clock hours - 1000~~

~~(B) Credit hours - 33~~

(c) **Minimum student kit contents.** A facial/esthetics instructor minimum kit equipment is required as follows:

(1) textbook or manual

(2) workbook

(3) Board Statute, Rules and Regulations Book

175:10-3-43. Hairbraiding Technician course entrance and curriculum requirements

(a) **Entrance requirements.** Hairbraiding Technician course entrance requirements are the same as for a Basic course pursuant to OAC 175:10-3-16.

(1) Each student shall be provided an approved textbook or manual before commencing classroom training.

(2) A Hairbraiding Technician student shall not be allowed to perform patron services until such time as he/she has received at least 80 clock hours ~~or 2 credit hours~~ of practice and classroom instruction under the direct supervision of a licensed Instructor.

(3) Kit is required on or before completion of practice and classroom instruction hours.

(4) If a licensed Hairbraiding Technician registers for the Basic course, credit of 224 clock hours ~~or8 credit hours~~ is allowed.

(b) **Curriculum requirements.** The 600 clock hour ~~or 20 credit hour~~ curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Bacteriology, chemistry, anatomy, physiology, sterilization and sanitation ~~(includes hair and scalp disorders)~~100 clock hours

~~(A) Clock hours - 100~~

~~(B) Credit hours - 3~~

(2) Hairbraiding/hairweaving skills (includes shampooing, purpose and effect, procedures, repair, removal of weft, sizing and finishing, extension and maintenance/care of braids/weaves) 300 clock hours

~~(A) Clock hours - 300~~

~~(B) Credit hours - 10~~

(3) Salon development (includes business administration and law, insurance, professional ethics, record keeping, business telephone techniques, salesmanship, displays, advertising, hygiene and public health 180 clock hours

~~(A) Clock hours - 180~~

~~(B) Credit hours - 6~~

(4) Board rules, regulations and statutes ~~Cosmetology rules, regulations and law~~30 clock hours

~~(A) Clock hours - 30~~

~~(B) Credit hours - 1~~

(5) Total hours 600 clock hours

~~(A) Clock hours - 600~~

~~(B) Credit hours - 20~~

(c) **Minimum student kit contents.**

(1) A Hairbraiding Technician minimum kit equipment is required as follows:

(A) textbook or manual

(B) four (4) hair brushes

(C) four (4) hard rubber combs or other good quality combs (shall include rat-tail, color, regular and/or barber type)

(D) hair extension material

(E) one (1) comb-out cape

(F) one (1) box of curl clips (100 per box)

(G) one (1) kit or tray to contain student personal training equipment

(2) In addition to the list of equipment in (1) of this subsection, the school shall have immediately available for student training:

(A) an adequate supply of protective gloves (disposable)

(B) an adequate supply of neck strips

(C) visual aid equipment in addition to the chalk, marker board or acceptable alternative.

175:10-3-44. Manicurist/Nail Technician Instructor course entrance and curriculum requirements

(a) **Entrance requirements.**

(1) Student registered in the manicurist/nail technician instructor course must:

(A) hold an Oklahoma manicurist/nail technician license or be registered for the manicurist examination. If any person enrolled prior to examination shall fail to appear or shall fail to pass manicurist test, he/she shall immediately cease manicurist/nail technician instructor training until such time as he/she shall again register for and show proof of achieving a passing score on the manicurist examination.

(B) hold a high school diploma or General Education Development Certificate.

(C) file registration application for manicurist/Nail Technician Instructor course including fee of $5.00 with the Board.

(2) Each student shall be provided with an approved text book or manual before commencing training.

(3)A person licensed as a Facial/Esthetics Instructor and holds a current Manicurist license, may be eligible for Manicurist/Nail Technician Instructor licensure by registering and passing the Manicurist/Nail Technician Instructor practical examination.

(b) **Curriculum requirements.** The 1000 clock hour ~~or 33 credit hour~~ Manicurist/Nail Technician Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Orientation 60 clock hours
~~(A) Clock hours - 60~~
~~(B) Credit hours - 2~~
(2) Introduction to teaching and curriculum 120 clock hours
~~(A) Clock hours - 120~~
~~(B) Credit hours - 4~~
(3) Course outlining and development; lesson planning; teaching techniques; teaching aids; developing, administering and grading examinations 330 clock hours
~~(A) Credit hours - 330~~
~~(B) Credit hours - 11~~
(4) Board rules, regulations and statutes~~Cosmetology Law~~, cosmetology school management and record keeping 90 clock hours
~~(A) Clock hours - 90~~
~~(B) Credit hours - 3~~
(5) Teaching - assisting in classroom and clinic 150 clock hours
~~(A) Clock hours - 150~~
~~(B) Credit hours - 5~~
(6) Practice teaching - classroom and clinic 250 clock hours
~~(A) Clock hours - 250~~
~~(B) Credit hours - 8~~
(7) Total hours 1000 hours
~~(A) Clock hours - 1000~~
~~(B) Credit hours - 33~~

(c) **Minimum student kit contents.** A manicurist/nail technician instructor minimum kit equipment is required as follows:
(1) textbook or manual
(2) workbook
(3) Board Statute, Rules and Regulations Book

175:10-3-45. Barber course entrance and curriculum requirements

(a) **Entrance requirements.** A Barber course entrance requirements are the same as for a Basic cosmetology course pursuant to OAC 175:10-3-16.
(1) Each student shall be provided an approved textbook or manual before commencing classroom training.
(2) A Barber student shall not be allowed to perform patron services until such time as he/she has received at least 150 clock hours of practice and classroominstruction under the direct supervision of a licensed Instructor.
(3) Kit is required on or before completion of practice and classroom instruction hours.

(b) **Curriculum requirements.** The 1500 clock hour curriculum for the barber course is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)
(1) Safe work practices, infection control, bacteriology, implements, tools, equipment, sterilization, sanitation and safety 155 clock hours
(2) Salesmanship, job search, shop management, history of barbering andprofessional image 175 clock hours
(3) Anatomy, physiology, chemistry, electricity and light therapy, properties anddisorders of skin, scalp and hair, hair and scalp treatments 200 clock hours
(4) Facial massage and treatment 40 clock hours
(5) Haircutting and styling 580 clock hours
(6) Chemical relaxing, soft curl perms, permanent waving 95 clock hours
(7) Hair coloring 150 clock hours
(8) Men's hairpieces, mustache, beard design and shaving 65 clock hours
(9) Board rules, regulations and statutes 40 clock hours
(10) Total hours 1500 hours

(c) **Minimum barber student kit contents.**
(1) A Barber student kit minimum equipment is required as follows:
(A) one (1) approved text on theory of barbering
(B) one (1) razor-type hair shaper and shaper blades
(C) one (1) pair each hair cutting shears and thinning shears
(D) one (1) tweezer
(E) six (6) assorted hair brushes
(F) twelve (12) combs (including rat-tail, color, regular and/or barber-type)
(H) one (1) shampoo cape
(I) one (1) kit or tray to contain student personal training equipment
(2) In addition to the list of equipment in (1) of this Section the school shallimmediately have available for student training:
(A) permanent wave rods
(B) other hair restructuring supplies
(C) an adequate supply of applicator bottles
(D) an adequate supply of protective gloves (disposable)
(E) an adequate supply of neck strips
(F) an adequate supply of hair clippers
(G) an adequately supplied products dispensary to appropriately train students in classes
(H) visual aid equipment in addition to the chalk or marker board

175:10-3-46. Master Barber instructor course, entrance and curriculum requirements

(a) **Entrance requirements.**
(1) Student registered in the barber instructor course must:
(A) hold an Oklahoma Barber license or be registered for the Barber examination. If any person enrolled prior to examination shall fail to appear or fail to pass the Barber exam, he/she shall immediately cease instructor training until such time as he shall again register for and show proof of achieving a passing score on the barber examination.
(B) hold a High School Diploma or General Education Development Certificate.

(C) file registration application for barber instructor course including fee of $5.00 with the Board.

(2) Each student shall be provided with an approved textbook or manual before commencing training.

(b) **Curriculum requirements.** The 1000 clock hour Master Barber Instructor course curriculum is prescribed as follows: (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.)

(1) Orientation 60 clock hours

(2) Introduction to teaching and curriculum 120 clock hours

(3) Course outlining and development; lesson planning; teaching techniques;teaching aids; developing and administering and grading examinations 330 clockhours

(4) Board rules, regulations and statutes, school management and record keeping 90 clock hours

(5) Teaching - assisting in the classroom and clinic 150 clock hours

(6) Practice teaching - classroom and clinic 250 clock hours

(7) Total hours 1000 clock hours

(b) Master Barber Instructor students are assigned practice in classes actually scheduled by the school. Practice teaching by barber instructor students will be in the barber course. Practice teaching must be supervised by a licensed Barber instructor.

(c) A master barber instructor student is not allowed to perform patron services. The master barber instructor student shall only demonstrate for or otherwise assist students under his supervision.

(d) **Minimum student kit contents.** A master barber instructor minimum kit equipment is required as follows:

(1) textbook or manual

(2) workbook

(3) Board Statute, Rules and Regulations Book

PART 7. GENERAL OPERATIONS AND LICENSING REQUIREMENTS

175:10-3-51. Approval for school

An initial license to open a cosmetology and/or barber school is issued upon approval of location, equipment, schedule and curriculum.

175:10-3-52. Change of ownership or location

(a) No license is transferable. Any time a school changes ownership, the requirements for an original cosmetology license shall apply.

(1) Any school owner who contemplates selling or otherwise transferring ownership of his school shall notify the Board in writing of intent to do so. The selling or other transfer of ownership shall not be considered consummated until such time as the pplication of the new proposed owner has been approved by the Board and a new license is issued.

(2) Incorporation of a school shall require a copy of the Articles of Incorporation, a new school license application, the initial license fee of four hundred dollars ($400.00) and a new sufficient surety bond shall be submitted to the Board immediately upon incorporation.

(b) Change of location of any ~~cosmetology~~ school shall require written notice be submitted to the Board no less than thirty (30) days prior to any change in order to be approved by the Board.

175:10-3-53. Instructors

(a) **Licensed instructors required; demonstrators and guest lecturers.** Teaching in a ~~cosmetology~~ school shall be done by licensed instructors only. Professional persons in fields related to cosmetology and barbering may lecture in ~~cosmetology~~ schools.

(b) **Product demonstration time allowed.** The total time given to product demonstrations or lecturers shall not exceed eight (8) hours per month in any one school.

(c) **Product demonstration by appropriately licensed person only.** No person may demonstrate a product in a cosmetology school unless the person is licensed by the Board.

(d) **List of substitute instructors.** Schools shall maintain a current list of substitute instructors.

(1) List of current instructors shall contain names, addresses and phone numbers in the event of emergencies, vacations, leaves, or absence to assure appropriate instruction for the number of students enrolled.

(2) Any substitute instructor in any ~~cosmetology~~ school shall posses a valid instructor license issued by the Board in order for hours of training to be credited to a student.

(e) **Owner instructors.** If the owner of a cosmetology school is the only instructor or one of the minimum number of instructors required for the number of students enrolled and registered in the school, the owner instructor shall devote full time to the instruction of courses of study~~cosmetology~~ during school training hours.

(f) **Notice of change in instructor staff.** Each school owner is required to notify the Board in writing of any changes in cosmetology staff or instructors.

175:10-3-55. Student application and contracts

(a) A new student application, contract and other required documents must be submitted before student commences training in any course. Student registration form must contain all applicable information including social security information.

(b) A student must be given a copy of the student contract at enrollment time.

(c) A copy of each student/school contract must be kept on file in the school.

(d) A student/school contract shall not be changed after a copy is submitted to the Board unless a change in contract is initialed by each involved party. A copy of the initialed contract shall be given to student at time of any change and a copy submitted to the Board within five (5) days of a change, noted with revised date.

(e) A student shall be registered in only one ~~cosmetology~~ school at any given time.

175:10-3-56. Student training; approved credits; credit limits

(a) **Commencement of student training.** Student training shall be counted from the date on the student registration receipt. The postmark will determine the issuance date on the student registration receipt. The postmark will determine the issuance date on the registration receipt provided that all forms and affidavits required by the Board are complete and accurate in accordance with Board rules. A student registration for any course in a specific school is valid two (2) years.

(b) If a school has an articulation agreement with a college or university, then the school shall notify a student prior to the student's registration of the following:

(1) the identity of the college or university with which the school has the agreement; and

(2) the number of credit hours that the college or university will accept pursuant to the articulation agreement.

(c) The notice shall also include a disclaimer informing the student that there is no guarantee that colleges of universities that do not have an articulation agreement with the school will accept the credit hours. The notice to the student shall be prominently displayed in the student handbook.

(d) **Direct instructor supervision required.** A student must train under the direct supervision of an instructor employed by the school at all times in order to be credited for hours by the Board.

(e) **Credit for field of study~~cosmetology~~ related field trip.** A student may be given credit for hours spent in a Board approved cosmetology/barber~~cosmetology~~ related field trip provided:

(1) the student is accompanied and observed by an~~a cosmetology~~ instructor licensed by the Oklahoma State Board of Cosmetology and Barbering~~of Oklahoma~~.

(2) credit for cosmetology/barber~~cosmetology~~ related field trips shall not exceed seventy-two (72) total clock hours of the Basic Cosmetology/Barber~~Cosmetology~~ course or more than sixteen clock hours in a given week.

(3) credit for cosmetology or barbering related field trips shall not exceed twenty four (24) clock hours of the Manicurist, Facial/Esthetics or Hairbraiding Technician course or more than sixteen clock hours in a given week.

(4) credit for cosmetology related field trips shall not exceed forty (40) total clock hours of the Master Instructor, Manicurist/Nail Technician Instructor, or Facial/Esthetics Instructor course, Barber or Barber Instructor or more than sixteen clock hours in a given week.

(f) **Credit for model participation in a State Board practical examination.** A student may be given eight (8) clock hours for participation as a student model in a State Board practical examination.

(g) **Credit limit per day.** No student is permitted to receive more than eight (8) clock hours per day.

175:10-3-60. Attendance and other records and requirements

(a) **Minimum attendance per week.** A part time schedule shall be submitted and approved by the Board. Student shall attend a clock hour school at least three (3) hours per day, five (5) days per week or a total of fifteen (15) hours per week.

(b) **Daily sign-in/time clock or other records maintained in a clock hour school.** In addition to maintaining a current record of student hours, clock hour schools shall keep a record of daily attendance Students registered in a clock hour school shall sign or clock in and out of each class daily.

(c) **Credit hour records maintained in a credit hour school.** Credit hour schools shall maintain a current record of credit hours earned by each student.

(d) **Practical practice records.** Clock and credit hour schools shall maintain a record of clinic practical practices and theory credit or clock hours earned by each student.

(e) **Student hour retention.** School shall retain records of students for three (3) years.

(f) **Record availability.** All attendance and educational records shall be available during inspection or upon request of the Board as allowed under the Cosmetology and Barbering Act.

175:10-3-62. Patron services in school

(a) **Student not paid for clinic work.** A school may not offer to pay commission to a student for clinic work performed.

(b) **Prices for services.** All prices charged by the ~~cosmetology~~ school for clinic ~~cosmetology~~ services shall be conspicuously posted in the school clinic area.

(c) **Performing patron services in school.** An instructor in a ~~cosmetology~~ school shall not be allowed to perform patron service in the school. Appointment books and other records shall reflect the name of the patron and the student assigned to perform ~~cosmetology~~ services for the patron.

(d) **Student not called from theory hour of instruction.** A student shall not be called from any required instruction to perform practical services on the public.

175:10-3-63. School rules to be posted; specific and current

(a) A copy of the ~~cosmetology~~ school rules and regulations is required to be posted in each school.

(b) School ~~Cosmetologyschool~~ rules shall define "Excused absence".

(c) School rules shall be specific regarding excessive absence and tardiness.

(d) Posted school rules shall be kept current. Any revised rules shall be submitted to the Board and students shall be apprised of revised rules and effective date at least two (2) weeks prior to planned effective date.

175:10-3-64. School uniform/dress code

(a) School rules shall be specific for student and student instructor uniform dress code requirements. The uniform dress code shall meet or exceed the Board rule requirements as pertain to professional uniform and safe and sanitary training

practices. No hours shall be credited to any student who is not in uniform during classroom or clinic practical practice training. The Board minimum uniform dress code standards set forth as follows:

(1) Each instructor, student training in a ~~cosmetology~~ school or apprentice training in an Establishment~~a salon~~ shall be dressed in a washable tightly woven crisp fabric which shall readily shed hair clippings and/or other airborne particles.

(2) Tank or tube tops, sleeveless tops, high heels, and open toe footwear are considered by the Board to be unsafe and unsanitary attire for any ~~cosmetology school~~ student while training in the theory and practical practices of cosmetology or barbering.

(b) It shall be the responsibility of the managing ~~cosmetology~~ instructor of a ~~cosmetology~~ school to dismiss any student not in compliance with uniform dress code from clinic or theory class until such time as the student is in Board approved uniform dress code.

175:10-3-67. Student re-registration fee and transfer process

(a) **Student re-registration.** Each time a student registers, re-registers, or transfers, in addition to other requirements, the registration fee of $5.00 must be submitted to the Board with registration application.

(b) **Student transfer.** A student shall not be allowed to transfer from one ~~cosmetology~~ school to another for a period of at least thirty (30) days from the date of withdrawal or other termination unless a notarized release agreement, signed by official of transferring school is received by the Board. Withdrawal/termination date on school affidavit is required to be submitted within five (5) days of termination.

(c) **Out-of-state student transfer.** A student may transfer out-of-state hours provided the student submits the necessary proof of training to the Board for evaluation. Necessary papers will be forwarded upon request. The reciprocity processing fee for transfer of out-of-state hours is $30.00.

175:10-3-71. Review hours

After a student registers for examination, he may register for non-required review hours not to exceed 500 clock or equivalent number of~~17~~ credit hours. The non-required review hours remain on file but shall not be credited toward an examination. Review hours that are required for the applicant whose license has expired may be credited toward the appropriate examination as in Rule 175:10-9-33.

175:10-3-73. Alcoholic beverage/controlled substance prohibited in schools

It is prohibited by the Board for any ~~cosmetology~~ school instructor, student or school personnel to consume, serve or keep on school premises any beer, alcoholic beverage or other controlled substance during school training hours. This conduct shall be cause for possible suspension of registration and/or license by the Board.

175:10-3-75. Truth in advertisement; notice of student practice

(a) A ~~cosmetology~~ school shall be forbidden to advertise by using knowingly false or deceptive statements in order to induce students to enroll in the school.

(b) All advertisements for clinic practice shall contain the statement "All work is performed by students". The statement shall be required to be posted in a highly visible manner in the ~~cosmetology~~ school clinic area.

175:10-3-76. Student complaints

Each school shall have in place a student complaint process. The procedures for the complaint process shall be provided to the student in writing no later than the first day of class. A copy of the student complaint procedures and process shall be posted in the school. A student who has exhausted the school's complaint process may file a complaint with the Board. The Board shall investigate the complaint in the same manner as other complaints. Complaints regarding financial aid do not fall under the jurisdiction of the Board. Students are referred to school's financial aid officer and/or their lending institution and/or federal financial office and/or school's accrediting commission to address complaint. If notification is received by the Board from the investigating authority that the school has been found to be in violation of federal regulations, the Board may take action pursuant to Title 59 O.S. § 199.6 or 199.11.

SUBCHAPTER 5. LICENSURE OF COSMETOLOGY AND BARBER ESTABLISHMENTS

175:10-5-1. Cosmetology and barber Establishment~~salon~~ license application; authorization to open pending first inspection

(a) The Board will issue an Establishment~~a salon~~ license upon receipt of application for ~~salon~~ license, appropriate fee and notarized affidavit of applicant which reflects compliance with all Establishment ~~salon~~ license requirements. Initial inspection will be conducted to confirm compliance of license requirements.

(b) In the event the Establishment~~salon~~ should fail to be approved at initial inspection, the Establishment may be required to close and cease to provide services to the public until applicant/establishment shall be in compliance of all license requirements.

(c) When the ownership of an Establishment~~a salon~~ changes, it will be considered a new Establishment~~salon~~ and shall be required to comply with requirements for initial Establishment ~~salon~~ license.

(d) Establishment~~Salon~~ owner is required to submit ~~a salon~~ change of location affidavit when the location of an Establishment~~a salon~~ changes. No fee is required unless a new license with new address information is requested.

(e) Establishment~~Salon~~ owner is required to submit a ~~salon~~ name change affidavit when the Establishment~~salon~~ name changes. No fee is required unless a new license with new Establishment ~~salon~~ name is requested.

175:10-5-2. Minimum equipment; sanitation standards; rule posted

(a) Each Establishment ~~salon~~ shall have at least one (1) shampoo basin and shampoo chair and other equipment, implements and supplies adequate to provide ~~cosmetology~~ services in a sanitary and safe manner to the public. Clothing worn by licensee while performing services to the public shall be clean and shall be designed to reduce risk of exposure to electrical and/or chemical burns/cuts to the skin and the potential for transmitting germs/bacteria.

(b) Each ~~cosmetology~~Establishment~~establishment~~ shall have in use at all times, at least one (1) dry and one (1) wet sanitizer for the purpose of sanitizing combs, brushes and other implements after each use.

(c) Each ~~cosmetology~~Establishment~~establishment~~ shall be required to be in compliance with rules established by the Board relating to the standards of sanitation to be observed and practiced in each ~~cosmetology~~Establishment~~establishment~~. A copy of the sanitary rules will be provided to each ~~cosmetology~~Establishment~~establishment~~ by the Board. The rules are required to be posted in each salon.

(d) Each Establishment~~salon~~ owner and manager is responsible for the general and sanitary condition of the Establishment~~salon~~. Each owner and manager is responsible for assuring that each person employed and/or under his supervision and control in the Establishment~~salon~~, shall appropriately post a current, valid Oklahoma license or work permit before performing services to the public in the Establishment ~~salon~~.

175:10-5-4. Licensure requirements for health care facilities

(a) No individual, company or corporation may operate an ~~a~~ cosmetology establishment without making application for an Establishment~~a salon~~ license.

(b) Health care facilities, such as hospitals, nursing or convalescent homes that offer ~~cosmetology~~ services to the public must have the following:

(1) an ~~a cosmetology~~Establishment~~establishment~~ license

(2) Board licensee~~licensed cosmetologist~~ to perform cosmetology or barbering services

(c) No Establishment~~salon~~ license is required if health care facilities offer limited cosmetology or barbering services for grooming and hygiene purposes to patrons and residents of the facility. Persons employed by the facility to perform limited ~~cosmetology~~ services must be a licensed cosmetologist, or barber or be authorized to practice the healing arts or nursing while engaged in the proper discharge of their professional duties. [Title 59 O.S. Section 199.6 (I)]

175:10-5-5. Display of barber pole

Only a licensed barber Establishment or an Establishment that employs licensed barbers may display a barber pole on the premise.

SUBCHAPTER 7. SANITATION AND SAFETY STANDARDS FOR COSMETOLOGY AND BARBER ESTABLISHMENTS, SALONS AND SCHOOLS

175:10-7-1. Cosmetology and barberEstablishment~~establishment~~ separate from residence or other business

No ~~cosmetology~~Establishment~~establishment~~ shall operate in a residence or beauty/barber supply house or other business unless a room or rooms are provided separate and apart from the residence/supply house business and with a separate entrance. Establishment ~~Salon~~ must be separate from beauty supply house/business. Establishment~~Salon~~ area shall have separate entrance and must be identified/signed in order for the Board and consumers to determine specific area of inspection authority and responsibility. Establishment ~~Salon~~ area shall be separated by a solid divider, partition, wall, display counter or shelves. Divider wall must measure at least six (6) feet from floor to top in such manner as to assure compliance with Board standards of sanitation and safety for Establishment ~~salon~~ operation. All doors and windows between residence/living quarters shall be kept closed during ~~cosmetology~~Establishment~~establishment~~ hours.

175:10-7-2. Cosmetologists and Barbers working in same Establishment ~~establishment~~; license

A cosmetologist may practice in a barber shop provided the Establishment~~establishment~~has been issued an appropriate Establishment license ~~is licensed~~ by the State Board of Cosmetology.

175:10-7-3. Adequate ventilation

All rooms must have good ventilation adequate to quickly rid immediate premises of fumes from ~~cosmetic~~ products (i.e. artificial nail products, bleach etc.) according to the city/state codes.

175:10-7-4. Furnishings; windows; ceilings; walls; floors

(a) Furniture shall be of washable material and shall be kept clean. If upholstered furniture is used in the Establishment~~salon~~, it shall be covered with clean, washable slip covers. Breaks or cracks in leather or vinyl covered furniture must be repaired immediately.

(b) Windows must be kept in a clean condition.

(c) Each work/styling station shall be provided with adequate light and fixtures which shall be kept in a sanitary and safe condition.

(d) Ceilings and walls shall be of an easily cleaned, smooth and unbroken surface.
(e) Curtains, partitions or wall hangings shall be kept clean at all times.
(f) Floors in Establishments~~salons~~ and schools shall be maintained in a clean manner.
(g) Carpet is prohibited for use in work areas (shampoo and styling areas) of an Establishment~~a cosmetology salon~~ or school.
(h) Each work/styling station shall be provided with a waste container which shall be emptied and cleaned each day.

175:10-7-5. Sanitizer(s) required for use in ~~cosmetology~~ schools and related establishments

(a) Every precaution shall be taken to prevent infection by sanitizing all ~~cosmetology~~ tools.
(b) All items shall be cleaned/sanitized by removing all visible debris from an item or surface by using soap/water or a cleaning agent.
(c) Items shall be rinsed thoroughly in plain water.
(d) Items shall be placed in a wet sanitizer, which is a large, pan-type container which may be of plastic, enamel, stainless steel, or rubber and shall be fully immersed in an EPA approved disinfectant prepared according to manufacturer's directions. The items must stay immersed for full contact time according to manufacturer's instructions in order that item or surface stays moist with disinfection for all pathogens listed on the label to be effectively destroyed.
(e) Combs may be disinfected in a cylinder jar by immersing in an EPA approved disinfectant prepared according to manufacturer's directions. The combs must stay immersed for full contact time according to manufacturer's directions. The combs must stay immersed for full contact time according to manufacturer's instruction in order that item or surface stays moist with disinfection for all pathogens listed on the label to be effectively destroyed.
(f) If an autoclave is used to sterilize items after disinfection, in order to destroy all microbial life (including spores), periodic testing and maintenance must be performed on system according to manufacturer's instructions.
(g) All disinfected and/or sterilized items must be stored in a dry/closed cabinet, drawer, or other closed/covered/light type container without fumes.

175:10-7-6. Sanitizing agents for use in ~~cosmetology~~ schools and related establishments

(a) Disinfectants for use by ~~cosmetology~~ establishments and school shall be used only if registered with the Environmental Protection Agency (EPA) for use as a disinfectant to achieve its intended purpose in accordance with the product label.
(b) To sanitize and minimize corrosion of metal instruments, immerse and wipe thoroughly with an EPA approved disinfectant or spray with approved oil base sanitizer and store in a cabinet or closed container free from contamination between sue and service for each patron.
(c) All disinfection immersion liquid must be changed daily or sooner if visibly contaminated.
(d) All customer contact items, including neck rests, arm rests and seats, must be cleaned and disinfected between patrons.

175:10-7-7. Detection of head lice

(a) If head lice is detected, the licensee, student or apprentice should not proceed with further services and shall wash and disinfect hands. Infected person should be referred to a physician or health clinic. The person should submit a statement, signed by a practicing physician, which states that he is no longer infected and is free from communicable episode before any ~~cosmetology~~ services are performed.
(b) Appropriate action is to wipe down all exposed areas with an EPA registered lice killing product.
(c) Exposed towels and other linen shall be sealed in a plastic bag until such time as they may be laundered.
(d) The immediate referral to a physician or health clinic shall also apply to any Board~~cosmetology~~ licensee, student or apprentice on whom head lice or other communicable disease, infection, or condition is detected.
(e) The ~~cosmetology~~ Establishment~~salon~~ or school owner/manager shall be held responsible for assuring that no person performs ~~cosmetology~~ services in a licensed establishment or school when the owner/manager knows that any licensee, student, apprentice or patron is infected with head lice or other communicable disease. License may be subject to revocation or suspension in instance of noncompliance.

175:10-7-12. Towels

(a) Clean towels shall be used for each patron.
(b) Clean towels and other linens shall be kept in a closed area that is free from contamination.
(c) A suitable hamper-type container shall be provided for soiled towels.
(d) The headrest of the facial chair shall be covered with a clean towel for each patron.
(e) An appropriate supply of clean towels, linens and neck strips shall be maintained in the ~~cosmetology~~Establishment.

175:10-7-17. License and other posting requirements

(a) Licenses shall be posted in a place easily viewed by the public.
(1) Current 2" X 3" photo of licensee is required to be posted with each license or work permit.
(2) Student and apprentice registration receipts and student permits to work shall be posted conspicuously.
(3) Posting at individual work/styling station in an Establishment~~establishment~~ may be required for inspection and identification purposes.
(b) Board Sanitation Rules shall be posted in each ~~cosmetology~~Establishment~~establishment~~.
(c) Code of Ethics shall be posted in each ~~cosmetology~~ school.
(d) Current inspection reports shall be posted in a place easily viewed by the public.

175:10-7-18. Sanitary precautions before and after each patron service

(a) The hands of the licensee, student or apprentice shall be washed and the integrity of the skin carefully examined before and after performing a ~~cosmetology~~ service for any person. If any abrasion, cut, scratch, open lesion or infection is evidenced, protective or disposable gloves shall be worn while performing ~~cosmetology~~ services in order to reduce risk or transmission of infectious bacteria/virus/disease.

(b) Styptic pencils and lump alum are prohibited. Liquid or powdered astringent shall be used to check bleeding and shall be applied with separate, clean, sterile gauze or cotton which shall be disposed of immediately after use.

(c) Any ~~cosmetology~~ licensee who can reasonably anticipate, as the result of performing any cosmetology or barbering service, contact with blood and other potentially infectious material, shall wear protective disposable gloves while performing the services. Gloves shall not be re-used and shall be disposed of properly immediately after use.

(d) Implements and tools that cannot be sanitized must be disposed of after one use.

175:10-7-19. Restroom areas

(a) Each ~~cosmetology~~Establishment~~establishment~~ and school shall be required to maintain an adequate supply of disposable towels or electric hand dryers, and liquid or powder soap for the restroom areas at all time. Soap must be dispensed from a pump or other type dispenser. Bar soap is prohibited for use in a cosmetology Establishment~~establishment~~ or school.

(b) E.P.A. approved disinfectant/germicidal products shall be used to clean restrooms in ~~cosmetology~~ Establishment~~establishments~~ and schools.

175:10-7-20. Communicable/infectious diseases in evidence

(a) ~~Cosmetology~~Licensees~~licensees~~ shall use universal precautions (treat blood and other body fluids/materials as if infectious).

(b) If a Board licensee, student or apprentice has reason to suspect that a patron is suffering from any communicable or infectious disease, the licensee's hands shall be washed and disinfected. Services shall be discontinued and patron referred to a physician.

(c) No person in charge of an~~a cosmetology~~Establishment or school, if knowingly infected with an infectious, contagious, communicable disease shall work in, nor shall he permit any person infected with communicable disease to work in an~~cosmetology~~Establishment or school.

(d) No licensee, student or apprentice shall massage any person when the surface to be massaged is inflamed or has open cuts, lesions or infection

175:10-7-25. Animals, birds, pets prohibited in ~~cosmetology~~ schools and related Establishments~~establishments~~

Animals, birds, and/or other pets shall be prohibited in an Establishment ~~a cosmetology establishment~~ or school, unless otherwise provided by law. The use of fish or other animals in performing a cosmetology/barbering~~cosmetology~~ service in anEstablishment~~a cosmetology establishment~~ or school, including but not limited to fish pedicures is prohibited.

175:10-7-29. Facial procedures, devices and equipment

(a) Licensees are prohibited from performing facial procedures using cosmetic exfoliating substances or devices that effect more than the top layer (stratum conium) or outer most layer of dead cells on the skin. Procedures which use any cosmetic exfoliation substance or device to remove viable (living) skin below the stratum corneum are deemed beyond the scope of practice of persons and Establishments~~establishments~~ licensed by the Board of Cosmetology and Barbering.

(b) Cosmetic exfoliating substances may include alpha hydroxyl acids (glycolic and lactic acids), beta_hydroxyl acids, salicylic acid, Jessner's solutions, resorcinol and other substances intended to affect no more than the stratum conium.

(c) Cosmetic exfoliating devices may include FDA (U.S. Food and Drug Administration) registered and/or approved devices, provided that such devices affect no more than the stratum conium.

SUBCHAPTER 9. LICENSURE OF COSMETOLOGISTS, BARBERS AND RELATED OCCUPATIONS

PART 1. APPRENTICESHIP

175:10-9-1. Apprentice training

(a) An apprentice must train under the direct supervision of a currently licensed ~~master~~ instructor or an instructor that is licensed in the particular field of practice. Only one (1) apprentice per Establishment~~establishment~~ shall be approved to be trained at any given time.

(b) A currently licensed instructor who wishes to train an apprentice shall make written application to the Board. The application shall include:

(1) Proof of need affidavit from the proposed apprentice. Proof of need is considered by the Board to be proof of dire financial circumstances of the apprenticeship applicant or proof of lack of ~~cosmetology~~ training available within a reasonable distance of residence of apprentice applicant.

(2) Apprenticeship inspection fee of $20.00 (includes purchase of Rules, Regulations and Law book, apprentice registration and inspection fee) is required.

(c) An inspection will be made by the Board for approval of required equipment, textbooks, and theory tests.

(d) An interview will be conducted with the instructor and the proposed apprentice to assure that both parties fully understand the apprenticeship program.

(e) When all requirements are met, an equipment affidavit will be signed by the inspector and the instructor. Apprentice registration forms will be completed at time of inspection.

(f) Equipment required to train an apprentice is based on course of study as follows ~~shall include~~:

(1) One (1) facial chair (reclining styling or shampoo chairs are acceptable.

(2) One (1) therapeutic lamp with red lights or unit that provides multi-lamp or light-heat treatment, installed for free use of both hands.

(3) One (1) facial supply cabinet.

(4) One (1) work/styling station.

(5) One (1) mannequin.

(6) Other ~~cosmetology~~Establishment~~establishment~~ equipment as shall be required for course of training.

(g) Textbooks must be approved by the Board that adequately cover the prescribed curricula and prepares students for State Board testing. Other textbooks and reference material may be used to enhance the apprentice course.

(h) Reference and other library equipment include:

(1) Standard Dictionary

(2) American Medical Dictionary

(3) Subscription to at least one (1) professional magazine

(i) Entrance requirements for apprentice training:

(1) Apprenticeship must be approved by the Board before apprentice attends class.

(2) Apprentice must be at least sixteen (16) years of age.

(3) Apprentice must show proof of at least 8th grade education or equivalency (8th grade diploma or transcript). The Board may accept a statement from a school official who states, upon interview with applicant, that applicant has the equivalency of at least 8th grade potential and ability to learn.

(4) Apprentice must be able to benefit from instruction.

(5) Apprentice must submit copy of birth certificate or other legal proof of age if under the age of 18 years of age.

(j) Minimum content requirements for an apprentice kit are the same as for students registered in a ~~cosmetology~~ school.

(k) In addition to requirements of a kit, the apprentice shall have available for apprentice training:

(1) At least one set of appropriately sanitized manicuring implements immediately available for use on each patron (not required for barber or esthetician apprentices)

(2) Adequately supplied dispensary to appropriately train apprentice in Cosmetology, barber, esthetician, manicuring, hairbraiding practices depending on program; and

(3) Visual aid equipment in addition to the chalk or marker board.

(l) Apprentice training may be approved for all courses except Instructor. Apprentice training may be approved for courses of review when required for expired license.

(m) The instructor shall not charge the apprentice for training. The instructor may charge for ~~cosmetology~~ services rendered by the apprentice while in apprentice training.

(n) If the apprentice performs extra-curricular work for the shop owner for compensation, the work shall in no way interfere with the eight (8) hours per day of training for an apprentice.

(o) The instructor shall instruct the apprentice in all subjects as outlined in the curricula prescribed by the Board to be taught in a ~~cosmetology~~ school. The instructor shall give the apprentice weekly tests and a final examination in both the practical skills and theory work.

(p) Apprenticeship training shall be under the direct supervision of the approved licensed instructor at all times.

175:10-9-2. Number of clock hours credited for apprentice training

(a) Apprentice course clock hours are as follows:

(1) Basic cosmetology - 3000 hours

(2) Manicurist/Nail Technician - 1200 hours

(3) Facial/Esthetics - 1200 hours

(4) Cosmetician - 1200 hours

(5) Hairbraiding Technician - 1200 hours

(6) Barber - 3000 hours

(b) An apprentice who transfers to a ~~cosmetology~~ school shall be given 50% credit of the hours completed as an apprentice.

175:10-9-3. Failure to complete apprentice training

If an apprentice ceases training before completion of the course, the instructor shall submit to the Board the apprentice badge and student affidavit within five (5) days ~~course completion~~.

175:10-9-5. Practical practice and attendance records

(a) Each apprentice shall maintain a record of each practical practice he performs during training on a form approved by the Board. The instructor shall initial each practice immediately after each is performed by the apprentice.

(b) Attendance reports shall be completed by both the instructor and the apprentice and maintained in the Establishment~~salon~~ for inspection purposes.

PART 3. STATE BOARD EXAMINATIONS

175:10-9-25. Examination form; administration and content of Board examination; passing score; disability accommodations; grade release reports

(a) The examination application shall be completed to include the School Affidavit of completion of hours and the applicable examination fee ~~of fifteen dollars ($15.00)~~.

(b) The Board shall conduct examinations for license at such times as the Board shall consider necessary to reasonably accommodate applicants for the examination.

(c) Each applicant shall be required to take both written and practical portion of the State Board ~~of Cosmetology~~ examination.

(d) The written exam will test general knowledge of cosmetology. Textbooks approved by the Board will contain the subjects and examination questions and answers.

(e) The test for all instructor license examination candidates must include completion of student attendance record form, lesson plan preparation, class presentation and a written theory test and other cognate areas of teacher training. The instructor tests shall include questions pertaining to Oklahoma Cosmetology and Barber law and Board rules and regulations.
(f) When a live model is used, model must be sixteen (16) years of age.
(g) Minimum passing grades, on each portion of the examination, are as follows:

(1) ~~Basic~~ Cosmetology ~~Course~~ - 75%
(2) Master Cosmetology Instructor ~~Course~~ - 85%
(3) Manicurist ~~Course~~ - 75%
(4) Esthetician ~~Course~~ - 75%
(5) Cosmetician ~~Course~~ - 75%
(6) Hairbraiding Technician - 75%
(7) Barber - 75%
(8~~7~~) Manicurist/Nail Technician Instructor - 85%
(9~~8~~) Facial/Esthetics Instructor - 85%
(10) Master Barber Instructor 85%

(h) A Cosmetologist, Manicurist, Esthetician, Cosmetician, Barber or Hairbraiding Technician, declaring a disability, defined by the American Disabilities Act (ADA) shall submit a written statement when requesting an oral examination or other special testing accommodation. Such needs identification and request for special accommodation must be made at time of student enrollment with the Board or at the earliest time possible during course of training.
(i) Validity of disability must be established by the submission of a statement from a licensed health care professional qualified to diagnose the disability.
(j) Instructor license examination candidate declaring a disability shall be provided a distraction free space, test schedule variation and/or extended time to complete the test.
(k) State Board examination grades/scores will be provided to schools at least twice a year. The reports will be provided more frequently only as time and staff allows.

175:10-9-26. Pre-registration for Board examination

(a) Except in emergency circumstances, examination pre-registration will be recognized by the Board only as follows:

(1) Application for examination pre-registration, including the School Affidavit which reflects the total accumulated hours of training as the date of application and shall reflect that applicant lacks 100 clock hours or equivalent number of ~~3~~ credit hours less of training required for course completion.
(2) May of each year shall be considered the "school year end" for any pre-registration application for examination, therefore, April, May and June pre-registration eligibility is established.
(3) A work permit shall not be issued to an applicant who is pre-registered before completion of training.
(4) School is required to submit School Affidavit immediately upon final completion of hours in order that the Board may issue a license.

(b) A student instructor may apply for examination registration within 100 clock hours or equivalent number of ~~3~~ credit hours of completion of the Instructor course.

175:10-9-28. Work permit; limitation

An applicant may be issued a permit to work in a licensed ~~cosmetology~~Establishment ~~establishment~~, under the direct supervision of an appropriately licensed individual, upon registration for the examination and course completion. The Board shall not issue a permit to work to ~~an applicant for the Instructor's examination nor to~~ an applicant who is pre-registered before course completion. An applicant registering for an instructor examination may be issued a permit to work in a license school or college, under the direct supervision of an appropriately licensed individual, upon registration for the examination and course completion. The Board shall not issue a permit to work to an instructor applicant who is pre-registered before course completion.

175:10-9-29. Failure of instructor student to pass examination

(a) Any instructor student enrolled and accumulating Instructor course hours who fails to pass the Cosmetologist, Manicurist, Barber or Esthetician examination, shall upon notice of the failure immediately cease instructor training until such time as the student passes the examination and applies for a license.
(b) School shall notify Board when Instructor student resumes training.

175:10-9-32. Failure to pass examination; re-taking failed portion; review hours

(a) An applicant who fails either the practical portion or the written theory examination may be re-scheduled for examination by submitting the appropriate registration application and fee to the Board. Applicant shall be scheduled to take only that portion of the examination failed.
(b) An applicant who has failed either the practical practice or the written theory examination four (4) times must first show proof of having completed 120 clock or equivalent number of ~~4~~ credit review hours in an approved Oklahoma ~~cosmetology~~ school before being eligible to re-register for the examination.

175:10-9-33. Review of hours required after failure to timely register for examination or to apply for license

(a) After one (1) year and up to five (5) years from date of the completion of a course of training, any applicant who fails to register for the examination or who fails to apply for his license after notice to apply, shall be required to show proof of no less than the following review hours in an approved Oklahoma cosmetology or barber school before being eligible to sit for the examination (Note: Hours may be measured in credits and ratio is as recognized by the United States Department of Education as recognized by a national accreditation entity recognized by the United States Department of Education.):

(1) ~~Basic~~ Cosmetologist 120 clock hours
~~(A) 120 clock hours~~
~~(B) 4 credit hours~~
(2) Manicurist 40 clock hours
~~(A) 40 clock hours~~
~~(B) 2 credit hours~~
(3) Facialist 40 clock hours
~~(A) 40 clock hours~~
~~(B) 2 credit hours~~
(4) Hairbraiding Technician 40 clock hours
~~(A) 40 clock hours~~
~~(B) 2 credit hours~~
(5) Cosmetician 40 clock hours
~~(A) 40 clock hours~~
~~(B) 2 credit hours~~
(6) Barber 120 clock hours
(~~6~~7) Master Cosmetologist Instructor 120 clock hours
~~(A) 120 clock hours~~
~~(B) 4 credit hours~~
(~~7~~8) Manicurist/Nail Technician Instructor 120 clock hours
~~(A) 120 clock hours~~
~~(B) 4 credit hours~~
(~~8~~9) Facial/Esthetics Instructor 120 clock hours
~~(A) 120 clock hours~~
~~(B) 4 credit hours~~
(10) Master Barber Instructor 120 clock hours

(b) After five (5) years from date of the completion of a course or training, any applicant who shall fail to register for the examination or who shall fail to apply for his license after notice to apply, shall be required to first register for the appropriate examination. He shall be required to show proof of a specific number of current review hours, the same as is required for the renewal of an expired license which is expired for the same length of time as required in Title 59 O.S. Section 199.10 (D).

PART 5. DEMONSTRATORS; COSMETIC STUDIOS; TRADE SHOWS; GUEST ARTISTS; WIG DRESSING

175:10-9-50. Demonstrator and cosmetic studio license requirements.

(a) Any person who is not a cosmetology or barber licensee in this state, and who demonstrates any cosmetic preparation for the public from open tester, sampler or other open container, is hereby declared to be a demonstrator and shall be required to obtain a license from the Board before making the demonstrations.

(b) While the Board does not interfere with door-to-door individual one-on-one type cosmetic retails sales, any person who establishes a cosmetology business or represents himself to be providing facials or other cosmetology or barber services to the general public in a place other than an~~a cosmetology~~Establishment~~salon~~ or school shall be required to obtain a license as is appropriate to the practice performed. Providing or performing a facial is a ~~cosmetology~~ practice which shall require a Facialist, Cosmetologist, Barber, Facial/Esthetics Instructor, Barber Instructor, Master Barber Instructor or Master Instructor license.

(c) A person who provides a demonstration of the proper use and application of specific make-up and cosmetic technique and product information to students enrolled in modeling, charm or other self-improvement programs, shall be a licensed Cosmetologist, Cosmetician, Facial/Esthetics Instructor, Manicurist, Facialist, Barber,Master Barber Instructor, Master Instructor, Barber Instructor or Demonstrator as applies to a specific license held and demonstration performed by the person. Techniques and products demonstration shall be restricted to personal self-improvement and individual modeling students and shall not be training to provide ~~cosmetology~~ services to others.

(d) A Cosmetic Studio is considered by the Board to be a place where licensed demonstrators give demonstrations for the sole purpose of advertising and selling cosmetics.

(e) Any Cosmetic Studio shall be required to be licensed by the Board and license shall expire and subject to renewal annually.

(f) Each Cosmetic Studio must prominently display an identifying sign in plain letters at least three (3) inches tall and one (1) inch wide. Failure to display such a sign will be considered as evidence of attempt to avoid inspection.

(g) A cosmetic counter or other Establishment~~establishment~~ where cosmetic preparations may be sold but where cosmetics are in sealed containers ad where no open containers (testers, samplers, applications etc.) are used to demonstrate, the cosmetics may be exempt from cosmetology licensing requirements.

(h) Requirements for the issuance of a Demonstrator's license are:
(1) One (1) current, 2" X 3", full-face photo
(2) Notarized application and affidavit
(3) Fee of $20.00
(4) Register and pass the Board's sanitation and safety examination

(i) Demonstrator license requirements shall be met before the demonstrator begins a demonstration. These requirements are established and must be met to ensure the identification of persons, products and locations where demonstrations are performed to the consuming public.

(j) The demonstration of eye lash and brow tints, hair tints and color rinses, permanent waves and hair relaxants, facial preparations or other preparations considered by the Board to require extensive knowledge, skill and training to ensure safe and proper usage, is hereby prohibited.

175:10-9-52. Trade show, special class, guest artist requirements

~~(a)~~ The Board has established the following rules for guest artist appearances, a cosmetology related trade show, special class, seminar and/or conference.

(1) The Board may allow a trade show, special class or demonstration, not to exceed five (5) consecutive days in any six (6) month time frame, provided that the trade show, special class, or demonstration shall be sponsored

by a cosmetology/barber association, cosmetology or barber school association, barber or beauty supply house.

(2) An out-of-state or in-state technician, product sales person, demonstrator, color analyst, or other person who may be engaged to appear at any trade show, special class, seminar or conference shall be required to show proof of current license ~~to practice cosmetology~~ issued by the person's state, province, territory or country for inspection purposes.

(3) Notice is required for any trade show, special class, or other ~~cosmetology~~ platform demonstration of technique or product. The notice shall be submitted to the Board prior to scheduled performance, class, show or seminar and shall include details of location, date and time, and the name(s) of sponsor(s) and guest artist(s) scheduled to perform at or to conduct the show. Advertising for trade show shall indicate that the show is limited to licensed Board licensee's ~~cosmetologists~~ and/or ~~cosmetology~~ students.

175:10-9-53. Wig dressing requirements

(a) The dressing, cleaning, styling, fitting or arranging of wig/wiglet/hair-piece of synthetic or human hair and the performing of these services to the public is a practice of cosmetology and barbering. The person performing these services upon head/hair or the public consumer must be appropriately licensed as a Cosmetologist, Barber or Instructor. The requirements for a Hairbraiding Technician at 175:10-3-43 do not apply to this sub-section.

(b) Wig dressing~~/cosmetology~~ services must be performed in a licensed ~~cosmetology~~ school or Establishment~~establishment~~. Sanitation rules and regulations must be observed.

(c) Retailing of wig, wiglet or hairpiece is exempt from licensing requirements. However the seller shall not engage in the practice of cosmetology or barbering as described in subsection (a) of this rule or as otherwise defined in the Oklahoma Cosmetology and Barber Act.

175:10-9-54. Cosmetology related high fashion photography or similar business/establishment requirements

(a) Any high fashion photography and similar cosmetology/barber~~cosmetology~~ related business/Establishment~~business/establishment~~ providing any one or combination of ~~cosmetology~~ services separately or in conjunction with photography or similar services to the public shall be appropriately licensed by the Board.

(b) Any employee or other person performing any one or combination of cosmetology or barber services in such Establishment~~establishment~~ shall be appropriately licensed by the Board.

175:10-9-55. Practices of cosmetology

(a) Only licensed Facialist/Estheticians~~,and~~ Cosmetologists or Barbers~~, as defined in Title 59 O.A. § 199.5 (5) and (10)~~ may perform threading ~~and body sugaring~~.

(b) Only a licensed Facialist/Esthetician or Cosmetologist may perform eyelash extensions.

(c) Only licensed Facialist/Estheticians, Cosmetologists or Barbers may perform body sugaring.

SUBCHAPTER 11. LICENSE RENEWAL, FEES AND PENALTIES

175:10-11-1. Application for renewal of license

(a) All practitioner licenses issued under the provisions of the Cosmetology andBarbering Act shall be issued for a period of one (1) year. The expiration date of the license shall be the last day of the applicant's birthday month.

(b) An~~A cosmetology~~Establishment~~establishment~~ license issued to a licensee ~~cosmetologist~~ shall expire on the last day of applicant's birthday month each year.

(c) An~~A cosmetology~~Establishment~~establishment~~ license issued to a non-Board licensee~~non-cosmetologist~~ owner and a ~~cosmetology~~ school license, shall expire by June 30th each year.

(d) Application for renewal must be made on or before the last day of the applicant's birthday month or by June 30th as applicable and shall be accompanied by appropriate fees.

(e) One day following the expiration date of a license is considered to be the day a license becomes void, and a person practicing with the invalid license shall be considered to be practicing without the appropriate license.

(f) Each person holding a license shall notify the Board of any change in name and/or address within thirty (30) days after the change. Any name change shall require court or other legal documentation of the change before the change may be recognized and recorded in files of the Board.

175:10-11-2. Cosmetology and Barber license and penalty fees

(a) The Board is authorized the following license and penalty fees:

(1) Student/Apprentice registration - $5.00
(2) Examination registration - $15.00
(3) Cosmetology school license (initial) - $400.00
(4) Cosmetology school license (renewal) - $125.00
(5) Master Instructor license - $30.00
(6) Facial/Esthetics Instructor license - $30.00
(7) Manicurist/Nail Technician Instructor license - $30.00
(8) Basic Cosmetology license - $25.00
(9) Manicurist license - $25.00
(10) Esthetician license - $25.00
(11) Cosmetician license - $25.00
(12) Hairbraiding Technician license- $25.00
(13) Demonstrator license - $20.00
(14) Advanced Operator license (renewal only) - $25.00
(15) Establishment~~Cosmetology establishment~~ license (initial) - $45.00
(16) Establishment~~Cosmetology salon~~ license (renewal) - $30.00

(17) Cosmetic studio license (initial) - $40.00
(18) Cosmetic studio license (renewal) - $30.00
(19) Nail salon license (initial) - $45.00
(20) Nail salon license (renewal) - $30.00
(21) Reciprocity license - $30.00
(22) Reciprocity transfer of hours processing fee from out-of-state - $30.00
(23) Duplicate license (in case of loss or destruction of original license and/or renewal application) - $5.00
(24) Notary Fee - $1.00
(25) Certification of Records - $10.00

(b) The Board is authorized the following license and penalty fees for Barber type licenses:
(1) Barber college - $200 per year
(2) Barber apprentice - $10 per year
(3) Barber examination fee - $35- per exam
(4) Barber Instructor license fee - $50 per year
(5) Barber Instructor examination Fee - $50 per year
(6) Barber License fee - $25 per year
(7) Barber license renewal after expiration $50.00 per year
(8) Barber instructor license renewal after expiration $75.00 per year

(c~~b~~) The Board shall charge a penalty fee of ten dollars ($10.00) for the renewal of any cosmetology license delinquent after two (2) months of expiration. This sub section also applies to any delinquent initial license application.

(d~~c~~) All fees shall be submitted to the Board in the form of a cashier's check, money order or business check. Personal checks are not accepted by the Board.

SUBCHAPTER 13. RECIPROCAL AND CROSSOVER LICENSING

175:10-13-1. Reciprocal license requirements

The Board, in accordance with the Oklahoma Cosmetology and Barbering Statutes 59 O.S. Section 199.13, has ruled to accept any applicant on a license for comparable license basis from any state in which the applicant has met the license requirements.

(1) The Board may issue a reciprocity license for license without examination to any applicant who shall qualify and who shall submit the completed appropriate and required application and fees to the Board.

(A) The reciprocity license application shall be submitted on forms approved by the Board and shall include official certification of current license, training, testing, and educational records from the applicable State Board.

(B) The application shall also include the (first year) reciprocity license and processing fee of sixty dollars ($60.00) plus the cost of the Oklahoma Board's Rules, Regulations and Law book. (The $30.00 processing fee and book cost are non-refundable.)

(C) The reciprocity application shall require that the applicant submit a current full-face photograph of self with the license application, (photo must be approximately 2" X 3" in size and shall have the applicant's name printed on the back).

(2) Any non-English speaking reciprocity licensee or transfer of hours applicant must contact the Board's office concerning requirements for licensing and transfer of hours. After all papers have been completed and necessary documents attached, the applicant for reciprocity license must make an appointment and appear personally in the Board's office for an interview before reciprocity license may be considered.

(3) The Board may retain the right to require that any applicant for the Oklahoma Instructor license shall register for the Oklahoma Board's Instructor examination and show proof of scoring no less than 85% (on each portion of the examination, written and practical) if at any time the applicant shall fail to show proof of at least equivalent of high school education or if other circumstance of irregular or unusual nature is reflected in Instructor reciprocity application.

(4) Reciprocity is granted only to a licensed cosmetologist, barber, nail technician, facialist, hairbraider, cosmetician, master cosmetology instructor, nail technician instructor, or facialist instructor and master barber instructor from a state that issues a license.

(5) Reciprocity shall not be granted to an applicant from a state or foreign country that does not issue a license unless the following requirements are met:

(A) Show proof of attending a cosmetology or barber school in state or country.

(B) Submit reciprocity application for license.

(C) Submit registration for examination form and show proof of scoring no less than 75% (on each portion of the examination, written and practical). If applicant should fail the examination, applicant must show proof of no less than 120 review hours in an Oklahoma school before being eligible to re-register and sit for the ~~Oklahoma State Board ofCosmetology~~ examination again. ($15.00 re-registration fee required). Applicant must then show proof of scoring no less than 75% (on each portion of the examination, written and practical) before being eligible for Oklahoma licensure by reciprocity.

(D) Submit fee of sixty dollars ($60) plus cost of Rules, Regulations and Law Book, plus examination fee of $15.00.

(6) No temporary permit shall be issued to an out-of-state reciprocity applicant.

175:10-13-2. Credit allowed for ~~barber~~barber/cosmetology crossover training

(a) A barber who holds a current Oklahoma barber license in good standing, who shall apply to register for the Board's examination for a Basic Cosmetologist license, may be eligible to sit for the examination upon showing proof of the completion of three hundred (300)~~seven hundred and fifty (750)~~ hours of training in a cosmetology school. Training shall be in accordance with a curriculum and schedule approved by

the Board and developed specific to Cosmetology techniques including manicuring, pedicuring and Cosmetology/Barber law. Training evaluation and curriculum is approved at time of enrollment in a cosmetology school.

~~(b) Training shall be in accordance with a curriculum and scheduled approved by the Board and developed specific to manicuring, pedicuring, skin care, make-up, hair styling, color techniques, Cosmetology law and Board rules and regulations. Training evaluation and curriculum is approved at time of enrollment in a school of cosmetology.~~

(b) A cosmetologist who holds a current Oklahoma cosmetology license in good standing, who shall apply to register for the Board's examination for a Barber license, may be eligible to sit for the examination upon showing proof of the completion of three hundred (300) hours of training in a barber school. Training shall be in accordance with a curriculum and schedule approved by the Board and developed specific to Barbering techniques including shaving and clipper cuts and Cosmetology/Barber law. Training evaluation and curriculum is approved at time of enrollment in a barber school.

SUBCHAPTER 15. INSPECTIONS, VIOLATIONS AND ENFORCEMENT

175:10-15-2. Board inspection of ~~cosmetology~~Establishments~~establishments~~ and schools

(a) The Board's Inspector and/or its authorized representative shall have the authority and right to entry to Establishments ~~cosmetology salons~~ and schools during reasonable business hours in order to perform inspection and investigatory duties necessary to the responsibility and functions of the Board. The inspection duties shall include all sanitation and licensing rules compliance as pertains to any licensed facility where cosmetology and barbering services are performed for the public.

(b) Inspectors shall list the names of persons working in each ~~cosmetology salon~~ Establishment and school, license type, file number and expiration date.

(c) Inspectors shall make inspections and investigations and shall file a report on any alleged violation and unlawful practice of the Oklahoma Cosmetology and Barbering Act.

(d) Refusal to permit, or otherwise interfering with an inspection shall constitute cause for disciplinary action and could lead to revocation or suspension of license(s).

SUBCHAPTER 17. EMERGENCY COSMETOLOGY AND BARBERING SERVICE

175:10-17-1. Emergency ~~cosmetology~~ services; documentation required

(a) A licensed cosmetologist or barber may perform ~~cosmetology~~ services for a person in the person's residence of the person in the event of an emergency. Emergency is considered to be serious injury or illness which causes the person to be residence bound.

(b) Appointment for emergency service must be booked from a licensed ~~cosmetology~~ Establishment. A doctor's statement must be kept in the ~~cosmetology~~Establishment verifying that the person is residence bound or otherwise incapacitated.

(c) The licensee~~cosmetologist~~ shall have his license in his possession when performing ~~cosmetology~~ services.

(d) Mobile, portable or other door-to-door cosmetology or barbering service is prohibited unless provided as emergency service as described in this sub-section.

[OAR Docket #14-708; filed 7-10-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #14-687]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Departmental Precepts
210:1-3-11. Open Records Act [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 51 O.S. §§ 24A.1 et seq.; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendments to the rule are necessary to update the rule in accordance with the provisions of the Open Records Act at 51 O.S. §24A.1 et seq. The rule establishes the agency procedures for responses to Open Records Act requests.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. DEPARTMENTAL PRECEPTS

210:1-3-11. Open Records Act

~~In recognition of the general public's right to be imformed about its government and in accordance with the Oklahoma Open Records Act at 51 O.S. § 24A.1 et seq., the State Board of Education and the State Department of Education adopt the following policy and procedures governing requests for information.~~

~~(1) And document which comes within the statutory definition of a "record" and is not required to be kept confidential by State of Federal law and does not fall within the exemptions recognized in the Open Records Act will be available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except state holidays, al the location were the records are housed which is generally the Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City.~~

~~(2) Any individual or group seeking access to public records maintained by the Oklahoma State Department of Education shall made a written request, either by mail or in person. Mail requests may be sent to the Oklahoma State Department of Education, 2500 North Lincoln Boulevard, Oklahoma City, 73105. Request for records made in person may be made at the same address.~~

~~(3) The State Superintendent of Public Instruction is authorized to periodically review and adjust the rates that will be charged for providing copies of records in accordance with the law. Those rates will include costs for record copies, document searches and transcript rates. The rates will be posted at the Oliver Hodge building and filed with the country clerk as required by law~~

(a) **Official records.** All files, records, minutes, proceedings, rules, documents, decisions, opinions, written statements of policy, and written materials of any other nature required by law to be maintained by the State Board of Education or the State Department of Education and not otherwise exempt from public disclosure pursuant to the provisions of state and/or federal law shall be made available promptly for public inspection, copying, or mechanical reproduction upon reasonable notice during regular business hours in accordance with the provisions of the Open Records Act at 51 O.S. § 24A.1 et seq. and the procedures set forth below.

(b) **Records subject to disclosure.** Any document that comes within the statutory definition of a "record" and is not required to be kept confidential by State or federal law, or otherwise exempt from disclosure pursuant to the Open Records Act will be available for inspection and copying between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except state holidays, at the location where the records are housed, which is generally the Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City.

(c) **Procedure for records requests.** Any individual or group seeking access to public records maintained by the State Board of Education or the State Department of Education shall submit a request to the State Department of Education Office of Legal Services, by fax, email, regular mail or in person. In order to provide prompt, reasonable access to records, to ensure that records requests are accurately communicated to the records custodian, and to enable the records custodian to accurately process the request, it is recommended that records requests be submitted in writing. In addition, all records requests must comply with the following provisions:

(1) All records requests must include:

(A) Identification of the individual and/or entity making the request;

(B) If the Requester is an entity rather than an individual, a name of a contact authorized to communicate with the records custodian on behalf of the Requester;

(C) Sufficient contact information at which the Requester may be contacted by the records custodian to comply with the records request procedures set forth in this Section;

(D) A description of the records requested with sufficient detail necessary to enable the records custodian to reasonably identify whether records responsive to the request exist;

(E) Whether the Requester seeks copies of any or all of the records requested and if so, whether the Requester seeks certified copies of any or all of the records requested; and

(F) If the Requester claims the public interest exemption from search fees in accordance with the provisions of (d) of this Section, all information necessary for the records custodian to determine the applicability of the exemption.

(2) An Open Records Act request form is provided on the OSDE website. The form may be submitted by email, fax, or regular mail via the addresses stated on the form. The form may also be obtained by writing to the Oklahoma State Department of Education Office of Legal Services, Oliver Hodge Education Building, 2500 N. Lincoln Blvd., Room 117, Oklahoma City, OK 73105.

(3) Requests submitted will not be deemed to have been received unless and until the request has been identified as a request properly filed in accordance with the provisions of the Oklahoma Open Records Act at 51 O.S. § 24A.1 et seq. and the procedures set forth in this Section.

(4) Within a prompt and reasonable time of the date of receipt of the request, the records custodian shall review the request, seek any additional information from the Requester necessary to clarify the request, and shall ascertain whether any records responsive to the request exist.

(5) In addition, the records custodian shall promptly notify the Requester of the following:

(A) Whether the request complies with the provisions of this Section and the provisions of the Open Records Act;

(B) Whether records responsive to the request exist, and if so, the records custodian shall instruct the Requester to confirm the record custodian's interpretation of the request;

(C) If records responsive to the request exist and require an additional search of data necessary to identify and/or locate individual records of persons, whether the search will incur any fees and costs

pursuant to (d) of this Section and if so, an estimate of search fees;

(D) If the Requester asks to be provided copies of the requested records in lieu of inspection, an estimate of the costs of copying the records requested as necessary to deliver the responsive records to the Requester;

(E) That processing of the request will not begin until any applicable records search fees and costs of copying have been received by the agency; and

(F) In the event the actual costs of copying and/or certification of records exceed the estimate provided and the amount of payment actually received from the Requester, that payment of any balance due from the Requester may be required prior to delivery of the requested records.

(6) All records requests will be deemed to have been received and processing of the request will begin when one of the following conditions is met:

(A) If payment of search fees or copying costs is required, upon receipt of:

(i) The fees and costs due; and

(ii) Receipt of any additional information necessary from the Requester to clarify and/or process the request; or

(B) If payment of search fees or copying costs is not required, upon receipt by the records custodian of:

(i) The Requester's confirmation of the request required by (7) of this subsection; and

(ii) Receipt of any additional information necessary from the Requester to clarify and/or process the request.

(7) Any request not confirmed by receipt of the requisite search fee within thirty (30) calendar days of the written notification set forth in (5) of this subsection shall be deemed to be abandoned, unless, within the time stated, the Requester can show cause why the confirmation should be delayed or postponed.

(8) If the Requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, any further processing of the request may be suspended by the records custodian. A request that remains suspended for a period of forty-five (45) calendar days or more shall be deemed abandoned.

(d) **Fees for record searches and copies of records.** Fees and costs associated with record searches and providing copies of records shall be determined in accordance with the following procedures:

(1) **Fees to recover reasonable and direct costs of record searches.** Requests that are either solely for commercial purposes or requests that cause an excessive disruption of the essential functions of the agency are subject to fees for recovery of the reasonable, direct costs of record searches in accordance with the provisions of 51 O.S. § 24A.5(3), provided that no search fee will be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

(2) **Fees to recover reasonable and direct costs of record copies.** Requests that are either solely for commercial purposes or requests that cause an excessive disruption of the essential functions of the agency are subject to fees for recovery of the reasonable, direct costs of copying records in accordance with the provisions of 51 O.S. § 24A.5(3).

(A) For purposes of this paragraph, "copying" of a record may include costs of:

(i) Mechanical reproduction of a paper record ("hard copy"); or

(ii) Conversion of a record into an electronic format (e.g., .pdf) as necessary for delivery to the requester.

(B) In no instance shall the fee per page fee for copies of documents exceed the amount set forth in 51 O.S. § 25A.5(3).

(C) The State Superintendent of Public Instruction is authorized to periodically review and adjust the rates that will be charged for providing copies of records in accordance with state law. Those rates will include costs for record copies, document searches and transcript rates. The rates will be posted at the Oliver Hodge building and filed with the country clerk as required by law.

(D) All fees and/or costs shall be paid by the Requester prior to delivery of the response to the request. All fees must be paid by check or money order payable to the Oklahoma State Department of Education. No cash will be accepted.

(e) **Processing and response times.** The agency will provide prompt, reasonable access to records in accordance with the requirements of 51 O.S. § 25A.5(5). The period of time considered prompt and reasonable is dependent upon a number of variable factors including, but not limited to:

(1) The scope and complexity of the request;

(2) Whether the workload of the agency or agencies necessary to respond to the request permits a response to the request without excessive disruption of essential services of the agency/agencies;

(3) Whether the records request includes:

(A) A sufficiently detailed description of the request by the requestor necessary for the agency to ascertain the existence of records responsive to the request;

(B) Records or portions of records deemed confidential by state and/or federal law which must be removed or redacted in order to permit inspection of the records.

(4) Whether the Requester requested copies of the records and if so, whether the Requester has paid applicable fees and/or costs set forth in (d) of this Section;

(5) Whether additional steps by the agency must be taken in order to ensure that inspection, copying, and/or response to the records can be provided without jeopardizing the integrity and organization of the records; and

(6) Whether student data is included within the scope of its request, and if so:

(A) Time necessary to de-identify and aggregate student data in accordance with the requirements of the Federal Educational Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. and accompanying regulations; the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168 and accompanying regulations; or any other applicable provisions of state or federal law pertaining to confidentiality of records; or

(B) Time necessary to obtain approval of the State Board of Education in accordance with the requirements of the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168 and accompanying regulations.

[OAR Docket #14-687; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #14-688]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Departmental Precepts
210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-168; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The new rule is necessary to implement the provisions of the Student Data Accessibility, Transparency and Accountability Act at 70 O.S. 3-168, which was enacted in 2013. The rule establishes requirements for establishment of an inventory or index of data elements collected by the State Department of Education through its student data system, and sets forth the procedure for the State Department of Education to add new data elements to the system. The proposed rule also requires the SDE to establish a procedure for response to requests for disclosure and/or transfer of student data deemed confidential that complies with the provisions of FERPA and requires pre-approval of the State Board of Education.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. DEPARTMENTAL PRECEPTS

210:1-3-8.1. Student Data Accessibility, Transparency and Accountability Act

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) **"Personally Identifiable Information"** shall have the meaning set forth in 34 C.F.R. § 99.3;

(2) **"School official"** shall mean the officials within an educational agency or institution, including, but not limited to teachers, who are determined by the agency or institution to have legitimate educational interests in Personally Identifiable Information pursuant to the provisions of 34 C.F.R. § 99.31(a)(1);

(3) **"Student data"** shall have the meaning set forth in 70 O.S. § 3-168(A)(7).

(b) **Annual inventory of student data collection.** The State Board of Education shall create and/or update and publish a data inventory and dictionary or an index of individual student data elements with definitions of individual student data fields currently collected by the State Department of Education in its student data system.

(1) The inventory or index required to be created and published by this subsection shall include:

(A) Any student data required to be reported by state and federal education mandates;

(B) Any student data, if any, which have been proposed for inclusion in the student data system with a statement regarding the purpose or reason for the proposed collection; and

(C) Any student data, if any, that the State Department of Education collects or maintains with no current purpose or reason.

(2) The inventory or index required to be created and published by this subsection shall identify which student data elements were collected by the State Department of Education on or before July 1, 2013. All data elements identified as a student data element collected by the State Department of Education on or before July 1, 2013 shall be considered an "existing collection of student data" exempt

from the provisions of (c) of this Section pertaining to collection of "new student data."

(c) **Collection of new student data - limits.** New collections of student data shall be subject to the following procedures:

(1) For purposes of this subsection, a "new collection of student data" shall mean any new data object (i.e., category of student data) added to the student information system.

(2) Any new collection of student data proposed for addition to the State Department of Education student data system shall be identified and submitted to the State Board of Education for approval no later than December 1 of the year prior to the school year for which the new data collection is proposed to be added.

(3) Any new collection of student data proposed for addition to the State Department of Education student data system shall be submitted to the Governor and the Legislature within one year from the date of approval by the State Board of Education, in accordance with the provisions of 70 O.S. § 3-168(C)(7). Until approved by the Governor and the Legislature, any proposed new data collection shall be considered provisional, provided that any proposed new data collection not approved by the Governor and the Legislature by the end of the next legislative session shall be deemed to expire and shall no longer be required by the State Department of Education.

(d) **Disclosure or transfer of student data - limits.** All requests for disclosure and/or transfer of student data collected and maintained by the State Department of Education, including, but not limited to Open Records Act requests and research requests, are subject to the following procedures:

(1) **Confidentiality of student data.** All data which falls within the definition of "student data" set forth in 70 O.S. § 3-168(A)(7) is hereby deemed confidential pursuant to 70 O.S. § 3-168(C). Accordingly, "student data" are not subject to disclosure by the State Department of Education unless:

(A) The student data are aggregated and any Personally Identifiable Information has been removed in accordance with the procedures set forth in (3) of this subsection;

(B) The student data are otherwise approved for release, sharing, and/or disclosure by the State Board of Education in accordance with the procedures set forth in (4) of this subsection; or

(C) The student data does not have prior approval of the State Board of Education for release, sharing, and/or disclosure, but the release of requested data to the requester does not violate provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. or accompanying regulations at 34 C.F.R. Part 99, and the release is limited to one of the following purposes:

(i) Facilitating a student transfer out of state, or assisting a school or school district with locating an out-of-state transfer;

(ii) Facilitating a student's application to an out-of-state institution of higher education or professional training program;

(iii) Registration for a national or multistate assessment taken by a student;

(iv) Facilitating a student's voluntary participation in a program for which transfer of that student's data are a condition and/or requirement of the student's participation;

(v) The Department enters into a contract that governs databases, assessments, special education, or instruction supports with an out-of-state vendor;

(vi) Compliance with federal reporting requirements for students classified as "migrants."

(2) **Authorized access to confidential student data.** Access to confidential student data in the State Department of Education student information system shall be restricted to:

(A) Employees of the State Department of Education who have been authorized by the Superintendent of Public Instruction to access confidential student data;

(B) Contractors of the State Department of Education who require such access to perform their assigned duties, including staff and contractors from the Information Services Division of the Office of Management and Enterprise Services (OMES) who have been assigned to the State Department of Education, provided that all such individuals shall comply with the terms set forth in the contract governing use and handling of student data;

(C) District administrators, teachers, personnel or other "school officials" under direct control of a school in which the student has been enrolled or in which the student has applied for transfer or enrollment and who require access to confidential student data in order to perform their assigned duties;

(D) A student and/or parents or legal guardians of the student with rights to inspect a student's own records in accordance with rights afforded by state or federal law;

(E) The authorized staff of any other State of Oklahoma agencies as authorized by law and in accordance with the terms of interagency data sharing agreements; and

(F) The authorized staff of any other entity as necessary to fulfill the purposes set forth in 70 O.S. § 3-168(C)(3) or as otherwise approved by the State Board of Education to access or share student data in accordance with terms of interagency data-sharing agreements.

(3) **Requests for release of student data.** All requests for release, disclosure, or transfer of confidential student data shall be reviewed in accordance with the following procedures:

(A) **Step one.** Prior to disclosure and/or transfer of information collected and maintained by the State Department of Education, any student data identified

for potential disclosure and/or transfer in response to a request shall be screened for all information that meets the definition of "Personally Identifiable Information".

(i) For purposes of this subparagraph, student data shall be deemed to result in the identification of a specific student if the n-size of the dataset is fewer than ten (10) records, provided that the provisions of this paragraph shall not be interpreted to require disclosure of records of a higher n-size if the release would result in disclosure of potentially identifiable information of one or more students.

(ii) Removal, redaction, and/or suppression of Personally Identifiable Information in a dataset necessary to bring a dataset proposed for release into compliance with the requirements of (3)(D)(iii)(II) of this subsection may require suppression of additional subsets of records to ensure that the privacy of students in the fewer than 10 subgroup.

(D) **Step two.** In accordance with the provisions of 70 O.S. § 3-168(C)(2)(c), all requests for release, disclosure, and/or transfer, of confidential student data shall be denied unless the data or dataset requested for release meets one of the following conditions:

(i) The request is from an individual or entity specifically authorized to access confidential student data pursuant to 70 O.S. § 3-168(C)(2)(a) or (d)(2) of this Section;

(ii) The requested data or dataset has been approved for release to the requester by the State Board of Education in accordance with the policies and procedures set forth in (4) of this subsection; or

(iii) The requested data or dataset meets all of the following criteria:

(I) The requested data meets the definition of "aggregate data" set forth in 70 O.S. § 3-168(A)(4); and

(II) All data that falls within the definition of "Personally Identifiable Information" set forth in 34 C.F.R. 99.3 has been removed, suppressed, and/or redacted as necessary to ensure no Personally Identifiable Information is included in the student data requested for release;

(4) **Policies and procedures governing approval of release, sharing and/or disclosure of confidential student data by the State Board of Education.** The State Department of Education shall develop a detailed data security plan that complies with the provisions of 70 O.S. §3-168(C)(4) and includes internal policies and procedures governing agency responses to requests for release and/or sharing of confidential student data to persons not authorized to access confidential student data in accordance with (2) of this subsection. Such internal policies and procedures shall meet all of the following requirements:

(A) The policies and procedures shall prohibit release of all data or datasets containing Personally Identifiable Information of one or more students unless all of the following conditions are met:

(i) The release complies with the provisions of the Family Education Rights and Privacy Act (FERPA) at 20 U.S.C. § 1232g et seq. and accompanying regulations at 34 C.F.R. Part 99; and

(ii) Approval for the release has been obtained from the State Board of Education.

(B) The policies and procedures shall set forth the requirements of all written agreements necessary to comply with the requirements of 34 C.F.R. § 99.31.

[OAR Docket #14-688; filed 7-7-14]

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

[OAR Docket #14-673]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-20. Implementation of policies prohibiting harassment, intimidation, and bullying [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 24-100.3; 70 O.S. § 24-100.4; 70 O.S. § 24-100.5; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 19, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule sets forth the requirements for school districts to implement policies and procedures prohibiting harassment, intimidation and bullying of students in public schools. The proposed changes to the rule update the definitions in the rules and amend the requirements for public school district policies pertaining to school bullying. The proposed changes to the rule are necessary to incorporate the amendments to the School Bullying Prevention Act resulting from HB 1661, which was enacted during the 2013 legislative session.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-20. Implementation of policies prohibiting ~~harassment, intimidation, and~~ bullying

(a) **Purpose.** Bullying has a negative effect on the social environment of schools, creates a climate of fear among students, inhibits the ability to learn, and leads to other antisocial behavior. Other detrimental effects of bullying include impact on school safety, student engagement, and the overall school environment. Successful school programs recognize, prevent, effectively identify, and intervene in incidents involving harassment, intimidation and bullying behavior. Schools that implement these programs have improved safety and create a more inclusive learning environment. The purpose of the Oklahoma School Bullying Prevention Act, 70 O.S. § 24-100.2, et seq., is to provide a comprehensive approach for public schools to create an environment free of unnecessary disruption which is conducive to the learning process by implementing policies for the prevention of ~~harassment, intimidation and~~ bullying.

(b) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) **"~~Harassment, Intimidation, and~~ Bullying"** means any pattern of harassment, intimidation, threatening behavior, physical acts, verbal or ~~gesture, written or verbal expression,~~ electronic communication directed toward a student or group of students that:~~, or physical act that a reasonable person should know will:~~

(A) Results in or is reasonably perceived as being done with the intent to cause negative educational or physical results for the targeted individual or group; and~~Harm another student;~~

(B) Is communicated in such a way as to disrupt or interfere with the school's educational mission or the education of any student. ~~Damage another student's property;~~

~~(C) Place another student in reasonable fear of harm to the student's person or damage to the student's property; or~~

~~(D) Insult or demean any student or group of students,~~

(2) **"At school"** means on school grounds, in school vehicles, at school-sponsored activities, or at school-sanctioned events.~~**"Applicability"** means the aforementioned conduct constitutes harassment, intimidation, and bullying if conducted in such a way as to disrupt or interfere with the school's educational mission or the education of any student. This includes, but is not limited to gestures, written, verbal, or physical acts, or electronic communications.~~

(3) **"Electronic Communication"** means the communication of any written, verbal, ~~or~~ pictorial information or video content by means of an electronic device, including, but not limited to, a telephone, a mobile or cellular telephone or other wireless telecommunication device, or a computer.

(4) **"Threatening Behavior"** means any pattern of behavior or isolated action, whether or not it is directed at another person, that a reasonable person would believe indicates potential for future harm to students, school personnel, or school property.

~~(5) **Scope.** Threatening behavior, harassment, intimidation, and bullying is prohibited on school grounds, in school vehicles, at designated bus stops, at school sponsored activities, or at school sanctioned events. Threatening behavior, harassment, intimidation, and bullying by electronic communication is prohibited whether or not such communication originated at school, or with school equipment, if the communication is specifically directed at students or school personnel and concerns harassment, intimidation, or bullying at school.~~

(c) **Implementation.** Each district board of education shall adopt a policy for the ~~control and~~ discipline of all children attending public school in that district. Such policy shall set forth investigative procedures of reported incidents ~~of harassment, intimidation,~~ bullying.~~or threatening behavior.~~ Such policy shall provide options for ~~the methods of control and~~ discipline of the students and shall define standards of conduct to which students are expected to conform, which may include a detailed description of a graduated range of consequences and sanctions for bullying. The policy adopted by each district board of education shall meet all of the following requirements:~~include and/or establish the following:~~

(1) The policy shall specifically ~~Specifically~~ prohibit ~~threatening behavior, harassment, intimidation, and~~all bullying at school. The prohibition against bullying at school shall include all use of ~~by students at school and by~~ electronic communication that is specifically directed at students or school personnel and is used to perpetuate incidents at school which meet the definition of bullying set forth (b) of this Section; ~~. Electronic communication shall be prohibited whether or not such communication originated at school or with school equipment, if the communication is specifically directed at students or school personnel and concerns harassment, intimidation, or bullying at school.~~

(2) The policy shall require the district to establish a procedure at each school for reporting an act of bullying to a school official that includes:

(A) A process that ensures reports of bullying are kept confidential and private to the extent necessary to ensure the ability of individuals to report incidents without fear of retribution or retaliation. Such process shall include a procedure which enables any person to report an act of bullying anonymously, provided that an anonymous report shall not be used as the sole basis for formal disciplinary action;

(B) A process that contains a requirement that any school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of bullying shall immediately report it to the principal or a designee of the principal and provides guidelines to school administrators, teachers, and other personnel on specific actions to take if incidents of bullying occur; and

(C) A process that ensures tracking of multiple incidents in a way that enables school administrators to identify emerging patterns of bullying over extended periods of time and interventions used with specific bullies and victims of bullying; and

(D) A process that ensures that students are encouraged to report incidents of known bullying and that the system of reporting bullying incidents does not contain unnecessary obstacles to reporting that would serve as a deterrent to reporting;

(3) The policy shall contain procedures for publicizing the bullying policy that meet all of the following requirements:

(A) An annual written notice of the bullying policy, written in age-appropriate language, shall be provided to parents, guardians, staff, volunteers, and students at each school;

(B) A written notice of the school bullying policy shall be posted at various locations within each school site, including, but not limited to cafeterias, school bulletin boards, classrooms, and administration offices. The notice shall be written in age-appropriate language that is understandable and accessible by all students in the school in which the notice is distributed;

(C) The bullying policy shall be posted on the internet websites of the school district and each school site in the district which has its own website; and

(D) The bullying policy shall be included in all student and employee handbooks;

(4) The policy shall require that appropriate school district personnel involved in investigation of reports of bullying shall make a determination regarding whether or not the conduct alleged is actually occurring;

(5) The policy shall require the district to establish a procedure at each school for providing timely notification of documented and verified incident(s) of bullying to the parents or guardians of a victim of documented to the parents or guardians of the perpetrator;

(6) The policy shall require each school to identify by job title the official who is responsible for enforcement of the district's bullying policy;

(7) The policy shall require the district to establish a procedure at each school for reporting all documented and verified acts of bullying to law enforcement that either:

(A) May constitute criminal conduct; or

(B) Have a reasonable potential to endanger the safety of school students, school personnel, or school visitors;

(8) The policy shall require administrators and school employees to participate in annual training in bullying identification, prevention, reporting, and response that is developed and/or provided by the State Department of Education;

(9) The policy shall require the district to provide students and parents at each school with an educational program in bullying identification, prevention, reporting, and response that is designed and developed by the State Department of Education;

(~~2~~10) The policy shall address~~Address~~ prevention of ~~and education about threatening behavior, harassment, intimidation, and~~ bullying by providing procedures at each school that contain:~~.~~

(A) Consequences and remedial action for any person (including a student or school employee) who commits an act of bullying. All consequences and remedial action shall be appropriate to the age of the perpetrator(s) and severity of the incident. Such consequences may include, but are not limited to one or more of the following:

(i) Verbal or written warnings;

(ii) Conferences with the parent(s) and/or guardian(s) of the student(s) involved in an incident of bullying;

(iii) Detention;

(iv) Loss of school privileges;

(v) Course and/or teacher reassignment;

(vi) Prohibition or suspension of participation in school activities;

(vii) In-school or out-of-school suspension in accordance with the provisions of 70 O.S. 24-101.3 and district policy and procedures;

(viii) Meetings or conferences with a school counselor, school psychologist, or school social worker;

(ix) Restitution of a victim's property that has been damaged as a result of a documented and verified bullying incident;

(x) Reassignment, suspension, and/or termination of school employment;

(xi) Referral to law enforcement;

(B) Consequences and remedial action for a student found to have falsely accused another student of bullying as a means of retaliation, reprisal, or means of bullying that is appropriate to the age of the perpetrator and severity of the incident, provided that such consequences shall not be implemented or enforced in such a way as to deter credible reports of bullying incidents; and

(C) A strategy for providing appropriate services as necessary for students who are targets of bullying; family members affected by bullying; and perpetrators of bullying. Such services and support may be provided by the school directly or through referrals to other providers and may include, but are not limited to one or more of the following:

(i) Counseling;

(ii) Academic intervention;

(iii) Protection for students who are targets of bullying; and

(iv) Any other appropriate services as necessary to:

(I) Ensure the safety of all students involved in incidents of bullying; and

(II) Prevent further incidents of bullying.

(~~3~~11) The policy shall require the district to establish a ~~A~~ procedure at each school for:

(A) The ~~the~~ investigation, documentation, and determination of all incidents of ~~harassment, intimidation,~~ bullying ~~or threatening behavior~~ reported to school officials;~~for the purpose of determining the severity of the incidents and their potential to result in future violence.~~

(B) Identification and designation of a school official at each school site who is responsible for investigation of incidents of bullying;

(C) Reporting the number of incidents of bullying to the State Department of Education; and

(D) Determination of the severity of the incident(s) and the potential of the incident(s) to result in future violence.

(~~4~~12) The policy shall require the district to establish a ~~A~~ procedure at each school which provides, upon the completion of an investigation, that a school may recommend that available community mental health care, substance abuse, or other counseling options be provide to the student, if appropriate. This may include information about the types of support services available to the student bully, victim, and any other students affected by the prohibited behavior.

(~~5~~13) The policy shall require the district toestablish a ~~A~~ procedure at each school whereby a school may request the disclosure of any information concerning students who have received mental health, substance abuse, or other health care pursuant to ~~sub-section (4)~~(12) of this ~~rule~~subsection, if that information indicates an explicit threat to the safety of students or school personnel provided, and if the disclosure of that information does not violate the provisions or requirements of the Family Educational Rights and Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, Section 2503 of Title 12 of the Oklahoma Statutes, Section 1376 of Title 59 of Oklahoma Statutes, or any other state or federal laws relating to the disclosure of confidential information.

(d) **Policy Adoption.** The policy adopted by the local school board pursuant to 70 O.S. § 24-100.4 shall include the statutorily required sections outlined in section (c) of this rule. Failure to include such items shall result in action pursuant to ~~section~~ (f) of this ~~rule~~Section.

(e) **Policy Development.** In developing a district policy, each district board of education shall make an effort to involve teachers, parents, and students. The students, teachers, and parents or guardian of every child residing within a school district shall be notified by the district board of education of the adoption of the policy and shall receive a copy upon request.

(f) **Monitoring and Compliance.** The State Board of Education shall monitor school districts for compliance with 70 O.S. § 24-100.4 and ~~section~~ (c) of this ~~rule~~Section.

(1) To assist the State Department of Education with compliance efforts pursuant to this section, each school district shall identify a Bullying Coordinator who will serve as the district contact responsible for providing information to the State Board of Education. The Bullying Coordinator shall maintain on file with the Department of Education updated contact information. Each school district shall notify the State Department of Education within fifteen (15) business days of the appointment of a new Bullying Coordinator.

(2) ~~Beginning with the 2012-2013 school year, and for eachschool year following, each~~ Every school district shall submit to the State Board of Education a copy of the district's bullying policy. The bullying policy shall be submitted to the State Department of Education by December 10th of each school year, and shall be submitted as a part of the school's Annual Performance Report.

(3) ~~Beginning with the 2012-2013 school year, and for each school year following, the~~ The State Department of Education shall conduct ~~a~~an annual comprehensive review of each school district's bullying policy to ensure compliance with 70 O.S. § 24-100.4. School districts that do not comply with the statutory requirements of the statute shall be notified in writing, and be required to make necessary changes to comply with state law.

(4) State Department of Education staff shall monitor school districts for compliance with 70 O.S. § 24-100.4 and section (c) of this rule. The State Department of Education may initiate a compliance review upon receipt of evidence which indicates noncompliance with 70 O.S. § 24-100.4. Evidence of potential noncompliance shall be based on the nature or frequency of confirmed complaints of non-compliance received by the State Department of Education. The scope of a compliance review initiated pursuant to ~~sub-section~~ (f) of this Section~~rule~~ shall be limited to determining whether a school district has implemented policies required by 70 O.S. § 24-100.4.

(5) Records indicating substantial noncompliance with ~~sub-sections(3) or (4)~~(c) of this ~~rule~~Section shall be submitted to the school district's Regional Accreditation Officer (RAO) for review and consideration during the district's accreditation process. Record of a school district's failure to comply with 70 O.S. § 24-100.4, including the number of confirmed complaints of non-compliance involving the district, shall be documented in the district's compliance report and be considered for purposes of accreditation.

(g) **Federal Applicability.** Harassment, intimidation, and bullying behavior may also result in discriminatory harassment, prohibited by Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on

the basis of sex; Section 504 of the Rehabilitation Act of 1973 (Section 504); and Title II of the Americans with Disabilities Act of 1990 (Title II). Section 504 and Title II prohibit discrimination on the basis of disability. Each school district shall take necessary steps to ensure compliance with federal law.

[OAR Docket #14-673; filed 7-7-14]

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

[OAR Docket #14-689]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-21. Emergency administration of anaphylaxis medication in public schools [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1-116.3; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The new rule addresses emergency administration of anaphylaxis medication in schools which elect to stock epinephrine injectors for emergency use pursuant to the provisions of 70 O.S. § 1-116.3(B). The rule is necessary to implement amendments to 70 O.S. §1-116.3 that were enacted during the 2013 regular legislative session (HB 2101).
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-21. Emergency administration of anaphylaxis medication in public schools

(a) **General provisions.** Every public school district board of education that elects to stock epinephrine injectors pursuant to the provisions of 70 O.S. § 1-116.3(B) shall adopt a policy and establish procedures to ensure safe administration of anaphylaxis medicine to a student in the event an emergency occurs while the student is attending school or participating in authorized school-sponsored activities on public school grounds. The State Board of Education shall adopt a model policy which is made available to school districts for this purpose.

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

(1) "**Medication**" means a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, prescribed by a physician and having an individual label, or an anaphylaxis medication used to treat anaphylaxis, including but not limited to Epinephrine injectors, prescribed by a physician and having an individual label.

(2) "**Self-administration**" means a student's use of medication pursuant to prescription or written direction from a physician.

(c) **School district decisions to stock epinephrine injectors.** Any school district that elects to stock epinephrine injectors pursuant to the provisions of 70 O.S. § 1-116.3(B) shall ensure that its policy and procedures comply with all of the following requirements:

(1) **Designation of primary school health professional.** The superintendent shall be responsible for designating a primary school health professional at each school site. The duties of the primary school health professional at each site shall include:

(A) Responsibility for knowledge and execution of all policies and procedures pertaining to emergency administration of epinephrine injectors;

(B) Responsibility for obtaining epinephrine injectors at the school site;

(C) Responsibility for ensuring that epinephrine injectors are secured and safely stored at the school site;

(D) Responsibility for maintaining a list of students at each site for whom a valid waiver of liability executed by a parent or legal guardian is on file in accordance with the requirements of 70 O.S. § 1-116.3(B)(2), and that the list is easily and quickly accessible to employees authorized to administer epinephrine injectors in emergency situations in which self-administration of medication by a student is not possible;

(E) Responsibility for maintaining a current list of all school employees authorized to administer emergency epinephrine injections at each school site; and

(F) Responsibility for proper storage, maintenance, and disposal of epinephrine injectors.

(2) **Designation of school employees authorized to administer emergency epinephrine injectors.** The superintendent shall ensure that each school site has designated a sufficient number of school employees at each

site to ensure that an individual trained in the emergency administration of epinephrine injections is available on the school campus at all times during which students are present.

(3) **Training in the use of epinephrine injectors.** The superintendent shall ensure that all primary school health professionals and school employees authorized to administer emergency epinephrine injections designated in accordance with (1) and (2) of this subsection shall be provided with training in the recognition of the signs and symptoms of anaphylaxis and procedures for emergency administration of epinephrine injectors that meets the requirements of 70 O.S. § 1-116.3(B)(1).

[OAR Docket #14-689; filed 7-7-14]

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

[OAR Docket #14-690]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Child Nutrition Programs
Part 5. National School Lunch Program
210:10-3-51. National School Lunch Program [AMENDED]
Part 7. School Breakfast Program
210:10-3-71. School breakfast program [AMENDED]
Part 9. Summer Food Service Program for Children
210:10-3-91. Summer food service program for children [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 56 O.S. § 163.3; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules establish health standards, recordkeeping, and cycle menus for food service programs in public school cafeterias. The proposed amendments revise the rules to incorporate State Health Department food handling regulations and USDE regulations pertaining to child nutrition programs. The amendments to the rules are necessary to avoid conflicts with federal, state, and local statutes and regulations pertaining to food handling and to implement provisions of the newly enacted Josephine Meade Anti-Hunger Act at 56 O.S. § 163.3 (HB 1418), which directs the State Department of Education to promulgate rules to prevent food waste in public school cafeterias and to develop policies for redistribution of leftover foods to students in need.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. CHILD NUTRITION PROGRAM

PART 5. NATIONAL SCHOOL LUNCH PROGRAM

210:10-3-51. National School Lunch Program

(a) **Adult meal charges.** ~~The state agency~~All school food authorities participating in the National School Lunch Program shall require that adults pay, at a minimum, the student price plus the reimbursement received for student meals. Adults other than food service employees cannot be served free of charge unless the local school district absorbs the cost.

(b) **Health standards.** All school food authorities participating in the National School Lunch Program shall develop and implement a written school food safety program at each facility or part of a facility where food is stored, prepared, or served that ensures preparation, service, and storage of food used in the National School Lunch Program complies with all applicable state, federal, county and local statutes and regulations pertaining to food handling and food safety, including but not limited to 42 U.S.C. § 1758(h), 7 C.F.R. §210.13 and OAC 310:257. In addition, all school food authorities shall comply with all of the following provisions:

(1) **Storage of leftover food.** School food authorities shall use best efforts to ensure that food waste is kept to a minimum. In order to minimize waste, leftover food may be re-served in subsequent meal services in accordance with the provisions of 310:257-5-44 and 310:257-5-71.

(2) **Donation of leftover food.** School food authorities participating in the program may donate any food under the program not consumed and unable to be reserved pursuant to the provisions of (1) of this subsection to food banks or charitable organizations in accordance with the provisions of 42 U.S.C. § 1758(l) and accompanying federal regulations if the donation is not otherwise prohibited by state, county, and local regulations.

~~(1) The state agency shall require children, as well as adults not involved in the preparation of food, not to be allowed in the meal preparation area.~~

~~(2) The state agency shall require all personnel involved in food preparation or service of meals to wear an effective hair restraint, to not wear excessive jewelry, and to not wear nail polish.~~

~~(3) The state agency shall require gum, tobacco products, and personal grooming activities not to be allowed in the kitchen.~~

~~(4) The state agency shall require food preparation and service surfaces to be properly sanitized prior to and after use. According to the Oklahoma State Department of Health, a good sanitizing solution is one tablespoon of bleach to one gallon of water.~~

~~(5) The state agency shall require dishes and utensils to be properly sanitized. If dish machine or dishwasher is used, the final rinse cycle must maintain a 180° water temperature or use of a proper sanitizing agent in accordance with manufacturer's specifications for time and concentration. If washed by hand, the three (3) tub method of wash, rinse, and sanitize with proper sanitizing agent must be used.~~

~~(6) The state agency shall require all equipment, utensils, and dishes to be air dried after sanitizing. State Department of Health regulations do not permit towel drying.~~

~~(7) The state agency shall require all refrigerators and freezers to have internal thermometers or exterior temperature indicators. A refrigerator's temperature should be maintained at forty (40) degrees or below and at zero (0) degrees or below for each freezer.~~

~~(8) The state agency shall require shelf paper and contact paper not to be used in the kitchen or storage areas.~~

~~(9) The state agency shall require storage areas to have adequate lighting and ventilation. Food in storage must be kept in sealed containers or must be properly wrapped. Containers of food shall be stored a minimum of six (6) inches above the floor or stored on dollies, skids, racks, or open-ended pallets.~~

~~(10) The state agency shall require trash and garbage cans used in food preparation and storage areas to have a tight fitting lid or cover and to be kept covered when not in actual use.~~

~~(11) The state agency shall require adequate precautions to be taken to avoid insect infestation~~

~~(12) The state agency shall require opened containers as well as cardboard boxes not to be utilized as storage containers in the dry food storage area.~~

~~(13) The state agency shall require food to be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Canned food items with visible can defects such as rust, bulges, or severe dents must be properly discarded.~~

~~(14) The state agency shall require that leftovers be properly stored. If refrigerated, leftovers may only be held and used again within twenty four (24) hours. If frozen, leftovers may be held and used again within thirty (30) days. Proper storage includes the item being dated and labeled. Leftovers may not be removed from premises. If leftovers are not properly maintained or used within the prescribed time frame, they must be properly discarded.~~

~~(15) The state agency shall require chemicals and medicines to be stored in separate cabinet areas away from food, food equipment, and utensils. Medicines, if stored in the refrigerator, must be placed in a separate container to prevent possible food contamination.~~

~~(16) The state agency shall require that milk served at a meal service not be re-served. Milk served with meals returned in unopened half-pint cartons can be used for cooking purposes only.~~

~~(17) The state agency shall require home grown and home processed foods not to be served in participating schools.~~

PART 7. SCHOOL BREAKFAST PROGRAM

210:10-3-71. School breakfast program

Health standards. All school food authorities participating in the National School Breakfast Program shall implement a written school food safety programat each facility or part of a facility where food is stored, prepared, or served that ensures preparation, service, and storage of food used in the National School Breakfast Program complies with all applicable state, federal, county and local statutes and regulations pertaining to food handling and food safety, including but not limited to 42 U.S.C. § 1758(h) and OAC 310:257. In addition, all school districts and school sites shall comply with all of the following provisions:

(1) **Storage of leftover food.** School food authorities shall use best efforts to ensure that food waste is kept to a minimum. In order to minimize waste, leftover food may be re-served in subsequent meal services in accordance with the provisions of 310:257-5-44 and 310:257-5-71.

(2) **Donation of leftover food.** School food authorities participating in the program may donate any food under the program not consumed and unable to be reserved pursuant to the provisions of (1) of this subsection to food banks or charitable organizations in accordance with the provisions of 42 U.S.C. § 1758(l) and accompanying federal regulations if the donation is not otherwise prohibited by state, county, and local regulations.

~~(a) The state agency shall require children, as well as adults not involved in the preparation of food, not to be allowed in the meal preparation area.~~

~~(b) The state agency shall require all personnel involved in food preparation or service of meals to wear an effective hair restraint, to not wear excessive jewelry, and to not wear nail polish.~~

~~(c) The state agency shall require gum, tobacco products, and personal grooming activities not to be allowed in the kitchen.~~

~~(d) The state agency shall require food preparation and service surfaces to be properly sanitized prior to and after use. According to the Oklahoma State Department of Health, a good sanitizing solution is one tablespoon of bleach to one gallon of water.~~

~~(e) The state agency shall require dishes and utensils to be properly sanitized. If dishwasher is used, the final rinse cycle must maintain a 180°F water temperature or proper use of a sanitizing agent in accordance with manufacturer's specifications for time and concentration. If washed by hand, a three~~

~~(3) tub method of wash, rinse, and sanitize with proper sanitizing agent must be used.~~

~~(f) The state agency shall require all equipment, utensils, and dishes to be air dried after sanitizing. State Department of Health regulations do not permit towel drying.~~

~~(g) The state agency shall require all refrigerators and freezers to have internal thermometers or exterior temperature indicators. A refrigerator's temperature should be maintained at forty (40) degrees or below and at zero (0) degrees or below for each freezer.~~

~~(h) The state agency shall require shelf paper and contact paper not to be used in the kitchen or storage areas.~~

~~(i) The state agency shall require storage areas to have adequate lighting and ventilation. Food kept in storage must be kept in sealed containers or must be properly wrapped. Containers of food shall be stored a minimum of six (6) inches above the floor.~~

~~(j) The state agency shall require trash and garbage cans used in food preparation and storage areas to have a tight fitting lid or cover and to be kept covered when not in actual use.~~

~~(k) The state agency shall require adequate precautions to be taken to avoid insect infestation. Opened cardboard boxes are not to be utilized as storage containers in the dry food storage area. The state agency shall require food to be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Canned food items with visible can defects such as rust, bulges, or severe dents must be properly discarded.~~

~~(l) The state agency shall require that leftovers be properly stored. If refrigerated, leftovers may only be held and used again within twenty-four (24) hours. If frozen, leftovers may be held and used again within thirty (30) days. Proper storage includes the item being dated and labeled. Leftovers may not be removed from premises. If leftovers are not properly maintained or used within the prescribed time frame, they must be properly discarded.~~

~~(m) The state agency shall require chemicals and medicines to be stored in separate cabinet areas away from food, food equipment, and utensils. Medicines, if stored in the refrigerator, must be placed in a separate container to prevent possible food contamination.~~

~~(n) The state agency shall require that milk served at a meal service not be re-served. Milk returned in unopened half-pint cartons can be used for cooking purposes only.~~

~~(o) The state agency shall require home-grown and home-processed foods not to be served in participating schools.~~

PART 9. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

210:10-3-91. Summer food service program for children

(a) **Health standards.** All service institutions participating in the Summer Food Service Program shall ensure that preparation, service, and storage of food used in the Summer Food Service Program complies with all applicable state, federal, county and local statutes and regulations pertaining to food handling and food safety, including but not limited to 42 U.S.C. § 1758(h) and OAC 310:257. In addition, all school districts or other service institutions shall comply with all of the following provisions:

(1) **Storage of leftover food.** All service institutions shall use best efforts to ensure that food waste is kept to a minimum. In order to minimize waste, leftover food may be re-served in subsequent meal services in accordance with the provisions of 310:257-5-44 and 310:257-5-71.

(2) **Donation of leftover food.** All service institutions participating in the program may donate any food under the program not consumed and unable to be reserved pursuant to the provisions of (1) of this subsection to food banks or charitable organizations in accordance with the provisions of 42 U.S.C. § 1758(l) and accompanying federal regulations if the donation is not otherwise prohibited by state, county, and local regulations.

~~(1) The state agency shall require children, as well as adults not involved in the preparation of food, not to be allowed in the meal preparation area.~~

~~(2) The state agency shall require all personnel involved in food preparation or service of meals to wear an effective hair restraint, to not wear excessive jewelry, and to not wear nail polish.~~

~~(3) The state agency shall require gum, tobacco products, and personal grooming activities not to be allowed in the kitchen.~~

~~(4) The state agency shall require food preparation and service surfaces to be properly sanitized prior to and after use. According to the Oklahoma State Department of Health, a good sanitizing solution is one tablespoon of bleach to one gallon of water.~~

~~(5) The state agency shall require dishes and utensils to be properly sanitized. If dish machine or dishwasher is used, the final rinse cycle must maintain a 180^{c} water temperature or use of a proper sanitizing agent in accordance with manufacturer's specifications for time and concentration. If washed by hand, the three (3) tub method of wash, rinse, and sanitize with proper sanitizing agent must be used.~~

~~(6) The state agency shall require all equipment, utensils, and dishes to be air dried after sanitizing. State Department of Health regulations do not permit towel drying.~~

~~(7) The state agency shall require all refrigerators and freezers to have internal thermometers or exterior temperature indicators. A refrigerator's temperature should be maintained at forty (40) degrees or below and at zero (0) degrees or below for each freezer.~~

~~(8) The state agency shall require shelf paper and contact paper not to be used in the kitchen or storage areas.~~

~~(9) The state agency shall require storage areas to have adequate lighting and ventilation. Food in storage must be kept in sealed containers or must be properly wrapped. Containers of food shall be stored a minimum of six (6) inches above the floor or stored on dollies, skids, racks, or open-ended pallets.~~

~~(10) The state agency shall require trash and garbage cans used in food preparation and storage areas to have~~

~~a tight fitting lid or cover and to be kept covered when not in actual use.~~

~~(11) The state agency shall require adequate precautions to be taken to avoid insect infestation.~~

~~(12) The state agency shall require opened containers as well as cardboard boxes not to be utilized as storage containers in the dry food storage area.~~

~~(13) The state agency shall require food to be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Canned food items with visible can defects such as rust, bulges, or severe dents must be properly discarded.~~

~~(14) The state agency shall require that leftovers be properly stored. If refrigerated, leftovers may only be held and used again within twenty four (24) hours. If frozen, leftovers may be held and used again within thirty (30) days. Proper storage includes the item being dated and labeled. Leftovers may not be removed from premises. If leftovers are not properly maintained or used within the prescribed timeframe, they must be properly discarded.~~

~~(15) The state agency shall require chemicals and medicines to be stored in separate cabinet areas away from food, food equipment, and utensils. Medicines, if stored in the refrigerator, must be placed in a separate container to prevent possible food contamination.~~

~~(16) The state agency shall require that milk served at a meal service not be re-served.~~

~~(17) The state agency shall require home grown and home processed foods not to be served at participating Summer Food Service Program sites.~~

(b) **Recordkeeping.** All service institutions participating in the program shall ensure that recordkeeping complies with all of the following provisions:

(1) ~~The state agency shall require~~ All service institutions shall report any significant increase or decrease in participation levels ~~tobe reportedby the sponsor~~ to the ~~state agency~~State Department of Education as soon as possible.

(2) ~~The state agency~~All service institutions shall maintain~~require that~~ daily food production records, as well as daily meal counts and menus, be maintained. Food production records enable sponsors to ensure that adequate amounts of food are served to meet the Summer Food Service Program's meal pattern requirements.

(3) ~~The state agency shall require sponsorsto~~All service institutions shall maintain all records necessary to support the costs reported on the claim for reimbursement. This includes itemized receipts for food and milk, time and attendance records for labor costs reported, etc.

(c) **Cycle menus.** ~~The state agency requires sponsorsto~~Service institutions shall develop and follow an eleven (11) day cycle menu for each type of meal served.

[OAR Docket #14-690; filed 7-7-14]

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

[OAR Docket #14-675]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]
210:10-13-11. Testing students with disabilities [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. §1210.507; 20 U.S.C. § 6311 et seq.; 34 C.F.R. Part 200; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule at 210:10-13-2 sets forth the general scope and requirements for administration of examinations required by the Oklahoma School Testing Program (OSTP). The proposed rule at 210:10-13-11 sets forth the requirements for administration of exams under the OSTP given to students with disabilities. The proposed changes to the rules remove references to the Oklahoma Modified Alternate Assessment Program (OMAAP); clarify the how test results of students educated in residential facilities are reported; and clarify the definition of a "Full Academic Year" for testing purposes. The proposed changes to the rule are necessary to implement the planned phaseout of the OMAAP and clarify how the test results of students in residential facilities are reported.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration

(a) **Definitions.** In this Section, the words and terms shall have the following meaning: "**Proficient/Satisfactory**" means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) All public school districts shall administer the state mandated academic achievement tests of the OSTP to all students enrolled in the designated grades. The series of tests shall be field-tested/implemented by the amended schedule in ~~Title~~ 70 O.S. §~~,Section~~ 1210.508, or federal law.

(1) Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP with regard to the type of assessment in which the student will participate (e.g., Oklahoma Core Curriculum Test (OCCT) with or without accommodations, ~~the Oklahoma Modified Alternate Assessment Program (OMAAP) with or without accommodations, a combination of OCCT and OMAAP,~~ or the Oklahoma Alternate Assessment Program (OAAP) Portfolio). The OCCT~~, OMAAP,~~ and OAAP Portfolio are all a part of the Oklahoma School Testing Program (OSTP). Any state approved accommodations must be documented in the student's current IEP. Current documentation for each student shall be on file in the local school prior to test administration.

(2) All students who have been determined to be limited English proficient (LEP) as the term is defined at 20 U.S.C. § 7801, also known as English language learners (ELL), shall be included in all of the state-mandated academic achievement tests of the OSTP. ELL students are those who have been appropriately identified, through English proficiency screening by the local school districts, as requiring specialized instructional services designed to increase their English proficiency and academic performance. For every student identified as ELL, the local district shall have on file verification that the student is receiving special instruction designed for the specific purpose of improving the ELL student's English proficiency. Any State Department of Education approved and adopted English proficiency assessment shall be considered an official assessment of the OSTP, and will be subject to the same security, privacy, and administration measures accorded to all other OSTP assessments.

(A) Students identified as ELL shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary and, to the extent practicable, with alternate assessments aligned to the state assessment provided by the local school district in the language and form most likely to yield accurate data on what such students know and can do in these content areas; these alternate assessments will continue until such students have achieved English language proficiency with the exception noted in paragraph (2)(B) of this subsection.

(B) If ELL students are administered the state-mandated reading and language arts achievement tests in a language other than English, this will be allowed only during their first three consecutive years of school attendance in the United States (not including Puerto Rico). After these first three years these tests must be administered in English, except that if the local school district determines on a case-by-case basis, that a student has not yet reached a level of English language proficiency that will allow valid and reliable information to be obtained, even with testing accommodations, in which case individual waivers will be allowed by the local district for up to two additional consecutive years, according to federal law.

(3) All End-of-Instruction assessments must be taken once the corresponding course of instruction has been completed. In order to meet the Federal No Child Left Behind (NCLB) legislation requirements, all students prior to graduating from high school must take the Algebra I, Biology I, and English II assessments regardless of whether instruction has been taken, unless otherwise exempt.

(c) On an annual basis, school superintendents or their designees shall provide a copy of the State Board of Education Rules, OAC 210:10-13, for all school personnel responsible for receipt, inventory, distribution, or return of tests documents, and/or for administration of tests within the Oklahoma School Testing Program.

(d) Districts may request special reports beyond those provided by state contract with the testing company at their own cost (i.e., individual student records on CD or disk, District Title I Report, District Alpha Order Report, etc.).

(e) Test results of all students not enrolled in a district for a full academic year shall be disaggregated and shall not be used to determine the progress of the district, according to federal law. Test results of all students not enrolled in a school site for a full academic year shall be disaggregated and shall not be used to determine the progress of the school site, according to federal law. ~~" Beginning with the 2008-2009 school year~~For purposes of the OSTP, "Full Academic Year" shall be defined ~~for the purposes of the Oklahoma Core Curriculum Tests (OCCT),Oklahoma Modified Alternate Assessment Program (OMAAP), and the Oklahoma Alternate Assessment Program (OAAP)~~ as continuous enrollment ~~beginning within the first ten days~~from October 1 of the school year through and including the date of administration of the exam without an enrollment lapse of ten or more consecutive days.

(f) For purposes of the annual reports of the OSTP, test ~~Test~~ results of all students who have been placed in a state juvenile facility by state law or court order, or students placed in a full time residential facility providing educational services to students by joint agreement with one or more school districts ~~within a district by state or court order,~~ shall not be used to determine the progress of the site or the district of residence of the students unless the facility has been specifically designated as a separate site within a school district and has been assigned

a separate site code within the school district by the State Department of Education at the request of the school district. Instead their scores will be used in accountability calculations in one statewide "virtual" district.

(g) Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's seventh grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the eighth-grade criterion-referenced tests in reading and mathematics. Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's eighth grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the end-of-instruction tests administered in high school. ~~Beginning with students entering the ninth grade in the 2008-2009 school year, each~~Each public school student who does not attain at least a satisfactory or proficient score on the state end-of-instruction tests shall be provided remediation for the purpose of assisting the student in attaining at least a satisfactory or proficient score on the Algebra I, English II, and two of the remaining five end-of-instruction tests, in order to graduate from an Oklahoma accredited public high school.

(1) Districts and/or schools may provide remediation through extended instructional time during the school day, a summer academy, tutoring, online coursework, or other supplementary services. Remediation is not limited to these practices.

(2) Remediation provided ~~through instructional time during the school day, a summer academy, or school-based tutoring~~ shall be under the supervision of a highly qualified teacher in the appropriate content area.

(3) The State Department of Education shall provide information about best practices for remediation and interventions on the State Department of Education website.

(4) ~~Beginning with the 2008-2009 school year,the~~Each district shall submit an annual remediation plan to its local board of education at a regularly scheduled meeting prior to November 15 of each school year. The remediation plan shall be for those students who do not attain at least a satisfactory or proficient score on the tests listed in this section. The plan should include how remediation funds will be spent, when and where remediation will be provided, what content will be addressed, how instruction will be delivered, and who will provide the instruction, including the highly qualified status of the instructor.

(5) Funds for remediation shall be disbursed by the State Department of Education to the local school districts by September 1 of each year in accordance with the requirements of 70 O.S. § 1210.526. Funds for each fiscal year shall be based on the most recent OSTP test results available for each student from the previous school year or summer test administration.

(6) Funds for remediation shall be utilized to provide intervention and remediation for qualifying students as described in this section. Allowable expenditures include salaries and stipends for highly qualified teachers and tutors under the supervision of highly qualified teachers; instructional materials such as textbooks, workbooks, teacher-made materials, computer assisted instructional software, manipulatives, and classroom instructional tools necessary to provide remediation; assessments designed to monitor the progress of students in remediation programs; transportation to and from tutoring sessions held outside of the school day; and training in best practices for providing remediation. Funds for remediation may not be used for salaries, materials, or administrative services not directly related to remediation or for students who do not qualify for remediation as described in this section.

(7) School districts shall report the use of remediation funds and the results of the remediation, as measured by periodic progress assessments and district student performance on state assessments. Districts shall submit an online report annually to the State Department of Education through the Oklahoma School District Reporting Site (SDRS). The district shall also submit the annual report to its local board of education at a regularly scheduled meeting. Remediation results shall be presented by a designated public school principal for each site.

210:10-13-11. Testing students with disabilities

(a) Acceptable accommodations of the general assessments of the OSTP for students with disabilities shall be:

(1) ~~specified~~Specified in the student's IEP under the Individuals with Disabilities Education Act (IDEA); or

(2) ~~specified~~Specified for the student served under the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(b) ~~The~~Any use of test accommodations which deviate from established standardized test procedures for the general assessments of the OSTP shall be reported to the State Department of Education's Student Assessment Section.

(c) Large print and Braille versions of the tests may be utilized with students whose visual disabilities necessitate such accommodations. The Student must be utilizing large print or Braille in daily classwork as indicated on the student's IEP on file at the school district. To order large print or Braille tests, the district test coordinator shall indicate the quantities required at each grade level tested on the annual questionnaire.

(d) Students with disabilities who cannot be assessed in a valid and reliable manner with the general state assessment even with accommodations, as specified in the student's IEP, shall be assessed with an appropriate alternate assessment provided by the State Department of Education. Eligibility for an alternate assessment shall be determined annually by the student's IEP team. ~~Alternate assessments may include, but not be limited to, portfolio assessments or modified assessments.~~ The scores from alternate assessments shall be included in accountability calculations for the school, district, and state according to the standard ~~AYPcalculation~~ procedures for calculation of academic performance targets, as specified in federal law.

(e) Students with the most significant cognitive disabilities shall participate in an Alternate Assessment Program (OAAP)

and should not exceed a small percentage of the special education population. The OAAP shall be designed for students who are participating in an alternative curriculum based on the Curriculum Access Resource Guide (CARG).

(f) The OAAP shall consist of a portfolio assessment, which may include authentic performance tasks. A portfolio assessment is a collection of student-generated or student-focused products that exhibit the alternative approach to teaching the Priority Academic Student Skills (PASS). The portfolio shall be scored by teams of teachers supervised by an individual who has received training in providing access to students with severe or profound disabilities from the Office of Special Education of the State Department of Education. If authentic performance tasks are used, teachers completing the portfolio shall be provided with information regarding these tasks during a specified time prior to the completion of the portfolio.

~~(g) Students with cognitive disabilities that inhibit their ability to attain, even after receiving appropriate instructional interventions, grade-level achievement standards within the same time frame as other students maydemonstrate academic proficiencythrough participation in a statewide system of modified assessments. These assessments, the Oklahoma Modified Alternate Assessment Program (OMAAP), shall be based in the content drawn from the Priority Academic Students Skills (PASS) and shall be designed to be rigorous, reliable and valid measures of the academic content required of all students.~~

[OAR Docket #14-675; filed 7-7-14]

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

[OAR Docket #14-674]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-4. Test security and validity [AMENDED]
210:10-13-18. Oklahoma School Accountability System [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1210.507; 70 O.S. § 1210.508; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule at 210:10-13-4 sets forth the rules pertaining to test security and invalidation of exams. The rule at 210:10-13-18 sets forth the consequences of testing irregularities or misconduct on test scores and school accountability grades. The proposed changes to 210:10-13-4 update the procedures for administration of online exams and administration of exam item tryouts. The proposed changes to 210:10-13-18 update the procedures pertaining to testing irregularities. The proposed changes to the rule are necessary to meet the requirements for development, field-testing, and validation of criterion-referenced tests established by the Oklahoma School Testing Program Act and to address situations in which one or more exam scores must be invalidated due to testing irregularities beyond the control of the school district.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-4. Test security and validity

(a) **Test security.** School administrators ~~or~~and their designees shall maintain security on tests administered under the auspices of the Oklahoma School Testing Program through following the procedures listed below:

(1) **Test coordinators.** School superintendents shall designate both district and building test coordinators before October 1 of each school year. Names and telephone numbers of district test coordinators shall be recorded on the OSTP Questionnaire conducted in the fall semester of each school year. This questionnaire is the order form provided by the testing vendors for all tests in the OSTP including large print and Braille test forms.

(2) **Pretest information.** The State Department of Education shall provide student/parent pretest information materials to schools for designated grade levels before testing.

(3) **Embargo of test materials.** The State Department of Education shall require the contracting test publisher to place an embargo on the sale, sampling, and/or distribution of test materials utilized in the OSTP to any person or organization in Oklahoma (other than the official distribution of such materials purchased for the OSTP by the State Department of Education). This embargo is to be enforced from the first day of contract with the State Department of Education throughout use of this test for the OSTP and until the Department has given notice that the test series is no longer going to be used in the OSTP. ~~The State Department of Education may enter into a Memorandum of Understanding with publicly funded schools to meet the requirements of federal programs.~~

(A) Violation of this agreement by a contracting test publisher can result in automatic and immediate forfeiture of the contract and reimbursement to the State Department of Education (by the contracting company) of any funds expended in the conduct of the OSTP.

(~~4~~B) No individual person~~ nor organization either private~~ or public or private entity shall obtain copies of any test materials utilized in the OSTP other than through the official distribution of test materials to public schools immediately prior to administration of the annual OSTP. Any person or organization attempting to order such materials from the contracting test publisher (or from other scoring companies handling OSTP or "off-grade" scoring and reporting) shall be reported by the contractor to the State Superintendent of Public Instruction.

(~~5~~4) **Maintenance of the security of test materials prior to exam administration.** All student test materials (i.e., test booklets, prompts for writing assessment, and answer documents) shall be bound by the test publisher in packages of designated lot sizes. No test booklets shall be viewed by any person other than the student taking the test at the time of testing, except in the case of special education, Section 504, or ELL accommodations which allow a test administrator to assist a student being tested. Test booklets shall be individually sealed, as practicable, to prohibit them from being opened.

(A) When seals are used on test booklets, the following procedures shall be followed:

(i) ~~they~~Test booklets shall remain intact until tests are distributed to students at the beginning of the test administration session;

(ii) ~~each~~Each test booklet seal shall be broken only by the student who is administered the test, except where special education or Section 504 accommodations allow the opening of the test; and

(ii) ~~unused tests~~Unused test booklets shall remain sealed.

(B) When seals are not used on test booklets, the following procedures shall be followed:

(i) ~~tests~~Test booklets shall remain closed until distributed to students at the beginning of ~~these~~the test administration session;

(ii) ~~each~~Each test booklet shall be opened only by the student who is administered the test, except where special education or Section 504 accommodations allow the opening of the book and turning of pages by someone other than the students. ~~No test booklets shall be viewed by any person other than the student taking the test at the time of testing, except in the case of special education, Section 504, or ELL accommodations which allow a test administrator to assist a student being tested.~~

(~~6~~5) **Inventory and accounting of test materials.** All test materials shall be inventoried by the school district upon receipt from the test publisher/contractor. Any discrepancies representing shortages in the quantity of materials supplied and the quantity needed for tests administered shall be reported immediately to the contracting company by the district test coordinator. Immediately upon receipt and inventory of materials, all tests, and other materials shall be locked in a secure place by the district test coordinator or school administrator.

(A) The site level distribution of test documents and materials may occur beginning one week prior to testing. Exceptions to the test materials distribution time limit needed by the largest districts in the state shall be registered with and approved by the ~~Student Assessment Section of the~~ State Department of Education Office of Accountability and Assessment at least four weeks prior to the first designated testing window of each year.

(B) During the days in which tests are being administered in each school district, all test administrators are responsible for locking all test materials in a secure place when the tests are not being utilized in the official test administration with students. This includes the time period between completion of the test administration and delivery of the answer documents and other test materials to the district test coordinator. Further, the building test coordinator is responsible for ensuring that materials are properly locked in a secure place at the times specified above.

(C) Test booklets are not to leave school buildings at any time (i.e., students' test booklets are not to be taken home by an employee or the community member/test monitor before, during, or after test administration has been completed). Exceptions to test booklets leaving a school site shall be made at the discretion of the State Department of Education Student Assessment Section for the purpose of secure transport to a site of instruction for the purpose of test administration, upon a written request from a District Test Coordinator. These requests must be registered with and approved by the Student Assessment Section at least four weeks prior to the first designated testing window of each year.

(~~7~~D) An accounting is to be conducted on all test booklets. Unused test booklets are to remain in "shrink-wrap" (or otherwise packaged) when possible. All unused tests are to be returned to the test publisher. Failure to return test booklets to the appropriate companies ~~(1)~~ will result in:

(i) A~~a~~ school or district being reported to the State Superintendent; and

(~~2~~ii) ~~may result in~~Possible invalidation of the school's and/or district's scores by the State Department of Education Office of Accountability and Assessment.

(~~8~~E) The contracting test publisher shall print electronically read identification codes on all documents containing secured test items prior to distribution of these materials to the public schools. Within all test program components of the OSTP, the contracting

test publisher shall record the specific series of numbers (represented by the "bar codes") assigned to each school district and building site within a district. Inventory lists of test document bar codes by school site shall be provided for each district test coordinator.

(~~9~~F) The district test coordinator shall ship all answer documents and specified identification forms to the designated scoring/reporting company and all other test materials to the contracting test publisher in accordance with the schedule for return of materials provided in the Test Preparation Manual. If a district fails to return materials and answer documents in a timely fashion, the district may be penalized with additional costs and the test scores for the individual school(s) and/or district in question may be declared invalid. If a district fails to complete or incorrectly ~~complete~~completes answer documents and/or demographic pages or other required testing-related materials, the district may be penalized with additional costs and may also receive a deficiency on the district accreditation report.

(~~10~~G) The contracting test publisher shall submit an inventory of test materials to the State Department of Education each year. This inventory shall document the quantity of materials distributed to each school district and received from each school district-- recorded by school site as indicated by the numbers represented by the "bar codes" printed on test materials. Quantities of writing assessment materials distributed to and retrieved from schools will be reported to the State Department of Education by the contracting test publisher.

(~~11~~H) School superintendents from whom incomplete quantities of materials have been received shall be notified of this discrepancy and shall be provided a date by which the remaining materials must be returned to the test publisher. The test publisher shall notify the Department of Education of all school districts from which test materials have not been received after this date. Names of these school districts shall be reported to the State Superintendent and may also receive a deficiency on the district accreditation report.

(~~12~~6) **Prohibition against reproduction of test materials**. Reproduction ~~in any form~~ of any copyrighted test materials--including test documents, teachers' test administration manuals, and student pretest materials--is strictly prohibited. Photocopying of these materials constitutes a violation of federal copyright laws. To ensure that all school employees and community members are aware of this regulation and the laws in support of same, the district or building test coordinator shall post a sign to this effect over each copy machine. The Federal Copyright Law--as it applies to the multiple-choice and/or Writing Assessment Component of the OSTP--prohibits the photocopying of any part of the student Test Booklet. This includes the lined writing pages, the writing prompt, and the student's written response. This portion of the set of test documents, as well as the writing prompt, is considered protected under the copyright guidelines.~~[as is the writing prompt].~~ These items shall remain protected, and thus may not be copied, printed, or disseminated in any manner, until they are officially released by the OSDE.

~~(13) Every test administered within the OSTP shall be administered by an education certified professional person employed by the school district.~~

~~(14) No person shall teach test items to students (except in the case of an alternate special education assessment in which authentic performance tasks may be utilized), change students' answers, or in any manner provide answers to test questions for students before, during, or after test administration has been completed. Violation of this regulation may result in revocation of the person's teaching, counseling, administrative, and/or other certificate(s).~~

(~~15~~7) **Other test security violations.** All of the following actions are prohibited ~~in that such actions represent~~as violations of test security:

(A) Teaching test items to students (except in the case of an alternate special education assessment in which authentic performance tasks may be utilized), changing students' answers, or in any manner providing answers to test questions for students before, during, or after test administration has been completed.

(~~A~~B) Using secured test items as instructional tools or for student "practice"--either verbatim as written or in reworded form. Note: Secured test items are those provided to measure student knowledge and/or skills on OSTP tests. Said items are to be differentiated from sample test items that are provided at the beginning of each subtest and used, according to official test administration procedures, solely for the purpose of understanding directions and marking answers.

(~~B~~C) Reading secured test items orally to students at any time before, after, or during test administration unless it is an IEP, Section 504, or ELL accommodation, in which case an affidavit shall be signed, prior to reading items, by the test administrator/reader stating they shall not reveal any test items, writing prompts, or other secured information to any person.

~~(C) Deviating from any instruction provided in the official test administration manual.~~

(D) Allowing students to view and/or read the writing assessment prompts before test administration or discussing or exposing the theme or topic of the prompt.

(E) Providing answers to secured test items. This includes provision of cues, clues, hints, and/or actual answers in any form--written, printed, verbal (oral), or nonverbal. In regard to the writing assessment component of the OSTP, prohibited actions include the provision of "hints" or any form of clues in regard to the manner in which students respond to the prompt (e.g., "brainstorming" about the topic of the prompt; offering suggestions regarding how to respond; assisting the student or class in organizing the response;

and all other such deviations from the printed instructions for administering the test).

(F) Changing students' responses to secured test items and/or influencing or encouraging students to change their answers to test items at any time.

(G) Deviating from any instruction provided in the official test administration manual or disclosure of any test information that materially inhibits the State Board of Education from exercising its duties set forth in 70 O.S. §1210.508 to develop, field-test, administer, and validate criterion-referenced tests and end-of-instruction assessments.

(~~16~~8) **Test security forms.** Test Security Forms provided by the State Department of Education's test contractor(s) shall be distributed by the district test coordinator with test materials to the persons designated on each form.

(A) OSTP Test Security Forms shall be provided for the following:

(i) Form 1: Superintendent and District Test Coordinator

(ii) Form 2: Building Principal and Building Test Coordinator

(iii) Form 3: Test Administrators and Test Monitors.

(B) After completing the test administration, these forms shall be signed by the designated persons and returned to the district test coordinator. The district test coordinator shall return all signed forms to the respective scoring company. Failure to sign and return the appropriate forms may result in:

(i) ~~a~~A school or district being reported to the State Superintendent; and

(ii) ~~invalidation~~Invalidation of a school's and/or district's test scores.

(~~17~~C) The contracting test companies shall provide the State Department of Education the signed OSTP Test Security Forms or a report of names of educators who signed SDE/OSTP Test Security Forms and an accounting of the number of tests and manuals:

(~~A~~i) ~~distributed~~Distributed to, and

(~~B~~ii) ~~returned~~Returned from each school district.

(~~18~~b) **Test administration.** All test administration sessions shall be conducted according to the standardized procedures described in the test administrators' manuals~~. This includes~~

(1) The standardized procedures include, but are not limited to:

(A) Reading ~~reading~~ the directions to students verbatim;

(B) Refraining ~~refraining~~ from allowing students to read test items before test timing begins and/or beyond the completion specified for each section of each test; and

(C) Ensuring~~assuring~~ that only the materials designated for student test use are on the student's desk during test sessions. ~~Any violation of security provisions in Section 210:10-13-4 constitutes invalidation of the test and test results. Such violations shall be reported to the State Superintendent and may result in a school's and/or school district's test scores being declared as invalid.~~

(~~13~~2) Every test administered within the OSTP shall be administered by an education-certified professional person employed by the school district.

(~~19~~3) All test administration sessions shall be monitored by an adult other than the test administrator. All test monitors shall be approved by the superintendent or school principal. Superintendents and principals may designate school employees or noncertified members of the community to serve as test monitors.

(4) All test administration procedures including time specifications, State Board of Education Rules 210:10-13, and the Instructions for Test Monitors shall be distributed to test monitor(s) before test administration.

(~~b~~5) School administrators or their designee(s) shall assure that all test administration procedures replicate standardized testing conditions to preserve test validity. Such procedures are stated in the manuals for administering the test.

(c) **Test security violations.** Any violation of security provisions in this Section may constitute a basis for invalidation of the test and test results. Such violations shall be reported to the State Superintendent and may result in a school's and/or school district's test scores being declared as invalid.

(d) **Penalties for test security violations.** In addition to any other penalties set forth in this Section, the State Board of Education may revoke the teaching, counseling, administrative, and/or other certificate(s) issued by the State Board of Education to one or more individuals upon a finding of willful violation of any of the provisions set forth in (a)(8)(A) through (a)(8)(G) of this Section.

210:10-13-18. Oklahoma School Accountability System

(a) **~~Adequate Yearly Progress (AYP)~~Academic performance targets.** The Oklahoma School Accountability System shall be based on academic performance data. All public elementary and secondary schools and local educational agencies (LEAs) shall be accountable for student achievement and for reaching academic performance targets~~making Adequate Yearly Progress (AYP)~~ in accordance with the Oklahoma School Accountability System required by 70 O.S. § 1210.541. For purposes of 70 O.S. § 1210.541, a school shall be deemed to have reached academic performance targets ~~made AYP~~ if it is not identified as a school in need of improvement by the State Department of Education Office of Accountability.

(b) **Consequences of testing irregularities~~Testing Irregularities~~ or misconduct~~Misconduct~~ on test scores ~~Test Scores~~ and ~~AYP~~academic performance targets.**

(1) If the State Department of Education (SDE) Student Assessment Office receives documentation of a student cheating on a test, the student's score shall be "invalidated." The student's score report for that content area shall read "Invalidated." The "invalidated" score shall have the effect of nonparticipation when aggregated with scores of other students at the school, district, and state levels.

(2) If a student does not attempt the test (such as refusal to read items or mark answers, finishing in 5 minutes, or randomly marking answers), no special action shall be taken. The student's test shall be scored and the score aggregated with the rest of the scores at the school, district, and state levels according to standard procedure.

(3) If a student becomes ill during testing and is not able to complete the test, the test shall not be scored and not counted in the summary scores. The student shall be counted as absent. If an equivalent form of the test is available through the OSTP, the student may be given an opportunity to take the equivalent form within the same testing window. In this case, the first test shall not be scored and the equivalent test shall be scored in its place. (Note: Equivalent test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(4) If any violation of security provisions occurs, such violations shall be reported in writing to the Student Assessment Section of the State Department of Education and may result in a student's, a school site's, and/or a school district's test scores being declared as invalid in accordance with the provisions of ~~(Section~~ 210:10-13-4.~~(18).~~

(A) In the case of invalidation resulting from a violation of the provisions of 210:10-13-4, each invalidated score shall have the effect of a zero score and each zero score shall be aggregated with the remaining student scores at the school, district, and state levels.

(B) If the violation is not the fault of the students involved, and if an equivalent form of the test is available through the OSTP, students may be given the equivalent form within the same testing window at the district's expense if this is the first year for a security violation within the school and/or district in question. In the case that an equivalent form is administered, the individual student score report shall reflect the scores from the equivalent test (in place of the previous invalidated scores) and shall be aggregated at the school, district, and state levels.

(C~~Note:~~ Equivalent test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(5) If extreme changes in test scores or in ~~Academic Performance Index (API)scores~~ academic performance data occur for a school or district from year to year, an investigation shall be conducted, which may include, but not be limited to, a hand erasure analysis, and results of any apparent testing irregularity or misconduct reported to the State Board of Education for possible further action, which may include but not be limited to, score invalidation.

(6) Erasures shall be identified statewide by electronic scanning of all student answer documents, and the following action shall be taken:

(A) Scores for classes whose wrong-to-right erasures exceed the state average by more than four standard deviations shall be identified for further investigation.

(B) For each class with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be taken into account.

(C) A report shall be made to the State Board of Education of schools where classes have been identified with excessive erasures as defined by the criteria above for possible further action, which may result in score invalidation.

(7) Steps for Dealing with Reported Testing Irregularities or Misconduct

(A) **Step One.** When the State Department of Education receives credible evidence~~report~~ of a testing irregularity or misconduct,~~is made to the State Department of Education Student Assessment Section,~~ the State Department of Education Office of Accountability and Assessments shall promptly notify the school site and/or school district involved.

(i) The school district shall have at least thirty (30) calendar days to conduct an investigation of the alleged testing irregularity and provide the State Department of Education with a written response.

(ii) In the event that the testing irregularity occurred as a result of testing misconduct or test security violations, the school site and/or school district shall be required to ~~respondby conducting an investigation and providing in writing to the State Department of Education Student Assessment Section an~~include an explanation in its written response of how the testing misconduct/irregularity occurred and a description of the measures taken to prevent the misconduct from occurring again.

(B) **Step Two.** The testing irregularity or misconduct shall be categorized into one of three violation categories (minor, major, and critical) according to the severity of the violation and its possible consequences. Possible consequences may include, but not be limited to, invalidation of scores, accreditation with deficiency, accreditation with warning, accreditation with probation.

(C) **Step Three.** A written report of each testing irregularity or a testing ~~violations~~irregularity report shall be prepared by the State Department of Education Office of Accountability and Assessment ~~Student Assessment office~~ for review by the State Superintendent and possible further action.

(c) **Procedures for Schools to Review Data Reports and Appeal Accountability Decisions.**

(1) To assure the validity of accountability decisions prior to the release of the list of schools in need of improvement as required by federal law, the State Department of Education will forward to schools the preliminary data reports containing component pieces from the school district, testing vendor, and the State Department of Education. Each school district must review these component pieces for accuracy and report any inaccuracies to the entity supplying the information within the applicable

timelines. If the school district does not report inaccuracies within the timeline the State Department of Education will rely on the data in the preliminary data report.

(2) Upon receiving their preliminary data reports from the State Department of Education for use in creating School and District Report Cards, districts shall review the data in the preliminary data reports and report any discrepancies with the data components previously reviewed by the district to the State Department of Education within the specified timeline.

(3) Subsequent to the review of the preliminary data report, if a principal of a school, or a majority of the parents of the students enrolled in a school, believe that the accountability decision contained in the data report is in error the principal shall provide supporting evidence to the district. The district must consider the evidence and if warranted, request an appeal in writing to the State Department of Education. The State Department of Education must receive the appeal request within ten working days of the electronic release of the data reports.

(4) If a school and/or district has had test scores invalidated because of a testing irregularity or misconduct with the effect of nonparticipation for aggregation purposes, and such action results in an invalidation that prevents the school and/or district from receiving an accountability decision, the district may appeal the determination on a first time occurrence and request placement on Probationary Status instead of receiving an invalidation. At the end of the next consecutive year, if the school and/or district does not receive an accountability decision for any reason, they shall automatically be identified as being in need of improvement status.

(5) When a school district or charter school appeals an accountability decision, the appeal request will be sent to the State Department of Education on the appeal form or other electronic submission method provided by the State Department of Education. The school district or charter school must specify on the form if a hearing pursuant to ~~Title~~ 75 O.S. § 309 is requested. If such a hearing is requested, the district must provide a written waiver of the right of the district to receive a final determination from the State Department of Education within the period required by federal law. In that event, all parties will cooperate to expedite the hearing process. If a hearing pursuant to ~~Title~~ 75 O.S. § 309 is not requested, the school district must submit written evidence supporting its appeal with the appeal request.~~written evidence supporting its appeal.~~ The district may also request to address the School Status Designation Appeals Committee in person or by telephone. All appeal requests will initially be reviewed by the Office of Accountability and Assessments to determine whether the appeal request remains with the School Status Designation Appeals Committee or is forwarded to the State Superintendent for a hearing pursuant to ~~Title~~ 75 O.S. § 309. The School Status Designation Appeals Committee will consist of members of the State Department of Education's Leadership Team and may also include additional members appointed by the State Superintendent. The Appeals Committee will review the district's evidence submitted with the appeal and if requested, hear comments from the school district, before providing a final determination in writing within forty-five (45) days from release of the data reports.

(6) At the end of the State Department of Education Appeals process, the State Department of Education shall report to the State Board of Education the statewide list of schools in need of improvement.

(d) **Sanctions for public elementary and secondary schools that do not reach academic performance targets. ~~make Adequate Yearly Progress (AYP)~~**

(1) Title I schools that do not reach academic performance targets ~~make Adequate Yearly Progress (AYP)~~ for two consecutive years shall be identified as being in need of improvement status. Title I schools in the State of Oklahoma shall be subject to the sanctions defined by federal law.

(2) Non-Title I schools that do not reach academic performance targets~~make AYP~~ for two consecutive years or more shall be subject to sanctions as determined by the State Board of Education. The State Board of Education may utilize sanction options identified by federal law, as deemed appropriate based upon relevant circumstances of the school's performance. The sanctions may include but not be limited to the following:

(A) provide a school improvement plan,
(B) provide technical assistance,
(C) offer school choice,
(D) provide supplemental services,
(E) take corrective action, or
(F) implement a restructuring plan.

(e) **Rewards for public elementary and secondary schools that reach academic performance targets.~~make Adequate Yearly Progress (AYP)~~** Subject to the availability of funds, public elementary and secondary schools that reach academic performance targets shall be eligible for recognition in accordance with provisions of the Academic Achievement Award (AAA) Program set forth in 70 O.S. § 3-152.1.

~~(1) Academic Achievement Awards – Title I, Part A. Schools that meet AYP and receive Title I, Part A funds are eligible for Academic Achievement Awards, subject to the availability of funds.~~

~~(2) State Academic Performance Award Program.~~

~~(A) All public elementary and secondary schools that make AYP shall be recognized by the state as Distinguished Schools.~~

~~(B) Recognition of Distinguished Schools may include, but not be limited to, citations of congratulations from the State Superintendent of Public Instruction as the designee of the State Board of Education, the Governor or designee, the Representative and Senator representing the school district, and a flag for each school achieving Distinguished status.~~

[OAR Docket #14-674; filed 7-7-14]

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

[OAR Docket #14-668]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1210.523; 70 O.S. § 526; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
October 15, 2013 through November 18, 2013
PUBLIC HEARING:
November 18, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule implements the provisions of the Achieving Classroom Excellence (ACE) Act established at 70 O.S. § 1210.521 et seq. The rule sets out the student exemptions and exceptions to the ACE requirements and the process of appeal of denials of student diplomas under the ACE requirements per 70 O.S. § 1210.523. The proposed amendments to the rule are necessary to incorporate amendments to 70 O.S. § 1210.523 made during the 2013 regular legislative session (HB 1756, SB 251, SB 226, and SB 559).
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams

(a) **Definitions.** Words and terms in this section shall have the following meaning:

(1) **"Alternate method"** means demonstrating mastery of state academic content standards through an End of Course Project designed and approved by the State Board of Education. An End of Course Project is a project integrating and applying the knowledge and skills gained throughout a course to address a practical, real world challenge.

(2) **"Alternate test"** means a state or national test approved by the Oklahoma State Board of Education for one or more of the subject areas assessed by an end-of-instruction (EOI) exam, which equals or exceeds the rigor of the ~~end-of-instruction~~EOI exam.

(3) **"Extenuating Circumstances"** means circumstances which are unexpected, significantly disruptive, beyond a student's control, and which may have materially affected his/her academic performance.

(4) **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) **ACE graduation requirements.** In accordance with 70 O.S. § 1210.523(A)-(E), students may graduate from a public high school with a standard diploma by demonstrating mastery in the state academic content standards for Algebra I; English II; and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History. Students may demonstrate mastery by attaining at least a satisfactory or proficient score on the ~~end-of-instruction~~EOI exams or ~~in~~ the following ways:~~way:~~

(1) Students who do not attain at least a satisfactory or proficient score on any of the four required ~~end-of-instruction~~EOI exams ~~in Algebra I, English II, and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History~~ may be eligible to graduate with a standard diploma by completing at least one of the steps below until a satisfactory or proficient score is attained and all other graduation requirements are met:

(A) Students shall be provided one or more remediation opportunities and will either:

(i) Retake the ~~end-of-instruction~~EOI exam(s) needed to fulfill graduation requirements; ~~or~~

(ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area. The approved alternate test ~~which~~ may be taken prior to or subsequent to the ~~end-of-instruction~~EOI exam; or

(iii) Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in paragraph (b)(2) of this section.

(B) School districts will only provide remediation for students while they are enrolled in public school.

(C) An alternate test may be used to meet the graduation requirements for more than one ~~end-of-instruction~~EOI exam. A student may take more than one alternate test to meet the graduation requirements.

(D) Remediation opportunities will be outlined in the local school district remediation plan (70 O.S.

§ 1210.523). School districts shall document a student's failure to participate in remediation including written acknowledgement of the graduation requirements by the student's parent or guardian.

(E) School districts shall document a student's failure to complete test retake opportunities. Documentation shall include written acknowledgement by the student's parent or guardian of the graduation requirements related to ~~end-of-instruction~~EOI tests.

(2) ~~Demonstration of~~Students who have not attained a satisfactory or proficient score on one or more EOI exams needed to graduate may demonstrate mastery through an End of Course Project (Alternate Method).

(A) In order to demonstrate mastery and graduate through an alternate method on ~~end-of-instruction~~EOI exams, students must complete an End of Course Project for Algebra I, Algebra II, Biology I, English II, English III, Geometry, or United States History. End of Course Projects will be designed by the State Department of Education and approved by the State Board of Education.

(i) End of Course Projects for English II and English III must include a response to literature and a writing sample of comparable rigor to the ~~end-of-instruction~~EOI exams.

(ii) End of Course Projects for Biology I must include the process standards as assessed through laboratory experiments.

(B) End of Course Projects shall be classified by the State Department of Education and submitted to the State Board of Education for approval in three different categories: Category A, Category B, or Category C. Category A projects shall be offered to all students who choose the Alternate Method. Category B projects shall be offered as an Alternate Method to students as directed by an IEP and/or LIEP, and shall incorporate additional, varied approaches for students to demonstrate mastery of the state academic content standards. Category C projects shall be offered as an Alternate Method to students with the most significant cognitive disabilities and shall be designed for students who are participating in an OAAP assessment for that subject area in accordance with the student's IEP.

(C) School districts shall submit completed student End of Course Project(s) to the State Department of Education by April 1, August 1, or November 1 of each year. Projects will be evaluated and returned within 45 business days. Subject to the availability of funds, the State Department of Education may contract with individuals, educational institutions, or companies to evaluate these End of Course Projects. Evaluators shall use rubrics approved by the State Board of Education for determining student mastery of state academic content standards through End of Course Projects. If funds are not available, End of Course Projects will be evaluated at the local school district level according to requirements of the State Board of Education, and school districts shall submit reports of all student End of Course Project(s) either in progress or completed by April 1, August 1, and November 1 of each year.

(D) End of Course Projects must be retained for a minimum of 5 years from completion.

(3) Students who do not receive instruction in Oklahoma public schools may demonstrate mastery in required subjects by submitting documentation of proficiency on an equivalent state ~~end-of-instruction~~EOI exam(s) in the state in which instruction was received; attaining at least a satisfactory or proficient score (as defined by the Oklahoma State Board of Education) on the Oklahoma ~~end-of-instruction~~EOI exam(s); meeting the approved level of proficiency on an alternate test(s); demonstrating mastery through an End of Course Project(s) as described in (b)(1) and (b)(2) of this section.

(4) Students who do not have an opportunity to take required ~~end-of-instruction~~EOI exams without extending the date of graduation may demonstrate mastery in required subject areas by meeting the approved level of proficiency on an alternate test(s) or an End of Course Project(s).

(5) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) may demonstrate mastery of state academic content standards through a modified proficiency score on the state assessment(s) as established by the IEP Team. Any deviation from the standard conditions, accommodations, or proficiency score on the state assessment(s) must be established on the student's IEP, and shall be recorded on the student's cumulative record.

(6) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) that directs that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment Program (OAAP) may demonstrate mastery of state academic content standards upon a determination by the school district that the student has met all of the following criteria:

(A) The student's special education teacher of record, after consultation with the student's teacher in each subject in which the student failed to meet the requirements of (b) of this Section, provides the student with a written recommendation that the student should graduate with a standard diploma. The written recommendation shall be signed by the special education teacher of record, and shall include:

(i) A signed written statement by the principal of the student's school indicating support of the recommendation for graduation; and

(ii) Documentation demonstrating the acquired knowledge of the student by alternate measures as required by the IEP;

(B) The student completes remediation opportunities to the extent required by the IEP;

(C) The student retakes the exam in each subject in which the student failed to meet the requirements of (b) of this Section if the IEP requires retake opportunities;

(D) The student maintains at least a "C" average or the equivalent in each subject in which the student failed to meet the requirements of (b) of this Section; and

(E) The student meets all other graduation requirements of the school district in which the student is enrolled.

(7) Students who have scored ten percent (10%) above the cut scores annually approved by the State Board of Education on a designated alternate test shall have been deemed to have satisfactorily demonstrated mastery of state academic content standards in the subject area for which the alternative test has been approved by the State Board of Education and shall be exempt from taking the EOI exams in the corresponding subject area for which the alternate test has been approved. For purposes of this paragraph, the designated alternate tests shall be limited to the following exams:

(A) The American College Testing Program (ACT);

(B) The Scholastic Aptitude Test (SAT); or

(C) The ACT Plan or Preliminary Scholastic Aptitude Test/National Merit Scholarship Qualifying Tests (PSAT/NMSQT).

(8) Students who have attained a score that is equal to or above the cut scores annually approved by the State Board of Education on a designated alternate test shall have been deemed to have satisfactorily demonstrated mastery of state academic content standards in the corresponding subject area for which the alternate tests has been approved by the State Board of Education and shall be exempt from taking the EOI exams in the corresponding subject area for which the alternate test has been approved. For purposes of this paragraph, the alternate tests shall be limited to the following exams:

(A) Advanced Placement (AP) course exams;

(B) The ACT WorkKeys job skills assessment;

(C) College Level Examination Program (CLEP) exams; or

(D) International Baccalaureate (IB) exams.

(9) The exemptions and exceptions set forth in this Section pertain only to ACE end-of-instruction graduation requirements. Nothing in this subsection shall be interpreted as exempting students from the course graduation requirements for completion of curriculum units or sets of competencies at the secondary level as set forth in 70 O.S. §11-103.6.

(~~6~~10) Each year ~~beginning with the 2011-2012 school year,~~ school districts shall report to the State Department of Education through the School District Reporting Site, by school site, the number of students issued standard diplomas based on the exceptions and exemptions outlined in these rules, including the categories of exceptions and exemptions granted.

(c) **ACE cumulative record.** ~~Beginning with students entering the ninth grade in 2008-2009, in~~ In order to facilitate the monitoring of student progress toward meeting the graduation requirements of 70 O.S. § 1210.523, districts will maintain an Achieving Classroom Excellence (ACE) Demonstration of Mastery cumulative record for those students who do not attain at least a satisfactory or proficient score on any of the required ~~end-of-instruction~~EOI exams. All school districts in the state shall use this cumulative record uniform document, or all information required on the uniform document must be contained within the district's student information system. The State Department of Education will provide an electronic version of this cumulative record to the districts. This cumulative record shall accompany the student when transferring to a new district. For each student who meets the graduation requirements, the student's transcript shall read, "The student has met the graduation requirement of demonstrating mastery in the state academic content standards."

(d) **Appeal of denial of a standard diploma.** Any student who has been denied a standard diploma by the school district in which the student is or was enrolled for failing to meet the educational requirements of 70 O. S. § 1210.523 may appeal the denial to the State Board of Education in accordance with the following procedures:

(1) **Who may petition for appeal.** Petitions for appeal of a denial of a student diploma may be filed by the following:

(A) A parent or legal guardian of a student or an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and 70 O.S. §1-113(A)(1) may file an appeal with the State Board of Education as a petitioner on behalf of the student if the student is either considered a minor child as of the date of denial of the student's diploma; if the student is considered legally incompetent as of the date of denial of the student's diploma; or both.

(B) A student who is not otherwise considered legally incompetent may file a petition for appeal directly with the State Board of Education as a petitioner if the student has either:

(i) Obtained the legal age of majority set forth under Oklahoma law; or

(ii) Rights of majority have been conferred upon the student by a judicial order recognized by the courts of the State of Oklahoma.

(C) A school, school district, or local school board in which a student is or was enrolled may not name itself as a Petitioner for a student or file a petition on behalf of a student. Any petition for appeal submitted by a school district as a petitioner on behalf of a student shall be grounds for automatic dismissal of the petition for appeal.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** A notice of appeal must be submitted in writing for filing to the Secretary of the State Board of Education within thirty (30) days after the date the student, parent(s) of the student, or legal guardian of the student receives a written notice of denial of a standard diploma issued by the school district or local board of education. In absence of receipt of a written notice of denial of a standard diploma, a diploma shall be deemed denied if not granted within ninety (90) days of the last day of the last semester of the last school year in which the student attended school.

(B) **Method of filing.** Petitions for appeal may be submitted for filing to the Secretary of the State Board of Education in person or by mail. A petition submitted for filing by mail may be accepted for filing if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the petitioner(s) and the school district's Superintendent or the Superintendent's legal designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board shall acknowledge receipt of the request in writing and notify the student and/or parent or legal guardian when the appeal shall be submitted to the State Board of Education for action. All timely filed petitions for appeal shall be brought to the State Board of Education for action. The Board shall take action on the petition no later than forty-five (45) days after the date of receipt of a timely-filed petition.

(3) **Review of petitions.** The State Board of Education shall appoint a committee consisting of employees of the State Department of Education to assign a case number for reference, review the petitions for appeal, and identify the basis for which the standard diploma was denied.

(A) **Factors considered in recommending acceptance or denial of an appeal.** The committee shall make a recommendation of action on the appeal to the State Board of Education based on the following criteria:

(i) Completion and scores of ~~end-of-instruction (~~EOI~~)~~ exams;

(ii) Remediation and retests of ~~end-of-instruction (~~EOI~~)~~ exams;

(iii) Completion and scores of Alternate tests approved by the State Board of Education;

(iv) Completion of End of Course Projects approved by the State Board of Education;

(v) Completion or scores of alternative methods approved by the State Board of Education;

(vi) The existence of an extenuating circumstance, as defined in section (a) of this rule;

(vii) The availability of testing opportunities;

(viii) Other methods identified by the student, which demonstrate mastery of state academic content standards, referenced in section (b) of this rule, not to include completion of the course;

(ix) The exhaustion of reasonable alternative methods and exemptions and exceptions approved by the State Board of Education, including the existence of extenuating circumstances; and

(x) Whether action is appropriate based on the statutory language of 70 O. S. § 1210.523. Petitions for appeal which are untimely filed shall be submitted to the Board with a recommendation for denial based upon untimeliness,

(B) **Deficiencies in petitions for appeal.** The State Board of Education may provide petitioners with an opportunity to remedy deficiencies in an appeal filed in an inaccurate or incomplete manner in accordance with the following procedures:

(i) Prior to submission to the State Board of Education with a recommendation for denial based upon a deficiency in the petition, the petitioner shall be notified in writing of the deficiency in the appeal and provided five (5) business days from the receipt of written notification to resolve any deficiencies identified in the petition for appeal.

(ii) Within five (5) business days from receipt of the written notification of deficiency, Petitioner shall either:

(I) Provide the Board with all information and/or documentation necessary to remedy the deficiency; or

(II) In the event a petitioner requires additional time to remedy the deficiency, Petitioner may request a stay/continuance of thirty (30) calendar days and provide the Board a signed waiver of the forty-five (45) day deadline in accordance with subparagraph (4)(A) of this section. Failure by a petitioner to complete the steps necessary to timely remedy a deficiency in a petition in accordance with the procedures set forth in (d)(3)(B)(ii) shall result in a recommendation submitted to the State Board of Education for denial based on deficiency.

(C) Upon completion of review of the petition, the committee shall submit to the Board:

(i) A copy of each petition for appeal;

(ii) A written explanation of the petition;

(iii) Copies of all evidence and/or documentation submitted to the Board by a petitioner in support of the appeal;

(iv) Any additional information that may be necessary for the Board to take action;

(v) A recommendation of either acceptance or denial of the petition.

(4) **Dismissals of petitions for appeal.** At any time after filing, a petition for appeal may be dismissed by the Board prior to final action in accordance with the following procedures:

(A) Grounds for dismissal of a petition may be based upon a demonstration of evidence of one or more of the following circumstances:

(i) The appeal has been rendered moot (e.g., petitioner subsequently meets all ACE requirements during the pendency of the appeal);

(ii) Appeal is filed by a party who is not a proper petitioner as set forth by (d)(1) of this section;

(iii) The appeal is premature (e.g., petitioner's diploma has not yet been denied);

(iv) Denial of diploma was based on factors unrelated to failure to demonstrate mastery of state academic content standards set forth in 70 O.S. § 1210.523 (e.g., denial based upon lack of credit hours necessary to meet graduation requirements set forth in 70 O.S. § 11-103.6);

(v) Inaction by Petitioner (e.g., failure to timely respond to requests for additional evidence or information from the State Board) or

(vi) Dismissal is requested by the Petitioner.

(B) Prior to dismissal, petitioner shall be provided with reasonable notice of intent to dismiss the appeal and opportunity to respond in accordance with the following procedures:

(i) The notice of intent to dismiss the appeal shall conform to the requirements of notice set forth in 75 O.S. § 309, and shall include:

(I) A statement notifying the Petitioner of the forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;

(II) A statement providing the Petitioner with five (5) business days from Petitioner's receipt of notice of intent to dismiss, to respond to the notice of intent to dismiss by either submitting a written opposition to dismissal, or requesting a stay/continuance of the action in accordance with the procedures set forth in (d)(5)(A) of this section; and

(III) A statement that Petitioner's failure to respond to the notice of intent to dismiss within five (5) business days from Petitioner's receipt of notice of intent to dismiss the appeal may result in dismissal of the petition by the Board without further action on the appeal.

(5) **Notice of action on petition recommended to the Board.** Following review of the petition for appeal, the Petitioner shall receive written notification as to the recommended action (i.e., acceptance or denial of the petition) that will be presented to the State Board. Written notification of the recommended action must be received by the Petitioner at least five (5) business days prior to the meeting of the State Board of Education in which the recommendation will be presented.

(A) At any time prior to final action on the appeal, the State Board may grant a stay or continuance of an action on an appeal upon receipt of a motion for continuance by Petitioner and a written waiver by Petitioner of the forty-five (45) day deadline for action upon an appeal set forth at 70 O.S. § 1210.523 and accompanying rules.

(B) Recommendations for denial of a petition for appeal shall be based upon the grounds set forth in paragraph (d)(3) of this section.

(6) **Action on a petition for appeal.** After review of the petition for appeal in accordance with the procedures set forth in (d)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the written information provided in the appeal.

(A) The Board shall consider a petition for appeal in the form of a "Consent Docket," which shall be considered as one item.

(B) Any member of the Board may request that a petition for appeal be removed from the "Consent Docket" for discussion or to be separately considered. If such a request is made, the matter shall be removed from the docket and presented for individual action by the State Board of Education.

(C) In the event the Board determines that there is insufficient evidence in order to make an effective or proper ruling on the appeal, the State Board of Education may, by a vote of the majority of members, remove a petition for appeal from the "Consent Docket" and set a hearing for further review and consideration in accordance with the procedures set forth at (d)(7) of this section.

(7) **Procedures for hearings on appeal of a petition.** If the Board determines a hearing is necessary, the Secretary of the Board shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 309 et seq. and with the following procedures:

(A) The Board shall provide the Petitioner(s) and all interested parties, if any, with reasonable notice of the hearing and opportunity to appear at the hearing to present explanation of the petition, evidence submitted to the Board, and/or any additional information that Petitioner believes may be necessary for the Board to take action. Any proper party to the appeal shall have the right to designate legal counsel to appear and act for and on behalf of the party represented, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma.

(B) In addition to the contents of the notice required by 75 O.S. § 309, the notice shall also advise Petitioner of:

(i) The forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;

(ii) Petitioner's opportunity to submit a motion and waiver of Petitioner's right to final action of the board along with a waiver of the forty-five (45) day time requirement in accordance with the procedures set forth in (d)(5)(A) of this section; and

(iii) A statement that Petitioner's failure to respond to the notice of petition and/or appear at the

hearing, may result in dismissal of the petition for appeal.

(C) The school district in which the student is or was enrolled shall be named as an "Interested Party" and shall be provided with notice and opportunity to appear and present evidence at the appeal hearing before the State Board of Education.

(D) The determination of the State Board of Education shall be considered a final agency order, shall be issued in writing, and shall conform to the requirements of final agency orders set forth in 75 O.S. § 312.

(e) **Exceptions and Exemptions to Student Requirements to Demonstrate Mastery of State Academic Content Standards.** The State Board of Education may approve the petition for appeal of students and grant a waiver of one or more EOI assessments for students who have provided evidence of the existence of at least one of the following:

(1) Facts documenting events, conditions, or situations which fall within the definition of "extenuating circumstances" set forth in paragraph (a)(3) of this section; or

(2) Demonstration of mastery of the state academic content standards referenced in subsection (b) of this rule, by successful completion of a higher level course in the same subject matter and attaining a satisfactory or proficient score in an ~~end-of-instruction~~EOI exam in that same course.

(f) **Reporting appeal data.** By September 1 of each year, each school district shall report to the State Department of Education all data necessary for the Board to complete the annual report required pursuant to 70 O. S. § 1210.523 by the October 1 deadline. The report provided to the State Department of Education shall include, at a minimum, the total number of students in the school district who filed petitions for appeal of denials of diplomas which occurred in the previous school year, and the total number of those petitions filed which were granted. Data shall include subtotals of number of appeals filed and granted for each school site. Information collected pursuant to state statute shall be made available to the district's Regional Accreditation Officer (RAO) during the accreditation process.

(g) **Re-enrollment for remediation.** Students who have successfully completed all courses necessary to graduate from high school with a standard diploma but were denied a standard diploma for failing to meet the graduation requirements 70 O.S.§ 1210.523 shall be eligible for re-enrollment in the school district that denied the student a standard diploma until the student has reached the age of twenty-one (21) years old. Enrollment shall be solely for the purpose of obtaining all remediation and/or intervention and opportunities necessary for the student to demonstrate mastery of state academic content standards in the subject area or areas in which the student failed to demonstrate mastery in accordance with the requirements of this Section. Students who re-enroll in the school district pursuant to this subsection shall be exempt from the hourly instructional requirements of 70 O.S. § 1-111 and the six-period enrollment requirements of 70 O.S. § 11-103.6. State aid funding for students enrolling part time in accordance with the provisions of this subsection shall be calculated in accordance with the provisions of 70 O.S. § 1210.526(D).

(h) **Oklahoma School for the Blind and the Oklahoma School for the Deaf.** The Oklahoma School for the Blind and the Oklahoma school for the Deaf shall be deemed local education agencies ("LEAs") solely for the purposes of purchasing, administering and obtaining results for the EOI exams necessary to comply with the requirements of 70 O.S. §1210.523 for the students attending their schools.

[OAR Docket #14-668; filed 7-7-14]

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

[OAR Docket #14-672]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-22. Implementation of a system of school improvement and accountability [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-145.6; 70 O.S. § 3-150; 70 O.S. § 1210.545; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
October 15, 2013 through November 18, 2013
PUBLIC HEARING:
November 18, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 13. Student Assessment
210:10-13-22. Implementation of a system of school improvement and accountability [AMENDED]
GUBERNATORIAL APPROVAL:
August 28, 2013
REGISTER PUBLICATION:
31 Ok Reg 19
DOCKET NUMBER:
13-1195
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule implements the provisions of the accountability system established at 70 O.S. § 1210.541 et seq. The rule sets out the formula for calculation of the annual reports of the Oklahoma School Testing Program (the "A-F" school report cards) required by 70 O.S. § 1210.545. The proposed change to the rule revises the formula used to calculate the school report card grades. The amendments to the rule are necessary to implement revisions to the formula resulting from amendments to 70 O.S. § 1210.545 during the 2013 regular legislative session (HB 1071 and HB 1658).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-22. Implementation of a system of school improvement and accountability

(a) **Purpose.** Accountability for student learning is the key focus of school improvement. Results from the statewide assessment program shall form the basis of the system of school improvement and accountability. Student achievement data from the State's annual standardized assessments in grades three (3) through eight (8) and end-of-instruction tests administered under Section 1210.508 of Title 70 shall be used to establish both proficiency levels and annual progress for individual students, school sites, school districts, and the State. Results shall further be used as the primary criteria in calculating school performance grades as specified in subsection (f) of this rule and shall be annually reported. Results may further be used by the Legislature in calculating any performance-based funding policy that is provided to public school districts. The statewide assessment program shall be used to measure the annual learning gains of each student toward achievement of the State standards appropriate for the student's grade level and to inform parents of the educational progress of their public school children.

(b) **~~Implementation~~Overview and implementation.** The A-F school accountability system will be implemented in the year 2012, based on data from the 2011-2012 school year, and shall be reported annually thereafter. The school accountability system will be considered to be fully implemented with the following accountability elements:

(1) Designation of overall school performance grades shall be based on a combination of the following:

(A) ~~Thirty-three~~Fifty percent ~~(33%)~~(50%) on whole school performance, as measured by allocating one (1) point for each student ~~test~~who scores proficient or advanced on the criterion-referenced tests and end-of-instruction tests administered to students pursuant to the provisions of~~, based on~~ the Oklahoma School Testing Program at 70 O.S. §§ 1210.508 and 1210.523, summing the points, and dividing the points by the total number of students taking the tests; ~~assessments in grades three (3) through twelve (12);~~

(B) ~~Seventeen~~ Twenty-five percent ~~(17%)~~(25%) on whole school growth, ~~annual student learning gainsas~~ measured by allocating one (1) point for each student tested who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8)~~;~~ and Algebra I and English II end-of-instruction tests administered to students pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests;

(C) ~~Seventeen~~Twenty-five percent ~~(17%)~~(25%) on ~~annual student learning gains for~~growth of the lowest twenty-five percent (25%) of students in the school, ~~as~~ measured by allocating one (1) point for each student tested in the bottom twenty-five percent (25%) who maintains a score of "Proficient" or above, improves proficiency levels, or improves substantially within a proficiency level on the State's annual standardized assessments in reading and mathematics in grades three (3) through eight (8)~~;~~ and Algebra I and English II end-of-instruction tests administered pursuant to the provisions of the Oklahoma School Testing Program at 70 O.S. § 1210.508, summing the points, and dividing the points by the total number of students taking the tests. ~~as required by 70 O.S. § 1210.545;~~

~~(D) Thirty-three percent (33%) on whole school improvement, based on the factors listed in sub-section (f)(4) of this rule.~~

(2) In addition to the three criteria listed in (b)(1) of this Section, bonus points shall be calculated in accordance with the criteria set forth in (g) of this Section and added to the subtotal of component points to create a final report card index of points used to calculate the overall school performance grade of each school site.

(~~2~~3) Schools shall earn a separate performance grade for each of the ~~four~~three criteria listed in ~~sub-sections~~ (b)(1) and (f) of this ~~rule~~Section. Additionally, schools shall earn an overall performance grade based on a combination of the criteria listed in ~~sub-sections~~ (b)(1) and (f) and the bonus points earned in accordance with (g)~~(f)~~ of this ~~rule~~Section.

(~~3~~4) To ensure that student data accurately represent school performance, schools shall be required to assess at least ninety-five percent (95%) of eligible students to earn a school performance grade. Failure to assess at least ninety-five percent (95%) of eligible students will result in a letter grade reduction in the school's overall school performance grade. Schools assessing less than ninety percent (90%) of eligible students will result in the school earning an overall performance grade of F.

(c) **School Accountability for Student Performance.** All schools shall be accountable for performance. Each school is accountable for the performance of its entire student population. Student achievement data from the State's annual standardized assessment and end-of-instruction tests administered in this State shall be used to measure a school's student performance for the subject areas of reading, mathematics, social studies, science and writing.

(d) **Reporting Student Achievement Data for School Accountability**. Student achievement data shall be reported for all students in a school. Each year, reports of achievement data for all students shall be prepared for each school, each district, and the State. District reports shall be calculated in the same manner as a school site, aggregated at the student level and calculated in accordance with the requirements of 70 O.S. §§ 1210.545(B), (D) and (J).

(1) The scores will be computed from the number of eligible students enrolled in the school. Eligible students shall include all students enrolled for the full academic year ("FAY") in the school and taking the State's annual standardized assessments or end-of-instruction tests. For end-of-instruction exams, only ~~Only~~ first opportunity students are included in the calculation of eligible students. A full time student shall be considered a "FAY" student if the student, has been continuously enrolled from October 1 of the school year through and including the date of administration of the exam and has not experienced an enrollment lapse of ten (10) or more consecutive days. The FAY determination shall be based on continuous enrollment and shall not be based on attendance determinations.

(2) All eligible students, regardless of disability or limited English proficiency classification, with valid state standardized assessment scores in reading and math in both the current school year and the previous school year are included in ~~paragraphs~~ (f)(2) and (f)(3) of this ~~rule~~Section regarding the determination of student learning gains. In addition, the inclusion of these students shall be applied to ~~sub-section~~ (b)(3) of this ~~rule~~Section, regarding the percentage of students assessed. Current and previous school years' reading and math scores for students with disabilities assessed on the State's annual standardized alternate assessment shall be included in the determination of test scores, including achievement ~~and improvement~~ addressed in ~~sub-sections~~ (f)(1) ~~and (f)(4)~~ of this ~~rule~~Section.

(3) The Superintendent of Public Instruction is authorized to designate a single school performance grade for schools that serve multiple levels: elementary and/or middle and/or high school grade levels. Designations shall be made based on the highest grade level offered by the school.

(A) If the highest grade offered by a school site is the sixth (6th) grade or below, the school shall be graded according to elementary school criteria.

(B) If the highest grade offered by a school site is the (7th) through tenth (10th) grade, the school shall be graded according to the middle school criteria. Schools in this category shall not earn advance coursework credit for ninth and tenth grade students completing high school coursework unless the course qualifies as advanced coursework pursuant to ~~subsection (f)(4)(A)(ii) or (f)(4)(B)(i)~~(g)(1)(B) or (g)(2)(A) of this Section.

(C) If the highest grade offered by a school site is the eleventh (11th) or twelfth (12th) grade, the school shall be graded according to high school criteria.

(4) The State Department of Education will verify that each school is appropriately classified by type before the issuance of school grades. School type is defined as the school level designation of a school based on the grade levels served: elementary, middle, high, or a combination across levels.

(5) For purposes of (f) of this Section, the determination of the proficiency level of eligible students exempted from one or more end-of-instruction exams in accordance with the requirements of 70 O.S. 1210.523 and the accompanying rule at 210:10-13-16(b)(7)-(8) shall be based upon the cut scores approved by the State Board of Education. Points shall be awarded and calculated for each "Proficient" or "Advanced" score in accordance with (f) of this Section.

(e) **School Performance Grades.** The measure of school accountability shall be the school performance grade. The Oklahoma State Board of Education is authorized to designate a school performance grade for each school that:

(1) For purposes of calculating student achievement pursuant to ~~subsection~~ (f)(1), has at least ten (10) eligible students with valid student state standardized assessment scores.

(2) For purposes of calculating student growth pursuant to ~~subsection~~ (f)(2), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in both the current and the previous school years.

(3) For purposes of calculating ~~student~~ growth of the lowest twenty-five percent (25%) of students pursuant to ~~subsection~~ (f)(3), has at least ten (10) eligible students with valid student state standardized assessment scores or end-of-instruction test scores in reading or math in the current and previous school years.

(4) A school shall not earn a grade for any component or criteria unless minimum N-size requirements established pursuant to this rule are met. Performance designations shall be made using School Performance Grades A+, A, A-, B+, B, B-, C+, C, C-, D+, D, D- and F. School performance grades shall be based on the assessments and criteria as specified in ~~subsection~~ (f) of this ~~rule~~Section and bonus points as specified in (g) of this Section. The Superintendent of Public Instruction is authorized to establish and adjust appropriate achievement level criteria to the extent allowed by law for submission to the State Board of Education for final approval.

(f) **Criteria for Designating School Performance Grades.** Overall school performance grades shall be based on a combination of the bonus points calculated in accordance with (g) and the ~~four~~ points calculated in accordance with the three criteria outlined in ~~sub-section~~ (b)(1) of this ~~rule~~Section: (1) whole school performance; ~~student achievement scores;~~ (2) whole school growth; ~~annual learning gains;~~and (3) growth ~~improvement~~ of the lowest twenty-five percent (25%).~~; and (4) whole school improvement.~~

(1) ~~**Student achievement/**~~**Whole school performance index.** Student achievement scores are represented through a performance index, aggregated for each school, calculated based on all state standardized assessments and/or end-of-instruction tests collectively, and by each subject area. A point value shall be given to each exam based on proficiency score. Points shall be summed and divided by the number of exams administered to eligible students.

(A) Points shall be assigned based on the following criteria:

(i) Unsatisfactory = 0

(ii) Limited Knowledge = 0

(iii) Proficient = 1.0

(iv) Advanced = 1.0

(B) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

(iv) 60 - 69 points = D

(v) 59 points or Below = F

(2) ~~**Student**~~**Whole school growth index.** Annual learning gains in reading and math are represented through a growth index, aggregated for each school. The score shall be calculated in whole and by subject-matter by assigning ~~points~~one point for each student who improves~~a positive change in~~ proficiency ~~level~~ levels or improves substantially within a proficiency level ~~foreligible students~~ from the previous school year to the current school year, divided by the number of students taking the tests.~~or by a positive change in Oklahoma Performance Index (OPI) score that meets or exceeds the State average of students with a positive OPI change.~~

(A) This calculation represents the number of eligible students who have:

(i) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level, as applicable, from the previous school year to the current school year; or

(ii) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with ~~a~~ positive OPI change; or

(iii) Maintained their proficient or satisfactory achievement level on the state standardized assessment or state standardized alternate assessment, as applicable, from the previous school year to the current school year.

(B) The growth index shall be calculated based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. The growth index shall be calculated by subject-matter and by assigning a point value to the change in proficiency score from the previous year to the next. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. Points shall be assigned based on the following criteria:

(i) Change from Unsatisfactory to Limited Knowledge = 1.0

(ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0

(iii) Change from Unsatisfactory to Advanced = 1.0

(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0

(v) Change from Limited Knowledge to Advanced = 1.0

(vi) Change from Proficient or Satisfactory to Advanced = 1.0

(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0

(viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0

(ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0

(x) Remained at Unsatisfactory from the previous school year to the current school year, or remained at Limited Knowledge from the previous school year to the current school year, but demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(~~C~~D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

(iv) 60 - 69 points = D

(v) 59 points or Below = F

(3) **Growth of the lowest twenty-five percent of students.** Improvement of the lowest twenty-five percent (25%) of students in reading and math shall be aggregated, as required by 70 O.S. § 1210.545. The score shall be calculated in whole and by subject-matter by assigning ~~points~~one point for each student in the bottom quartile

who improves ~~a positive change in~~ proficiency ~~score~~ levels or improves substantially within a proficiency level ~~for eligible students~~ from the previous school year to the current school year, divided by the number of students taking the test.~~or by a positive change in Oklahoma Performance Index (OPI) score that meets or exceeds the State's positive average change.~~

(A) The calculation of a positive change in OPI score that meets or exceeds the State's average growth represents the number of eligible students who have:

(i) Improved their state standardized assessment achievement level or state standardized alternative assessment achievement level, as applicable, from the previous school year to the current school year; or

(ii) Retained their state standardized assessment achievement level or state standardized alternative assessment achievement level and such change in OPI from the previous school year to the current school year met or exceeded the State average of students with ~~a~~ positive OPI change.

(B) The score shall be based on improved state standardized assessment and end-of-instruction test performance from the previous school year to the current school year. Points based on student gains shall be summed and divided by the number of exams administered, and shall include only eligible students for whom comparative test scores exist. The growth of the lowest twenty-five percent (25%) shall be calculated based on the following criteria:

(i) Change from Unsatisfactory to Limited Knowledge = 1.0

(ii) Change from Unsatisfactory to Proficient or Satisfactory = 1.0

(iii) Change from Unsatisfactory to Advanced = 1.0

(iv) Change from Limited Knowledge to Proficient or Satisfactory = 1.0

(v) Change from Limited Knowledge to Advanced = 1.0

(vi) Change from Proficient or Satisfactory to Advanced = 1.0

(vii) Remain Proficient or Advanced from Year 1 to Year 2 = 1.0

(~~vi~~viii) Remained at Unsatisfactory from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Meets or Exceeds State Average Positive Change = 1.0

(~~vii~~ix) Remained at Unsatisfactory from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change or remained at Limited Knowledge from Year 1 to Year 2 and Fails to Meet or Exceed State Average Positive Change = 0

(x) Demonstrates substantial improvement within a proficiency level = 1.0

(C) For purposes of this subparagraph, a student's improvement within a proficiency level will be considered "substantial improvement" if the student demonstrates an increase in Oklahoma Performance Index ("OPI") score from the previous school year to the current school year that meets or exceeds the average positive increase amongst all students in the State who increased their OPI score from the previous school year to the current school year.

(~~C~~D) A letter grade shall be earned based on the following criteria:

(i) 90 points or Above = A

(ii) 80 - 89 points = B

(iii) 70 - 79 points = C

(iv) 60 - 69 points = D

(v) 59 points or Below = F

(4g) ~~**Whole school improvement**~~**Bonus points.** Each school can earn up to a maximum of ten (10) bonus points to be added to the subtotal of component points and applied toward their final grade. The criteria listed in ~~sub-sections(4)(A)and(4)(B)~~(1), (2) and (3) of this subsection shall be used to calculate ~~whole school improvement~~bonus points for high schools, middle schools, and elementary grade schools. Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula and the projected availability of valid data used for computing ~~whole school improvement~~bonus points. Technical assistance shall be published in time for school districts to make meaningful use of the information and data. A school district, charter school, or virtual charter school shall not be eligible to be awarded bonus points on its site report cards for attendance pursuant to (g)(3)(A) and (g)(2)(B) of this Section unless it has established a method for maintaining accurate records of student daily attendance and accurate reporting of student daily attendance that ensures compliance with the provisions of 70 O.S. §§ 5-117.3, 10-103.1, 10-106, 18-111, 18-116.

(~~A~~1) **High schools.** ~~For schools~~Schools comprised of high school grades~~, the whole school improvement grade shall include~~may earn up to a maximum of ten (10) bonus points as follows:

(~~i~~A) **Four-year adjusted cohort graduation~~Graduation~~ rate.** A high school shall earn five (5) bonus points if its ~~Four-yearhigh school~~four-year adjusted cohort graduation rate meets or exceeds the criteria for earning an "A" for the high school graduation rate of the school. The criteria for earning an "A" for this component shall be met if a school's four-year adjusted cohort graduation rate meets or exceeds ninety percent (90%). ~~For this component, a letter grade shall be earned based on the calculation of a graduation rate,~~The calculation of the four-year adjusted cohort graduation rate shall only ~~including~~include students counted as on-time graduates as defined by federal regulations.

~~(I) 90% - 100% = A~~

~~(II) 80% - 89% = B~~

~~(III) 70% - 79% = C~~

~~(IV) 60% - 69% = D~~

~~(V) 59% or Below = F~~

(~~ii~~B) **Participation or performance in accelerated coursework.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or student performance in accelerated coursework. The criteria for earning an "A" for this component shall be met if the school achieves either a student participation rate of seventy percent (70%) or higher in accelerated coursework or a student performance rate of ninety percent (90%) or higher in accelerated coursework. Student participation and performance rates shall be calculated as follows:

(i) **Participation in accelerated coursework.** Participation in accelerated coursework, is defined as participation in Advanced Placement (AP) courses, International Baccalaureate (IB) programs, concurrent enrollment, Advanced International Certificate of Education (AICE) courses, and industry certification courses. For this component, participation shall be calculated for the school year by dividing a count of accelerated coursework participants in grades nine (9) through twelve (12) (numerator) by the count of all students enrolled in grades eleven (11) and twelve (12) (denominator). For this component, a student must earn a passing grade in the course in order to be counted as a participant. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled. In calculating a percentage for this component, participation rate shall include all enrollment data regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics. ~~A letter grade for accelerated coursework shall be earned based on percentage of participation listed below. The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 70% - 100% = A~~
~~(II) 60% - 69% = B~~
~~(III) 50% - 59% = C~~
~~(IV) 30% - 49% = D~~
~~(V) 29% or Below = F~~

(~~iii~~ii) **Performance in accelerated coursework.** Performance in concurrent enrollment, Advanced International Certificate of Education (AICE) courses, Advanced Placement (AP), International Baccalaureate (IB), and industry certification courses. For this component, the numerator of the performance calculation shall include all students in grades nine (9) through twelve (12) who took an accelerated course or subject area examination during the academic year. AICE successful completion is defined as earning a "C" or higher and being awarded credit for specific postsecondary course(s). For concurrent enrollment, successful completion is defined as a passing grade of "C" or higher in a concurrent enrollment course for college credit. For industry certification, successful completion is defined as earning a "C" or better in the course leading to industry certification. Schools can earn additional successful completions for students who achieve industry certifications that result in credit for more than one (1) college course through statewide articulation agreements. For AP and IB performance, credit shall be earned based for each student scoring a three (3) or better on the AP exams, or a four (4) or better on IB exams. For purposes of this component, a school shall earn credit for every course in which a student demonstrates the required level of performance. In calculating a percentage for this component, performance shall include all coursework regardless of whether the course was taught at the high school, at a career technology center, an accredited college or university, or at a regional site of the Oklahoma School of Science and Mathematics. ~~A letter grade shall be earned based on the percentage of students enrolled in these programs who meet the criteria listed above:~~

~~(I) 90% - 100% = A~~
~~(II) 80% - 89% = B~~
~~(III) 70% - 79% = C~~
~~(IV) 60% - 69% = D~~
~~(V) 59% or Below = F~~

(~~iv~~C) **ACT and SAT participation or performance.** One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" in either student participation or performance on ACT or SAT college entrance exams. The criteria for earning an "A" for this component shall be met if a school achieves a rate of seventy-five percent (75%) or higher percentage of either student participation or performance on college entrance exams. Student participation and performance rates shall be calculated as follows:

(i) **ACT and SAT participation.** ~~For this component,~~High schools ~~will~~ may earn one (1) bonus point~~a grade~~ based on the calculated percent of students taking the ACT and/or SAT. The percent is calculated by dividing the number of twelfth (12th) grade students who have taken the ACT and/or SAT tests, divided by the number of students enrolled in grade twelve (12). Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score

reported at the time the test is administered. ~~A letter grade for ACT and SAT participation shall be earned based on the criteria listed below.The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 75% - 100% = A~~
~~(II) 65% - 74% = B~~
~~(III) 50% - 64% = C~~
~~(IV) 30% - 49% = D~~
~~(V) 29% or Below = F~~

(~~v~~ii) **ACT and SAT performance.** ~~For this component,~~High schools ~~will~~may earn one (1) bonus point~~a grade~~ based on the percentage of students scoring an ACT composite score of 20 or greater based on 36-point scale, and/or an SAT score of 1410 or greater based on a 2400-point scale. Students will be counted once for the ACT and/or once for the SAT, regardless of the number of times or at which grade levels the test(s) are taken. The high school will earn credit for the most recent test score reported at the time the test is administered. ~~A letter grade for ACT and SAT performance shall be earned based on the criteria listed below.The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 75% - 100% = A~~
~~(II) 65% - 74% = B~~
~~(III) 50% - 64% = C~~
~~(IV) 30% - 49% = D~~
~~(V) 29% or Below = F~~

(~~v~~iD) **High school graduation rate of eighth (8th) graders.** ~~For this component, schools shall earn~~One (1) bonus point shall be awarded to each high school that meets or exceeds the criteria for earning an "A" for the a~~ grade based on the~~ high school graduation rate of students who scored at limited knowledge or unsatisfactory on the eighth (8th) grade reading and mathematics criterion-referenced test administered pursuant to the Oklahoma State Testing Program (OSTP). The criteria for earning an "A" for this component shall be met if a school achieves a graduation rate of eighty-five percent (85%) or higher for its students who scored at limited knowledge or unsatisfactory on the eighth grade reading and mathematics tests. For this component, schools shall be eligible to earn the bonus point~~a grade~~ based on the calculation of the graduation rate of this population of eighth (8th) graders, regardless of where the student attended the eighth (8th grade). ~~The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 85% - 100% = A~~
~~(II) 75% - 84% = B~~
~~(III) 65% - 74% = C~~
~~(IV) 55% - 64% = D~~
~~(V) 54% or Below = F~~

~~(vii) **Graduation rate, including students taking five (5) or more years to graduate.** For this component, schools shall earn a grade based on the calculation of a graduation rate to include all graduates regardless of the amount of time required to meet graduation requirements.~~

~~(I) 90% - 100% = A~~
~~(II) 80% - 89% = B~~
~~(III) 70% - 79% = C~~
~~(IV) 60% - 69% = D~~
~~(V) 59% or Below = F~~

(E) **Overall EOI performance.** Upon the availability of valid student assessment data, one (1) bonus point shall be awarded to a high school if eighty percent (80%) or more of its graduates from the previous school year have scored either a "Satisfactory/Proficient" or "Advanced" on six (6) out of the seven (7) secondary level EOI assessments required by the Oklahoma School Testing Program Act at 70 O.S. § 1210.508(A)(6).

(F) **Year-to-year growth.** Upon the availability of valid student data, one (1) bonus point shall be awarded to each high school which demonstrates improvement from the previous school year in at least three (3) of the five (5) components used to calculate bonus points set forth in (1)(A) through (1)(E) of this subsection. For purposes of this subparagraph, a high school will be deemed to have demonstrated improvement in a category if the school has received bonus points in that category for two consecutive years (i.e., the current report card and the previous year's report card). In the alternative, a high school can demonstrate improvement in a category by meeting the following criteria specified in the category:

(i) **Four-year adjusted cohort graduation rate.** A high school demonstrates improvement by increasing its four-year adjusted cohort graduation rate in (1)(A) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(ii) **Participation or performance in accelerated coursework.** A high school demonstrates improvement by increasing its rate of participation or performance in accelerated coursework in (1)(B) of this subsection by five percent (5%) or more.

(iii) **ACT and SAT participation or performance.** A high school demonstrates improvement by increasing its rate of participation or performance in ACT or SAT in (1)(C) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(iv) **High school graduation rate of eighth (8th) graders.** A high school demonstrates improvement by increasing its high school graduation rate of eighth graders in (1)(D) of this subsection by at least ten percent (10%) of the difference between the previous year's graduation rate and one hundred percent (100%).

(v) **Overall EOI performance.** A high school demonstrates improvement by increasing its overall rate of EOI performance in (1)(E) of this subsection by at least ten percent (10%) of the difference between the previous year's rate and one hundred percent (100%).

(~~B~~2) **Middle schools.** ~~For~~schoolsSchools comprised of middle school grades~~, the whole school improvement grade shall include~~may earn up to a maximum of ten (10) bonus points as follows:

(~~i~~A) **The percentage of students who are taking higher level coursework at a satisfactory or higher level in middle school.** ~~For this component,~~Middle schools shall earn ~~a grade based on~~two (2) bonus points for meeting or exceeding the criteria for earning an "A" on the rate of the school's middle school students who take accelerated coursework at a satisfactory or higher level. The criteria for earning an "A" for this component shall be met if the school achieves a participation rate of thirty percent (30%) or higher ~~the~~ percentage of middle school students taking traditional high school courses ~~in the middle school grades,~~ pre-Advanced Placement courses, or honors courses in a traditional classroom or in a virtual environment who score at a satisfactory level or higher on the corresponding state standardized assessment. Schools shall earn credit for every accelerated course in which a student is enrolled. Students enrolled in multiple accelerated courses shall be counted once for each course in which they are enrolled. ~~A letter grade will be earned based on the criteria listed below. The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 30% or Higher = A~~
~~(II) 25% - 29% = B~~
~~(III) 20% - 24% = C~~
~~(IV) 15% - 19% = D~~
~~(V) 14% or Below = F~~

(~~ii~~B) **Attendance.** ~~For this component,~~Middle schools will earn ~~a grade~~six (6) bonus points for ~~the level of student attendance based on the calculation of a student~~for meeting or exceeding the criteria for earning an "A" for middle school student attendance. The criteria for earning an "A" for this component shall be met if the school achieves a student attendance rate of ninety-four percent (94%) or higher. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable. ~~A letter grade for attendance will be earned based on the criteria listed below.The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 94% - 100% = A~~
~~(II) 92% - 93% = B~~
~~(III) 90% - 91% = C~~
~~(IV) 88% - 89% = D~~
~~(V) 87% or Below = F~~

(~~iii~~C) **Dropout rate.** ~~For this component,~~Middle schools shall earn ~~a grade based~~two (2) bonus points for meeting or exceeding the criteria for earning an "A" for the drop-out rate of the school. The criteria for earning an "A" for this component shall be met if the school achieves a rate of zero point nine percent (0.9%) or lower of ~~on~~ the annual number of students reported as dropouts to the Oklahoma State Department of Education on the Annual Dropout Report. ~~A letter grade for dropout rate will be earned based on the listed below. The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 0% - 0.9% = A~~
~~(II) 1% - 1.9% = B~~
~~(III) 2% - 2.9% = C~~
~~(IV) 3% - 3.9% = D~~
~~(V) 4% or More = F~~

(~~C~~3) **Elementary schools.** ~~For~~schoolsSchools comprised of elementary school grades~~, the whole school improvement grade~~ shall ~~include~~ earn ten (10) bonus points as follows:

(~~i~~A) **Attendance.** ~~For this component,~~Elementary schools will earn ten (10) bonus points for meeting or exceeding the criteria for earning an "A" on student

attendance. The criteria for earning an "A" shall be met if the school achieves ~~a grade for the level of student attendance based on the calculation of~~ a student attendance rate of ninety-four percent (94%) or greater. This rate is the Average Daily Attendance (ADA) divided by the Average Daily Membership (ADM). ADA is calculated by dividing the total number of days students were present by the number of days in the school calendar or by dividing the number of hours students were present by the number of hours in the school calendar, whichever applicable. ADM is calculated by dividing the total number of days students were enrolled in school by the number of days in the school calendar or by dividing the number of hours students were enrolled by the number of hours in the school calendar, whichever applicable. ~~A letter grade for attendance will be earned based on the criteria listed below.The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 94% - 100% = A~~
~~(II) 92% - 93% = B~~
~~(III) 90% - 91% = C~~
~~(IV) 88% - 89% = D~~
~~(V) 87% or Below = F~~

~~(ii) **Dropout rate.** For this component, schools shall earn a grade based on the annual number of students reported as dropouts to the Oklahoma State Department of Education on the Annual Dropout Report. A letter grade for dropout rate will be earned based on the scale listed below.The scale provided to assign a grade will be converted to a transformed scale so that the A will range from 90-100, the B will range from 80-89, the C will range from 70-79, the D will range from 60-69, and the F will range from 59 and below. Points will be earned based on a transformed scale.~~

~~(I) 0% - 0.9% = A~~
~~(II) 1% - 1.9% = B~~
~~(III) 2% - 2.9% = C~~
~~(IV) 3% - 3.9% = D~~
~~(V) 4% or More = F~~

(~~g~~h) ~~**Additional points**~~**Technical assistance.** ~~In addition to the criteria listed in sub-section (f)(4) of this rule, schools may earn additional points that will be factored into the school's whole school improvement grade.~~ Annually, the Oklahoma State Department of Education shall publish technical assistance specifically detailing the weighted formula used for computing ~~additional~~ bonus points.~~ into the whole school improvement grade.~~ Technical assistance shall be published in time for school districts to make meaningful use of the information and data.

~~(1) **Parent and community engagement factors.** For all schools comprised of high school, middle school, and elementary school grades, additional points may be earned and factored into the whole school improvement grade based on the following school improvement factors. For this component, schools shall earn additional points based on the number of volunteer hours performed during the school year by parents and/or community members.~~

~~(2) In addition to the factors outlined in sub-section (g)(1), for schools comprised of high school grades, additional points may be earned and factored into the whole school improvement grade based on the following school improvement factors:~~

~~(A) **College preparatory coursework.** For this component, high schools serving students in grades nine (9) through twelve (12) shall earn points based on the percentage of students completing the State's college and career preparatory curriculum. This shall be calculated based on a sum of all students, in grades nine (9) through twelve (12), enrolled in college preparatory coursework divided by the total number of students enrolled in the school in grades nine (9) through twelve (12).~~

~~(B) **College remediation.** For this component, a college remediation rate shall be calculated by dividing the unduplicated count of students needing remediation in reading, English, math, or science by the total number of the students attending an Oklahoma college or university.~~

(~~h~~i) **School Performance Grading Scale.** The School Performance Grade shall be based on a combination of the factors outlined in sub-section (b)(1) ~~of this rule~~ and detailed in ~~sub-section~~ (f) and (g) of this ~~rule~~Section. ~~Thirty-three~~Fifty percent~~ (33%)~~(50%) shall be based on student test scores; ~~seventeen~~twenty-five percent ~~(17%)~~(25%) on student learning gains; ~~seventeen~~and twenty-five ~~percent(17%)~~(25%) on improvement of the lowest twenty-five percent (25%) of students in the school in reading and mathematics.~~;and thirty-three percent (33%) on whole school improvement.~~ Letter grades will be calculated according to the assigned weight of each criteria and by combining points earned for each component within each criteria. The school performance grade~~grades for each factor described in sub-section (b)(1)~~ will be ~~earned and~~ assigned according to the following scale:

~~(1) 90 or Above = A~~
~~(2) 80 - 89 = B~~
~~(3) 70 - 79 = C~~
~~(4) 60 - 69 = D~~
~~(5) 59 or Below = F~~

(1) Ninety-seven percent (97%) to one-hundred and ten percent (110%) = A+
(2) Ninety-three percent (93%) to ninety-six percent (96%) = A
(3) Ninety percent (90%) to ninety-two percent (92%) = A-
(4) Eighty-seven percent (87%) to eighty-nine percent (89%) = B+
(5) Eighty-three percent (83%) to eighty-six percent (86%) = B

(6) Eighty percent (80%) to eighty-two percent (82%) = B-

(7) Seventy-seven percent (77%) to seventy-nine percent (79%) = C+

(8) Seventy-three percent (73%) to seventy-six percent (76%) = C

(9) Seventy percent (70%) to seventy-two percent (72%) = C-

(10) Sixty-seven percent (67%) to sixty-nine percent (69%) = D+

(11) Sixty-three percent (63%) to sixty-six percent (66%) = D

(12) Sixty percent (60%) to sixty-two percent (62%) = D-

(13) Fifty-nine percent (59%) and below = F

(~~i~~j) **Accuracy and Representativeness of Performance Data.** The Oklahoma State Department of Education shall review all information submitted by school districts to represent the performance of schools receiving a school performance grade.

(1) Each school district superintendent shall designate a school accountability contact person to be responsible for verifying accuracy of data.

(2) The Superintendent of Public Instruction shall withhold the designation of a school's performance grade if he or she determines that the performance data does not accurately represent the progress of the school.

(A) Circumstances under which a school's performance data may be considered to not accurately represent the progress of the school include:

(i) Less than ninety-five percent (95%) of the school's student population eligible for inclusion in the designation of the school's performance grade was assessed.

(ii) Circumstances identified before, during, or following the administration of any state assessment where the validity or integrity of the test results are called into question and are subject to review as determined by the State Department of Education.

(~~j~~k) **Data verification by school sites/districts.** School sites shall be provided an opportunity to review all data used to calculate the school performance grade and the calculation of the school performance grade.

(1) **Initial Data Verification.** Initial data verification of the data used to calculate school performance grades shall occur throughout the school year as data becomes available to the State Department of Education. School district accountability staff shall have the opportunity to perform data verification and confirm that data being used to calculate school performance grades are accurate prior to the review period required by ~~(j)~~(k)(2) of this rule. The school district shall have at least thirty (30) calendar days to review and request corrections to each new data component, as it becomes available. No requests for changes to data shall be made after the expiration of the respective thirty (30) calendar day review period. For purposes of this paragraph only, a "new data component" means a data component that has not been previously submitted to the State Department of Education in accordance with other state or federal reporting requirements.

(2) **Calculation Verification.** Prior to the final release of school performance grades, a school district shall have at least ten (10) calendar days to certify the calculation of the performance grade. If the school district determines that a different performance grade should be assigned because of the omission of student data, a data miscalculation, or special circumstances that might have affected the grade assigned, school districts may submit a request for a review of the data calculation to the State Department of Education. All evidence supporting the district's claim of a calculation error and documentation ~~Documentation~~ of all elements to be reviewed by the Department must be submitted within the time limits specified in this subsection. No request for review of the calculation shall be accepted after the expiration of the ten (10) calendar day review period. Changes to the criteria, data, or process shall not be considered as part of this review.

(3) **Data deemed certified.** To ensure timely issuance of the school report cards in accordance with the requirements of 70 O.S. § 1210.545, any data component verification or calculation verification for which a district fails to timely review and certify as accurate in accordance with the provisions of (1) or (2) of this subsection shall be deemed certified as accurate by the district and districts shall not be permitted to request further corrections to the data.

(~~k~~l) **Final determination.** The Oklahoma State Board of Education's determination of a school's performance grade shall be final.

(~~l~~m) **Planned System Enhancements.** As indicated in this subsection, planned enhancements will occur in the System of School Improvement and Accountability. The Superintendent of Public Instruction will periodically recommend additional changes to the system to the State Board of Education for approval as necessary to ensure that continuous improvements are made in the educational programs of the State. ~~(A)~~ Performance data shall be reviewed annually to determine whether to adjust the school grading scale for the following year's school grades. Adjustments may include, but shall not be limited to grading criteria, classification of school type, point calculations, point requirements, and minimum points necessary to obtain a certain grade. Adjustments may reset the minimum required number of points for each grade.

(n) **Virtual education providers and virtual charter schools.** Any virtual provider that offers full-time online programs for students enrolled in charter schools sponsored by a school district, technology center school district, higher education institution, a federally recognized Indian tribe, or the State Board of Education, in accordance with the provisions of the Oklahoma Charter Schools Act shall be considered a "virtual charter school."

(1) Each virtual charter school and each school district which contracts with a virtual charter school or virtual education provider shall identify its full-time virtual students

who do not live in the physical boundaries of the school district with which the sponsor is associated.

(A) Each virtual charter school and each school district shall report the achievement data of its full-time virtual students who are not residents of the district in which the sponsor is located separate from the achievement data of its full time virtual students who are residents of the district of sponsorship.

(B) The performance of non-resident full-time virtual students identified in (1) of this subsection shall be excluded from the determination of the overall school performance letter grade of the sponsoring school district, but shall be included in the overall school performance letter grade of the virtual charter school as resident students.

(2) Any virtual provider that contracts with a school district to provide full-time virtual education for resident students of the school district shall be considered a separate site within the school district for accountability purposes and shall be issued a separate report card that includes performance of full-time virtual students identified in (1) of this subsection as residents of the school district with which the provider contracts.

(o) **Statewide virtual charter schools.** Any virtual provider sponsored as a charter school by the Statewide Virtual Charter School Board shall be considered a "statewide virtual charter school."

(1) Each statewide virtual charter school will be considered a separate school site and "district" of the Statewide Virtual Charter School Board for accountability purposes and will be subject to the system of school improvement and accountability established by 70 O.S. § 1210.545 and the accompanying provisions set forth in this Section.

(2) The performance of all eligible students enrolled in a statewide virtual charter school shall be included in the calculation of the overall school performance letter grade of the virtual charter school. For purposes of this Section, any student enrolled full-time in a statewide virtual charter school who resides within the borders of the state shall be considered a resident student of the statewide virtual charter school.

[OAR Docket #14-672; filed 7-7-14]

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

[OAR Docket #14-679]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Priority Academic Student Skills
Part 13. The Arts
210:15-3-114. Overview [AMENDED]
210:15-3-114.1. Definitions for visual art [AMENDED]
210:15-3-114.2. Definitions for music [AMENDED]
210:15-3-115. The arts for grade 1 [AMENDED]
210:15-3-116. The arts for grade 2 [AMENDED]
210:15-3-117. The arts for grade 3 [AMENDED]
210:15-3-118. The arts for grade 4 [AMENDED]
210:15-3-119. The arts for grade 5 [AMENDED]
210:15-3-120. The arts for grade 6 [AMENDED]
210:15-3-121. The arts for grade 7 [AMENDED]
210:15-3-122. The arts for grade 8 [AMENDED]
210:15-3-123. The arts for high school [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6; 70 O.S. § 11-103.6a; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set forth the academic method and process standards for the Visual Arts and General Music in public schools. 70 O.S. § 11-103.6a(A) requires the State Board of Education to review standards in each subject matter area every six (6) years and implement any revisions to the standards necessary to achieve further improvements in the quality of education for Oklahoma public school students. The proposed changes to the rules are necessary to incorporate the revisions to the standards that were implemented by the State Board of Education on July 25, 2013 in accordance with the six (6) year cycle required by statute.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 13. THE ARTS

210:15-3-114. Overview of Artistic Literacy

~~(a) Since 1990 The Arts have been part of core curriculum in Oklahoma. The PRIORITY ACADEMIC STUDENT SKILLS (PASS) in The Arts is a basic curriculum framework.~~

~~Visual Arts and General Music objectives are grouped into the following four standards:~~

~~(1) General Music - language of music, music history and culture, music expression, music appreciation.~~

~~(2) Visual Art - language of visual art, visual art history and culture, visual art expression, visual art appreciation.~~

~~(b) Throughout the ages the arts have been used to express happiness, sorrow, love, and many other very real human emotions. The arts are often asked to express that which cannot be expressed through words. The PRIORITY ACADEMIC STUDENT SKILLS (PASS) suggest benchmarks in the understanding of the arts for all students. Why is it important for each student to understand the significance of the arts in a historical, cultural, or aesthetic sense? Should students be encouraged to create meaningful, interpretive, original, or creative expressions? Will meaningful arts instruction give students the confidence they need to explore and create at the very highest of educational standards? Anthropologists have found evidence of the use of art for purposes of discussion as early as 70,000 years ago. The arts that are created today will one day be our contribution to this ongoing discussion of the human experience.~~

~~(c) "There is a vitality, a life force, an energy, a quickening, that is translated through you into action, and because there is only one of you in all time, this expression is unique. And if you block it, it will never exist through any other medium and will be lost." (Martha Graham)~~

~~(d) A balance of instructional activities will provide students with a basic understanding of their knowledge of the Visual Arts and General Music. A quality fine arts program can contribute greatly to the development of each student's creative thinking and problem-solving skills. Consequently, it is necessary to teach and assess all the competencies at each grade level.~~

~~(e) "In classrooms across the nation, experience has repeatedly demonstrated that when arts are taught in a comprehensive program, they are also a medium for developing cognitive skills that carry over into other areas. These include the abilities to see clearly, analyze, reflect, make judgments, and link information from diverse sources to generate new ideas." (Excerpt from the Getty Education Institute for the Arts publication.)~~

(a) **Visual art - general standards.** The visual arts curriculum is organized under four major strands: Presenting, Responding, Creating, and Connecting. Each strand provides a clear outline of what students are to know across grade levels while providing unifying threads of understanding in support of the goals and objectives within the Visual Art standards. Presenting, responding, creating, and connecting are the strands in which all aspects of visual art can be organized and defined as follows:

(1) **"Presenting"** refers to presenting or demonstrating something about an existing artwork, informally or formally, using a process that calls upon the technical expressive, and interpretive skills of the learner.

(2) **"Responding"** refers to synthesizing knowledge of visual art in relation to history, culture, heritage, or other content areas, ideas, and life-long learning.

(3) **"Creating"** refers to expressing ideas and feelings through the creating of visual art.

(4) **"Connecting"** refers to analyzing, critiquing, describing, and evaluating visual artworks.

(b) **General music - general standards.** The strands define the major elements of music that are relevant across grade levels and provide unifying threads of understanding supporting the goals and objectives of the Oklahoma Academic Standards for General Music. Responding, Connecting, Performing, and Creating are the strands in which all aspects of music can be defined as follows:

(1) **"Responding"** refers to listening, analyzing, critiquing, describing, evaluating, and moving to musical works.

(2) **"Connecting"** refers to synthesizing knowledge of music in relation to history, culture, heritage, or other content areas, ideas, and life-long learning.

(3) **"Performing"** refers to presenting or demonstrating an existing work, informally or formally; a process that calls upon the technical, expressive, and interpretive skills of the learner.

(4) **"Creating"** refers to expressing ideas and feelings through improvising, composing, arranging, and interpreting music.

(c) **Media arts - general standards.** The Media Arts standards are embedded within the visual arts and general music content standards, and can be used to design curriculum in animation, film studies, graphic design, sound design and recording, digital photography, audio-video communication technology, broadcasting, journalism, performing arts, printing technology, telecommunications, and the visual arts.

210:15-3-114.1. Definitions for visual art

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

~~"**Absolute location**" means the location of a point on earth's surface which can be expressed by a grid reference (i.e., latitude and longitude).~~

"**Abstract art**" means a twentieth-century art movement which is nonrepresentational and in which the elements and principles of design may be stressed or shapes of real objects may be simplified or distorted. Noted artists include Piet Mondrian, Wassily Kandinsky and Jackson Pollack.

"**Acrylic paint**" means a nontoxic, water-based pigment available in tubes or jars and may be washed out of brushes.

"**Aesthetics**" means that branch of philosophy which focuses on the nature and value of art, the nature of beauty, and provides a criteria by which works of art are analyzed and evaluated.

"**Ancient art**" means prehistoric to approximately A.D. 330 (artifacts listed are a few of the noted contributions of these ancient cultures): Egyptian- including the Pyramids, Sphinx, hieroglyphics, columns and wall paintings, Greek - including architecture, pottery/vase decoration and sculpture, Roman - including panel paintings, portrait sculpture, and mosaics.

"**Architecture**" means the art form of designing and planning the building of structures such as homes, churches,

bridges, shopping centers, office buildings, schools, etc. Architecture is common to all cultures throughout history.

"**Art criticism**" means the field of inquiry that describes, interprets and evaluates works of visual art, often by making comparative judgments.

"**Art history**" means the field of inquiry into the origins of visual art in worldwide and/or specific cultures, including the social, religious, cultural, philosophical, aesthetic and technological factors which influence changes in their production over time.

"**Background**" means part of the picture plane that seems furthest from the viewer, usually in the upper portion of the image.

"**Ceramics**" means making visual art from clay, a naturally occurring earth substance. The pottery is produced using this process, and is then fired in a kiln to make it stronger.

"**Commercial art**" means graphic art produced for purposes such as advertising and packaging.

"**Composition**" means arrangement of objects, shapes, colors in a work of art.

"**Content**" means message or theme the artist is trying to communicate in a particular work of art.

"**Contour**" means outline or outside edge of shapes. Contour lines will define something in a drawing, painting, or other work of art.

"**Create**" means ~~The~~the process of producing works of visual art using various materials, media and techniques, usually of an original concept or idea, and involving higher-order thinking skills.

"**Cubism**" means a twentieth-century art movement begun in the 1900s, in which subject matter is broken up or separated into cubes and other geometric shapes. These artists rejected the use of proportion and emphasized the flatness of the painted subject and subjects are sometimes shown from several viewpoints at the same time. Noted artists include Pablo Picasso and Georges Braque.

"**Design**" means organization, plan or arrangement of a work of art.

"**Drawing**" means the art of representing objects, ideas, etc. on a surface using pencil, crayon, marker, pen, or other marking material to make lines or values, usually on a flat surface.

"**Easel**" means a freestanding upright support for a painter's canvas.

"**Elements of art (design)**" means the observable components of which all works of visual art are comprised, includes: line, shape, color, texture, value (light and dark), form, and space.

"**Engraving**" means an intaglio printmaking method in which a sharp tool called a burin is used to scratch lines into a metal plate. This technique is used to create a print.

"**Expression**" means a process of conveying ideas, feelings and meanings through selective use of the communicative possibilities of the visual arts.

"**Folk art**" means paintings and decorative objects made in a naïve style.

"**Foreground**" means part of the picture plane that seems closest to the viewer, usually in the lower portion of the image.

"**Foreshortening**" means a way of drawing or painting an object or person (using linear perspective) so that it seems to go back in space. Prominently used during the Renaissance.

"**Impressionism**" means a style of painting started in France in the 1860s. This style of art emphasized the effect of sunlight on objects and used small dabs of paint that are blended in the viewer's eyes to imitate reflected light. Noted artists include Edgar Degas, Pierre-Auguste Renoir, Mary Cassatt and Claude Monet.

"**Landscape**" means a painting, drawing, photograph, or other work of art, which shows natural or outdoor scenes, such as rivers, lakes, mountains, or trees.

"**Loom**" means a machine or frame for weaving.

"**Materials**" means the resources used in (1) the creation of works of visual art, ~~including~~ such as canvas, clay, fabrics, fibers, film, paint, paper, wood, etc.; and, (2) the study of works of art, such as art reproductions, books, video cassettes, film strips, slides, etc.

"**Media**" means visual artworks ~~are~~ grouped according to the materials used to produce them, such as film, oils, pen and ink, pencils and watercolors, etc.

"**Medium**" means material used by an artist to produce a work of art. May also refer to the liquid mixed with pigment to make paint.

"**Middle ground**" means area of a picture between foreground and background.

"**Mixed media**" means creating artwork that uses more than one medium or technique in combination.

"**Modern art**" means the latest styles of art, often associated with revolutionary ideas and styles in art, architecture, and literature. The art that developed in the early 20th century as a reaction to traditional forms.

"**Mosaic**" means floor or wall decoration made of small pieces of stone, ceramic, shell, or glass set into plaster or cement.

"**Original**" means artwork not copied or imitated from the work of someone else.

"**Paint**" means pigments (color) mixed with oil or water. Pigment particles in paint stick to the surface of the support material on which the paint is applied.

"**Paint brush**" means a brush used to apply paint to the surface of different support materials.

"**Paper machè**" means modeling material made of mashed newspaper and liquid paste.

"**Perception**" means visual and sensory awareness, discrimination and integration of impressions, conditions and relationships with regard to objects, images and feelings.

"**Perspective**" means a system for giving the illusion of three-dimensional space on a two-dimensional surface.

"**Photographer**" means person using the technique of photography to capture optical images on light sensitive surfaces.

"**Picture plane**" means the surface of a painting or drawing.

"**Portrait**" means an image of a person's face.

"**Post-Impressionism**" means a French art movement that immediately followed Impressionism, in the 1880s and 1890s.

Artists emphasized light, shadow, and color and added dimensions of psychological depth and emotional involvement in their art. Noted artists included Paul ~~Cezanne~~Cèzanne Vincent van Gogh and Paul Gauguin.

"**Pottery**" means a ceramic container made from clay, and then fired in a kiln.

"**Primary colors**" means the basic colors of red, yellow, and blue from which it is possible to mix all other colors on the color wheel.

"**Principles of design**" means ~~refer to~~ the different ways the elements of design may be used in works of art in the Western European tradition, such as: balance, rhythm, center of interest, emphasis, contrast, repetition, movement, variety, and unity. Although, works from cultures that are not part of the Western European tradition may give evidence of such principles, they were not created according to these principles and should not be judged by them.

"**Print, printmaking**" means the art process used to produce an impression from one surface to another and may be repeated one or more times to produce identical images. Several basic printing processes used in the classroom include stencil, block, and monoprint.

"**Process**" means a complex operation involving a number of methods or techniques, such as the additive/subtractive process in sculpture, or the etching/intaglio processes in printmaking.

"**Renaissance**" means a revival or rebirth. An art movement during the fourteenth and fifteenth century, during which time advances in painting were made, including perspective and foreshortening. Noted artists of the time include Leonardo Da Vinci, Michelangelo and Raphael.

"**Rubbing**" means technique of transferring textural qualities of a surface to paper by placing the paper over the surface and repeatedly rubbing over the top of the paper with crayon or pencil until the image is clearly visible on the paper.

"**Sculpture**" means a three-dimensional work of art, which may be carved, modeled, constructed, or cast.

"**Secondary colors**" means the three colors obtained by mixing equal parts of two primary colors: red + yellow = orange; red + blue = violet; blue + yellow = green.

"**Shade**" means a dark value of a color made by adding black to it. Opposite of a tint.

"**Shadow**" means shaded areas in a drawing painting photograph, or other work of art. Shadows show the surface of the subject that reflects the least light, and are used to create the illusion of form. Opposite of highlight.

"**Still life**" means a painting, drawing, photograph, or other work of art that shows an arrangement of inanimate objects.

"**Style**" means an artist's or group of artists' characteristic way of making art or expression, often typical of a cultural group or time period.

"**Subject matter**" means the categories for identifying the type of content in visual works of art, such as abstractions, animals, landscapes, genre (people in everyday activities), human figures, cityscapes, seascapes, etc.

"**Symbol**" means a visual image that stands for or represents something else.

"**Techniques**" means the processes by which art materials and media are used to create/produce works of visual art, such as carving, drawing, painting, printing, etc.

"**Technologies**" means complex equipment used in the study and creation of art, such as lathes, presses, computers, lasers and video equipment.

"**Three-dimensional**" means having three qualities including depth, height, and breadth, as in a sculpture, for example.

"**Tint**" means light value of a color made by mixing the color with white.

"**Tools**" means instruments and equipment used by students to create and learn about art, such as brushes, scissors, brayers, easels, kilns, carving tools and cameras.

"**Two-dimensional**" means flat. Having only two qualities of height and breadth, as in a drawing or painting, for example.

"**Vanishing point**" means in perspective, the point at which receding lines seem to converge and vanish.

"**Visual arts**" means a broad category that includes the traditional fine arts, such as drawing, painting, printmaking and sculpture; communication and design arts such as film, television, graphics and product design; architecture and environmental arts such as urban, interior and landscape design; folk arts; and works of art such as ceramics, fibers, jewelry, works in wood, paper and other materials.

210:15-3-114.2. Definitions for music

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

"**AB form**" means a musical plan that has two different parts, or sections.

"**ABA form**" means a musical plan that has three sections. The first and last sections are the same. The middle section is different.

"**Accelerando**" means to perform gradually faster.

"**Accompaniment**" means vocal or instrumental parts that accompany a melody.

"**Acoustic instruments**" means traditional musical instruments that produce sound and amplify it by natural means (piano, guitar, trumpet, etc.), as opposed to instruments that produce and amplify sound electronically (synthesizers, sound modules, etc.).

"**Acoustics**" means the science of sound generation.

"**Alto**" means the lowest female voice.

"**Allegro**" means a quick and lively tempo.

"**Andante (ahn-DAHN-tay)**" means a walking pace, flowing (tempo).

"**Articulation**" means the degree to which notes are separated or connected such as staccato or legato.

"**A tempo**" means return to the previous tempo.

"**Atonal**" means a type of music in which tones and chords are not related to a central keynote.

"**Augmentation**" means a compositional device in which a melodic line is repeated in longer note values.

"**Augmented interval**" means a major or perfect interval raised by a half step.

"**Aural**" means relating to the sense of hearing, listening.

"**Ballad**" means a narrative song.

"**Ballet**" means a dance performance, often involving a narrative or plot sequence, usually accompanied by music. A ballet is characterized by conventional steps, poses, and graceful movements including leaps and spins. ~~Women ballet dancers often wear pointed shoes to perform steps balancing on the tips of their toes.~~

"**Bar line**" means a vertical line dividing the music into measures.~~on the staff~~.

~~"**Baroque**" means 1600-1750. Secular music predominated over sacred music and there was a certain "theatrical" spirit of elaborate design in the music, painting, and architecture. Polyphony and counterpoint from the Renaissance still predominate but homophonic texture (melody with chordal accompaniment) gains importance. New instrumental forms (solo sonata, concerto grosso, overture, etc.) and vocal forms (aria, recitative, opera, oratorio, and cantata, etc.) were developed. Noted composers of the time include Bach, Vivaldi, Handel.~~

"**Bass**" means the lowest male singing voice.

"**Bass clef**" means the symbol placed on the five-line staff in traditional notation that tells you that the fourth line of the staff is the note F.

"**Beat**" means the consistent pulse that occurs throughout a rhyme, song or recorded musical selection.

"**Body percussion**" means sounds produced by the use of the body (e.g., clap, pat, slap, tap, stamp, etc.).

"**Bluegrass**" means a type of American country music using acoustic instruments.

"**Blues**" means a genre of African-American music often expressing suffering, hardship and longing.

"**Brass family**" means wind instruments made out of metal with either a cup or funnel-shaped mouthpiece, such as trumpet, cornet, bugle, trombone, tuba, euphonium, saxophone, and French horn.

"**Cadence**" means a chordal or melodic progression which occurs at the close of a phrase, section or composition which gives the feeling of a temporary or permanent ending.

"**Call and response**" means a song style that follows a simple question and answer pattern in which a soloist leads and a group responds.

"**Canon**" means a musical form in which a melody is imitated exactly in one or more parts. Similar to a *round*.

"**Chord**" means a combination of three or more tones sounded simultaneously.

"**Chorus**" means the repetitive part of a song that occurs between the verses; also a large group of singers.

~~"**Classical**" means 1750-1820, referred to as the "Age of Enlightenment"; the meaning of "classicism" in music relates to the ancient Greek ideals of objectivity, emotional restraint, and a balanced clear musical form of short, regular phrases. Instrumental music surpassed vocal music in popularity. More attention was given to dynamic shading (getting gradually louder or softer). Dissonant sounds were resolved into consonant sounds. Noted composers of the time include Wolfgang Amadeus Mozart, Ludwig van Beethoven, Franz Joseph Haydn.~~

"**Classroom instruments**" means instruments typically used in the general music classroom, including, for example: recorder-type instruments, autoharp, mallet instruments, simple percussion, keyboard, and electronic instruments.

"**Clef**" means a symbol placed at the beginning of the staff to indicate the pitch of the notes on the staff (treble clef and bass clef).

"**Coda**" means closing section of a composition.

~~"**Collage**" means twentieth-century technique of making art in which various materials, such as paper, photographs, fabric, string, etc., are pasted on a flat surface.~~

"**Common time**" means 4/4 meter.

"**Compound meter**" means a type of meter in which the beat is divided into threes or sixes.

"~~**Compose**~~**Composer**" means a person who writes music.

"**Composition**" means the ~~completed arrangement of music.~~creation of original music by organizing sound which is usually written for others to perform.

"**Concert**" means a musical performance for an audience, requiring the cooperation of several musicians.

"**Concerto**" means a musical work for a soloist and orchestra.

"**Conductor**" means director of an orchestra or chorus.

~~"**Contemporary**" means 1900 to present. There are many different musical trends occurring simultaneously, including music for film and television. Some of the broader tendencies of modernism are Neoromanticism, Expressionism, Neoclassicism, American jazz/blues, popular music for Broadway and film. Noted composers of the time include Igor Stravinsky, Aaron Copeland, Duke Ellington~~

"**Contour**" means the direction of a melodic line.

"**Countermelody**" means an independent melody which complements the main melody.

"**Crescendo**" means gradually louder.

"**Cue**" means a signal given by the director of a performing group to begin either at the beginning of the music or after they have concluded a section at rest.

"**Cut time**" means a meter in which there are two beats in each measure and a half note receives one beat.

"**Dal segno, D.S. al fine**" means repeat from the sign to fine (the end).

"**Da capo, D.C. al fine**" means repeat from the beginning to the fine~~to~~(the end).

"**Decrescendo**" means gradually softer. Synonymous with diminuendo.

"**Diminution**" means the shortening of note values.

"**Duet**" means a composition performed by two performers.

"**Duration**" means how long a sound lasts.

"**Dynamics**" means varying degrees of loud and soft (pianissimo, piano, mezzo piano, mezzo forte, forte, fortissimo, sforzando).

"**Elements of music**" means:~~pitch - the highness or lowness of a particular note; rhythm - beats per measure; harmony - two or more tones sounding together; dynamics - varying degrees of loud and soft; number of sounds occurring simultaneously; form - the organization of a musical composition; tempo - the speed or pace of music; melody - a succession or pattern~~

~~of musical tones or pitches; tone color - the quality of sound of an instrument or voice.~~

(1) Melody - a succession or pattern of musical tones or pitches;

(2) Rhythm - the duration of musical sounds and silences;

(3) Harmony - two or more tones sounding together;

(4) Form - the organization of a musical composition;

(5) Tone color - The quality of sound of an instrument or voice;

(6) Pitch - The highness or lowness of a particular note;

(7) Tempo - The speed or pace of music;

(8) Dynamics - Varying degree of loud and soft;

(9) Texture - number of sounds occurring simultaneously.

"**Flat**" means - a symbol that lowers the pitch of a note one-half step.

"**Folk music**" means music of a particular people, nation or region, originally transmitted orally, sometimes as a rhythmic accompaniment to manual work or to mark a specific ritual.

"**Form**" means the organization of a musical composition according to its sections of repetition, contrast, variation or development.

"**Forte- f**" means loud (dynamic).

"**Fortissimo - ff**" means very loud (dynamic).

"**Four sections of an orchestra**" means:

(1) ~~woodwind~~**Woodwind instruments** - include the flute, oboe, piccolo, English horn, clarinet, bassoon, contrabassoon, and saxophone. Many of these instruments are pipes perforated by holes in their sides, which produce musical sound when the columns of air within them vibrate by blowing on a mouthpiece.

(2) **String instruments** - include the violin, viola, cellos (or cello), and double bass. All of these have strings that produce sound when stroked with a bow or plucked.

(3) **Brass instruments** - include the French horn, trumpet, trombone, and tuba, all of which have metal instrument bodies and mouthpieces.

(4) **Percussion instruments** - musical instruments that are struck or shaken to produce a sound, includes tympany, bass drum, snare drum, cymbals, triangle, gongs, glockenspiel, and xylophone and marimba.

"**Fugue**" means a composition in which three or more voices enter one after the other and imitate the main melody in various ways according to a set pattern.

"**Genre**" means a category of musical composition, such as symphony, opera, string quartet, cantata, concerto, etc.

"**Harpsichord**" means a keyboard instrument of European origin, resembling a piano and having horizontal strings plucked by leather or quill points connected to the keys.

"**Harmony**" means two or more tones sounding together.

~~"**Impressionism**" means 1880-1918. This style was centered mostly in France. The composers developed a new musical "language" that has affected music even to the present day. Composers experimented with: new coloristic effects in instruments and the voice and in harmonies, new combinations of scales and rhythms. There were parallels to the artwork of the time in the "feeling" of lightness and exoticism in the music. Noted composers of the time include Claude Debussy, Maurice Ravel.~~

"**Improvisation**" means a spontaneous creation of music.

"**Instrument groupings or instrument families**" means classification of instruments by the way or material by which sound is made (i.e. strings, brass, percussion, wind).

"**Interval**" means the distance between two tones.

"**Intonation**" means the degree to which pitch is accurately produced in performance, by the musicians in an ensemble.

"**Jazz**" means a popular style of music characterized by strong, prominent meter, improvisation, and dotted or syncopated patterns.

"**Key signature**" means the sharps and flats placed at the beginning of a composition or line of music denoting the scale on which the music is based.

"**Major key**" means tonally, a key based on a major scale; a scale that contains the following step pattern: whole, whole, half, whole, whole, whole, half; or uses the sol - fa tones of *do, re , mi, fa, so, la, ti, do.*

"**Major scale**" means a scale built on the pattern of two whole steps, one half step, three whole steps, and one half step.

"**Measure**" means a group of beats in written music, set off by vertical lines; the notes and rests comprised between two vertical bar lines.

"**Melody**" means a succession or pattern of musical tones or pitches. Arranging these pitches creates a specific tonal and rhythmic succession of sounds that makes each piece recognizable and expresses a musical idea or tune.

"**Meter**" means the grouping of accented and unaccented beats in a pattern of two (ONE, two, ONE, two) or three (ONE, two, three, ONE, two, three) or combinations of two and three, which gives internal organization, consistency and flow to the music.

"**Meter signature**" means an indication at the beginning of a musical work, the lower number indicates the unit of measurement~~kind of note to receive one beat,~~ and the upper number of which indicates the number of ~~beats~~units that make up a measure (see also "time signature").

"**Mezzo forte - mf**" means medium loud.

"**Mezzo piano - mp**" means medium soft.

"**MIDI**" means an acronym for Musical Instrument Digital Interface. The standard specifications that enable electronic instruments to communicate with one another and with computers.

"**Minor key**" means tonally, a key based on a minor scale; a scale that contains the following step pattern: whole, half, whole, whole, half, whole, whole; or uses the sol-fa tones of *la, ti, do, re, me, fa, so, la.*

"**Minor scale**" means a scale built on the pattern of one whole step, one half step, two whole steps, one half step, and two whole steps.

"**Mixed meter** " means a mixture of duple and triple meters.

"**Mode**" means a type of scale with a specific arrangement of intervals (e.g., Aeolian, Dorian, Ionian, Locrian, Lydian, Mixolydian, and Phrygian).

"**Motive**" means a short melodic or rhythmic pattern.

"**Movement**" means the principal division or section of a musical composition.

"**Notation**" means a method in which music is written down, usually on a staff, indicating specific pitches and the duration of each pitch. In Western culture, this system works just like fractions (e.g., whole notes, half notes, quarter notes, eighth notes, sixteenth notes).

"**Note**" means a musical symbol that denotes both pitch and duration.

"**Opera**" means a theatrical performance involving a drama, the text of which is sung to the accompaniment of an orchestra.

"**Opera glasses**" means small decorative low-powered binoculars for use by people in the audience at theatrical, operatic, or ballet performances.

"**Orchestra**" means group of musicians playing together on instruments. In Western music, the orchestra typically includes string, wind, brass and percussion instrument groupings.

"**Ostinato**" means a rhythmic or melodic accompaniment figure repeated continually.

"**Overture**" means an extended orchestral introduction to an opera, ballet, or similar type of musical presentation.

"**Percussion family**" means instruments that produce sounds of definite or indefinite pitch when shaken or struck including tympani, bass drum, snare drum, xylophone, marimba, cymbal, triangle, chimes.~~, and piano.~~

"**Percussive sounds**" means sounds made by striking, shaking and/or scraping.

"**Phrase**" means a relatively short portion of a melodic line which expresses a musical idea, comparable to a line or sentence in poetry.

"**Phrasing**" means dividing musical sentences into melodic and/or rhythmic sections, similar to the effect of punctuation in language.

"**Pianissimo**" means very soft.

"**Piano**" means a large musical instrument consisting of a wooden case with wires stretched inside it and a row of white and black keys.

"**Piano - p**" means soft; pianissimo -pp - very soft (dynamic). Italian for "soft."

"**Pitch**" means the highness or lowness of a particular note.

"**Polyphony**" means the simultaneous combination for different melodies and rhythms.

"**Prelude**" means an introductory movement of a piece.

"**Presto**" means very fast tempo.

"**Prima donna**" means the principal female singer in an opera.

"**Quartet**" means a composition for four instruments or voices.

"**Range**" means pitches from low to high which a singer or instrumentalist may perform.

"**Refrain**" means a short section of repeated music which occurs at the end of each stanza.

"**Reggae**" means Jamaican dance music, mixing African and Caribbean rhythms.

~~"**Renaissance**" means 1400-1600. This period is referred to as the "Golden Age of Polyphony" (poly - many, and phony - sounds), where there are two or more melodic lines sounding simultaneously. Vocal music predominated but instrumental music had increased interest as an independent style. Music was heard in church as well as the households of the aristocracy and upper classes. There was more of a tendency to use major/minor tonality rather than modality, as in the Medieval times. Noted composers of the time include Gabrielli, Monteverdi, Palestrina.~~

"**Repertoire**" means a variety of musical pieces.

"**Repetition**" means music that is the same, or almost the same, as music that was heard earlier.

"**Rests**" means symbols used to represent silence between notes.

"**Rhythm**" means the term which denotes the organization of sound in time or the proportion or duration of notes. Beats per measure.

"**Rhythm pattern**" means a group of long and short sounds/silences.

"**Ritardando**" means to perform gradually slower.

~~"**Romantic**" means 1820-1900. During the nineteenth and early twentieth century Romantic music was expressive and exciting, and stressed the expression of feeling using of a wide dynamic range, expanded harmonies of new chords and progressions. Noted composers of the time include Johannes Brahms, Richard Wagner, Franz Schubert, Robert Shumann.~~

"**Rondo**" means a composition consisting of a recurring theme alternating with contrasting sections.

"**Rondo form**" means a musical form in which a section is repeated, with contrasting sections in between, such as ABACA.

"**Round**" means a song imitated at the same pitch by a second (or third) group of singers who begin at a designated time during the song (e.g., "Row, row, row your boat").

"**Scale**" means an organization of pitches in ascending or descending sequence.

"**Score**" means the written depiction of all the parts of a musical ensemble with the parts layered vertically and rhythmically aligned.

"**Sequence**" means the repetition of a melodic ensemble with the parts layered vertically and rhythmically aligned.

"**Sharp - #**" means a symbol which raises the pitch of a note one-half step.

"**Solo**" means playing or singing alone. A solo performer is called a soloist.

"**Sonata**" means an instrumental piece in several movements.

"**Sonata - allegro form**" means a return form consisting of three sections: exposition, development, and recapitulation.

"**Soprano**" means the highest female voice.

"**Soul music**" means a form of rhythm and blues.

"**Staccato**" means playing notes in a distinct, detached, separated manner. Staccato is represented by dots placed directly above or below the notehead.

"**Staff**" means the musical ~~graph~~ladder made up of a set of five parallel lines and four spaces on which music is written and

makes it easy for you to tell how high or low a sound is. The lines and spaces are counted from the bottom up.~~to the top.~~

"**Staves**" means the plural of staff. The five parallel lines on which music is written.

"**String instrument family**" means instruments with strings that produce sound when plucked, bowed, or struck including violin, viola, cello, and bass.

"**String quartet**" means an ensemble of four stringed instruments including two violins, a viola, and a cello, also music performed by the ensemble.

"**Style**" means the distinctive or characteristic manner in which the elements of music are treated.

"**Swing era**" means a period of music from 1935 to 1945.

"**Symphony**" means a musical work for a large orchestra usually in four movements (e.g., *Symphony No. 5* by Beethoven).

"**Syncopation**" means deliberate shifting of the pattern of strong and weak beats.

"**Synthesizer**" means a machine that produces sound electronically.

"**Tempo**" means the speed or pace of music. Musical tempos are expressed in Italian and include *lento*~~,~~ (very slow); ~~adagi~~*adagio*~~,~~ (slow); *moderato* (moderate); *allegro*~~,~~ (lively); *presto*~~,~~ (fast); and *vivace*~~,~~ (very fast).

"**Tenor**" means the highest male voice.

"**TexturE**" means the way individual parts of music are layered or the number of sounds occurring simultaneously.

"**Theme**" means a melody that assumes importance in a composition because of its central and continued use.

"**Theme and variation**" means an important melody that is heard and repeated several times throughout a musical composition. Variations occur when the theme is stated and then altered in successive statements. (e.g., key changes, tempo, melodic elaborations, etc.).

"**Timbre**" means the quality of sound of an instrument or voice.

"**Time signature**" means the meter (number of beats per measure and kind of note getting one beat, e.g., 2/4 or 3/4 or 4/4 meter). See "meter signature."

"**Tonality**" means the key or tonal center of a piece of music.

~~"**Tone Color**" means the quality of sound of an instrument or voice.~~

"**Tone poem**" means a programmatic work for a symphony.

"**Transposition**" means the process of changing the key of a composition.

"**Treble**" means high in pitch.

"**Treble clef**" means a symbol placed on the five-line staff in traditional notation indicating the pitch of the notes and locating G on the second line from the bottom.

"**Triad**" means a three-note chord consisting of root, third, and fifth.

"**Triple meter**" means beats grouped into a set of three.

"**Twelve-bar blues**" means a chord pattern often used in blues music based on the I, IV, and V chords and the blues scale in specific order within twelve (12) bars.

"**Twelve-tone scale**" means a scale constructed of all twelve half steps within an octave and organized in a specific order called a tone row.

"**Two-part songs**" means songs written for performance by two distinct voices.

"**Vibrato**" means a slight wavering or pulsating of tone.

"**Virtuoso**" means a performer with brilliant, flawless technique.

"**Unison**" means two or more parts performing the same pitches or melody simultaneously.

"**Waltz**" means a dance in triple meter, made famous in Vienna in the late 1800s.

"**~~Wind~~Woodwind instrument family**" means instruments originally made of wood, in which sound is produced by the vibration of air including piccolo, flute, clarinet, oboe, English horn, bassoon, and contrabassoon.

210:15-3-115. The arts for grade 1

(a) **Visual art.**

(1) **Standard 1 - Language~~language~~ of ~~Visual~~visual art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., collage, design, original, portrait, paint, subject, etc.).~~

(A) Use appropriate art vocabulary to describe art.

(B) Name elements of art, including:~~;~~ line, color, form, shape, texture, value and space.

(C) Name the principles of design, including:~~;~~ rhythm, balance, contrast, movement, center of interest (emphasis) and repetition.

(D) Use the elements of art and ~~principals~~principles of design.

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Understand art reflects a culture.

(B) Identify connections between visual arts and other arts disciplines.

(C) Identify specific works of art produced by artists in different cultures.~~, times and places.~~

(D) Use appropriate art terminology to express personal opinions about art.

(3) **Standard 3 - Visual art expression: "Creating".** The students will observe, select, and utilize a variety of ideas and subject matter in creating original works of ~~visual~~ art.

(A) Experiment in color mixing with various media.

(B) Use a variety of subjects, basic media and techniques in ~~making original~~ creating visual art, including drawing, painting, ~~and~~ sculpture, collage, and mixed media.

(C) Demonstrate beginning skills of composition using the elements of art and principles of design.

(D) Use art media and tools in a safe and responsible manner to create visual art.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art ~~as~~

~~a vehicle of human expression~~ to make interdisciplinary connections and informed aesthetic decisions.

(A) Demonstrate appropriate behavior while attending a visual ~~arts~~art exhibition in a museum or art gallery.

(B) Demonstrate respect for ~~their work~~personal artwork and the ~~work~~artwork of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Identify learning connections between visual art and concepts from other disciplines such as mathematics, science, English language arts, social studies, and media arts.

(b) **General music.**

(1) **Standard 1 - Language~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting music.~~will read, notate and interpret music.~~

(A) ~~Identify~~Explore the elements of music:

(i) Melody (e.g., high and low, upward and downward, leaps and repeats)

(ii) Rhythm (e.g., strong and weak beats, steady beat, meter in 2/4, and long and short sounds)

(iii) Harmony (e.g., sing accompanied, sing unaccompanied, and perform ostinato pattern as accompaniment)

(iv) Form (e.g., introduction, repetition/contrast, solo/chorus, and verse/refrain)

(v) Tone color ~~Color~~ (e.g., classroom percussion instruments, sounds from nature, machines~~,~~ or the environment, and orchestra instruments from each family of instruments - trumpet, clarinet, violin, tympani)

(vi) Pitch (high and low)

(vii) Tempo (fast and slow, getting faster or slower); and

(viii) Dynamics (loud and soft, getting louder or softer)

(B) ~~Use~~Identify a system of syllables, numbers or letters to demonstrate basic notation:

(i) Rhythmic (e.g., quarter note, quarter rest, paired eighth notes)

(ii) Melodic (e.g., sol, mi, la or 5, 3, 6)

(C) Respond to the beat or rhythm in music by clapping, walking, running, skipping, galloping, hopping, playing classroom instruments, or chanting. ~~Recognize basic features of familiar and unfamiliar songs:~~

~~(i) Dynamics - loud and soft~~

~~(ii) Tempo - fast and slow~~

~~(iii) Form - same and different~~

(D) While listening to a musical piece, use directional hand movements to follow the melodic contour (sound or progression of single tones).

(2) **Standard 2 - ~~music~~Music history and culture: "Connecting".** The student ~~will recognize~~recognizes the development of music from ~~an~~a historical and cultural perspective.

(A) Sing and perform action songs, chants, rhymes, singing games and dances from a variety of cultures.

(B) Recognize American music, including~~from our country,~~ work songs, holiday songs, and music ~~from different countries~~ related to citizenship.

(C) Identify music and instruments from different cultures.

(D) Recognize and practice appropriate audience or performer behavior that is appropriate for the context and style of music performed.

(E) Demonstrate respect for music performed by others.

(3) **Standard 3 - ~~music~~Music expression: "Performing".** The student presents or demonstrates an existing work, formally or informally, with appropriate expressive and technical skills. ~~will perform, imitate, and compose a variety of music within specific guidelines.~~

(A) Participate in music through singing and/or playing instruments.

(B) Match pitches, sing in tune and use appropriate tone and expression.

~~(C) Respond to the beat or rhythm in music by clapping, walking, running, skipping, galloping, hopping, playing classroom instruments, or chanting.~~

(~~D~~C) Play simple rhythmic patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.

(~~E~~D) Play simple pitch patterns (tones) on instruments, such as bells or xylophones.

~~(F) While listening to a musical piece, use directional hand movements to follow the melodic contour (sound or progression of single tones).~~

~~(G) Respond to unfinished short melodic patterns using voice or classroom instruments.~~

(4) **Standard 4 - ~~music~~Music appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and expand their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation). ~~andpractice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation. ~~Demonstrate respect for music performed by the student and by other students and professional performers.~~

(C) Discuss likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

210:15-3-116. The arts for grade 2

(a) **Visual art.**

(1) **Standard 1 -Language~~language~~ of visual~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., collage, design, original, portrait, paint, subject, etc.).~~

(A) Use appropriate art vocabulary to describe art.

(B) Name and describe elements of art, including:~~;~~ line, color, form, shape, texture, value and space.

(C) Name and describe the principles of design, including:~~;~~ rhythm, balance, contrast, movement, center of interest (emphasis) and repetition.

(D) Use the elements of art and ~~principals~~principles of design to communicate ideas.

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Understand art reflects the culture of its origin.

(B) Identify connections between characteristics of ~~the~~ visual art ~~arts~~ and other art ~~arts~~ disciplines.

(C) Identify specific works of art produced by artists in different cultures, times and places.

(D) Use appropriate art terminology to express personal opinions about art.

(3) **Standard 3 - Visual art expression: "Creating".** The students will observe, select, and utilize a variety of ideas and subject matter in creating original works of ~~visual~~ art.

(A) Experiment in color mixing with various media.

(B) Use a variety of subjects, basic media and techniques in making ~~original~~ visual art, including drawing, painting, weaving, sculpture, ~~and~~ ceramics, collage, and mixed media.

(C) Demonstrate beginning skills of composition using the elements of art and principles of design.

(D) Use art media and tools in a safe and responsible manner to make visual art.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decisions.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual ~~arts~~art exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork~~their work~~ and the artwork ~~work~~ of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Identify learning connections between visual art and concepts from other disciplines, such as mathematics, science, English language arts, social studies and media arts.

(b) **General music.**

(1) **Standard 1 - Language~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting music.~~will read, notate and interpret music.~~

(A) ~~Identify the elements of music~~Explore the elements of music, including:

(i) Melody (e.g., steps, leaps, and repeated tones, melody patterns, high and low, upward and downward, motives, and repeated phrases)

(ii) Rhythm (e.g., strong and weak beats, steady beat, meter in 2/4 and 3/4, long and short sounds, and rhythm patterns in songs and ostinatos)

(iii) Harmony (e.g., sing accompanied, sing unaccompanied, perform ostinato patterns as accompaniment, sing to chordal accompaniment)

(iv) Form (e.g., introduction, coda, repetition/contrast, solo/chorus, and AB)

(~~iii~~v) Tone Color (classroom percussion instruments, identify trumpet, clarinet, violin, tympani, different tone quality of an individual or group)

~~(iv) Rhythm (strong and weak beats, meter in 2/4 and 3/4, long and short sounds, rhythm patterns in songs and ostinatos).~~

~~(v) Form (introduction, coda, repetition/contrast, solo/chorus, AB)~~

(~~vi~~vi) Pitch (e.g., high and low~~higher and lower~~)

(~~vii~~vii) Tempo (e.g., fast and slow, gradually faster and slower, and suddenly faster and slower)

(~~viii~~viii) Dynamics (e.g., loud and soft, gradually louder and softer, suddenly louder and softer)

(B) Identify ~~Use~~ a system of ~~syllables~~syllables, numbers, or letters to demonstrate basic notation:

(i) Rhythmic (e.g., quarter note, quarter rest, paired eighth notes, half note, half rest, whole note, and whole rest)

(ii) Melodic (e.g., sol, mi, la, do or 5, 3, 6, 1)

(C) Respond to the beat or rhythm in music by clapping, walking, running, skilling, galloping, hopping, playing classroom instruments, or chanting.~~Recognize basic features of familiar and unfamiliar songs:~~

~~(i) Dynamics - loud and soft, gradual change of louder and softer~~

~~(ii) Tempo - fast and slow, gradual change of faster and slower~~

~~(iii) Form - same and different~~

(D) While listening to a musical piece, use directional hand movements to follow the melodic contour (sound or progression of single tones).

(E) Discuss likes and dislikes of music of different styles.

(2) **Standard 2 - Music~~music~~ history and culture: "Connecting".** The student recognizes ~~will recognize~~ the development of music from ~~an~~a historical and cultural perspective.

(A) Sing and perform action songs, chants, rhymes, singing games and dances from a variety of cultures.

(B) Recognize American music,~~from our country,~~including work songs, holiday songs and music related to citizenship.~~from different countries.~~

(C) Identify music and instruments from different cultures. (~~i.e.~~e.g., koto, maracas, Native American flute, African talking drum, etc.).

(D) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(E) Demonstrate respect for music performed by others.

(3) **Standard 3 - Music~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~will perform, imitate, and compose a variety of music within specific guidelines.~~

(A) Participate in~~In~~ music through singing (e.g., echo singing) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(B) Match pitches, sing in tune (C-scale range), and use appropriate tone and expression.

~~(C) Respond to the beat or rhythm in music by clapping, walking, running, skipping, galloping, hopping, sliding, playing classroom instruments, or chanting.~~

(~~D~~C) Play simple rhythmic patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.

(~~E~~D) Play simple pitch patterns (tones)~~melodies by rote~~ on instruments, such as bells or xylophones.

~~(F) While listening to a musical piece, use directional hand movements to follow the melodic contour (sound or progression of single tones).~~

~~(G) Respond to unfinished short melodic patterns using voice or classroom instruments.~~

(~~H~~E) Perform solos and in groups.

(4) **Standard 4 - Music~~music~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and expand their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation).~~Recognize and practice appropriate audience or performer behavior~~ appropriate for the context and style of music performed.

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation.~~Demonstrate respect for music performed by the student and by other students and professional performers.~~

(C) Discuss likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

(E) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

210:15-3-117. The arts for grade 3

(a) **Visual art.**

(1) **Standard 1 - Language ~~language~~ of ~~Visual~~visual art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., collage, design, original, portrait, paint, subject, etc.).~~

(A) Use appropriate art vocabulary to describe art.

(B) Name, describe, and understand the elements of art, including: line, color, form, shape, texture, value and space.

(C) Name, describe, and understand the principles of design, including: rhythm, balance, contrast, movement, center of interest (emphasis) and repetition.

(D) ~~Use the elements~~Understand the characteristics of art and use the elements of art and principles~~principals~~ of design to creatively express original ideas.

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Understand that art reflects and describes the culture of its origin.

(B) Identify connections between different styles of the visual arts and other art disciplines.

(C) Identify specific works of art produced by artists at different times and places, including ~~European,~~ American, Native American, African American, Asian, European, and Hispanic~~, and Asian~~ art produced.~~at different times and places.~~

(D) Use appropriate art terminology to express personal opinions about art.

(E) Understand how the visual arts are reflected in the culture, traditions, and history of Oklahoma.

(3) **Standard 3 - Visual art expression: "Creating".** The ~~students~~student will observe, select, and utilize a variety of ideas and subject matter in creating original works of ~~visual~~ art.

(A) Experiment in color mixing with various media.

(B) Use a variety of subjects, basic media and techniques in ~~making~~creating visual ~~original~~ art including drawing, painting, weaving, sculpture, ceramics, collage, and mixed media.~~printmaking, and ceramics.~~

(C) Demonstrate understanding and knowledge of composition using the elements of art and principles of design.

(D) Use art media and tools in a safe and responsible manner to create visual art.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decisions.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual art~~arts~~ exhibition in a museum or art gallery.

(B) Demonstrate respect for ~~their work~~personal artwork and the work of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(b) **General music.**

(1) **Standard 1 - Language~~language~~ of music: "Responding".** The student ~~will read, notate and interpret~~meaningfully engages with the artform through reading, notating, and/or interpreting music.

(A) Explore ~~Identify~~ the elements of music, including:

(i) Melody (e.g., steps, wide and narrow leaps, and repeated tones, melody patterns, high and low pitches, melodic contour, same, different and similar phrases);

(ii) Rhythm (e.g., strong and weak beats, steady beat, meter in 2/4, 3/4 and 4/4, dotted rhythms);

(iii) Harmony (chordal harmony, chord changes, ostinato patterns, countermelody, rounds);

(~~iii~~iv) Form (e.g., introduction, coda, repetition/contrast, solo/chorus, AB, ABA, rondo, and D.C. al fine);

(v) Tone Color (e.g., classroom percussion instruments,~~:~~identify trumpet, clarinet, violin, tympani, and different tone quality of an individual or group);

~~(iv) Rhythm (strong and weak beats, steady beat, silent beat, meter in 2/4, 3/4 and 4/4, dotted rhythms).~~

~~(v) Form (introduction, coda, repetition/contrast, solo/chorus, AB, ABA, rondo, D.C. al fine)~~

(vi) Pitch (e.g., higher and lower);

(vii) Tempo (e.g., fast and slow, faster and slower, gradual and sudden changes in tempo); and

(viii) Dynamics (e.g., loud and soft, gradually louder and softer, suddenly louder and softer).

(B) Use a system of syllables, numbers or letters to demonstrate basic notation:

(i) Rhythmic (e.g., quarter note, quarter rest, paired eighth notes, half note, half rest, whole note, whole rest, and dotted half note); and

(ii) Melodic (e.g., sol, mi, la, do, re or 5, 3, 6, 1, 2).

(C) Recognize basic features of familiar and unfamiliar songs, including:

(i) Dynamics (e.g., loud and soft, gradual change of louder and softer);

(ii) Tempo (e.g., fast and slow~~,~~and gradual change of faster and slower); and

(iii) Form (e.g., same, ~~and~~ different, and similar).

(D) Identify instrument ensembles (brass, strings, woodwinds, percussion)

(2) **Standard 2 - Music ~~music~~ history and culture: "Connecting".** The student recognizes~~will recognize~~ the development of music from ~~an~~a historical and cultural perspective.

(A) Sing and perform action songs, chants, rhymes, singing games, and dances from a variety of cultures.

(B) Recognize American music,~~from our coutry,~~including work songs, holiday songs and music related to citizenship.~~from different countries.~~

(C) Identify music and instruments from different cultures. (e.g., bagpipes, ~~i.e., bagpipe~~, wooden flute, koto, and panpipes).

(D) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(E) Demonstrate respect for music performed by others.

(3) **Standard 3 -Music ~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~will perform, imitate, and compose a variety of music within specific guidelines.~~

(A) Participate in music through singing (e.g., echo singing, rounds and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(B) Match pitches, sing in tune (C- scale range) and use appropriate tone and expression.

~~(C) Respond to the beat or rhythm in music by clapping, walking, running, skipping, galloping, sliding, playing classroom instruments, or chanting.~~

(~~D~~C) Play simple rhythmic patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.

(~~E~~D) Play simple melodies by rote on instruments, such as bells or xylophones.

~~(F) While listening to a musical piece, use directional hand movements to follow the melodic contour (sound or progression of single tones).~~

~~(G) Respond to unfinished short melodic patterns using voice or classroom instruments.~~

(~~H~~E) Perform solos and in groups.

~~(I) Sing two-part rounds, partner songs and ostinatos.~~

(4) **Standard 4 -Music ~~music~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and expand their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation). ~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation.~~Demonstrate respect for music performed by the student and by other students and professional performers.~~

(C) Compare students' likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

(E) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(~~C~~F) Use appropriate terms to explain preferences for musical works and styles.

210:15-3-118. The arts for grade 4

(a) **Visual arts.**

(1) **Standard 1 - Language ~~language~~ of visual ~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., architecture, contour, medium, mixed media, perspective, symbol, etc.).~~

(A) Know how works of art are made with respect to the materials, media, techniques, and sources of ideas.

(B) Describe and use the elements of art, including: line, color, form, shape, texture, value (light and dark), and space in works of art.

(~~B~~C) Describe and use the principles of design, including: rhythm, balance, contrast, movement, variety, center of interest (emphasis), and repetition in works of art.

~~(C) Describe and use the elements of art: line, color, form, shape, texture, value (light and dark), and space in works of art.~~

~~(D) Discuss observations of visual and expressive features seen in the environment (such as colors, textures, shapes, etc.).~~

(D) Infer meaning from and discuss student observations of visual and expressive features seen in the environment (e.g., colors, textures, shape, form, etc.).

(2) **Standard 2- Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Describe and place a variety of specific significant art objects by artist, style and historical and cultural context.

(B) Identify themes and purposes of works of art and artifacts in history and culture.

(C) Demonstrate a basic knowledge of several fields of art such as painting, sculpture, drawing, computer graphics, printmaking, architecture, ~~and~~ fiber arts and media arts.

(D) Identify how ~~the~~ visual ~~arts are~~art is used in today's world, including media arts and the popular media of advertising, television, and film.

(E) Understand how the visual arts have affected and are reflected in, the culture, traditions, and history of the United States.

(3) **Standard 3 - Visual ~~arts~~art expression: "Creating".** The ~~students~~student will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create ~~Make~~ original visual artworks~~works of art~~ using a variety of materials (media), ~~and~~ techniques (skills), and sources for ideas.

(B) Use observation, memory and imagination in creating ~~making~~ original works of art.

(C) Apply knowledge of a basic art vocabulary through experiences in creating ~~making~~ original works of art.

(D) Use art media and tools in a safe and responsible manner to create original visual art.

(4) **Standard 4 - Visual arts appreciation: "Connecting".** The student will ~~learn to~~ appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decisions. ~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual art~~arts~~ exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork ~~their work~~ and the artwork ~~work~~ of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(E) Critique personal art based on teacher-established criteria.

(b) **General music.**

(1) **Standard 1 - Language ~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting ~~will read, notate and interpret~~ music.

(A) Use correct terminology to discuss the elements of music, including:~~.~~

(i) Melody (e.g., steps, wide and narrow leaps, octave leap, and repeated tones, melody patterns, melodic contour, same, different, similar phrases);

(ii) Rhythm (e.g., strong and weak beats, steady beat, offbeat, silent beat, meter in 2/4, 3/4, 4/4 and 6/8);

(iii) Harmony (e.g., chordal harmony, chord changes, ostinato patterns, countermelody, rounds, thick and thin texture);

(iv) Form (e.g., introduction, coda, repetition/contrast, solo/chorus, AB, ABA, rondo, D.C. al fine);

(v) Tone Color (e.g., sound quality of individual and group performances by voice or instrument to include duets, trios, quartets, chorus, ~~etc.,~~ and ranges of~~(~~soprano, alto, tenor, and bass);~~.~~

(vi) Pitch (e.g., high and low);

(vii) Tempo (e.g., allegro (fast), lento (slow), andante (walking), and moderato (moderate));and ~~.~~

(viii) Dynamics (e.g., forte (loud), piano (soft), mezzo forte (medium loud), and mezzo piano (medium soft)).

(B) Use a system of syllables, numbers or letters to demonstrate basic notation:

(i) Rhythmic (e.g., quarter note, quarter ~~test~~rest, paired eighth notes, half note, half rest, whole note, whole rest, dotted half note, sixteenth notes, single eighth note, single eighth rest, syncopation, 2/4, 3/4, 4/4, and 6/8).

(ii) Melodic (sol, mi, la, do, re, high do, low la, low sol or 5, 3, 6, 1, 2, 8, low 6, low 5, and treble clef).

(C) Experiment with variations in and demonstrate understanding of tempo (speed), timbre or tone color (sound quality), dynamics (degree of loudness), and phrasing for expressive purposes.

(D) Identify visually and aurally:

(i) Instrumental ensembles (e.g., marching band, ~~symphony~~ orchestra, and jazz band);

(ii) Families of orchestral instruments (e.g., strings, woodwinds, brass and percussion); and

(iii) Classification of voice ranges (e.g., soprano, alto, tenor, and bass).

(E) Notate ~~(written representation of music)~~ simple pitch and rhythm patterns presented aurally (listening).

(2) **Standard 2 -Music ~~music~~ history and culture: "Connecting".** The student recognizes~~will recognize~~ the development of music from an historical and cultural perspective.

(A) Sing or play a variety of folk, ethnic, classical, and contemporary musical pieces.

(B) Listen and describe music from a variety of styles, periods and cultures including European, Native American, African American, Hispanic, and Asian.

(C) Identify music and instruments from different cultures. (~~i.e. bagpipe,~~e.g., bagpipes, wooden flute, koto, panpipes).

(D) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(E) Demonstrate respect for music performed by others.

(~~D~~F) Identify and describe the various roles ~~of~~ musicians have in various music settings and cultures.

(G) Identify uses of music in everyday life (e.g., film, television, background music, and commercials).

(3) **Standard 3 -Music ~~music~~ expression "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~will perform, imitate, and compose a variety of music within specific guidelines.~~

(A) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(B) Match pitches, sing in tune (C-scale range) and use appropriate tone and expression.

(C) Play simple rhythmic patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities. ~~Respond to the beat or rhythm in music by clapping, playing classroom instruments.~~

(D) Play simple and syncopated rhythm patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.

(E) Play simple melodies on instruments, such as bells or xylophones.

(F) While listening to a musical piece, use directional hand movements to follow the melodic contour (e.g., sound or progression of single tones).

~~(G) Respond to unfinished short melodic patterns using voice or classroom instruments.~~

(~~H~~G) Perform solos and with groups.

~~(I) Sing two-part rounds, partner songs/ostinatos.~~

(4) **Standard 4 -Music~~music~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and expand their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation).~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation.~~Demonstrate respect for music performed by the student and by other students and professional performers.~~

(C) Compare students' likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

(E) Participate in music through singing (echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(~~C~~F) Use appropriate terms to explain preferences for musical works and styles.

210:15-3-119. The arts for grade 5

(a) **Visual arts.**

(1) **Standard 1 -Language ~~language~~ of visual ~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., architecture, contour, medium, mixed media, perspective, symbol, etc.).~~

(A) Know how works of art are made with respect to the materials, media, techniques, and sources of ideas.

(~~A~~B) Describe and apply knowledge of the principles of design, including: rhythm, balance (symmetrical, asymmetrical, radial) contrast, movement, variety, center of interest (emphasis), and repetition in ~~their own art work,~~personal artwork and the artworks ~~art works~~ of others.

(~~B~~C) Describe and use the elements of art, including: line, color, form, shape, texture, value (light and dark), and space in works of art.

(D) Identify and discriminate between types of shape (geometric and organic), colors (primary, secondary, complementary, intermediates, neutrals, tints, tones, shades, and values), lines (characteristics, quality), textures (tactile and visual), and space (background, middleground, foreground, placement, perspective, overlapping, ~~overlap,~~ negative space, positive space, size, color) in ~~their~~his/her own artwork ~~art work,~~ and the artworks ~~art works~~ of others.

~~(C) Know how works of art are made with respect to the materials, media, techniques, and sources of ideas.~~

(~~D~~E) Infer meaning from and discuss student ~~Discuss~~ observations of visual and expressive features seen in the environment (e.g., ~~such as~~ colors, textures, shape, form,~~shapes,~~ etc.).

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Describe and place a variety of ~~specific~~ significant visual art objects by artist, style and historical and cultural context.

(B) Identify themes and purposes of works of art and artifacts in history and culture.

(C) Identify how the visual arts are used by artists and designers in today's world, including media arts, and the popular media of advertising, television, and film (e.g., illustrator, fashion designer, sculptor, display designer, painter, graphic designer, animator, photographer).

(D) Communicate in-depth knowledge gained through integrated study of a visual art theme, historical period, or event.

(E) Understand how the visual arts are reflected in, the culture, traditions, and history of the United States.

(3) **Standard 3 - Visual art expression: "Creating".** The student ~~students~~ will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create ~~Make~~ original visual artworks ~~works of art~~ using a variety of materials (media), ~~and~~ techniques (skills), and sources for ideas.

(B) Use observation, memory and imagination in creating ~~making~~ original works of art.

(C) Apply knowledge of a basic art vocabulary through experiences in creating original works of art.

(~~C~~D) Demonstrate safe and proper use, care, and storage of media, materials, and equipment.

~~(D) Apply knowledge of a basic art vocabulary through experiences in making original works of art.~~

(E) Demonstrate a basic knowledge of media, techniques and processes while creating in the following disciplines of visual art:

(i) Painting

(I) ~~media~~ Media: tempera, watercolor, oil, and acrylic.

(II) ~~processes~~ Processes: wet-on-wet, wet-on-dry, wash, resist, and sponge.

(ii) Sculpture or Architecture

(I) ~~media~~ Media: paper, papier-mâchè, clay, plaster, cardboard, wood, found objects, beads, sand, and wire.

(II) ~~processes~~ Processes: carving, constructing, and assembling

(iii) Drawing

(I) ~~media~~ Media: pencils, colored pencils, markers, chalks, crayons, and oil-pastels.~~,~~

(II) ~~processes~~ Processes: sketching, contour line, hatching, crosshatching, and stippling.

(iv) Printmaking

(I) ~~media~~ Media: printing ink, styrofoam, stencil, found object.

(II) ~~processes~~ Processes: relief, silkscreen, and monoprint.

(v) Fiber Arts

(I) ~~media~~ Media: cloth, yarn, ribbon, found objects, paper, and rope

(II) ~~processes~~ Processes: weaving, stitchery, braiding, and basketry.

(vi) Media Arts

(I) Media: broadcasting, film, journalism, performing arts, and telecommunications

(II) Processes: Audio-video communication technology, printing technology.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize ~~learn to appreciate~~ visual art to make interdisciplinary connections and informed aesthetic decisions.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual arts exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork~~their work~~ and the artwork~~work~~ of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(E) Critique personal art based on teacher-established criteria.

(b) **General music.**

(1) **Standard 1 -Language ~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting music.~~will read, notate and interpret music.~~

(A) Define and use correct terminology to identify and discuss the elements of music, including:

(i) Melody (e.g., steps, wide and narrow leaps, repeated tones, phrases, pentatonic scale (five-tone scale);~~,~~

(ii) Rhythm (e.g., even and uneven rhythm patterns, syncopation, triplets, and dotted rhythms);~~.~~

(iii) Harmony (e.g., partner songs, countermelody, descant, and major and minor chords);~~.~~

(iv) Form (e.g., AB, ABA, round, rondo, introduction, coda, interlude, verse and refrain, and prelude);~~.~~

(v) Tone color (e.g., sound quality of individual and group performances by voice or instrument to include duets, trios, quartets, chorus, ~~etc.~~ and ranges of~~(~~soprano, alto, tenor, bass);~~.~~

(vi) Pitch (e.g., high and low);

(vii) Tempo (e.g., allegro (fast), lento (slow), andante (walking), and moderato (moderate)); and

(viii) Dynamics (e.g., forte (loud), piano (soft), mezzo forte (medium loud), and mezzo piano (medium soft)).

~~(B) Experiment with variations in and demonstrate understanding of tempo (speed), tone quality (sound quality), dynamics (degree of loudness) and phrasing for expressive purpose in performing music.~~

(~~C~~B) Use a system of syllables, numbers or letters to demonstrate basic notation:

(i) Rhythmic (e.g., quarter note, quarter rest, paired eighth notes, half note, half rest, whole note, whole rest, dotted half note, sixteenth notes, single eighth note, single eighth rest, dotted quarter note, syncopation, 2/4, 3/4, 4/4, and 6/8).

(ii) Melodic (e.g., diatonic scale, treble clef, and bass clef).

(C~~D~~) Identify visually and aurally:

(i) Instrumental ~~instrumental~~ ensembles (e.g., marching band, ~~symphony~~ orchestra, and jazz band);~~.~~

(ii) Families ~~families~~ of orchestral instruments (e.g., strings, ~~wood winds~~woodwinds, brass, and percussion); and~~.~~

(iii) Classification ~~classification~~ of voice ranges (e.g., soprano, alto, tenor, bass).

(D~~E~~) Notate ~~(written representation of music)~~ simple pitch and rhythm patterns presented aurally (listening).

(2) **Standard 2- Music ~~music~~ history and culture: "Connecting".** The student recognizes~~will recognize~~ the development of music from ~~an~~a historical and cultural perspective.

(A) Sing or play a variety of folk, ethnic, classical, and contemporary musical compositions.

(B) Recognize, describe and listen to music from a variety of:

(i) Styles (e.g., jazz, mariachi band, opera, musicals~~musical~~, call and response, and country-western ~~call response~~);

(ii) Periods (e.g., Baroque, Classical, Romantic, Impressionism and Contemporary); and

(iii) Cultures ~~including~~(e.g., European, Native American, African American, Hispanic, and Asian).

(C) Identify and differentiate the use of musical elements and instruments from other parts of the world and compare them to the use of musical elements in American music (e.g., patriotic, orchestral, band, and folk).

(D) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(E) Demonstrate respect for music performed by others.

(F) Identify and describe the various roles ~~of~~ musicians have in various music settings and cultures.

(3) **Standard 3 -Music ~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~will perform, compose, improvise and arrange a variety of music within specified guidelines.~~

(A) Participate in music through singing (e.g., echo singing, rounds and partner songs ~~songes~~) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(B) Match pitches, sing in tune (C-scale range) and use appropriate tone and expression.

(C) Play simple rhythmic patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.~~Respond to the beat or rhythm in music by clapping, playing classroom instruments.~~

(D) Play simple and syncopated rhythm patterns using sounds and silences on classroom percussion instruments to accompany songs and rhythm activities.

(E) Play simple melodies on instruments, such as bells or xylophones.

(F) While listening to a musical piece, use directional hand movements to follow the melodic contour (e.g., sound or progression of single tones).

(G) Respond to unfinished short melodic patterns using voice or classroom instruments.

(H) Perform solos and with groups.

(I) Sing two-part rounds, partner songs, and ~~/~~ostinatos.

~~(J) Identify uses of music in everyday life (film, television, background music, and commercials).~~

(4) **Standard 4 -Music ~~music~~ appreciation: "Creating".** The student will understands and uses musical tools, including active listening to create and evaluate original works. ~~learn to appreciate music and extend their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation). ~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation. ~~Demonstrate respect for music performed by~~

~~the student and by other student and professional performers.~~

(C) Compare students' likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

(E) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(~~C~~F) Use appropriate terms to explain preferences for musical works and styles.

(~~D~~G) Identify criteria for evaluating a musical composition or a musical performance.

210:15-3-120. The arts for grade 6

(a) **Visual arts.**

(1) **Standard 1 -Language~~language~~ of visual~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art ~~Visual Art~~ terms.~~(i.e., still life, contour, composition, foreshortening foreground, perspective, etc.).~~

(A) Compare works of art which are similar or different in expressive quality, composition, and style.

(~~A~~B) Describe and apply knowledge of the principles of design, including: rhythm, balance (symmetrical, asymmetrical, radial) contrast, movement, variety, center of interest (emphasis), and repetition in his/her own ~~art work~~artwork, and the artworks~~art works~~ of others.

(~~B~~C) Describe and use the elements of art, including: line, color, form, shape, texture, value (light and dark), and space in works of art.

(D) Identify and discriminate between types of shape (geometric and organic), colors (primary, secondary, complementary, intermediates, neutrals, tints, tones, shades, and values), lines (characteristics, quality), textures (tactile and visual), and space (background, middleground, foreground, placement, perspective, ~~overlap~~overlapping, negative space, positive space, size, color) in his/her own ~~art work~~artwork, and the artwork ~~art works~~ of others.

(E) Infer meaning from and discuss how artists use the elements of art and principles of design in creating art.

~~(C) Compare works which are similar or different in expressive quality, composition, and style.~~

~~(D) Discuss works of art of different media and styles beyond statements of mere preference.~~

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Recognize and describe the cultural and ethnic traditions which have influenced the visual arts, including ~~European,~~ American, Native American, African American, Asian, Australian, European, and Hispanic~~, and Asian~~ traditions.

(B) Analyze art from various historical periods in terms of artistic style and subject matter .~~Describe and place a variety of specific significant art objects by artist, style, and historical and cultural context.~~

(C) Identify how the visual arts are~~the variety of art forms~~ used in business and industry, including advertising, television, and film.

(D) Discuss the relationship that exists between the visual arts~~art~~ and other art forms, such as music, dance, drama, and ~~drama~~media arts.

(E) Understand how the visual arts are reflected in different cultures throughout history.~~Communicate in depth knowledge gained through integrated study of a visual art theme, historical period, or event.~~

(3) **Standard 3 - Visual arts expression: "Creating".** The students will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create~~Make~~ original works of art using a variety of materials (media), ~~and~~ techniques (skills), and sources for ideas.

(B) Use observation, memory and imagination in making original works of art.

(C) Apply knowledge of a basic art vocabulary through experiences in making original works of art.

(D) Demonstrate safe and proper use, care, and storage of media, materials, and equipment.

~~(D) Apply knowledge of a basic art vocabulary through experiences in making original works of art.~~

(E) Demonstrate a basic knowledge of media~~, techniques~~ and processes while creating in the following disciplines of visual art:

(i) Painting

(I) ~~media~~ Media: tempera, watercolor, oil, and acrylic.

(II) ~~processes~~ Processes: wet-on-wet, wet-on-dry, wash, resist, sponge.

(ii) Sculpture or Architecture

(I) ~~media~~ Media: paper, papier-mâchè, clay, plaster, cardboard, wood, found objects, beads, sand, wire.

(II) ~~processes~~ Processes: carving, constructing, and assembling.

(iii) Drawing

(I) ~~media~~ Media: pencils, colored pencils, markers, chalks, crayons, and oil-pastels.~~,~~

(II) ~~processes~~ Processes: sketching, contour line, hatching, crosshatching, and stippling.

(iv) Printmaking

(I) ~~media~~ Media: printing ink, styrofoam, stencil, found object.

(II) ~~processes~~ Processes: relief, silkscreen, and monoprint.

(v) Fiber Arts

(I) ~~media~~ Media: cloth, yarn, ribbon, found objects, paper, and rope.

(II) ~~processes~~ Processes: weaving, stitchery, braiding, and basketry.

(vi) Media Arts

(I) Media: broadcasting, film, journalism, performing arts, and telecommunications.

(II) Processes: Audio-video communication technology, printing technology.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decisions.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual arts exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork~~their work~~ and the ~~work~~artwork of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(E) Critique personal art based on teacher-established criteria.

(b) **General music.**

(1) **Standard 1 -Language ~~language~~ of music "Responding".** The student meaningfully engages with the artform through reading, notating and/or interpreting ~~will read, notate and interpret~~ music.

(A) Define and use correct terminology to identify and discuss the elements of music, including:

(i) Melody (e.g., steps, wide and narrow leaps, repeated tones, phrases, pentatonic scale [five-tone scale], intervals, and major and minor scales).

(ii) Rhythm (e.g., steady beat, back beat, syncopation, triplets, dotted rhythms, and 2/2 meter).

(iii) Harmony (e.g., partner songs, rounds, descants, countermelody, and ~~descant,~~ major and minor chords).

(iv) Form (e.g., unity and variety, AB, ABA, round, rondo, theme and variations, marching, introduction, coda, interlude, verse and refrain, and prelude).

(v) Tone color (e.g., opera, musical theater, duet, trio, quartet, chorus, voice ranges and instrument ranges, and *a capella*).

(vi) Pitch (e.g., range and register, change pitch with compositional devices, such as imitation, inversion, and transposition).

(vii) Tempo (e.g., allegro (fast), lento (slow), andante (walking), and moderato (moderate)).

(viii) Dynamics (e.g., forte (loud), piano (soft), mezzo forte (medium loud), mezzo piano (medium soft), crescendo, and decrescendo).

(B) Identify basic notational symbols (e.g., written representation of music), including: treble and bass clef, time signatures (2/4, 3/4, 4/4, and 6/8); and note values (e.g.,whole note, half note, quarter note, eighth note, dotted half note, dotted quarter note, and the corresponding rests).

(C) Experiment with variations in and demonstrate understanding of tempo (speed), tone quality (sound quality), dynamics (degree of loudness) and phrasing for expressive purpose in performing music.

(D) Identify visually and aurally:

(i) Instrumental~~instrumental~~ ensembles (e.g., marching band, ~~symphony~~ orchestra, and jazz band).

(ii) Families~~families~~ of orchestral instruments (e.g., strings, woodwinds, brass, and percussion).

(iii) Classification~~classification~~ of voice ranges (e.g., soprano, alto, tenor, and bass).

(E) Notate ~~(written representation of music)~~ simple pitch and rhythm patterns presented aurally (listening).

(F) Respond to basic rhythm patterns either physically or using classroom instruments.

(2) **Standard 2 -Music~~music~~ history and culture: "Connecting".** The student recognizes~~will recognize~~ the development of music from ~~an~~a historical and cultural perspective.

(A) Sing or play a variety of folk, ethnic, classical, and contemporary musical compositions.

(B) Recognize, describe and listen to music from a variety of:

(i) Styles (e.g., jazz, mariachi band, opera, musical, call and response, and country-western~~call response~~).

(ii) Periods (e.g., Baroque, Classical, Romantic, Impressionism and Contemporary).

(iii) Cultures (e.g., ~~including~~ European, Native American, African American, Hispanic, and Asian.)

(C) Identify and differentiate the use of musical elements and instruments from other parts of the world and compare them to the use of musical elements in American music (e.g., patriotic, orchestral, band and folk).

(D) Recognizeand practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(E) Demonstraterespect for music performed by others.

(~~D~~F) Identify and describe the roles of musicians in various music settings and cultures.

(3) **Standard 3 ~~Musicmusic~~ expression: "Performing".** The student presentsor demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~will perform, compose, improvise and arrange a variety of music within specified guidelines.~~

(A) Perform basic tonal patterns and rhythm patterns on classroom instruments (e.g., autoharp, recorder, percussion instruments, and guitar).

(B) Demonstrate the ability to read music from basic notation in treble or bass clef (e.g. folk songs, patriotic songs, etc.).

(C) Sing with an acceptable tone quality throughout his/her singing ranges or play an instrument with

an acceptable tone quality throughout an appropriate range.

(D) Compose music using a variety of sound sources, including electronic and computer.~~to compose music.~~

(E) Playsimple melodies on instruments, such as bells or xylophones.~~Respond physically or using classroom instruments to basic rhythm patterns (including triplets, dotted rhythms, syncopation).~~

(F) Perform and create melodies and accompaniments in solo or group ensembles through singing and playing instruments (e.g. four-chord songs on autoharp).

(G) Sing or play musical compositions demonstrating knowledge of tonal and rhythmic elements, (including syncopated patterns, beats and offbeats).

(H) Use a system for counting beat and rhythm patterns (e.g., rhythm syllables and body movement) to demonstrate knowledge of rhythms found in musical compositions.

(I) Identify uses of music in everyday life (e.g., film, television, background music, and commercials).

(J) Recognize and identify the appropriate ways to use all of the following elements of musical style:

(i) Dynamics (e.g., piano, forte);

(ii) Tempo (e.g., allegro, lento, andante, moderato);

(iii) Conducting patterns of simple meters (e.g., 2/4, 3/4, 4/4, and 6/8); and

(iv) Articulation (e.g., staccato, legato, accent).

(4) **Standard 4 ~~-Musicmusic~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and extend their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation).~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation. ~~Demonstrate respect for music performed by the student and by other students and professional performers.~~

(C) Compare and contrast students' likes and dislikes of music of different styles. ~~Use appropriate terms to explain preferences for musical works and styles.~~

(D) Recognize basic features of familiar and unfamiliar songs.~~Identify criteria for evaluating a musical composition or a musical performance.~~

(E) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(F) Use appropriate terms to explain preferences for musical works and styles.

(G) Identify criteria for evaluating a musical composition or a musical performance.

210:15-3-121. The arts for grade 7

(a) **Visual art.**

(1) **Standard 1 -Language~~language~~ of visual~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art~~Visual Art~~ terms (i.e., architecture, collage, medium, perspective, symbol, etc.).

(A) Compare and contrastworks which are similar or different in expressive quality, composition, and style.

(B) Describe and apply knowledge of the principles of design, including: rhythm, balance (symmetrical, asymmetrical, radial) contrast, movement, variety, center of interest (emphasis), and repetition in his/her own ~~art work~~artwork, and the artworks~~art works~~ of others.

(~~B~~C) Describe and use the elements of art, including: line, color, form, shape, texture, value (light and dark), and space in works of art.

(D) Identify and discriminate between types of shape (geometric and organic), colors (primary, secondary, complementary, intermediates, neutrals, tints, tones, shades, and values), lines (characteristics, quality), textures (tactile and visual), and space (background, middleground, foreground, placement, perspective, ~~overlap~~overlapping, negative space, positive space, size, color) in his/her own art work, and the art works of others.

(~~C~~E) Infermeaning from and discuss how artists use the elements of art and principles of design in creating art. ~~Compare works which are similar or different in expressive quality, composition, and style.~~

(~~D~~F) Identifyand evaluate solutions to visual design problems.~~Discuss works of art of different media and styles beyond statements of mere preference.~~

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Recognize and describe the cultural and ethnic traditions which have influenced the visual arts, including ~~European,~~ American, Native American, African American, Asian, Australian, European, and Hispanic~~, and Asian~~ traditions.

(B) Identify and be familiar with a range of art works, identifying artist, culture and style from a historical context.

(C) Identify thevarietyof art forms used in business and industry, (including advertising, television, and film) and understand the role of art in creating digital images and commercial designs. ~~how the visual arts are used by artists in today's world, including the~~

~~popular media of advertising, television, and film. (Illustrator, fashion designer, sculptor, display designer, painter, graphic designer, animator, photographer).~~

(D) Analyze careers in art and a variety of other careers in terms of the art skills needed to be successful. ~~Identify the relationship that exists between visual art and other art forms such as music, dance, and drama.~~

(E) Understand how the visual arts are reflected in different cultures throughout history.

(3) **Standard 3 - Visual art expression: "Creating".** The students will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create original visual artworks using a variety materials (media), techniques (skills), and sources for ideas.

(B) Use observation, memory and imagination in ~~making~~creating original works of art.

~~(B) Assess and modify art work in progress based on an understanding of art materials and techniques.~~

(C) Demonstrate safe and proper use, care, and storage of media, materials, and equipment.

(D) Apply knowledge of a basic art vocabulary through experiences in making original works of art. ~~Depict three-dimensional qualities by overlapping planes, vertical position, size and color intensity, in original art work.~~

(E) Create original art using a variety of art tools, media, techniques and processes in the art disciplines of (e.g., ceramics, drawing, fiber arts, painting, printmaking, media arts, and sculpture). ~~Develop and apply skills and techniques using a variety of art media, and processes in making two- and three-dimensional works of art:~~

~~(i) Ceramics~~

~~(I) media: clay, modeling clay, clay substitutes, glazes, paint, stains.~~

~~(II) processes: pinch and pulled forms, slab, coil, incising, etc.~~

~~(ii) Drawing~~

~~(I) media: pencils, colored pencils, markers, chalks, crayons, oil pastels,~~

~~(II) processes: sketching, contour line, hatching, crosshatching, stippling, rendering shading~~

~~(iii) Fiber Arts~~

~~(I) media: cloth, yarn, ribbon, found objects, paper, and rope.~~

~~(II) processes: weaving, stitchery, braiding, and basketry.~~

~~(iv) Mixed Media~~

~~(I) media: tissue paper, photos, found objects, foil, fiber, paint, paper, and magazines.~~

~~(II) processes: collage, bas-relief.~~

~~(v) Painting~~

~~(I) media: tempera, watercolor, oil, and acrylic.~~

~~(II) processes: wet-on-wet, wet-on-dry, wash, resist, sponge.~~

~~(vi) Printmaking~~

~~(I) media: printing ink, styrofoam, stencil, found object.~~

~~(II) processes: relief, silkscreen.~~

~~(vii) Sculpture or Architecture~~

~~(I) media: paper, papier mâchè, clay, plaster, cardboard, wood, found objects, beads, sand, wire.~~

~~(II) processes: carving, constructing, and assembling.~~

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed decisions.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual arts exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork~~their work~~ and the artwork~~work~~ of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learningconnections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(E) Analyzeand reflect upon personal artwork based on formative evaluations of the work.

(b) **General music.**

(1) **Standard 1- Language~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting ~~will read, notate and interpret~~ music.

(A) Define and use correct terminology to identify and discuss the elements of music, including:

(i) Melody (e.g., steps, wide and narrow leaps, repeated tones, phrases, pentatonic scale [five-tone scale], intervals, and major and minor ~~scale~~ scales);~~.~~

(ii) Rhythm (e.g., steady beat, back beat, syncopation, triplets, dotted rhythms, and 2/2 meter);~~.~~

(iii) Harmony (e.g., partner songs, rounds, descants, countermelody, and major and minor chords);~~.~~

(iv) Form (e.g, unity ~~Unity~~ and variety ~~Variety~~, AB, ABA, round, rondo, theme and variations, ~~march~~marching, introduction, coda, interlude, verse and refrain, prelude).

(v) Tone color (e.g., opera, musical theater, duet, trio, quartet, chorus, voice ranges and instrument ranges, and *a capella*);

(vi) Pitch (e.g., range and register, change pitch with compositional devices, such as imitation, inversion and transposition);~~.~~

(vii) Tempo (e.g., allegro (fast), lento (slow), andante (walking), and moderato (moderate)); and~~.~~

(viii) Dynamics (e.g., forte (loud), piano (soft), mezzo forte (medium loud), mezzo piano (medium soft, crescendo and decrescendo)).

(B) Identify basic notational symbols (e.g.,written representation of music), including: treble and bass clef, time signatures~~;~~ (e.g., 2/4, 3/4, 4/4, and 6/8); and note values (e.g., whole note, half note, quarter note, eighth note, dotted half note, dotted quarter note, and the corresponding rests).

(C) Experiment with variations in and demonstrate understanding of tempo (speed), tone quality (sound quality), dynamics (degree of loudness) and phrasing for expressive purpose in performing music.

(D) Identify visually and aurally:

(i) Instrumental ~~instrumental~~ ensembles (e.g., marching band, ~~symphony~~ orchestra, and jazz band);

(ii) Families ~~families~~ of orchestral instruments (e.g, strings, woodwinds, brass, and percussion); and

(iii) Classification of voice ranges (e.g., soprano, alto, tenor, and bass).

(E) Notate ~~(written representation of music)~~ simple pitch and rhythm patterns presented aurally (listening).

(F) Respond to basic rhythm patterns either physically or using classroom instruments.

(2) **Standard 2 -Music~~music~~ history and culture: "Connecting".** The student recognizes~~will recognize~~ the development of music from a historical and cultural perspective.

(A) Sing or play a variety of folk, ethnic, classical, and contemporary musical compositions.

(B) Recognize, describe and listen to music from a variety of:

(i) Styles (e.g., jazz, mariachi band, opera, musical, call and response, and country-western.~~call-response~~)

(ii) Periods (e.g., Baroque, Classical, Romantic, Impressionism and Contemporary); and

(iii) Cultures ~~including~~(e.g., European, Native American, African American, Hispanic, and Asian).

(C) Identify and differentiate the use of musical elements and instruments from other parts of the world and compare them to the use of musical elements in American music (e.g., patriotic, orchestral, band and folk).

(D) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed. ~~Identify and describe the roles of musicians in various music settings and cultures.~~

(E) Demonstrate respect for music performed by others.

(F) Identify and describe the various roles musicians have in various musical settings and cultures.

(3) **Standard 3 -Music~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills. ~~will perform, compose, improvise and arrange a variety of music within specified guidelines.~~

(A) Perform basic tonal patterns and rhythm patterns on classroom instruments (e.g., autoharp, recorder, percussion instruments, and guitar).

(B) Demonstrate the ability to read music from basic notation in treble or bass clef (e.g., folk songs, patriotic songs).

(C) Sing with an acceptable tone quality throughout his/her singing ranges or play an instrument with an acceptable tone quality throughout an appropriate range.

(D) Compose music using a variety of ~~electronic and computer~~ sound sources including electronic and computer.

(E) Play simple melodies on instruments, such as bells or xylophones.~~Respond physically or using classroom instruments to basic rhythm patterns (including triplets, dotted rhythms, syncopation).~~

(F) Perform and create melodies and accompaniments in solo or group ensembles through singing and playing instruments (e.g. four-chord songs on autoharp).

(G) Sing or play musical compositions demonstrating knowledge of tonal and rhythmic elements,~~(~~including syncopated patterns, beats and offbeats~~)~~.

(H) Use a system for counting beat and rhythm patterns (e.g., rhythm syllables and body movement) to demonstrate knowledge of rhythms found in musical compositions.

(I) Identify uses of music in everyday life (e.g., film, television, background music, and commercials).

(J) Recognize and identify the appropriate ways to use all of the following elements of musical style:

(i) Dynamics (e.g., piano, forte);

(ii) Tempo (e.g., allegro, lento, andante, and moderato);

(iii) Conducting patterns of simple meters (e.g., 2/4, 3/4, 4/4, and 6/8); and

(iv) Articulation (e.g., staccato, legato, and accent).

(4) **Standard 4 - Music~~music~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and extend their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation).~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation. ~~Demonstrate respect for music performed by the student and by other student and professional performers.~~

(C) Compare and contrast students' likes and dislikes of music of different styles.

(D) Recognize basic features of familiar and unfamiliar songs.

(E) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(~~C~~F) Use appropriate terms to explain preferences for musical works and styles.

(~~D~~G) Identify criteria for evaluating a musical composition or a musical performance.

210:15-3-122. The arts for grade 8

(a) **Visual art.**

(1) **Standard 1 - Language~~language~~ of visual ~~visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., architecture, collage, medium, perspective, symbol, etc.).~~

(A) Compare and contrast works which are similar or different in expressive quality, composition, and style.

(B) Identify and apply knowledge of the principles of design, including: rhythm, balance (symmetrical, asymmetrical, radial), contrast, movement, variety, center of interest (emphasis), and repetition in personal ~~their own~~ artwork, and the artwork ~~art works~~ of others.

(~~B~~C) Identify and apply the elements of art, including: line, color, form, shape, texture, value (light and dark), and space in works of art.

(D) Discriminate between types of shape (geometric and organic), colors (primary, secondary, complementary, intermediates, neutrals, tints, tones, shades, and values), lines (characteristics, quality), textures (tactile and visual), and space (background, middleground, foreground, placement, one-, two-, and three-point perspective, ~~overlap~~overlapping, negative space, positive space, size, color) in personal ~~their own~~ artwork~~,~~ and the artwork~~art works~~ of others.

(~~C~~E) Infermeaning from and discuss how artists use the elements of art and principles of design in creating art. Compare works which are similar or different in expressive quality, composition, and style.

~~(D) Discuss works of art of different media and styles beyond statements of mere preference.~~

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Recognize and describe the cultural and ethnic traditions which have influenced the visual arts, including ~~European,~~ American, Native American, African American, Asian, Australian, European, and Hispanic~~, and Asian~~ traditions.

(B) Identify and be familiar with a range of art works, identifying artist, culture and style from an historical context. ~~Explain the purpose of visual art and artists in history and culture.~~

(C) Use visual images from a variety of media and technological sources to communicate creatively. ~~Identify how the visual arts are used by artists in today's world, including the popular media of advertising, television, and film (e.g., illustrator, fashion designer, sculptor, display designer, painter, graphic designer, animator, photographer).~~

(D) Analyzecareers in art and a variety of other careers in terms of the art skills needed to be successful. ~~Identify the relationship that exists between visual art and other art forms such as music, dance, and drama.~~

(E) Research and explain how the visual arts are reflected in different cultures throughout history.

(3) **Standard 3 - Visual art expression: "Creating".** The student ~~students~~ will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create original visual artworks using a variety materials (media), techniques (skills), and sources for ideas.

(B) Use observation, memory and imagination in creating ~~making~~ original works of art.

(~~B~~C) Apply knowledge of a basic art vocabulary through experiences in making original works of visual art. ~~Assess and modify art work in progress based on an understanding of art materials and techniques.~~

(~~C~~D) Demonstrate safe and proper use, care, and storage of media, materials, and equipment.

(~~D~~E) Create original visual art using a variety of art tools, media, techniques and processes in the art disciplines of (e.g., ceramics, drawing, fiber arts, painting, printmaking, media arts, and sculpture). ~~Depict three-dimensional qualities by overlapping planes, vertical position, size and color intensity, in original art work.~~

~~(E) Develop and apply skills and techniques using a variety of art media, and processes in making two- and three-dimensional works of art.~~

~~(i) Ceramics:~~

~~(I) media: clay, modeling clay, clay substitutes, glazes, paint, stains.~~

~~(II) processes: pinch and pulled forms, slab, coil, incising, etc.~~

~~(ii) Drawing~~

~~(I) media: pencils, colored pencils, markers, chalks, crayons, oil pastels,~~

~~(II) processes: sketching, contour line, hatching, crosshatching, stippling, rendering shading~~

~~(iii) Fiber Arts~~

~~(I) media: cloth, yarn, ribbon, found objects, paper, and rope~~

~~(II) processes: weaving, stitchery, braiding, and basketry.~~

~~(iv) Mixed Media~~

~~(I) media: tissue paper, photos, found objects, foil, fiber, paint, paper, magazines.~~

~~(II) processes: collage, bas-relief.~~

~~(v) Painting:~~

~~(I) media: tempera, watercolor, oil, and acrylic.~~

~~(II) processes: wet on wet, wet on dry, wash, resist, sponge.~~

~~(vi) Printmaking~~

~~(I) media: printing ink, styrofoam, stencil, found object.~~

~~(II) processes: relief, silkscreen.~~

~~(vii) Sculpture or Architecture~~

~~(I) media: paper, papier mâchè, clay, plaster, cardboard, wood, found objects, beads, sand, wire.~~

~~(II) processes: carving, constructing, and assembling .~~

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decision.~~as a vehicle of human expression.~~

(A) Demonstrate appropriate behavior while attending a visual arts exhibition in a museum or art gallery.

(B) Demonstrate respect for personal artwork ~~their work~~ and the artwork ~~work~~ of others.

(C) Demonstrate thoughtfulness and care in completion of artworks.

(D) Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies, and media arts.

(E) Analyze and reflect upon personal art work based on formative and summative evaluations of the work.

(b) **General music.**

(1) **Standard 1 - Language ~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting ~~will read, notate and interpret~~ music.

(A) Define and use correct terminology to identify and discuss the elements of music, including:

(i) Melody (e.g., steps, wide and narrow leaps, repeated tones, phrases, pentatonic scale [five-tone scale], intervals, and major and minor scale);~~.~~

(ii) Rhythm (e.g., steady beat, back beat, syncopation, triplets, dotted rhythms, and 2/2 meter);~~.~~

(iii) Harmony (e.g., partner songs, rounds, descants, countermelody, and major and minor chords~~, polyphony, harmony in thirds and sixths~~);~~.~~

(iv) Form (e.g., unity and variety, ~~Unity and Variety,~~ AB, ABA, round, rondo, theme and variations, ~~march~~marching, introduction, coda, interlude, verse and refrain, and prelude);~~.~~

(v) Tone color (e.g., opera, musical theater, duet, trio, quartet, chorus, voice ranges and instrument ranges, and *a capella*~~and electronic tone color~~);~~.~~

(vi) Pitch (e.g., range and register, change pitch with compositional devices, such as imitation, inversion and transposition);~~.~~

(vii) Tempo (e.g., allegro (fast), lento (slow), andante (walking), and moderato (moderate)); and ~~.~~

(viii) Dynamics (e.g., forte (loud), piano (soft), mezzo forte (medium loud), mezzo piano (medium soft, crescendo and decrescendo)).

(B) Identify basic notational symbols ~~(written representation of music)~~, including: treble and bass clef, time signatures~~;~~ (e.g., 2/4, 3/4, 4/4, and 6/8); and note values (e.g., whole note, half note, quarter note, eighth note, dotted half note, dotted quarter note, and the corresponding rests);~~.~~

(C) Experiment with variations in and demonstrate understanding of tempo (speed), tone quality (sound quality), dynamics (degree of loudness) and ~~melodic and rhythmic~~ phrasing for expressive purpose in performing music.

(D) Identify visually and aurally:

(i) Instrumental ensembles (e.g., marching band, orchestra, jazz band);~~.~~

(ii) Families of orchestral instruments (e.g., strings, woodwinds, brass, and percussion); and~~.~~

(iii) Classification of voice ranges (.e.g, soprano, alto, tenor, and bass).

(E) Notate ~~(written representation of music)~~ short melodies presented aurally (listening).

(F) Respond to basic rhythm patterns either physically or using classroom instruments.

(2) **Standard 2 - Music~~music~~ history and culture: "Connecting".** The student recognizes ~~will recognize~~ the development of music from a ~~an~~ historical and cultural perspective.

(A) Sing or play a variety of folk, ethnic, classical, and contemporary musical compositions.

(B) Recognize, describe and listen to music from a variety of:

(i) Styles (e.g., jazz, mariachi band, opera, musical, call and response, and country-western ~~call-response~~);

(ii) Periods (e.g., Baroque, Classical, Romantic, Impressionism and Contemporary); and

(iii) Cultures ~~including~~(e.g., European, Native American, African American, Hispanic, and Asian).

(C) Identify and differentiate the use of musical elements and instruments from other parts of the world and compare them to the use of musical elements and instruments in American music (e.g., patriotic, orchestral, band and folk).

(D) Demonstrate respect for music performed by others. ~~Identify and describe the roles of musicians in various music settings and cultures.~~

(E) Identify and describe the various roles musicians have in various musical settings and cultures.

(3) **Standard 3 - Music~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills.~~ will perform, compose, improvise and arrange a variety of music within specified guidelines.~~

(A) Perform basic tonal patterns and rhythm patterns on classroom instruments (e.g., autoharp, recorder, percussion instruments, and guitar).

(B) Demonstrate the ability to read music from basic notation.~~(written representation of music).~~

(C) Use a variety of sound sources, including electronic and computer.~~to compose music.~~

(D) Respond to basic rhythm patterns either physically or using classroom instruments. ~~to basic rhythm patterns.~~

(E) Perform in solo or group ensembles through singing and playing instruments.

(F) Sing or play musical compositions demonstrating knowledge of tonal and rhythmic elements.

(G) Use a system for counting beat and rhythm patterns (e.g., rhythm syllables and body movement) to demonstrate knowledge of rhythms found in musical compositions.

(H) Identify uses of music in everyday life (e.g., film, television, background music, and commercials).

(I) Recognize and identify the appropriate ways to use the following elements of musical style:

(i) Dynamics (e.g., piano~~,~~and forte);

(ii) Tempo (e.g., allegro, lento, andante, and moderato);

(iii) Conducting patterns of simple meters (e.g., 2/4, 3/4, 4/4, and 6/8); and

(iv) Articulation (e.g., staccato, legato, and accent)

(4) **Standard 4 - Music~~music~~ appreciation: "Creating".** The student understands and uses musical tools, including active listening to create and evaluate original works.~~will learn to appreciate music and extend their listening beyond music currently familiar to the student.~~

(A) Answer unfinished short melodic patterns using voice or classroom instruments (improvisation). ~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.~~

(B) Improvise with or without a system of syllables, numbers, or letters to demonstrate basic notation. ~~Demonstrate respect for music performed by the student and by other student and professional performers.~~

(C) Compare and contrast students' likes and dislikes of music of different styles. ~~Use appropriate terms to explain preferences for musical works and styles.~~

(D) Participate in music through singing (e.g., echo singing, rounds, and partner songs) and/or playing instruments (e.g., body percussion and melodic ostinatos).

(E) Use appropriate terms to explain preferences for musical works and styles.

(~~D~~F) Identify criteria for evaluating a musical composition or a musical performance.

210:15-3-123. The arts for high school

(a) **Visual arts.**

(1) **Standard 1 - Language~~language~~ of visual~~Visual~~ art: "Presenting".** The student will identify and communicate using a variety of visual art terms.~~(e.g., content, engraving foreshortening, mosaic, perspective, etc.).~~

(A) Compare and contrast works which are similar or different in expressive quality, composition, and style.

(B) Identify and apply knowledge of the principles of design, including: rhythm, balance (symmetrical, asymmetrical, radial) contrast, movement, variety, center of interest (emphasis), and repetition in ~~their own~~personal artwork, and the ~~art works~~artwork of others.

(~~B~~C) Identify and apply the elements of art: line, color, form, shape, texture, value (light and dark), and space in works of art. ~~Describe exhibitions of original works of art seen in the school or community.~~

(D) Differentiate~~Discriminate~~ between types of shape (geometric and organic), colors (primary, secondary, complementary, intermediates, neutrals, tints, tones, shades, and values), lines (characteristics, quality), textures (tactile and visual), and space (background, middleground, foreground, placement, one-, two-, and three-point perspective, ~~overlap~~overlapping, negative space, positive space, size, color) in ~~their own~~personal artwork, and the ~~art works~~ artwork of others. ~~Differentiate between art criticism and art reviews, recognizing that criticism is positive as well as negative in its evaluation of a work of art.~~

(E) Analyze how the elements of art and principles of design are used in the presentation of visual arts.

(F) Discuss visual arts skills and processes used to identify and solve design problems in visual art and other creative disciplines.

(2) **Standard 2 - Visual art history and culture: "Responding".** The student will recognize the development of visual art from a historical and cultural perspective.

(A) Proficient: Research works of art within their cultural and historical context. ~~Analyze a work of art within its cultural and historical context.~~

(B) Advanced: Analyze common characteristics of works of art and artifacts across time and among different cultural groups.~~to analyze and identify influences.~~

(C) Proficient: Describe the basic ideas underlying several major art movements or historical periods including: Ancient (Egyptian, Greek and Roman), Renaissance, Impressionism/Post-Impressionism and 20th Century.

(D) Advanced: Analyze issues related to chronology and discuss or debate ~~these~~ contemporary issues in relation to historical perspective.

(E) Proficient: Compare cultural and ethnic art forms throughout the world that have influenced the visual arts.

(F) Advanced: Classify works of art based on time-periods, movements or specified style, and understand the role of visual art in documenting history. ~~Assign works time periods or movements based upon style.~~

(G) Proficient: Describe the relationship between ~~the~~ visual art ~~arts~~ and other academic~~arts~~ disciplines.~~such as drama, music and dance.~~

(H) Advanced: Analyze the creative and analytical principles, themes, and techniques relating to visual art and contrast them with other academic disciplines. ~~Synthesize the creative and analytical principles, themes, and techniques of the visual arts and other disciplines.~~

(I) Proficient: Identify major regional, national, and international collections of art.

(J) Advanced: Research exemplary art exhibitions at local, regional, national, or international museums or art galleries. ~~Visit and critique art at local, regional, national, and international museums, and art exhibitions.~~

(K) Proficient: Identify the use of ~~the~~ visual art~~arts~~ in business and industry, advertising, television and film.

(L) Advanced: Document and create a visual art~~arts~~ career plan based on personal portfolio, and develop an in-depth investigation of future educational possibilities.

(M) Proficient: Understandthe role of visual arts in United States history.

(N) Advanced: Interpret the role of visual arts in United States history from a cultural, and/or historical perspective.

(3) **Standard 3 - Visual art~~arts~~ expression: "Creating".** The student ~~students~~ will observe, select, and utilize a variety of ideas and subject matter in creating original works of art.

(A) Create original two-and three-dimensional works of visual art from observation, memory and imagination using a variety of art media.

(B) Prepare a portfolio (collection) of the learner's original artwork.

~~(C) Develop and apply skills and techniques using a variety of art media, and processes in making two- and three-dimensional works of art:~~

~~(i) Ceramics~~

~~(I) media: clay, modeling clay, clay substitutes, glazes, paint, stains.~~

~~(II) processes: pinch and pulled forms, slab, coil, incising, etc.~~

~~(ii) Drawing~~

~~(I) media: pencils, colored pencils, markers, chalks, crayons, oil pastels.~~

~~(II) processes: sketching, contour line, hatching, crosshatching, stippling, rendering shading.~~

~~(iii) Fiber Arts~~

~~(I) media: cloth, yarn, ribbon, found objects, paper, and rope~~

~~(II) processes: weaving, stitchery, braiding, and basketry.~~

~~(iv) Mixed Media~~

~~(I) media: tissue paper, photos, found objects, foil, fiber, paint, paper, magazines.~~

~~(II) processes: collage, bas relief.~~

~~(v) Painting:~~

~~(I) media: tempera, watercolor, oil, and acrylic.~~

~~(II) processes: wet on wet, wet on dry, wash, resist, sponge.~~

~~(vi) Printmaking~~

~~(I) media: printing ink, styrofoam, stencil, found objects.~~

~~(II) processes: relief, silkscreen.~~

~~(vii) Sculpture or Architecture~~

~~(I) media: paper, papier-mâchè, clay, plaster, cardboard, wood, found objects, beads, sand, wire.~~

~~(II) processes: carving, constructing, and assembling.~~

(~~D~~C) Demonstrate safe and proper use, care, and storage of media, materials, and equipment.

(D) Apply knowledge of a basic art vocabulary through experiences in making original works of visual art.

(E) Create original visual art using a variety of art tools, media, techniques and processes in the visual art disciplines of (e.g., ceramics, drawing, fiber arts, painting, printmaking, media arts, and sculpture).

(F) Analyze anddiscuss the influences of digital media and technology on the visual arts.

(4) **Standard 4 - Visual art appreciation: "Connecting".** The student will appreciate and utilize visual art to make interdisciplinary connections and informed aesthetic decisions. ~~as a vehicle of human expression.~~

(A) Proficient: Demonstrate appropriate behavior while attending a visual arts exhibition in a museum or art gallery.

(B) Advanced: Understand the collaborative relationships between cultural art organizations, and the citizens they serve.

(C) Proficient: Demonstrate respect for personal artwork ~~their work~~ and the artwork ~~work~~ of others.

(D) Advanced: Create a personal artistic style in the development of a portfolio of personal artwork.

(~~C~~E) Proficient: Demonstrate thoughtfulness and care in completion of artworks.

(F) Advanced: Develop an artist statement of personal artwork.

(G) Proficient: Make learning connections between visual art and other disciplines, such as mathematics, science, English Language Arts, social studies and media arts.

(H) Advanced: Understand how knowledge gained in other disciplines of learning can lead to the creative resolution of design challenges in the visual arts.

(I) Proficient: Critique personal artwork based on thoughtful inquiry.

(J) Advanced: Construct persuasive and reasonable arguments, individually and/or in collaboration with other students, to defend or critique works of art.

(b) **Music.**

(1) **Standard 1 - Language~~language~~ of music: "Responding".** The student meaningfully engages with the artform through reading, notating, and/or interpreting~~will read, notate and interpret~~ music.

(A) Identify and define the meaning of symbols ~~for pitch, rhythm, dynamics, tempo, articulation (e.g. staccato, legato, marcato, accent) and expression (phrasing)~~ found in a musical score.

(B) Identifymusical elements and use appropriate vocabulary to discuss their use, including melody, rhythm, tonality, form, tone color, texture, pitch, tempo, dynamics, and phrasing. ~~Analyze and discuss the use of appropriate vocabulary of musical elements.~~

~~(i) Melody (skips, leaps and repeats, major and minor scales, modes, intervals and phrasing, melodic contour).~~

~~(ii) Rhythm (quarter notes, eighth notes, half notes, whole notes, sixteenth and dotted notes and corresponding rests in 6/8, 3/8, and (2/2) meter signatures, combined and compound meter (mix of duple and triple meter), syncopation.~~

~~(iii) Harmony (triads, major and minor chords, seventh chords, chord modulation).~~

~~(iv) Form (AB, ABA, theme and variations, prelude and fugue, rondo, sonata allegro, concerto, program symphony, 12 bar blues).~~

~~(v) Tone color:~~

~~(I) Vocal ranges and registers of female voices (soprano, mezzo soprano, alto, contralto) and male voices (tenor, baritone, bass, basso profundo).~~

~~(II) Orchestra instrument families: strings (violin, viola, cell, bass), brass (trumpet, French horn, trombone, tuba), woodwinds (piccolo, flute, clarinet, oboe, English horn, bassoon), percussion (tympani, bass drum, snare drum, xylophone, marimba, cymbal, triangle, chimes).~~

~~(vi) Texture~~

~~(I) Monophonic - a single melodic line.~~

~~(II) Polyphonic - the simultaneous combination of different melodies and rhythms.~~

~~(III) Heterophonic - the same melodic line repeated in different ways.~~

~~(IV) Homophonic - a single melodic line with chordal accompaniment.~~

~~(vii) Pitch (half steps, whole steps, major and minor scales).~~

~~(viii) Tempo (accelerando, ritardando, presto, allegro, andante, lento).~~

~~(ix) Dynamics (forte, piano, mezzo forte, mezzo piano, fortissimo, pianissimo, crescendo, decrescendo~~

(C) Notate ~~simple~~ rhythms and melodies using ~~standard~~appropriate notation.

(D) Demonstrate a physical response to written or aural music through performance.

(E) Recognize the use of musical elements in familiar and unfamiliar songs.

(F) Use appropriate terms to explain preferences for musical works and styles.

~~(D) Choral or Instrumental Ensemble: Proficient: Demonstrate the ability to read an instrumental or vocal score of up to four staves. Demonstrate ability to describe how the elements of music (melody, rhythm, harmony, form, tone color, texture, pitch, tempo and dynamics) are used.~~

~~(E) Choral or Instrumental Ensemble: Advanced: Demonstrate the ability to read and interpret a full instrumental or vocal score including nonstandard notation symbols used by 20th century composers. Demonstrate the ability to describe how elements of music are used and explain all transpositions and clefs.~~

~~(F) Choral or Instrumental Ensemble: Proficient: Notate rhythms and melodies in simple meters.~~

~~(G) Choral or Instrumental Ensemble: Advanced: Notate rhythms and melodies in compound meters.~~

~~(H) Choral or Instrumental Ensemble: Proficient: Identify compositional devices used in choral or instrumental compositions such as key changes, cadences, and articulation.~~

~~(I) Choral or Instrumental Ensemble: Advanced: Identify use of compositional devices used in choral or instrumental compositions such as key changes, augmentation and diminution, motives, and imitation.~~

~~(J) Choral or Instrumental Ensemble: Proficient: Describe the characteristic features of particular instrumental composition.~~

~~(K) Choral or Instrumental Ensemble: Advanced: Identify use of formal devices characteristic of a string quartet, march, tone poem, suite or symphony.~~

(2) **Standard 2 - Music~~music~~ history and culture: "Connecting".** The student recognizes ~~will recognize~~ the development of music from a historical and cultural perspective.

(A) ~~Proficient:Classify by genre or style and by historical period or culture unfamiliar but representative aural examples of music and explain the reasoning behind the classifications. Example: Upon hearing works that have been studied name the genre (such as opera), style (such as jazz,blues) and historical background (national anthems), period in history (Baroque, Classical, Romantic, Contemporary), and culture for each, including composers.(B) Advanced:~~ Compare and contrast music from a variety of

genres, styles, periods, and cultures. ~~Example: In a small group, prepare a class presentation comparing the Baroque, Classical, Romantic and Contemporary period orchestras including representative instrumentation, composers and style of composition, using visual and aural examples.~~

(B) Discusshow musical experiences can contribute to personal enrichment.

(C) Evaluate one's own and other musicians' music performances, comparing them to exemplary works. ~~Proficient: Describe origins and development of American genres such as musicals, jazz and rock music including composers.~~

(D) Identify and make connections between music and concepts from other content areas. ~~Advanced: Identify and differentiate two or more cultural sources of influence and determine the historical context that created a synthesis of influences.~~

(E) Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed.

(3) **Standard 3 -Music~~music~~ expression: "Performing".** The student presents or demonstrates an existing work formally or informally with appropriate expressive and technical skills. ~~will perform, imitate, compose a variety of music within specific guidelines.~~

(A) Perform music using a variety of sound sources, that may include electronic and computer sources. ~~Choral Ensemble: Proficient: Sing with expression and accuracy, including proper technique and breath control, intonation, diction, correct pitches and rhythms, appropriate for a large and varied repertoire of vocal literature (e.g., madrigal, jazz, barbershop).~~

(B) Perform in solo or group ensembles through singing and playing instruments. ~~Choral Ensemble: Advanced: Sing with expression and accuracy, including proper technique, breath control, diction and a variety of articulations appropriate for a large and varied repertoire of vocal literature.~~

(C) Critique a musical performance generating suggestions for improvement. ~~Choral Ensemble: Proficient: Sing music written in four parts, with and without accompaniment at a moderate level of difficulty.~~

(D) Research how advances in music technology influence traditional careers in music and produce new creative opportunities. ~~Choral Ensemble: Advanced: Sing music written for a variety of voicings (first soprano, second soprano, alto, tenor, baritone, bass) with and without accompaniment (a capella) at a moderate level to professional level of difficulty.~~

~~(E) Choral Ensemble: Proficient: Perform instrumental music accurately and in tune, and following the conductor.~~

~~(F) Choral Ensemble: Advanced: Perform instrumental music accurately (pitch, rhythm, phrasing, intonation, articulation in tune) balancing with the rest of the ensemble and responding to the conductor's cues.~~

~~(G) Choral Ensemble: Proficient: Perform with expression and technical accuracy a large and varied repertoire of instrumental literature.~~

~~(H) Choral Ensemble: Advanced: Perform on an instrument with expression (phrasing and interpretation) and accuracy (varied meters and keys), including appropriate technique specific to the instrument (i.e breathing techniques, mallet techniques and bowing techniques), using appropriate dynamics, tempo and articulations appropriate for the style of the music.~~

(4) **Standard 4 - Music~~music~~ appreciation:"Creating".** The studentunderstands and uses musical tools, including active listening to create and evaluate original works. ~~Student will learn to appreciate music and extend their listening beyond music currently familiar to the student.~~

(A) Produce short rhythmic and melodic improvisations. ~~Recognize and practice appropriate audience or performer behavior appropriate for the context and style of music performed. For example, symphony concert behavior includes the following guidelines:~~

~~(i) Arrive on time.~~

~~(ii) Refrain from talking during the performance.~~

~~(iii) Do not use cameras during a performance.~~

~~(iv) Do not applaud until the conductor steps off the podium. (One does not applaud after separate movements of a composition).~~

~~(v) Prepare for the performance by researching information about the music to be performed.~~

(B) Compose with or without a system of syllables, numbers, or letters.~~Demonstrate respect for music performed by the student and by other student and professional performers.~~

(C) Compare and contrast students' likes and dislikes of different kinds of music. ~~Use appropriate terms to explain preferences for musical works and styles.~~

(D) Create original music using imagination and technical skill in applying the elements of music.

(E) Identify criteria for evaluating a musical composition, arrangement, improvisation, or performance by comparing it to an exemplary performance or musical work.

(5) **Choral ensembles.** Students will gain musical knowledge and skills, develop their leadership, teamwork, problem solving and goal setting abilities by participating in choral/vocal ensembles.

(A) Identify compositional devices used in choral or instrumental works.

(B) Compare characteristics of two or more styles of music.

(C) Identify and explain the stylistic features of a given American musical work that serve to define its aesthetic tradition and its historical or cultural context.

(D) Evaluate a given musical work in terms of its aesthetic qualities and explain the musical means it uses to evoke feelings and emotions.

(E) Sing with expression and accuracy, including proper technique, breath control, diction, and a variety of articulations appropriate for a varied repertoire of vocal literature.

(F) Sing music written for a variety of voicings (e.g., first soprano, second soprano, alto, tenor, baritone, and bass) with and without accompaniment (a capella) at a moderate level to a professional level of difficulty.

(G) Perform in chamber settings and respond appropriately to other ensemble members' musical cues.

(H) Perform in large ensembles and respond appropriately to the conductor's patterns, gestures, and cues.

(I) Discuss how the subject matter learned in other disciplines is interrelated with and/or connected to music.

(6) **Instrumental ensembles.** Students will gain musical knowledge and skills, develop their leadership, teamwork, problem solving and goal setting abilities by participating in instrumental music ensembles.

(A) Identify compositional devices used in choral or instrumental works.

(B) Compare characteristics of two or more styles of music.

(C) Identify and explain the stylistic features of a given American musical work that serve to define its aesthetic tradition and its historical or cultural context.

(D) Evaluate a given musical work in terms of its aesthetic qualities and explain the musical means it uses to evoke feelings and emotions.

(E) Perform with expression, technical accuracy, and stylistic integrity a varied repertoire of instrumental literature.

(F) Perform on an instrument with expression and accuracy, including appropriate technique specific to the instrument.

(G) Perform in chamber settings and respond appropriately to other ensemble members' musical cues.

(H) Perform in large ensembles and respond appropriately to the conductor's patterns, gestures, and cues.

(I) Discuss how the subject matter learned in other disciplines is interrelated with and/or connected to music.

(c) **Media Arts.**

(1) **Standard 1 - General Skills.** The Media Arts standards are embedded within the visual arts and general music content standards, and can be used to design curriculum in animation, film studies, graphic design, sound design and recording, digital photography, audio-video communication technology, broadcasting, journalism, performing arts, printing technology, telecommunications, and the visual arts.

(A) Proficient: Use a variety of media arts technologies, techniques, and processes to communicate ideas

(B) Advanced: Develop and expand using technologies, techniques, and processes related to media arts creatively.

(C) Proficient: Make connections between media arts and other arts disciplines, of learning.

(D) Advanced: Communicate and understand the interrelationship between media arts and other disciplines of learning.

(E) Proficient: Demonstrate a working knowledge of digital citizenship.

(F) Advanced: Demonstrate fluency of the responsible use of digital technology and digital citizenship.

(G) Proficient: Explore language, tone and point of view in media arts texts.

(H) Advanced: Analyze how language, tone, and point of view used in media arts texts influence variations in meaning and multiple interpretations of visual messages.

(I) Proficient: Understand cultural and societal issues related to media arts.

(J) Advanced: Debate the roll of media arts and use of digital technologies in today's world.

(K) Proficient: Use a variety of media arts techniques and processes to develop original ideas.

(L) Advanced: Creatively use media arts techniques and processes to develop original ideas.

(M) Proficient: Design media arts artwork that indicates an understanding of the elements and principles of artistic design. Create a portfolio of media arts artwork that indicates deep knowledge of the elements and principles of artistic design.

[OAR Docket #14-679; filed 7-7-14]

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

[OAR Docket #14-695]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Priority Academic Student Skills
Part 3. Pre-Kindergarten and Kindergarten
210:15-3-5.6. Science [AMENDED]
Part 9. Science
210:15-3-70. Overview and organization of standards [AMENDED]
210:15-3-70.1. Science standards for grades 1 through 12 [REVOKED]
210:15-3-70.2 Definitions [AMENDED]
210:15-3-71. Standards for inquiry, physical, life, and earth/space science for grade 1 [AMENDED]
210:15-3-72. Standards for inquiry, physical, life, and earth/space science for grade 2 [AMENDED]
210:15-3-73. Standards for inquiry, physical, life, and earth/space science for grade 3 [AMENDED]

210:15-3-74. Standards for inquiry, physical, life, and earth/space science for grade 4 [AMENDED]
210:15-3-75. Standards for inquiry, physical, life, and earth/space science for grade 5 [AMENDED]
210:15-3-76. Standards for inquiry, physical, life, and earth/space science for grade 6 [AMENDED]
210:15-3-77. Standards for inquiry, physical, life, and earth/space science for grade 7 [AMENDED]
210:15-3-78. Standards for inquiry, physical, life, and earth/space science for grade 8 [AMENDED]
210:15-3-79. Physical science - standards for inquiry and the physical sciences for high school [AMENDED]
210:15-3-80. Biology I - standards for inquiry and the biological sciences for high school [AMENDED]
210:15-3-81. Chemisty - standards for inquiry and chemistry for high school [AMENDED]
210:15-3-82. Physics - standards for inquiry and physics for high school [AMENDED]
210:15-3-83. Earth and Space Science and Environmental Science - standards for inquiry, Earth and Space Science and Environmental Science~~and environmental science~~ for high school [AMENDED]

AUTHORITY:
State Department of Education; 70 O.S. § 3-104; 70 O.S. § 11-103.6a
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 27, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
March 20, 2014
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set forth the academic method and process standards for the subject of Science in public schools. 70 O.S. § 11-103.6a(A) requires the State Board of Education to review standards in each subject matter area every six (6) years and implement any revisions to the standards necessary to achieve further improvements in the quality of education for Oklahoma public school students. The proposed changes to the rules are necessary to incorporate the revisions to the standards in accordance with the six (6) year cycle required by statute.
CONTACT PERSON
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE STATE DEPARTMENT OF EDUCATION, ROOM 1-17, HODGE EDUCATION BUILDING, 2500 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. § 255(B):

SUMMARY:
The rules amend the academic method and process standards in the subject of Science to be implemented by public schools for grades Pre-Kindergarten (Pre-K) through Eight (8) and High School.

Interested parties may obtain the full text of the rules from the Oklahoma State Department

[OAR Docket #14-695; filed 7-7-14]

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

[OAR Docket #14-669]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Reading Sufficiency Act
210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act [AMENDED]
210:15-27-3. Standards for mid-year promotion of retained third graders [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. §§ 1210.508C, 1210.508D, 1210.508E; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
October 15, 2013 through November 18, 2013
PUBLIC HEARING:
November 18, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
210:15-27-2 sets out the requirements for good cause exemptions from third grade retention under the Reading Sufficiency Act. The proposed amendment to 210:15-27-2(b)(3)(C) reduces the required thirty (30) day waiting period between administrations of approved alternative standardized reading tests. The change is necessary to provide schools and teachers with more flexibility in providing remediation opportunities to students.

210:15-27-3 sets out the standards for mid-year promotion of third graders who have been retained pursuant to provisions of the Reading Sufficiency Act (the "RSA") at 70 O.S. § 1210.508C. The proposed change to 210:15-27-3 is necessary to clarify requirements for demonstrating the proficiency necessary for a mid-year promotion make the language consistent with other RSA rules which were amended in 2013.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 27. READING SUFFICIENCY ACT

210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act

(a) Beginning with the 2013-2014 school year, students who score at the Unsatisfactory level on the Reading portion of the third grade criterion-referenced test(s) may only be promoted to fourth grade if the student qualifies for a good cause exemption pursuant to 70 O.S. § 1210.508C.

(b) Good cause exemptions shall be limited to the six (6) statutory exemptions outlined in 70 O.S. § 1210.508C (K) as follows:

(1) Students with limited English proficiency may be granted a good cause exemption for promotion to the fourth grade pursuant to 70 O.S. § 1210.508C(K)(1). To qualify for this exemption, the student must:

(A) Be identified as Limited-English Proficient (LEP)/English Language Learner (ELL) on a screening tool approved by the Oklahoma State Department of Education Office of Bilingual/Migrant Education and have a Language Instruction Educational Plan (LIEP) in place prior to the administration of the third grade criterion referenced test; and

(B) The student must have had less than two (2) years of instruction in an English Language Learner (ELL) program that meets the definition of a "language instruction educational program" set forth in 20 U.S.C. §7011.

(2) Students with disabilities who are assessed with alternate achievement standards (AA-AAS) under the Oklahoma School Testing Program (OSTP) with the Oklahoma Alternative Assessment Program (OAAP) qualify for the good cause exemption pursuant to 70 O.S. § 1210.508C(K)(2). To qualify for this exemption, the student must meet all of the following criteria:

(A) The student must be identified as needing special education services prior to the administration of the third grade criterion referenced test;

(B) The student must have an Individualized Education Program (IEP) in place prior to the administration of the third grade criterion referenced test; and

(C) The student's IEP must direct that the student is to be assessed with alternate achievement standards through the Oklahoma Alternative Assessment Program (OAAP) based upon the OSDE Criteria Checklist for Assessing Students with Disabilities on State Assessments.

(3) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment may be granted a good cause exemption for promotion to the fourth grade pursuant to 70 O.S. § 1210.508C(K)(3). To promote a student using an alternative standardized reading assessment, the following criteria shall apply:

(A) The student must score an acceptable level of performance on an approved alternative standardized reading assessment. The following are approved alternative standardized reading assessments that may be used to justify a good cause promotion pursuant to 70 O.S. § 1210.508C(K)(3). The listed score constitutes an acceptable level of performance, and the student must score at or above the following percentiles:

(i) Stanford Achievement Test, Tenth Edition, (SAT 10) - 45th Percentile

(ii) Iowa Test of Basic Skills (ITBS) Complete Battery Form A, C or E, Level 9, Reading Comprehension - 45th Percentile

(iii) Iowa Test of Basic Skills (ITBS) Core Battery, Form A, C, or E, Level 9, Reading Comprehension - 45th Percentile

(iv) TerraNova, Third Edition Complete Battery Level 13, Reading - 45th Percentile

(B) Alternative standardized reading assessments may only be administered following the administration of the Reading portion of the third grade criterion-referenced test(s). The spring test form of the exam shall be administered.

(C) An approved alternative standardized reading assessment may be administered at any time prior to the start of the next academic year, if there are at least ~~thirty (30)~~twenty (20) calendar days between administrations and different test forms are administered.

(4) Students who can demonstrate evidence through a student portfolio that the student has mastered state standards beyond the retention level and that the student is reading on grade level or higher may be granted a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(4). To promote a student through the use of a student portfolio, the following criteria shall apply:

(A) The student portfolio shall include evidence demonstrating the student's mastery of the Oklahoma state standards in reading equal to grade level performance on the Reading portion of the statewide third grade criterion-referenced test(s). Such evidence shall be documented through an organized collection of work representing the student's mastery of such standards, including a demonstration of mastery of all of the following essential components of reading:

(i) Phonological awareness;

(ii) Phonics (i.e., The student demonstrates awareness of letter-sound correspondence for consonants, vowels, and consonant diagraphs, syllable types, and two to three syllable words);

(iii) Vocabulary (i.e., The student demonstrates ability to determine the meaning of general academic-specific and domain-specific words and phrases in a text relevant to a grade three topic or subject area);

(iv) Automaticity/Fluency (i.e., The student demonstrates timed letter and word identification, sight words, modeled paragraph reading);

(v) Comprehension (i.e., The student demonstrates ability to read and comprehend informational text independently and proficiently); and

(vi) Spelling/Writing (i.e., The student demonstrates proficiency in spelling and writing through spelling tests and writing samples).

(B) The student portfolio shall include clear evidence that the standards assessed by the Reading portion of the statewide third grade criterion-referenced test(s) have been met. Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(i) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(ii) Teacher-prepared assessments.

(C) Each standard and objective assessed by the Reading portion of the third grade criterion-referenced test(s) must include a minimum of four (4) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required.

(D) The student portfolio shall include copies of the screening assessments and benchmark/progress monitoring assessments administered pursuant to 70 O.S. 1210.508C(B) and (C), as well as a copy of the student's Academic Progress Plan.

(E) The student portfolio shall be signed by the certified classroom teacher responsible for the student's Reading instruction and the principal of the school, attesting that:

(i) The portfolio is an accurate assessment of the student's reading achievement level;

(ii) The portfolio includes only work that has been independently produced by the student in the third grade, including programs of reading instruction provided after regular school hours, on Saturdays, and during the summer following the student's third grade year; and

(iii) The student possesses required reading skills to be promoted to fourth grade.

(5) Students with disabilities who participate in the statewide criterion-referenced test and have an IEP may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(5). To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in kindergarten, first grade, second grade, or third grade; and

(B) The student's IEP must:

(i) Identify Reading as an area of education need for the student or identify some type of special education service in the area of Reading; and

(ii) Reflect that the student has received intensive remediation for more than two (2) years. Intensive remediation may include any type of program offering intensive reading instruction that is identified as appropriate by the IEP team.

(6) Students who demonstrate a reading deficiency and have been previously retained may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(6). To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in kindergarten, first grade, second grade, or third grade for a total of two (2) years; and

(B) The student must have received intensive reading instruction for two (2) or more years.

(c) Each student completion of a transitional grade between kindergarten and third grade shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K). A transitional grade consists of subject area curriculum selected from two consecutive grade levels to provide differentiated instruction needed for a student to master appropriate skills required for promotion.

(d) Documentation shall be maintained in the student record of any student promoted on the basis of a good cause exemption listed in 70 O.S. § 1210.508C(K). Documentation shall include the student's criterion-referenced test score and any documentation relied upon to grant a good cause exemption or exemption pursuant to (b) of this Section.

(e) Any student promoted on the basis of a good cause exemption listed in 70 O.S. 1210.508C(K) should continue to receive intensive reading instruction and intensive instructional services and supports through the continued implementation of an Academic Progress Plan (APP) to remedy the reading deficiency.

(f) Each student's APP required under this section shall be documented on a form approved by the Office of Instruction of the State Department of Education, and shall include, but not be limited to, the following information:

(1) Identification of assessments used for diagnostic purposes and periodic monitoring;

(2) The results of the assessment(s) used to identify the reading deficiency;

(3) A list of the developmental reading skill areas targeted for improvement (i.e., comprehension, phonics, phonological awareness, spelling, reading fluency, or vocabulary);

(4) A description of the supplemental and/or remedial services and supports provided to the student in accordance with the provisions of 70 O.S. § 1210.508C(N)(2);

(5) A description of parental involvement strategies; and

(6) Identification of any collaborative services provided to the child in order to facilitate the APP (i.e., Title I, IDEA, ELL/Title III).

(g) For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon a three-tiered Response to Intervention ("RtI") model, and shall include:

(1) For students identified for Tier I intervention, a minimum of ninety (90) minutes of uninterrupted daily scientific-research-based reading instruction;

(2) For students identified for Tier II intervention, at least thirty (30) to forty-five (45) minutes of additional uninterrupted daily scientific-research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I; and

(3) For students identified for Tier III intervention, at least forty-five (45) to sixty (60) minutes of additional uninterrupted daily scientific-research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I.

210:15-27-3. Standards for mid-year promotion of retained third graders

(a) District school boards of education shall adopt and implement a policy for the mid-year promotion of any student retained in third grade due to a reading deficiency as required by 70 O.S. § 1210.508C. Such mid-year promotions of retained third grade students must occur during the first semester of the academic year, and must occur prior to November 1 of that academic year.

(b) To be eligible for mid-year promotion, a student must demonstrate by reasonable expectation that he or she:

(1) Is a successful and independent reader as demonstrated by reading at or above grade level;

(2) Has progressed sufficiently to master appropriate fourth grade reading skills; and

(3) Has met any additional requirements, such as satisfactory achievement in other curriculum areas, as determined by the policies of the district school board.

(c) Standards that provide a reasonable expectation that the student has met the requirements of ~~section~~ (b) of this ~~rule~~ Section include demonstrating a level of proficiency required to score above the Unsatisfactory-level on the Grade 3 criterion referenced test(s) and mastery of reading skills, consistent with the month of promotion to fourth grade, as presented in the scope and sequence of the school district's core reading program. Evidence of demonstrated mastery shall be shown by the following:

(1) Successful completion of portfolio elements that meet state criteria in ~~subsection~~ (d) of this ~~rule~~Section; or

(2) Satisfactory performance on a subsequent alternative standardized assessment as specified in ~~section~~ (e) of this ~~rule~~Section.

(d) To promote a student mid-year using a student portfolio as provided for in ~~paragraph~~ (c)(1) of this ~~rule~~Section, there must be evidence of the student demonstrating a level of proficiency required to score above the Unsatisfactory level on the Oklahoma state standards as assessed by the Reading portion of the Grade 3 criterion-referenced test(s), and mastery of the Oklahoma state standards as assessed by the Reading portion of the Grade 4 criterion-referenced test(s), as specified in ~~section~~ (b) of this ~~rule~~Section. The student portfolio must meet the following requirements:

(1) Consist only of work selected by the ~~student's Reading~~certified classroom teacher responsible for the student's Reading instruction;

(2) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced by the student in the classroom of the ~~student's Reading~~certified classroom teacher responsible for the student's Reading instruction;

(3) Include evidence demonstrating a level of proficiency required to score above the Unsatisfactory level on the standards assessed by the Reading portion of the Grade 3 criterion-referenced test(s) by meeting all requirements set forth in ~~210:15-27-2(d)~~210:15-27-2(b)(4);

(4) Include evidence of beginning mastery of fourth grade state standards that are assessed by the Grade 4 Reading portion of the criterion-referenced test(s). Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(A) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(B) Teacher-prepared assessments;

(5) Each standard and objective assessed by the Grade 4 Reading portion of the criterion-referenced test(s) must include a minimum of three (3) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required; and

(6) Be signed by the ~~Reading~~certified classroom teacher responsible for the student's reading instruction and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's ability and that the student possesses the required reading skills to be promoted to fourth grade.

(e) To promote a student mid-year using an alternative standardized assessment as provided for in ~~sub-section~~ (c)(2) of this ~~rule~~Section, there must be evidence that the student scored at or above grade level on the reading portion of an alternative standardized reading assessment listed in OAC ~~210:15-27-2(c)(1)~~ 210:15-27-2(b)(3)(A), as demonstrated by standard scores or percentiles consistent with the month of promotion to the fourth grade. Alternative assessments administered for the purpose of determining a student's eligibility for mid-year promotion must also comply with the requirements of 210:15-27-2(b)(3)(B)-(C) and the school district's policy for mid-year promotion, provided that alternative assessments administered for this purpose may be administered until November 1 of the school year.

(f) The Academic Progress Plan (APP) for any retained third grade student who has been promoted mid-year to fourth grade must continue to be implemented for the entire academic year.

(g) A mid-year promotion shall only occur upon agreement of the parent or legal guardian of the student, and the principal of the school. Such decision should be made in consultation with the student's third and fourth grade teachers.

[OAR Docket #14-669; filed 7-7-14]

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

[OAR Docket #14-670]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 34. Supplemental Online Course Procedures
210:15-34-1. General provisions [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 1-111; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
October 15, 2013 through November 18, 2013
PUBLIC HEARING:
November 18, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 34. Supplemental Online Course Procedures
210:15-34-1. General provisions [AMENDED]
GUBERNATORIAL APPROVAL:
July 24, 2013
REGISTER PUBLICATION:
30 Ok Reg 2167
DOCKET NUMBER:
13-1145
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule is one of a series of rules in Subchapter 34 implementing the provisions 70 O.S. § 1-111(C), which requires the State Board of Education to establish rules relating to supplemental online instruction in public schools. The rule sets out the general provisions, purpose and scope of the Oklahoma Supplemental Online Course Program ("OSCOP"). The proposed change to the rule revises the definition of "educationally appropriate" instruction for purposes of supplemental online course pursuant to the OSCOP. The amendments to the rule are necessary to update the rule to reflect the definition of "educationally appropriate" instruction in 70 O.S. § 1-111(C)(3) which was amended during the 2013 regular legislative session by SB 4719.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 34. SUPPLEMENTAL ONLINE COURSE PROCEDURES

210:15-34-1. General provisions

(a) **Purpose.** The purpose of this program is to make supplemental learning opportunities available to local school district students using online technology in a nontraditional classroom setting, (i.e., inside or outside of public school site locations). The supplemental online course enrollment options are for public school students enrolled in the district. This rule establishes policies and procedures as directed by 2011 Senate Bill 280, which amends Oklahoma Statute Title 70, Section 1-111.

(b) **General Information.** The Oklahoma Supplemental Online Course Program (hereafter referred to as OSOCP), establishes a framework for districts to offer supplementary online courses to any public student residing in Oklahoma. All OSOCP teachers shall be: 1) appropriately certified in accordance with Oklahoma Administrative Rule 210:35-21-2 to teach in the content area of the course offered, or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. All courses offered through OSOCP shall be aligned with Oklahoma's Priority Academic Student Skills (PASS) curriculum standards and/or Common Core State Standards (CCSS). Local districts have control regarding the method by which they deliver online courses to enrolled students.

(c) **Definitions.**

(1) **Supplemental online course.** An online program that allows students who are enrolled in a public school to supplement their education by enrolling part time in online courses that are educationally appropriate for the student, which are equal to the equivalent of classroom instruction time required for student attendance and participation by the district.

(2) **Educationally appropriate.** For the purposes of supplemental online courses, "educationally appropriate" means any instruction that is not substantially a repeat of a course or portion of a course that the student has successfully completed, regardless of the grade of the student, and regardless of whether a course is similar to or identical to the instruction that is currently offered in the school district.~~educationally appropriate means an instructional delivery method best suited for an individual student to advance the student's academic standing toward meeting the learning expectations of the district and State graduation requirements for the student.~~ The determination of educationally appropriate will be made at local district level.

[OAR Docket #14-670; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-682]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-110. Alternative placement teaching certificates [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-122.3; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed new rule sets out the criteria for individuals to obtain a provisional and standard teaching certificate under the alternative placement program, and replaces the previous rule for alternative teaching certificates that was revoked in 1998. The rule is necessary to clarify the procedure for issuance of alternative teaching certificates in accordance with the provisions of 70 O.S. § 6-122.3.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

210:20-9-110. Alternative placement teaching certificates

(a) **Issuance of provisional alternative teaching certificates.** The State Department of Education shall issue a three (3) year, nonrenewable provisional alternative placement teaching certificate to an individual who completes the application for an alternative placement teaching certificate and submits all documentation necessary to verify that the applicant meets all of the following criteria:

(1) The applicant holds at least a baccalaureate degree from an institution whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a retention/graduation grade point average of not less than 2.50 on a 4.0 scale;

(2) The applicant has either:

(A) Earned a major in a field of studythat corresponds to an area of specialization for an Elementary-Secondary Certificate, a Secondary Certificate or a career-technical certificate; or

(B) Provided a letter from the registrar or academic dean of the college or school from which the applicant graduated verifying that the applicant has completed a major in a field that corresponds to an area of specialization for an Elementary-Secondary Certificate, a Secondary Certificate or a career-technology certificate;

(3) The applicant can document either:

(A) Two (2) years of work experience in the applicant's degree field area, unless the applicant is participating in the federal Troops to Teachers Program; or

(B) Completion of post-baccalaureate coursework in the applicant's degree field area;

(4) The applicant declares the intention to earn standard certification by means of an alternative placement program that meets the requirements of 70 O.S. § 6-122.3 in not more than three (3) years;

(5) The applicant has passed all of the following teacher competency examinations:

(A) The Oklahoma General Education Test (OGET); and

(B) The Oklahoma Subject Area Test (OSAT) in the area of specialization for which certification is sought;

(6) The applicant provides one of the following types of documentation:

(A) A letter from an accredited Oklahoma public school district offering employment to the applicant in the area of specialization for which the applicant seeks certification that is conditioned upon the applicant's enrollment in an alternative certification program approved by the State Board of Education; or

(B) A letter from the applicant declaring the applicant's intention to seek employment as a teacher in an Oklahoma public school district accredited by the Oklahoma State Department of Education; and

(7) The applicant has received a favorable recommendation for certification from the Teacher Competency Review Panel (TCRP) for evaluation of the applicant's qualifications and career accomplishments.

(b) **Requirements for enrollment in an alternative certification program.** As a prerequisite to enrollment in an alternative placement program set forth in 70 O.S. § 6-122.3, applicants shall meet all of the following requirements;

(1) The applicant has never been denied admittance to a teacher education program approved by the Oklahoma State Regents for Higher Education, the North Central Association of Colleges and Schools and by the Oklahoma Commission for Teacher Preparation to offer teacher education programs; and has never been enrolled in and subsequently failed courses necessary to successfully meet the minimum requirements of the program;

(2) The applicant has on file with the director of teacher education at an Oklahoma institution of higher education a plan for meeting standard certification requirements within three (3) years; and

(3) The applicant is participating in the teacher residency program set forth in 70 O.S. § 6-195, unless the

residency program has been suspended for lack of funding.

(c) **Issuance of standard alternative teaching certificates.** The State Department of Education shall issue a standard teaching certificate to an individual who successfully completes all of the requirements set forth in (a) and (b) of this Section within three (3) years of the date of issuance of the applicant's provisional alternative teaching certificate and meets all of the following requirements:

(1) The applicant has passed the Oklahoma Professional Teaching Exam (OPTE) for either elementary/middle level or secondary level; and

(2) The applicant has completed all professional education requirements of the alternative placement program set forth in 70 O.S. § 6-122.3.

(d) **No student teaching experience required.** Student teaching and/or prestudent teaching field experience shall not be required of alternative program applicants as a condition of receiving a provisional or standard certificate pursuant to the provisions of this Section.

(e) **State Board of Education exceptions.** In accordance with the requirements of 70 O.S. § 6-122.3, the State Board of Education may grant a waiver or exception to any of the requirements of this Section and may grant a certificate upon demonstration of specific competency in the subject area of specialization by the applicant.

[OAR Docket #14-682; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-681]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 1. General Teaching Certificate Requirements
210:20-9-9. Kinds, types, classes, and processing fees of certificates [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-189.1; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCOPORATIONS BY REFERENCE:
N/A/
ANALYSIS:
The rule describes various kinds, types and classes of teaching certificates issued by the State Board of Education. The proposed change to the rule is necessary to implement the 2013 amendments to 70 O.S. § 6-189.1 resulting from SB 170. SB 170 amended 70 O.S. § 6-189.1 to provide that any teacher with a secondary level teaching certificate can teach grades five (5) and six (6) in the subject area in which the teacher has received certification or endorsement.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 1. GENERAL TEACHING CERTIFICATE REQUIREMENTS

210:20-9-9. Kinds, types, classes, and processing fees of certificates

(a) **Kinds of certificates.** The specific use of each kind of certificate, in terms of the nature of services which the holder is permitted to render, is regulated by rules of the State Board of Education. ~~Effective July 1, 1997, the~~The kinds of certificates ~~which will be~~ available are:

(1) Administrative certificate

(A) Elementary ~~elementary~~ principal (Grades ~~grades pk-8~~ Pre-Kindergarten (Pre-K through eight (8)

(B) Middle ~~middle~~ level principal (Grades ~~grades 5-9~~five (5) through nine (9) (optional)

(C) Secondary ~~secondary~~ principal (Grades ~~grades 6-12~~five (5) through twelve (12)

(D) Superintendent ~~superintendent~~ (Grades ~~gradespk-12~~Pre-Kindergarten (Pre-K) through twelve (12)

(2) Early childhood education certificate (Grades ~~gradespk-3~~Pre-Kindergarten (Pre-K) through three (3)

(3) Elementary school certificate (Grades ~~grades 1-8~~one (1) through eight (8)

(4) Middle level certificate (Grades ~~grades 5-8~~five (5) through eight (8) (optional)

(5) ~~Prekindergarten~~Pre-Kindergarten - secondary certificate (Grades ~~grades pk-12~~Pre-Kindergarten (Pre-K) through twelve (12)

(6) Secondary school certificate (Grades ~~grades 6-12~~five (5) through twelve (~~12~~)

(7) Other certified personnel certificate (Grades ~~gradespk-12~~Pre-Kindergarten (Pre-K) through twelve (~~12~~)

(8) ~~Vocational-technical~~Career technology certificate (Grades ~~grades 6-12~~five (5) through twelve (12)

(b) **Types of certificates.** The endorsement indicates the type of license/certificate issued.

(c) **Classes of certificates.** The class determines the term of validity. The classes of certificates are:

(1) License-issued to beginning teachers with zero years of experience for a period of one (1) year validity

(2) Standard certificate-valid for five (5) years and renewal upon compliance with prescribed conditions

(3) Provisional certificate- term of validity varies depending upon regulatory basis for issuance

(d) **Processing fees of certificates.**

(1) Certificate $50.00

(2) Renewals $50.00

(3) License $50.00

(4) Alternative Placement Application/Evaluation $50.00

(5) All other transactions will be $50 or less

[OAR Docket #14-681; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-680]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-102. Career development program for paraprofessionals [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-127A.; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A/
ANALYSIS:
The proposed changes to the rule add a minimum GPA requirement that mirrors the requirements for alternative teacher certification set forth in statute, and remove the requirement that paraprofessionals with a provisional teaching certification complete the residency program in order to obtain a standard certificate. Instead, the teacher will complete a year of teaching experience in a public school and provide at least two letters of recommendation. The proposed changes are necessary because the residency program is currently on hiatus due to lack of funding and the addition of a GPA requirement is necessary to ensure provisional certificates are issued to qualified candidates for licensure. The proposed change to the rule also requires that the one year of experience necessary for a paraprofessional to qualify for a provisional teaching certificate cannot be experience gained by an individual seeking to obtain certification under the nontraditional certification path for special education teachers set forth in 210:20-9-105.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-102. Career development program for paraprofessionals

(a) **Paraprofessional credential.** The State Department of Education shall issue a paraprofessional credential to an applicant who meets all of the following requirements:

(1) Has~~has~~ a high school diploma or a General Educational Development (GED) Diploma;~~,~~

(2) Has~~has~~ met a career development paraprofessional program approved by the State Board of Education;~~,~~ and

(3) Has~~has~~ on file with the Board a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records.

(b) **Provisional teaching certificates - paraprofessional.** The State Department of Education shall issue a one-year provisional teaching certificate, renewable for up to three years, in early childhood, elementary education, or special education ~~teaching license~~ to a paraprofessional who meets all of the following requirements:

(1) Has been employed for one full school year (i.e., two consecutive semesters, three consecutive trimesters, or four consecutive quarters) with a public school as a paraprofessional in the area for which a license is being pursued. For purposes of this paragraph, experience obtained while teaching with a non-traditional certification in special education issued in accordance with the

provisions of 210:20-9-105 shall not count toward the one year experience requirement;

(2) Has ~~a~~earned at least a bachelor's degree from a~~an accredited~~ college or university whose accreditation is recognized by the Oklahoma State Regents for Higher Education and has attained a cumulative grade point average of not less than 2.5 on a 4.0 scale;~~.~~

(3) Has passed all of the following teacher competency examinations adopted by the Oklahoma Commission for Teacher Preparation prior to July 1, 2014, or adopted by the Commission for Educational Quality and Accountability on and after July 1, 2014:

(A) The Oklahoma General Education Test~~,~~ (OGET);

(B) The~~the Early Childhood or Elementary Education or Special Education~~ Oklahoma Subject Area Test (OSAT) in Early Childhood, Elementary Education, or Special Education; and

(C) The ~~the~~ Oklahoma Professional Teaching Exam (OPTE) (PK-8);~~.~~

(4) Has on file with the State Board of Education a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records;

(5) Has made application to the Oklahoma State Department of Education.

~~(6) The individual shall be reported on the certified personnel report and be considered as any other certified employee.~~

(~~7~~c) **Standard teaching certificate - paraprofessional.** The State Department of Education shall issue a standard teaching certificate to individuals who have met all of the requirements of (b) of this section and met all of the following requirements:

(1) The applicant has successfully completed at least one (1) full school year (i.e., two consecutive semesters, three consecutive trimesters, or four consecutive quarters) of teaching service in a public school accredited by the State Board of Education; ~~upon successfulcompletionofa residency year programand~~

(2) The applicant provides at least two (2) favorable recommendations for granting a standard teaching certificate to the applicant from:

(A) A school district board of education; and

(B) The chair or director of the accredited teacher preparation program in which the applicant completed the coursework requirements set forth in (3) of this subsection.

(3) Within three (3) years of initial issuance of the provisional teaching certificate in accordance with the provisions of (b) of this Section, the applicant has successfully completed twelve (12) semester hours of professional education coursework from an ~~accredited~~ institution of higher education whose accreditation is recognized by the Oklahoma State Regents for Higher Education. The twelve (12) hours of coursework required by this paragraph shall consist of coursework that:

(A) Is offered in a ~~which has an accredited~~teacher preparation program that has been accredited by the Oklahoma Commission for Teacher Preparation prior to July 1, 2014 or accredited by the Commission for Educational Quality and Accountability on and after July 1, 2014; ~~related to the license sought,~~

(B) Is related to the area of teacher certification sought;

(C) Includes ~~including~~ a minimum of three (3) semester hours in reading instruction.~~,from a higher education program accredited by the Oklahoma Commission for Teacher Preparation.~~

(d) **Reporting.** Any individual who has been issued a provisional certificate in accordance with the provisions of (b) of this Section shall be reported on the certified personnel report and be considered as any other certified employee.

[OAR Docket #14-680; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-684]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 15. General Competencies for Licensure and Certification
210:20-9-152. General competencies for licensure and certification [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 6-189; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

The rule establishes general minimum competencies for licensure and certification of public school teachers required by the Oklahoma Teacher Preparation Act at 70 O.S. §6-189(A). The proposed change to the rule updates the general competencies to be incorporated into the teacher preparation system as necessary to align the general competencies with the standards recommended by the Oklahoma Commission for Teacher Preparation.

CONTACT PERSON:

Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 15. GENERAL COMPETENCIES FOR LICENSURE AND CERTIFICATION

210:20-9-152. General competencies for licensure and certification

The general competencies for licensure and certification are:

~~(1) The teacher understands the central concepts and methods of inquiry of the subject matter discipline(s) he or she teaches and can create learning experiences that make these aspects of subject matter meaningful for students.~~

~~(2) The teacher understands how students learn and develop, and can provide learning opportunities that support their intellectual, social and physical development at all grade levels including early childhood, elementary, middle level, and secondary.~~

~~(3) The teacher understands that students vary in their approaches to learning and creates instructional opportunities that are adaptable to individual differences of learners.~~

~~(4) The teacher understands curriculum integration processes and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills and effective use of technology.~~

~~(5) The teacher uses best practices related to motivation and behavior to create learning environments that encourage positive social interaction, self-motivation and active engagement in learning, thus, providing opportunities for success.~~

~~(6) The teacher develops a knowledge of and uses a variety of effective communication techniques to foster active inquiry, collaboration, and supportive interaction in the classroom.~~

~~(7) The teacher plans instruction based upon curriculum goals, knowledge of the teaching/learning process, subject matter, students' abilities and differences, and the community; and adapts instruction based upon assessment and reflection.~~

~~(8) The teacher understands and uses a variety of assessment strategies to evaluate and modify the teaching/learning process ensuring the continuous intellectual, social and physical development of the learner.~~

~~(9) The teacher evaluates the effects of his/her choices and actions on others (students, parents, and other professionals in the learning community), modifies those actions when needed, and actively seeks opportunities for continued professional growth.~~

~~(10) The teacher fosters positive interaction with school colleagues, parents/families, and organizations in the community to actively engage them in support of students' learning and well-being.~~

~~(11) The teacher shall have an understanding of the importance of assisting students with career awareness and the application of career concepts to the academic curriculum.~~

~~(12) The teacher understands the process of continuous lifelong learning, the concept of making learning enjoyable, and the need for a willingness to change when the change leads to greater student learning and development.~~

~~(13) The teacher understands the legal aspects of teaching including the rights of students and parents/families, as well as the legal rights and responsibilities of the teacher.~~

~~(14) The teacher understands and is able to develop instructional strategies/plans based on the Oklahoma core curriculum.~~

~~(15) The teacher understands the State teacher evaluation process, "Oklahoma Criteria for Effective Teaching Performance," and how to incorporate these criteria in designing instructional strategies.~~

(1) **Learner development.** The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences.

(2) **Learner differences.** The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards.

(3) **Learning environments.** The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self motivation.

(4) **Content knowledge.** The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content.

(5) **Application of content.** The teacher understands how to connect concepts and use differing perspectives

to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues.

(6) **Assessment.** The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making.

(7) **Planning for instruction.** The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context.

(8) **Instructional strategies.** The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways.

(9) **Professional learning and ethical practice.** The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner.

(10) **Leadership and collaboration.** The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession.

[OAR Docket #14-684; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #14-676]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. School Board Members
210:20-23-3. Requirements for new school board member training [AMENDED]
210:20-23-4. Requirements for continuing education; certificates; costs [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 5-110; 70 O.S. § 5-110.1; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set forth the requirements for instruction for new school board members and the continuing education requirements for all school board members. The proposed amendments to the rules clarify the requirements for new board members who assume office by appointment; address carry-over of excess instructional credits earned; and update the breakdown of hourly requirements for specific categories of instruction. The proposed amendments to the rules are necessary to resolve confusion about the application of 70 O.S. § 5-110 and 5-110.1 and to incorporate the recent amendments to 70 O.S. § 5-110 resulting from the enactment of SB 91 during the 2013 legislative session.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 23. SCHOOL BOARD MEMBERS

210:20-23-3. Requirements for new and incumbent school board member training

(a) **Definitions.** The following words and terms, when used in this subchapter, shall have the following meaning:

(1) **"Approved instruction"** means instruction provided through workshops for the purpose of meeting the school board member instruction and continuing education requirements set forth in 70 O.S. §§5-110 and 5-110.1. Workshops providing instruction to qualify for credit pursuant to this Section and 210:20-23-4 shall include all in-state workshops, seminars, conferences, and/or conventions that are conducted by the State Department of Education, the Oklahoma Department of Career and Technology Education, the Oklahoma State School Boards Association, and all approved local professional development programs of the board member's district. Other programs must have joint prior approval in writing by the State Department of Education and the Oklahoma Department of Career and Technology Education. Requests for such approval must be in writing.

(2) **"Incumbent school board member"** means an individual who currently serves as a member of a district school board by either election or appointment and who also served as a school board member through either election or appointment to the term immediately prior to the current term of office.

(3) **"New school board member"** means an individual who has been elected or appointed to serve as a member of a district school board and who has not been previously appointed or elected to serve as a school board member to the term immediately prior to the current term for which the member has been elected or appointed.

(b) **Training for new school board members.** Within fifteen (15) months after the date of election or appointment, each ~~Each~~ new school board member shall complete at least twelve (12) hours of approved instruction on education issues that meet all of the following requirements: ~~within 15 months of election:~~

(1) ~~Two hours~~At least one (1) hour on public school finance ~~and reportingincluding public school finance~~ and/or, if appropriate, Career Technology finance;

(2) ~~Two hours~~At least one (1) hour on the Oklahoma ~~Open Meeting/Open Records Act~~Open Records Act and Oklahoma Open Meeting Act;

~~(3) One hour on new state and federal laws and their impact on local school districts;~~

(~~4~~3) At least one (1) ~~One~~ hour on ethics; and~~, duties, and responsibilities of school board members;~~

~~(5) Two hours on legal issues impacting local school districts;~~

~~(6) One hour on school employment and due process law;~~

~~(7) Two hours of specific instruction on the Individuals with Disabilities Education Act (IDEA); and~~

(~~8~~4) At least nine (9) hours of approved instruction in other educational issues in the following areas:~~, One hour~~

(A) Legal issues impacting local school districts;

(B) School employment and due process law;

(C) New laws;

(D) Special education law; or

(E) Additional hours of instruction in legal issues related to topics set forth in (1) through (3) of this subsection, provided that no hour of instruction shall be counted more than once to meet the required twelve (12) hours of new board member instruction. ~~on educational issues.~~

(c) **Training for incumbent school board members.** Within fifteen (15) months after the date of election or appointment, each incumbent school board member shall complete at least six (6) hours of approved instruction that meets all of the following requirements:

(1) At least one (1) hour of instruction in public school financeand/or, if appropriate, Career Technology finance;

(2) At least one (1) hour of instruction on the Oklahoma Open Records Act and the Oklahoma Open Meeting Act;

(3) At least one (1) hour of instruction on ethics; and

(4) At least three (3) hours of approved instruction in other educational issues in the topics referenced in this subsection and/or in (b)(1) through (b)(4) of this Section, provided that no hour of instruction shall be counted more than once to meet the required six (6) hours of training required by this subsection.

(d) **Short-term appointments.** School board members who hold their seats by appointment for less than fifteen (15) months prior to the date of the next election shall be excused from the training requirements in (b) and (c) of this Section. However, the provisions of this subsection do not excuse an appointed board member from any training requirements of 70 O.S. §5-110 incurred during the incumbent's previous term or any future training requirements incurred upon future election or appointment.

(e) **Carry over of excess approved instruction credits.** Any hours of approved instruction in excess of the requirements of this Section that have been earned during a school board member's current term of office may be applied toward the continuing education requirements of 70 O.S. §5-110.1, provided that:

(1) No excess hours of approved instruction shall be permitted to carry over into a subsequent term of office; and

(2) No hour of instruction shall be counted more than once to meet any of the training requirements set forth in this Section or in 210:20-23-4.

210:20-23-4. Requirements for continuing education; certificates; costs

(a) **Continuing education requirements.** In addition to the training requirements set forth in 210:20-23-3, every new and incumbent school board member elected to a full term of office of three (3) years or more shall meet the continuing education requirements set forth in 70 O.S. 5-110.1(A) as follows:

(1) Members elected to a full term of three (3) years or more shall be required to attend a minimum of nine (9) hours of continuing education;

(2) Members elected to a full term of four (4) years or more shall be required to attend a minimum of twelve (12) hours of continuing education; and

(3) Members elected to a full term of five (5) years or more shall be required to attend at least fifteen (15) hours of continuing education.

(b) **Approved instruction.** Workshops which qualify for credit shall include all in-state workshops, seminars, conferences, and/or conventions that are conducted by the State Department of Education, the Oklahoma Department of Career and Technology Education, ~~State Department of Vocational and Technical Education,~~ the Oklahoma State School Boards Association and all approved local professional development programs of the board member's district. Other programs must have joint prior approval in writing by the State Department of Education and the Oklahoma Department of Career and Technology Education.~~State Department of Vocational and Technical Education.~~ Requests for such approval must be in writing.

(~~b~~c) **Certificates of completion.** School board members who complete any approved workshop shall receive a certificate of completion at the end of the workshop. Copies of the certificate shall be forwarded to the State Department of Education by the director of the workshop. Upon completion of local professional development workshops, copies of the

certificate, signed by the professional development coordinator, shall be forwarded by the board president or designee to the State Department of Education.

[OAR Docket #14-676; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #14-691]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Budgeting and Business Management
Part 2. Personnel and Procedures
210:25-5-10. The encumbrance clerk [AMENDED]
210:25-5-11. The school district treasurer [AMENDED]
AUTHORITY:
State Department of Education; 70 O.S. § 3-104; 70 O.S. § 5-190
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set forth the duties and responsibilities for school district treasurers and school district encumbrance clerks. The amendments to the rules incorporate the training requirements of 70 O.S. § 5-190 into the rules and require State Department of Education approval of training and continuing education courses offered to school district encumbrance clerks and school district treasurers.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. BUDGETING AND BUSINESS MANAGEMENT

PART 2. PERSONNEL AND PROCEDURES

210:25-5-10. The encumbrance clerk

(a) **Duties and responsibilities.** The encumbrance clerk shall be employed by the district board of education and may also serve as the minute clerk. The encumbrance clerk is responsible for the following duties:

(1) Maintain Appropriation and Encumbrance Ledger.

(2) Determine that encumbrances do not exceed appropriations and are for purpose of appropriation charged.

(3) May complete purchase orders.

(4) Transmit warrants to vendor(s).

(5) Perform such other duties as the board or its committees may require.

(b) **Required forms and documents.** In performing the required duties of the position the Encumbrance Clerk needs the following forms and documents:

(1) A supply of approved purchase order blanks.

(2) A supply of approved warrant blanks.

(3) A copy of the following:

(A) S.A.&I Form 2661, Estimate of Needs.

(B) S.A.&I. Form 307, Request for approval of State Aid and/or Federal Funds.

(C) Form 308 - Cash Fund Estimate and Request for Appropriation.

(D) Form 150 - Supplemental Estimate

(4) Other forms to meet board's requirements.

(c) **Additional duties - dual appointments as minute clerk.** If also serving as the minute clerk additional duties to perform:

(1) Maintain an accurate journal of the proceedings of the board of education.

(2) Perform such other duties as the board or its committees may require.

(d) **Encumbrance clerk training and continuing education requirements.** Every school district encumbrance clerk shall complete the following training requirements in accordance with the provisions of 70 O.S. § 5-190:

(1) **Encumbrance clerk training.** Within nine (9) months after the first day of employment as an encumbrance clerk by a local school district, every school district encumbrance clerk shall complete at least twelve (12) hours of approved instruction that meets all of the following requirements:

(A) Any courses of instruction or workshop of courses offered for purposes of meeting the requirements of this subsection shall be approved for credit by the State Department of Education Office of Financial Services;

(B) The instruction shall address all of the following topics:

(i) School finance laws of the State;

(ii) Accounting;

(iii) Ethics;

(iv) Duties and responsibilities of a school district encumbrance clerk.

(2) **Encumbrance clerk continuing education.** In addition to the requirements of (1) of this subsection, every school district encumbrance clerk shall be required to complete an additional twelve hours (12) of approved

continuing education instruction every three (3) years from the date of initial employment with a school district. The twelve (12) hours of required continuing education instruction shall meet all of the requirements for encumbrance clerk training set forth in (1) of this subsection.

(e) **Certificates of completion.** As a condition of course approval, every instructor of a school district encumbrance clerk course or coordinator of a workshop of school district encumbrance clerk courses shall provide a certificate of completion to encumbrance clerks upon successful completion of the course or workshop offered for the purpose of fulfilling the requirements of (d) of this Section. Upon completion of the course, copies of the certificate, signed by the course instructor or the workshop coordinator, shall be forwarded by the encumbrance clerk to the district board president or the board president's designee.

(f) **Compliance.** Failure to comply with the training requirements set forth in this Section shall result in a deficiency on the accreditation report of the school district that employs the encumbrance clerk.

210:25-5-11. The school district treasurer

(a) **Overview.** The law requires the county treasurer of each county to also be the school district treasurer for all school districts in the County, except that the board of education in each school district may appoint a local treasurer. All school districts are also allowed to employ an assistant local treasurer. An assistant local treasurer may perform any of the duties and exercise any of the powers of the local treasurer with the same force and effect. A school district treasurer or assistant treasurer may also serve as a minute clerk. The local treasurer and/or assistant treasurer shall be a resident of this state. A local treasurer or assistant local treasurer may be appointed for more than one school district. Since the State Auditor and Inspector is directly charged by law to prescribe the forms and procedures for the operation of the county treasurer's office, nothing herein is intended to disturb or supersede any directive or advice from the Auditor's Office. It is, however, agreed upon by the above mentioned office and the Department of Education that if the treasurer follows the principles and procedures as provided below for the operation of the local treasurer's office of the school district, a valuable service to boards of education, taxpayers and the general public will occur.

(b) **Duties and responsibilities.** The Treasurer is required by law to:

(1) Ensure ~~Insure~~ that warrants shall show warrant number, fiscal year, and fund against which the warrant is being drawn.

(2) Code all receipts using the Oklahoma Cost Accounting System dimensions of Fiscal Year, Fund, Project Reporting, Source of Revenue, Program, and Operational Unit, to the bold dimension for State Department of Education requirements. If coded in detail have ability to roll dimensions to the bold for magnetic media transfer to State Department of Education.

(~~c~~3) The Treasurer of a School District shall keep the following computerized records based on the following format:

(~~1~~A) SA&I, Form 208 (1967) Treasurer's General Ledger.

(~~2~~B) SA&I, Form 2061 (1967) Treasurer's Cash Ledger.

(~~3~~C) SA&I, Form 2062 (1967) Treasurer's Investment Ledger.

(~~4~~D) SA&I, Form 207 (1967) Treasurer's Warrant Ledger.

(~~5~~E) SA&I, Form 411 (1967) Treasurer's Receipt.

(~~6~~F) SA&I, Form 410 (1967) Treasurer's Check.

(~~7~~G) SA&I, Form 1141 (1967) Bond Register.

(~~8~~H) Deposit Books.

(~~9~~I) Such other records as may be deemed advisable or useful.

(~~d~~4) The Treasurer shall also maintain adequate files of:

(~~1~~A) Paid Warrants-Warrants purchased with a treasurer's check, shall be filed by group in the numerical order of the treasurer's checks which paid them. Each group of warrants paid by a treasurer's check shall also have a copy of the treasurer's check with which they were purchased attached to them.

(~~2~~B) Voided Warrants--Shall be filed in the numerical order of their issuance by fund and by fiscal year in a separate file and shall be sufficiently mutilated to prevent their being cashed but not mutilated as to not be identifiable.

(~~3~~C) Paid Bonds and Coupons.

(~~4~~D) Canceled Bonds and Coupons.

(~~5~~E) Bank and fiscal agency statements, including deposit tickets and paid warrants/checks.

(~~6~~F) County Clerk's remittance advises.

(~~7~~G) Copies of any directive from the County Clerk or County Excise Board supplementing, changing or transferring appropriation balances.

(~~8~~H) State Board of Education notices and allocation of State and Federal Aid.

(~~9~~I) School board resolutions pertinent to the conduct of the School Treasurer's office and duties.

(~~10~~J) Letters, memos, or other supporting data pertaining to transactions of the school district or to the operation of the Treasurer's office.

(~~11~~K) Any other files which may be considered advisable or useful.

(c) **Treasurer training and continuing education requirements.** Every school district treasurer who does not also act as the county treasurer shall complete the following training requirements in accordance with the provisions of 70 O.S. § 5-190:

(1) **Treasurer clerk training.** Within nine (9) months after the first day of assuming duties as a local school district treasurer, every school district treasurer shall complete at least twelve (12) hours of approved instruction that meets all of the following requirements:

(A) Any courses of instruction or workshop of courses offered for purposes of meeting the requirements of this subsection shall be approved for credit by the State Department of Education Office of Financial Services;

(B) The instruction shall address all of the following topics:

(i) School finance laws of the State;

(ii) Accounting;

(iii) Ethics;

(iv) Duties and responsibilities of a school district treasurer.

(2) **Treasurer continuing education.** In addition to the requirements of (1) of this subsection, every school district treasurer shall be required to complete an additional twelve hours (12) of approved continuing education instruction every three (3) years from the date of initial employment with a school district. The twelve (12) hours of required continuing education instruction shall meet all of the requirements for treasurer training set forth in (1) of this subsection.

(d) **Certificates of completion.** As a condition of course approval, every instructor of a school district treasurer course or coordinator of a workshop of school district treasurer courses shall provide a certificate of completion to treasurers upon successful completion of the course or workshop offered for the purpose of fulfilling the requirements of (c) of this Section. Upon completion of the course, copies of the certificate, signed by the course instructor or the workshop coordinator, shall be forwarded by the treasurer to the district board president or the board president's designee.

(e) **Compliance.** Failure to comply with the training requirements set forth in this Section shall result in a deficiency on the accreditation report of the school district that employs the treasurer.

[OAR Docket #14-691; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #14-671]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Transportation
210:30-5-8. School bus driver certification [NEW]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. §§ 9-118; 47 O.S. § 15-109; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
October 15, 2013 through November 18, 2013
PUBLIC HEARING:
November 18, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 5. Transportation
210:30-5-8. School bus driver certification [NEW]
GUBERNATORIAL APPROVAL:
July 24, 2013
REGISTER PUBLICATION:
30 Ok Reg 2170
DOCKET NUMBER:
13-1143
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule sets out the requirements for certification of school bus drivers pursuant to 70 O.S. § 3-104(6), which grants authority to the State Board of Education to formulate rules governing the issuance and revocation of certificates for public school bus drivers. The statute also requires adopted regulations to be incorporated into school bus driver contracts. In addition, the rule is necessary to comply with 47 O.S. § 15-109, which requires the State Board of Education to adopt and enforce regulations to govern the design and operation of all school buses used for the transportation of public school children. The proposed new rule is necessary to protect the public safety of public school children who rely upon public school transportation to travel to and from school and replaces the former language pertaining to school bus driver certification at 210:30-5-1(g), which was revoked in 2013. The new rule includes language necessary to ensure compliance with the Americans with Disabilities Act by creating a procedure whereby school bus drivers who have monocular vision conditions or drivers with diabetes who are dependent upon insulin can demonstrate their ability to safely transport public school children in school buses.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. TRANSPORTATION

210:30-5-8. School bus driver certification

(a) **General criteria.**

(1) Pursuant to the authority granted to the State Board of Education in 70 O.S. § 3-104(6) to regulate school bus drivers and 47 O.S. § 15-109, no board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid Oklahoma School Bus Driver's Certificate issued by the State Board of Education authorizing said bus driver to operate a school bus within the State of Oklahoma.

(2) In order to obtain and maintain a standard Oklahoma School Bus Driver's Certificate, the State Board of Education requires all public school bus drivers to:

(A) Successfully complete a school bus driver training course approved by the State Department of Education;

(B) Possess and maintain a valid Commercial Driver's License (CDL) issued by the Oklahoma

State Department of Public Safety, which includes the following endorsements required by 70 O.S. § 6-110.1 in accordance with the qualifications determined by the Department of Public Safety:

(i) A school bus "S" endorsement; and

(ii) For drivers of vehicles designed to transport sixteen (16) or more passengers (including the driver), a passenger "P" endorsement; and

(C) Comply with all other health and safety qualifications set forth in this Section.

(3) The State Board of Education recognizes the substantial public interest in safe school bus transportation of children. Therefore, in addition to meeting the vision standards required to obtain a CDL from the Department of Public Safety, in order to obtain a standard or emergency Oklahoma School Bus Driver's Certificate, all school bus drivers must have:

(A) A visual acuity of not less than twenty-forty (20/40) (Snellen) in each eye with or without corrective lenses; and

(B) Not less than twenty-forty (20/40) (Snellen) with both eyes with or without corrective lenses; and

(C) A minimum field of vision of 70 degrees horizontal median vision in each eye.

(4) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.

(5) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.

(6) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(7) At a minimum, the chief administrative officer of the local school district or designee of the chief administrative officer shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(8) The State Board of Education shall revoke the bus driver's certificate of any holder who fails to comply with the provisions of this Section.

(9) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to 210:30-5-2.

(b) **School bus driver certificate requirements.**

(1) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

(A) Is at least 18 years of age;

(B) Has successfully completed a special school bus drivers' course approved by the State Department of Education;

(C) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety;

(D) Has not been convicted of a felony, or pled guilty or nolo contendere to a felony during the last ten years; and

(E) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three (3) years:

(i) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. § 751 et seq.;

(ii) Has a conviction for a violation of 47 O.S. § 11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug;

(iii) Has been convicted or plead guilty to a violation of 47 O.S. § 761, operating a motor vehicle while impaired by consumption of alcohol;

(iv) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired; or

(v) Has had four (4) or more traffic violations (excluding parking violations).

(2) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable):

(A) Is at least 18 years of age;

(B) Holds a valid Commercial Drivers License with the proper endorsements required by the Department of Public Safety; and

(C) Has passed a driving record check and meets the requirements set forth in (1)(D)-(E) of this subsection.

(3) Requirements for Renewal of the Standard Five-Year Certificate include:

(A) Every five (5) years, each driver shall have successfully completed four (4) hours per year of inservice training approved by the State Department of Education;

(B) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant meets all requirements for standard certification; [47 O.S. § 15-109]

(C) Each applicant has a health certificate on file signed by a licensed physician and meets all vision requirements;

(D) Each applicant has not been convicted or pled guilty to a felony in the last ten (10) years;

(E) The applicant's driving record has been checked and meets all other State Board of Education requirements for certification; and

(F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course approved by the State Department of Education. Such a course must, at a minimum, include topics on:

(i) Railroad crossings;

(ii) Emergency evacuation procedures;

(iii) Mirror placement;

(iv) Pick-up and drop-off procedures;

(v) Sound driving practices; and

(vi) Accident procedures.

(4) During the period that the application for issuance of a new or renewed school bus driver certificate is pending, applicants must immediately notify the State Department of Education Transportation Section of any arrest, citation, or conviction of any disqualifying offense set forth in (1)(E) of this subsection; any moving violation; or any involvement in a traffic accident.

(c) **Certification of drivers with a monocular vision condition.**

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of this Section by providing evidence showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

(A) Documentation establishing that Applicant's vision condition has been present and unchanged for three years or more prior to the application for an exemption from the vision requirements of (a)(3) of this Section;

(B) Documentation establishing that Applicant has experience in safely operating a Commercial Motor Vehicle with the monocular vision condition within the three (3) year period immediately preceding the date of the application for an exemption from the vision requirements of (a)(3) of this Section; and

(C) One of the following:

(i) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the vision requirements of 49 C.F.R. § 391.41; or

(ii) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the vision requirements of 49 C.F.R. § 391.41.

(2) Documentation of the evidence required by (1)(A) of this subsection shall consist of documentation for each one of the following:

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of the official Oklahoma State Department of Public Safety vision form documenting the examination. (B) In addition, if not included on the official Oklahoma State Department of Public Safety vision form, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

(i) The nature of the vision deficiency, including how long the individual has had the deficiency;

(ii) The date of the examination;

(iii) Whether the applicant's vision is stable;

(iv) The visual acuity of each eye, corrected and uncorrected;

(v) The field of vision of each eye, including central and peripheral fields, testing to at least 120 in the horizontal. (Formal perimetry is required. The doctor must submit the formal perimetry test for each eye and interpret the results in degrees of field of vision.);

(vi) Whether the applicant has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and

(vii) The ophthalmologist/optometrist's medical opinion as to whether the individual has sufficient vision to perform the driving tasks required to operate a school bus.

(3) Documentation of the evidence required by (1)(B) of this subsection shall consist of each of the following:

(A) Applicant must provide documentation of experience in operating a commercial motor vehicle (as defined by 47 O.S. §§ 1-107.1, 1-107.2, or 1-107.3) while the Applicant has a monocular vision condition for the three (3) year period immediately preceding the date of this application which includes the following information:

(i) For any applicant employed as a driver of a commercial motor vehicle, the DOT # or ICC# of Applicant's employer(s); for any applicant with driving experience as an independent motor carrier, a list of names, addresses, and phone numbers of customers for whom Applicant performed transportation services through the operation of a commercial motor vehicle on public highways;

(ii) A list of all dates (month/date/year) during the three (3) year period for which Applicant performed services driving and/or operating a commercial motor vehicle, and the number of hours driven per week; and

(iii) A list of all types of commercial motor vehicles operated by Applicant and gross vehicle weight rating ("GVWR") of each vehicle operated by Applicant;

(B) Acceptable forms of required documentation of the Applicant's driving experience described in (3) of this paragraph may include either:

(i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or

(ii) An affidavit by the Applicant.

(C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:

(i) Contains no suspensions or revocations of Applicant's driver's license for the operation of any motor vehicle (including Applicant's personal vehicle);

(ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;

(iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)

(4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must submit to their employer a copy of the documentation required by (1)(C) of this subsection.

(d) **Certification of drivers with insulin-dependent diabetes mellitus.**

(1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:

(A) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or

(B) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the physical requirements of 49 C.F.R. § 391.41.

(2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:

(A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;

(B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).

(i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.

(ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.

(C) The individual shall carry a source of rapidly absorbable glucose at all times while operating a school bus; and

(D) The individual shall meet the annual physical examination requirements for drivers with metabolic diseases set forth by the Department of Public Safety in OAC 595:10-5.

(E) The individual shall notify the Department of Public Safety and the State Department of Education of any changes in physical or mental ailments or conditions which may cause loss of control or partial control or may otherwise render the individual incapable of properly controlling a school bus.

(3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:

(A) A current copy of the diabetes exemption certificate of the individual;

(B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;

(C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and

(D) Copies of any medical certifications obtained pursuant to (5) of this subsection.

(4) An individual holding a diabetes exemption certificate shall immediately notify the superintendent (or the superintendent's designee) of the school district in which the individual is employed if the individual's blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. Upon receipt of such notice, the superintendent or the superintendent's designee shall not allow the individual holding the diabetes exemption certificate to drive. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver

cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

[OAR Docket #14-671; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-686]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:35-1-4. Standards eligible for deregulation [AMENDED]
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 1. Standard I: Philosophy (and/or Mission) and Goals
210:35-3-4. Standards eligible for deregulation [REVOKED]
Part 3. Standard II: School-Community Relationships
210:35-3-24. Standards eligible for deregulation [REVOKED]
Part 5. Standard III: Administration and Organization
210:35-3-44. Standards eligible for deregulation [REVOKED]
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate
210:35-3-64. Standards eligible for deregulation [REVOKED]
Part 9. Standard V: The School Staff
210:35-3-84. Standards eligible for deregulation [REVOKED]
Part 11. Standard VI: Student Services
210:35-3-104. Standards eligible for deregulation [REVOKED]
Part 13. Standard VII: The Media Program
210:35-3-124. Standards eligible for deregulation [REVOKED]
Part 15. Standard VIII: Student Activities Program
210:35-3-144. Standards eligible for deregulation [REVOKED]
Part 17. Standard IX: Financial Support
210:35-3-164. Standards eligible for deregulation [REVOKED]
Part 19. Standard X: School Facilities
210:35-3-184. Standards eligible for deregulation [REVOKED]
Subchapter 5. Additional Standards for Elementary Schools
Part 9. Standard V: The School Staff
210:35-5-46. Standards eligible for deregulation [REVOKED]
Part 13. Standard VII: The Media Program
210:35-5-75. Standards eligible for deregulation [REVOKED]
Subchapter 7. Additional Standards for Middle Level Schools
Part 5. Standard III: Administration and Organization
210:35-7-22. Standards eligible for deregulation [REVOKED]
Part 9. Standard V: The School Staff
210:35-7-45. Standards eligible for deregulation [REVOKED]
Part 13. Standard VII: The Media Program
210:35-7-65. Standards eligible for deregulation [REVOKED]
Subchapter 9. Additional Standards for Secondary Schools
Part 5. Standard III: Administration and Organization
210:35-9-22. Standards eligible for deregulation [REVOKED]
Part 9. Standard V: The School Staff
210:35-9-47. Standards eligible for deregulation [REVOKED]
Part 13. Standard VII: The Media Program
210:35-9-75. Standards eligible for deregulation [REVOKED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. 3-129.11; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules list the accreditation standards eligible for deregulation. The proposed changes revoke the lists of rules pertaining to accreditation standards eligible for deregulation. The proposed revocation of the rules is necessary to bring the rules into compliance with the new provisions of the School District Empowerment Program at 70 O.S. § 3-129.11 added in 2013 by HB 2131. In addition, the proposed revocation is necessary because use of the lengthy rulemaking process is unfeasible to maintain current and updated lists of rules eligible for deregulation. The list of rules eligible for deregulation is out of date and includes numerous citations to subsections, paragraphs and subparagraphs of rules which no longer exist.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

210:35-1-4. Standards eligible for deregulation

(a) Public schools shall be eligible to apply for deregulation of any State Department of Education accreditation standard or regulation, request a waiver from a statutory requirement, and/or apply for participation in the School District Empowerment Plan in accordance with the procedures set forth in 210:35-3-228 and 210:35-3-229. Public schools shall not be granted exemptions or waivers from any accreditation standard, regulation, or statute that is related to the following categories of statutes and regulations:

(1) Federal, state, and local statutes and regulations relating to health, safety, civil rights and insurance;

(2) State statutes and regulations pertaining to testing required by the Oklahoma School Testing Program Act

and reporting of test results and accountability data to the State Department of Education;

(3) Statutes and regulations pertaining to financial reporting and compliance, audits, audit procedures, and audit requirements;

(4) Federal and state statutes and regulations relating to education of children with disabilities;

(5) State regulations pertaining to the public school year calendar at 70 O.S. § 1-109;

(6) State regulations pertaining to student suspension requirements at 70 O.S. § 24-101.3;

(7) Statutes and regulations pertaining to the Oklahoma Open Meeting Act at 25 O.S. §§ 301 et seq. and the Oklahoma Open Records Act at 51 O.S. §§ 24A.1 et seq.;

(8) Federal and state statutes and regulations pertaining to the rights of children to attend school free of charge as set forth in 70 O.S. § 1-114;

(9) State statutes and regulations pertaining to the minimum salary schedule for teachers as set forth in 70 O.S. § 18-114.12;

(10) Statutes and regulations pertaining to participation of school district employees in the Teachers' Retirement System of Oklahoma as set forth in 70 O.S. §§ 17-101 et seq.;

(11) Statutes and regulations pertaining to health insurance plans for school district employees required by 70 O.S. § 5-117.5 and cafeteria plans required by 70 O.S. § 26-104;

(12) Statutes and regulations pertaining to criminal history record checks for public school employees;

(13) Statutes and regulations pertaining to evaluations of teachers and school personnel as set forth in 70 O.S. §§ 6-101.10 and 6-101.11;

(14) Statutes and regulations pertaining to the dismissal and due process procedures for administrators as set forth in 70 O.S. §§ 6-101.13 through 6-101.15;

(15) Statutes and regulations pertaining to the dismissal and due process procedures for teachers as set forth in 70 O.S. §§ 6-101.21 through 6-101.26;

(16) Statutes and regulations pertaining to the payroll deduction requirements as set forth in 70 O.S. §5-139;

(17) Statutes and regulations pertaining to the dismissal and due process procedures for education support employees as set forth in 70 O.S. §§ 6-101.40 through 6-101.47;

(18) Statutes and regulations pertaining to certification of teachers, counselors, librarians, school nurses, superintendents, principals, supervisors, school bus drivers, or any other instructional, supervisory, or administrative employee unless otherwise exempt from certification or licensure requirements;

(19) Statutes pertaining to negotiations between school districts and school employees set forth in 70 O.S. §§ 509.1 through 509.11;

(20) Statutes and regulations pertaining to the required courses that must be offered in order to meet the curriculum requirements set forth in 70 O.S. § 103.6;

(21) Statutes and regulations pertaining to demonstration of mastery of state academic content standards set forth at 70 O.S. § 1210.523;

(22) Statutes and regulations pertaining to the instruction and continuing education requirements for school board members set forth in 70 O.S. §§ 5-110, 5-110.1, and 5-110.2; and

(24) Any other federal statutes or regulations applicable to the state public school system from which the state has not received a waiver.

(b) No later than July 1 of every year, the State Department of Education shall publish an updated list on its website of all Oklahoma statutes, regulations, and accreditation standards that are ineligible for deregulation in accordance with (a) of this Section.

~~The following sections, subsections, and/or subdivisions as listed under each standard are eligible for deregulation.~~

~~(1) **STANDARD I: Philosophy (and/or Mission) and Goals.**~~

~~(A) 210:35-3-6~~

~~(B) 210:35-3-7~~

~~(C) 210:35-3-8~~

~~(D) 210:35-3-9~~

~~(2) **STANDARD II: School-Community Relationships.**~~

~~(A) 210:35-3-26~~

~~(B) 210:35-3-27~~

~~(C) 210:35-3-30~~

~~(3) **STANDARD III: Administration and Organization.**~~

~~(A) 210:35-3-46 (b), (c), (d), (e), first sentence only, (f), (g), (h) first sentence, (h) (1) (B), (h) (1) (C), (h) (1) (D), (h) (3)~~

~~(B) 210:35-3-47 (1), (3), (6), (7) (A), (7) (C), 7 (D), (8), (9)~~

~~(C) 210:35-3-48 (a) (1), (a) (2), (a) (3), (a) (4), (a) (5), (a) (6), (a) (7), (a) (8), (a) (8) (B), (a) (8) (C), (a) (8) (D), (b) (1), (b) (2), (b) (3), (b) (3) (A), (c)~~

~~(D) 210:35-7-21~~

~~(E) 210:35-9-21~~

~~(4) **STANDARD IV: Curriculum, Instruction, Assessment and Climate.**~~

~~(A) 210:35-3-66 (b), (e), (f), (g), (h), (i), (j) (5), (j) (6), (j) (7), (j) (8)~~

~~(B) 210:35-3-67~~

~~(C) 210:35-3-68 (a), (e), (f), (g), (i), (j)~~

~~(D) 210:35-3-69 (a), (b), (c), (e), (f), (g) (h), (j)~~

~~(5) **STANDARD V: The School Staff.**~~

~~(A) 210:35-3-86 (b), (c), (d), (e)~~

~~(B) 210:35-5-41~~

~~(C) 210:35-5-42 (d) (2), (f)~~

~~(D) 210:35-5-43~~

~~(E) 210:35-5-44~~

~~(F) 210:35-5-45 (a) does not include (a) (1) through (a) (3); (a) (4), (b), (b) (1) through (b) (4)~~

~~(G) 210:35-7-41 (c), (f), (g)~~

~~(H) 210:35-7-42~~

~~(I) 210:35-7-43~~

~~(J) 210:35-7-44 (a), (b), (c), (e), (f)~~
~~(K) 210:35-9-41 (a), (e), (f)~~
~~(L) 210:35-9-42~~
~~(M) 210:35-9-43~~
~~(N) 210:35-9-44 (a) through (i)~~
~~(O) 210:35-9-45 (a), (b)~~

~~(6) **STANDARD VI: Student Services.**~~
~~(A) 210:35-3-106 (a), (c) (1), (c) (2), (c) (3), (c) (4), (d)~~
~~(B) 210:35-3-107 (a) through (e)~~
~~(C) 210:35-3-108 (a)~~

~~(7) **STANDARD VII: The Media Program.**~~
~~(A) 210:35-3-126 (a) through (i)~~
~~(B) 210:35-3-127 (a) through (e)~~
~~(C) 210:35-3-128~~
~~(D) 210:35-5-71~~
~~(E) 210:35-5-72~~
~~(F) 210:35-5-73~~
~~(G) 210:35-5-74~~
~~(H) 210:35-7-61~~
~~(I) 210:35-7-62~~
~~(J) 210:35-7-63~~
~~(K) 210:35-7-64~~
~~(L) 210:35-9-71~~
~~(M) 210:35-9-72~~
~~(N) 210:35-9-73 (a), (b), (c)~~
~~(O) 210:35-9-74~~

~~(8) **STANDARD VIII: Student Activities Program. 210:35-3-146 (1) through (9)**~~

~~(9) **STANDARD IX: Financial Support. 210:35-3-166 (b), (c), (d), (e) (1), (e) (2), (f)**~~

~~(10) **STANDARD X: School Facilities. 210:35-3-186 (f), (h)**~~

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 1. STANDARD I: PHILOSOPHY (AND/OR MISSION) AND GOALS

210:35-3-4. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard I) are eligible for deregulation.~~

~~(1) 210:35-3-6~~
~~(2) 210:35-3-7~~
~~(3) 210:35-3-8~~
~~(4) 210:35-3-9~~

PART 3. STANDARD II: SCHOOL-COMMUNITY RELATIONSHIPS

210:35-3-24. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard II) are eligible for deregulation.~~

~~(1) 210:35-3-26~~
~~(2) 210:35-3-27~~
~~(3) 210:35-3-30~~

PART 5. STANDARD III: ADMINISTRATION AND ORGANIZATION

210:35-3-44. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard III) are eligible for deregulation.~~

~~(1) 210:35-3-46 (b), (c), (d), (e), first sentence only, (f), (g), (h) first sentence, (h) (1) (B), (h) (1) (C), (h) (1) (D), (h) (3)~~
~~(2) 210:35-3-47 (1), (3), (6), (7) (A), (7) (C), (7) (D), (8), (9)~~
~~(3) 210:35-3-48 (a) (1), (a) (2), (a) (3), (a) (4), (a) (5), (a) (6), (a) (7), (a) (8), (a) (8) (B), (a) (8) (C), (a) (8) (D), (b) (1), (b) (2), (b) (3), (b) (3) (A), (c)~~

PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

210:35-3-64. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard IV) are eligible for deregulation.~~

~~(1) 210:35-3-66 (e), (f), (g), (h), (i), (j) (5), (j) (6), (j) (7), (j) (8)~~
~~(2) 210:35-3-67~~
~~(3) 210;35-3-68 (a), (e), (f), (g), (i), (j)~~
~~(4) 210:35-3-69 (a), (b), (c), (e), (f), (g), (h), (j)~~

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-3-84. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard V) are eligible for deregulation: 210:35-3-86(b), (c), (d), (e)~~

PART 11. STANDARD VI: STUDENT SERVICES

210:35-3-104. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VI) are eligible for deregulation.~~

~~(1) 210:35-3-106(a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (d)~~
~~(2) 210:35-3-107 (a) through (e)~~
~~(3) 210:35-3-108 (a)~~

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-3-124. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VII) are eligible for deregulation.~~

~~(1) 210:35-3-126 (a) through (i)~~
~~(2) 210:35-3-127 (a) through (e)~~
~~(3) 210:35-3-128~~

PART 15. STANDARD VIII: STUDENT ACTIVITIES PROGRAM

210:35-3-144. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VIII) are eligible for deregulation: 210:35-3-146 (1) through (9)~~

PART 17. STANDARD IX: FINANCIAL SUPPORT

210:35-3-164. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard IX) are eligible for deregulation: 210:35-3-166 (b), (c), (d), (e), (1), (e)(2), (f)~~

PART 19. STANDARD X: SCHOOL FACILITIES

210:35-3-184. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard X) are eligible for deregulation: 210:35-3-186~~

SUBCHAPTER 5. ADDITIONAL STANDARDS FOR ELEMENTARY SCHOOLS

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-5-46. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard V) are eligible for deregulation.~~

~~(1) 210:35-5-41~~
~~(2) 210:35-5-42 (d), (2), (f)~~
~~(3) 210:35-5-43~~
~~(4) 210:35-5-44~~
~~(5) 210:35-5-45 (a) does not include (a) (1) through (a) (3); (a) (4), (b), (b) (1) through (b) (4)~~

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-5-75. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VII) are eligible for deregulation.~~

~~(1) 210:35-5-71~~
~~(2) 210:35-5-72~~
~~(3) 210:35-5-73~~
~~(4) 210:35-5-74~~

SUBCHAPTER 7. ADDITIONAL STANDARDS FOR MIDDLE LEVEL SCHOOLS

PART 5. STANDARD III: ADMINISTRATION AND ORGANIZATION

210:35-7-22. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard III) are eligible for deregulation: 210:35-7-21.~~

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-7-45. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard V) are eligible for deregulation.~~

~~(1) 210:35-7-41 (c), (f), (g)~~
~~(2) 210:35-7-42~~
~~(3) 210:35-7-43~~
~~(4) 210:35-7-44(a), (b), (c), (e), (f)~~

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-7-65. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VII) are eligible for deregulation~~

~~(1) 210:35-7-61~~
~~(2) 210:35-7-62~~
~~(3) 210:35-7-63~~
~~(4) 210:35-7-64~~

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 5. STANDARD III: ADMINISTRATION AND ORGANIZATION

210:35-9-22. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard III) are eligible for deregulation: 210:35-9-21~~

PART 9. STANDARD V: THE SCHOOL STAFF

210:35-9-47. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard V) are eligible for deregulation.~~

~~(1) 210:35-9-41 (a), (e), (f)~~
~~(2) 210:35-9-42~~
~~(3) 210:35-9-43~~
~~(4) 210:35-9-44 (a) through (i)~~
~~(5) 210:35-9-45 (a), (b)~~

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-9-75. Standards eligible for deregulation [REVOKED]

~~The following sections of this standard (Standard VII) are eligible for deregulation.~~

~~(1) 210:35-9-71~~
~~(2) 210:35-9-72~~
~~(3) 210:35-9-73 (a), (b), (c)~~
~~(4) 210:35-9-74~~

[OAR Docket #14-686; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-677]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 19. Standard X: School Facilities
210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 5-148; 70 O.S. § 5-149; 63 O.S. § 681; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule sets forth the health and safety standards for public school facilities.The proposed changes to the rule amend the requirements for school safety drills required to be conducted in each school year; update statutory references; and reorganize the rule to make the rule easier to understand. The proposed changes to the rule are necessary to incorporate the recent amendments to 70 O.S. § 5-148 and the new law added at 70 O.S. § 5-149 resulting from the enactment of SB 256 during the 2013 legislative session.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 19. STANDARD X: SCHOOL FACILITIES

210:35-3-186. Site and buildings: size and space; accessibility; maintenance; health and safety

(a) **General requirements for school facilities.** All school facilities shall meet the following requirements:

(1) The site and building(s) shall be properly sized and equipped for the number of occupants and grades served in accordance with the requirements of 70 O.S. § 5-131. ~~[Reference: 11:22-117 School Speed Limit Signs in Municipalities; 25:91.2 Display of Oklahoma Flag on School Premises Compulsory; 25:153 School to Display Flag; 47:11-801 Speed Limit for School Buses School Zones Outside Municipalities Signs; 70:5-131 Educational Courses Buildings and Equipment; 70:5-131.1 Sewage Disposal System; 74:324.8 State/Municipality Adoption of Building Codes BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction or Alterations of Building]~~

(2) Adequate space shall be provided for classrooms, specialized instructional areas, support facilities and other areas as needed, these areas being grouped and arranged in such manner to provide optimum instructional function and class control.

(b) **Accessibility requirements for school facilities.** The site and building(s) shall be readily accessible, and shall meet all requirements of state and federal law in providing ~~allowing~~ access for students with disabilities. ~~handicapped persons to required programs. [Reference: 70:13-103 Authorized Provisions for Education of Exceptional Children]~~

~~(c) Adequate space shall be provided for classrooms, specialized instructional areas, support facilities and other areas as needed, these areas being grouped and arranged in such manner to provide optimum instructional function and class control. [Reference: 70:5-131 Educational Courses Buildings and Equipment; 70:18-152 Legislative Intent School Facilities; Other citings State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES; Vocational Rehabilitation Act of 1973, Section 504; American National Standards Institute (ANSI) A117.1.]~~

(~~d~~c) **Capital improvement plans.** Each school district shall develop and adopt a four-year capital improvement plan for all public schools in the district that meets the requirements of 70 O.S. 18-153 and 210:30-1. School facilities shall be able to accommodate changes in curriculum and/or equipment within a program. ~~[Reference: 70:18-152 Legislative Intent School Facilities; 70:18-153 Capital Improvement Plan]~~

(~~e~~d) **Maintenance of school facilities and equipment.** Programs for preventive and corrective maintenance shall be developed and implemented to ensure that the site and building(s) will be clean, in good repair, and maintained with consideration for function and aesthetic values. ~~[Reference: 70:18-152 Legislative Intent School Facilities](f)~~ Equipment, furnishings, and supplies in proper quantity and quality shall be maintained; and a system shall be developed and implemented for inventory, issue, usage, storage, repair, and replacement.

~~(g) A long-range plan for replacing and/or updating the site, building(s), and equipment shall be developed.[Reference: 70:18-153 Capital Improvement Plan]~~

(~~h~~e) **Health and safety.** The site and building(s) shall ensure that the health and safety of ~~those served~~all school students, school personnel, and school visitors are properly safeguarded.

(1) **Building code compliance.** Where required, the facility shall have utility systems, plumbing systems, electrical systems, mechanical systems, emergency systems, building interiors and building envelope designed, built, and maintained to ~~recognized~~all federal, state, and local standards, codes and/or other legal requirements. ~~[Reference: 59:1002 Authorizes State Department of Health to Adopt Codes BOCA Plumbing Code; 59:1681 Authorizes State Board of Health to Adopt Codes Selections from NFPA; 59:1850.3 Authorizes State Board of Health to Adopt Codes BOCA Plumbing Code; 61:152 through 157 Oklahoma Lighting Energy Conservation Act; 70:3-104 State Board of Education Powers and Duties; 70:5-131.1 Sewage Disposal System; 74:324.7 Fire Marshal; 74:324.8 State/Municipality Adoption of Building Codes BOCA, SBCCI or ICBO; 74:324.11 Permits for Construction of Alteration of Buildings] Other citings State Department of Education SPACE GUIDELINES FOR PLANNING EDUCATIONAL FACILITIES]~~

(~~i~~2) **Loading and unloading zones.** The site shall be as free as possible from hazards, provide a safe area for (un)loading of vehicles, with adequate lighting, signage and drainage. ~~[Reference: 11:22-117 School Speed Limit Signs in Municipalities; 47:11-801 Speed Limit for School Buses School Zones Outside Municipalities Signs; 74:324.8 State/Municipality Adoption of Building Codes BOCA, SBCCI or ICBO]~~

(~~j~~3) **Hazardous materials.** Appropriate programs pertaining to hazardous materials, hazardous waste, asbestos, underground storage tanks, lead contamination, and other applicable life, health, and/or safety matters shall be developed and implemented in accordance with federal, state, and local statutes, regulations, and codes. ~~[Reference: 40:403 and 404 Oklahoma Occupational Health and Safety Standards Act; Other citings 29 CFR 1910 Occupational Safety and Health Standards, Oklahoma Corporation Commission's General Rules and Regulations Governing Underground Storage Tanks; 40 CFR 260-272 Asbestos Hazard Emergency Response Act 9 (AHERA), Lead Contamination and Control Act of 1988(LCCA), Resources Conservation and Recovery Act of 1976 (Hazardous and Solid Waste Amendments of 1984)]~~

(~~k~~4) **Emergency warning and prevention systems.** Proper precautions shall be taken to prevent injuries. All equipment and facility safety features shall be in place and properly maintained, including, but not limited to safety goggles in accordance with the requirements of 70 O.S. §24-117 and respirators in accordance with the requirements of 70 O.S. §24-118.~~[Reference: 70:24-117 Safety Goggles School Board to Provide for Certain Personnel; 70:24-118 Respirators School Board to Provide for Certain Teachers and Students; 70:324.7 Fire Marshal; 74:324.11 Smoke Detectors]~~

(~~l~~f) **School safety inspections.** The school's administration shall ensure that qualified personnel conduct a safety/emergency/disaster procedure review at least annually and safety inspections of site, building(s), and equipment regularly. ~~[Reference: 63:176 Fire Drills; 74:324.7 Fire Marshal]~~

(~~m~~g) **School safety drills.** Each public school district shall adopt policies and procedures for each type of safety drill required by this subsection. All safety drills shall conform to the written plans and procedures adopted by the district for protecting against natural and man-made disasters and emergencies as required by Title 63 O.S. § 681 and 70 O.S. §§ 5-148 and 5-149.

(1) **Compliance documentation.** Each public school district shall document compliance with the requirements of this subsection by each school site in writing as follows:

(A) The records for each fire drill shall be preserved for at least three (3) years and shall be made available to the State Fire Marshal or the designated agent of the State Fire Marshal upon request. In addition, one copy of the fire drill compliance report shall remain at each school site and one copy shall be filed with the school district's administrative office;

(B) In addition to the fire drill documentation required by (1)(A) of this subsection, each public school district shall document all other required safety drills in writing by school site. One copy of the safety drill compliance report shall remain at each school site and one copy shall be filed with the school district's administrative office. Each school district shall also submit documentation in writing for each school site to the Oklahoma Office of Homeland Security Oklahoma School Security Institute in accordance with the Institute's established forms, policies and/or procedures; and

(C) Each school district shall make all of its safety compliance reports required by this subsection available to the Regional Accreditation Officer during the accreditation process.

(2) **Safety drill types and requirements.** Each school district shall ensure that every public school within the district shall conduct no fewer than ten (10) safety drills per school year at each school site. All students and teachers at the public schools shall participate. Safety drills conducted in accordance with this subsection shall meet all of the following requirements:

(A) **Fire drills.** Each public school district shall conduct a minimum of two (2) fire drills per school year. Each fire drill shall be conducted within the first fifteen (15) days of the beginning of each semester. The fire drills shall include the sounding of a distinctive audible signal designated as the fire alarm signal.

(B) **Tornado drills.** ~~All~~Each public school ~~districts~~district shall conduct a minimum of two (2) tornado drills per school year, in which all students and school employees participate. At least one (1) tornado drill shall be conducted in the month of September and at least one (1) tornado drill shall be conducted during the month of March. ~~Such drills shall conform to the written plans and procedures adopted by the district for protecting against natural and man-made disasters and emergencies as required by Title 63 O.S. § 681.Each school district shall document in writing and by school site, compliance with this requirement and such records shall be available to the Regional Accreditation Officer during the accreditation process.~~

(~~B~~C) **Lockdown drills.** All public schools shall have a minimum of ~~one~~two (2) lockdown ~~drill~~drills each school year. No lockdown drill shall be conducted at the same time of day as a previous lockdown drill conducted in the same school year.~~All students and employees are required to participate in the drills, with the extent of student involvement to be determined by the district. Each school district board of education and administration shall adopt policies and procedures for lockdown drills.Each public school district shall document lockdown drills in writing by public school site. Compliance with this requirement and such records shall be available to the Regional Accreditation Officer during the accreditation process.~~

(D) **Intruder drills.** In addition to the two lockdown drills required in this subsection, all public schools shall conduct two (2) intruder drills per school year. Intruder drills shall be conducted for the purpose of mitigating injuries or deaths by execution of a plan as an alternative to the lockdown drills required by (2)(C) of this subsection. The two required intruder drills shall be conducted within the first fifteen (15) days of each semester.

(E) **Additional safety drills.** The principal of each public school shall, at the direction of the district superintendent, utilize the remaining two (2) required safety drills for one or more of the following purposes:

(i) To conduct additional drills of any of the types provided in this subsection;

(ii) To conduct one or more drill(s) developed by the district that is consistent with the risks assessed for the school facility; or

(iii) To conduct one or more drills in accordance with recommendations submitted by the Safe School Committee as authorized by the provisions of 70 O.S. § 24-100.5 or any assisting fire or law enforcement department.

[OAR Docket #14-677; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-685]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 21. Standard XI: Accreditation Status
210:35-3-201. Statement of the standard [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 3-104.4; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule sets out statement of accreditation standards for public schools and requirements for submission of accreditation applications in accordance with the provisions of 70 O.S. § 3-104.4, which requires the State Board of Education to adopt standards of accreditation of public schools in Oklahoma. The proposed changes add references to charter school sites, which are considered public schools. The proposed changes are necessary to clarify that new and existing charter school sites are subject to the same deadlines and requirements for submission of accreditation applications as other public schools.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 21. STANDARD XI: ACCREDITATION STATUS

210:35-3-201. Statement of the standard

(a) Each public school site, including charter school sites, must submit an Application for Accreditation to the Accreditation Standards Section of the State Department of Education by the due date specified on the Application. School sites are accredited for one year. An accredited school site shall meet all applicable regulations and statutory requirements at the beginning of and throughout the school year.

(b) Accreditation status of school sites shall be classified according to the following categories:

(1) Accredited With No Deficiencies--All standards are being met.

(2) Accredited With Deficiencies--A school site fails to meet one or more of the standards but the deficiency does not seriously detract from the quality of the school's educational program.

(3) Accredited With Warning--A school site:

(A) fails to meet one or more of the standards and the deficiency seriously detracts from the quality of the school's educational program; and/or

(B) is designated as a school in need of improvement in school years 2011-2012 or later;

(4) Accredited With Probation--A school site:

(A) consistently fails to remove or make substantial progress towards removing all deficiencies noted the previous year; and/or,

(B) consistently violates regulations; and/or,

(C) deliberately and unnecessarily violates one or more of the regulations; and/or

(D) is declared as a School Improvement School in school years 2009-2010 and 2010-2011 and designated as a school in need of improvement in school year 2011-2012; and/or;

(E) is designated as a school in need of improvement for three or more consecutive years beginning in school year 2011-2012.

(5) Nonaccredited--The school site is no longer recognized by the State Board of Education.

(c) If a school site is placed on warning or probation, the school board and administration will meet with a committee from the Accreditation Section to review their accreditation status. After the review from the committee, a determination will be made concerning warning, probation or nonaccredited status. The Accreditation Section will then present a recommendation to the State Board of Education.

[OAR Docket #14-685; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-683]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 23. Standard XII: Deregulation, Waivers, and the School District Empowerment Program–Rules and Procedures
210:35-3-228. Required application criteria to be considered for requests for deregulations, waivers of statutory requirements, and participation in the School District Empowerment Program~~deregulated status~~ [AMENDED]
210:35-3-229. ~~State Department of Education/State Board of Education application program procedures~~Applications for participation in the School District Empowerment Program [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. 3-129.11; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 7, 2013
COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 10, 2014
ADOPTION:
January 23, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set out the criteria and procedures for considering applications by public school districts for deregulation, waivers, and participation in the School District Empowerment Program. The proposed changes to the rule are necessary to implement the new provisions of the School District Empowerment Program at 70 O.S. §3-129.11 added in 2013 by HB 2131, which provides that public schools may request exemption from all statutory requirements and State Board of Education rules from which charter schools are exempt.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

PART 23. STANDARD XII: DEREGULATION, WAIVERS, AND THE SCHOOL DISTRICT EMPOWERMENT PROGRAM–RULES AND PROCEDURES

210:35-3-228. Required application criteria to be considered for requests for deregulations, waivers of statutory requirements, and participation in the School District Empowerment Program~~deregulatedstatus~~

(a) **Applications.** The State Department of Education shall develop an application for ~~school district~~ use by school districts in seeking approval from the State Board of Education of requests for:

(1) Waivers from a statutory requirement;

(2) Deregulation from a State Department of Education regulation; or

(3) Participation in the School District Empowerment Program, by obtaining a waiver from all statutory requirements and State Board of Education rules from which charter schools are exempt under the Oklahoma Charter Schools Act.

~~School districts shall complete the application to be submitted to the State Board of Education in order for deregulated status to be considered for approval or denial~~.

(b) **Criteria for applications for deregulation, waivers, or participation in the School District Empowerment Program.** The application submitted shall ~~contain~~meet all of the following ~~criteria~~ requirements:

(1) **Alternate strategies.** The application shall clearly state the alternate strategy(ies) which the school district proposes to utilize and the needed resources to meet clearly stated objectives as a result of the proposed deregulation, waiver, or participation in the School District Empowerment Program. The specific objectives to be focused on as a result of deregulated status shall be clearly delineated.

(2) **Student performance.** The application shall clearly specify and describe the expected student performance levels to be demonstrated and evaluated as a result of the proposed ~~deregulated status~~ deregulation, waiver, or participation in the School District Empowerment Program.

(3) **Standard(s) to be deregulated or statutes to be waived.** The application shall clearly identify/state the ~~regulation~~regulation(s) from which the school district is proposing to be deregulated or the statute(s) for which the school district seeks a waiver.

(4) **Financial impact.** The application shall clearly delineate the projected financial impact the proposed ~~deregulated status~~deregulation, waiver, or participation in the School District Empowerment Program would create.

(5) **Timeline(s).** The application shall clearly delineate the proposed timeline(s) which, if approved, will apply to the ~~deregulated status~~deregulation, waiver, or participation in the School District Empowerment Program.~~, i.e.,~~The proposed timeline for implementation shall include:

(A) The ~~the~~ date(s) the school district proposes to implement the ~~deregulated status~~deregulation, waiver, or participation in the School District Empowerment Program; and

(B) The ~~the~~ date(s) proposed to terminate the ~~deregulated status~~deregulation, waiver, or participation in the School District Empowerment Program, which shall be no longer than:

(i) Waivers and deregulations: One (1) year from the date of implementation of a waiver or deregulation;

(ii) School District Empowerment Program: Three (3) years from the date of implementation of the district's empowerment plan.

(6) **Local board approval.** The application shall contain the original signature of the school district superintendent and the president of the local board of education ~~indicating~~ certifying that the local board of education has approved the application for deregulation, waiver, or participation in the School District Empowerment Program in accordance with the provisions in the bylaws, policies, and/or procedures of the school board governing transaction of business.

(c) **Applications for School District Empowerment Program.** In addition to the requirements set forth in (b) of this Section, all applications by the school district for participation in the School District Empowerment Program shall submit a comprehensive plan which identifies the goals sought to

be achieved through deregulation and the anticipated educational and fiscal benefits, impacts, and outcomes for all schools in the district resulting from participation in the School District Empowerment Program. Applications for participation in the School District Empowerment Program shall be submitted and reviewed in accordance with the procedures set forth in 210:35-3-229.

210:35-3-229. ~~State Department of Education/State Board of Educationapplication program procedures~~Applications for participation in the School District Empowerment Program

(a) **Application submission.** All applications for participation in the School District Empowerment Program shall be submitted by delivering one (1) copy to the Secretary of the State Board of Education and one (1) copy to the State Department of Education Office of Accreditation Standards Division. Within five (5) business days of the date of receipt of the application, the Secretary of the State Board of Education shall mail a written acknowledgement of receipt of the application to the school district contact name and address stated by the school district in the application.

(~~a~~b) **Application review.** A ~~deregulation~~School District Empowerment Program team, consisting of State Department of Education employees, shall be appointed by the State Superintendent of Public Instruction to review all applications submitted in accordance with this Section. Within thirty (30) calendar days of the date of receipt of the application, the deregulation ~~The~~ team shall ~~receive and~~ review ~~allapplications~~the application and issue a recommendation to the State Board of Education for approval or denial. Applications which ~~do notcontain the required elements~~fail to meet the requirements set forth in this Section and in 210:35-3-228 will ~~not be considered by the deregulation team or the State Board of Education~~ be recommended for denial. The team shall determine:

(1) If the application has addressed all ~~required criteria elements~~ requirements set forth in this Section and 210:35-3-228;

(2) If the ~~standard(s)~~statutes or regulations~~being proposed~~ for which a waiver or deregulation is requested are ~~consistent with those allowed for deregulation~~eligible for consideration of waiver or deregulation by the State Board of Education;

(3) If additional data needs to be considered, such as the school district's or site's norm-referenced performance indicators, or such evaluation indicators as compensatory reading, language arts and mathematics;

(4) If any accreditation deficiencies are to be considered and their applicability to the application.

(~~b~~c) **Notice ~~application approval~~ of application recommendation.** Within three (3) business days of ~~Upon~~ completion of application review by the deregulation team, ~~when the team recommends application approval,~~ the team shall provide ~~the following~~written notice of its recommendation to the applicant and the State Board of Education that meets all of the following requirements:~~:~~

(1) The notice shall contain the team's recommendation and shall explain the specific factual and legal grounds for the team's recommendation for approval or disapproval of the application; ~~.~~

(2) The notice shall ~~also~~ contain any variances to the application which it will be forwarding to the State Board of Education (e.g., amendments to the application submitted by the school district subsequent to filing or required amendments upon which recommendations from the team are conditioned); ~~and~~

(~~2~~3) The notice shall contain the ~~meeting~~ date, time and location of the meeting of the State Board of Education at which the application is to be considered for approval or disapproval by the Board; and

(4) The notice shall contain language which notifies the school district that it may, but is not required to designate a representative to appear on its behalf at the board meeting to either support or contest the team's recommendation to the State Board of Education.

(d) **Application decisions.** The State Board of Education shall approve or disapprove all applications within ninety (90) days of the date of receipt of the application by the Secretary of the State Board of Education. The Secretary of the State Board of Education shall send the school district written notice of the application decision within five (5) business days of the date of the meeting at which the Board considered the application. The written notice shall meet all of the following requirements:

(1) The notice shall contain the specific factual and legal grounds for the Board's approval or disapproval of the application;

(2) The notice shall state the effective date of any approved request set pursuant to (f) of this Section;

(3) The notice shall advise the school district that it may submit a request for reconsideration of the application decision in accordance with the provisions of (e) of this Section; and

(4) In the event of denial of an application for participation in the School District Empowerment Program, the notice shall advise the school district the school district may submit an amended request for participation in the School District Empowerment Program at any time after the denial of the application in accordance with the provisions of 70 O.S. § 3-129.11.

~~(c) **Notice application disapproval.** Upon completion of application review by the deregulation team, when the team recommends application disapproval, the team shall provide the following notice to the applicant and the State Board of Education:~~

~~(1) The notice shall contain the team's recommendation. The notice shall also contain the specific reason(s) why the team does not recommend approval of the application; and~~

~~(2) The notice shall contain language which notifies the school district of its right to appeal the team's recommendation to the State Board of Education. Should a school district elect to appeal a team's recommendation, it must, within 30 calendar days of the date of the team's notice to the school district, provide written notice to the State~~

~~Superintendent of Public Instruction of its intent to appeal the recommendation to the State Board of Education. The State Superintendent will then place the appeal on the agenda of the State Board of Education.~~

(e) **Appeal of denials of applications.** A school district may request reconsideration of a denial of an application by delivering a written request for reconsideration to the Secretary of the State Board of Education within ten (10) business days of the date of receipt of the written notice of the Board's decision provided to the district in accordance with (d) of this Section. Within five (5) business days of receipt of the request of reconsideration, the Secretary shall schedule the district's request for reconsideration on the agenda for a board meeting to be held within forty-five (45) calendar days of the date of receipt of the request for reconsideration, and provide written notice of the date, time, and location of the meeting to the district via certified mail.

(f) **Effective date of approval.** Upon approval ~~of the~~by the State Board of Education of an application for participation in the School District Empowerment Program, the ~~deregulated status~~ Board may ~~be~~declare the approval of the application to take immediate effect, ~~effective immediately,~~ or to take effect on a date designated ~~as determined appropriate~~ by the State Superintendent of Public Instruction.

(g) **Annual reports.** No later than December 15 of each year following the first full year of participation in the School District Empowerment Program approved by the State Board of Education, every school district participating in the School District Empowerment Program shall submit a report to the State Board of Education. The report shall include all information necessary for the State Board of Education to assess the academic achievement and fiscal status of the school district, and shall include the school district's assessment of the impacts and outcomes of the school's participation in the Program for the previous school year and the progress made by the school district during the previous school year in meeting the goals and objectives for participation set forth in the district's plan.

(h) **Renewal of a plan of participation in the School District Empowerment Program.** Prior to the beginning of the third year, a school district may apply for renewal of an approved plan of participation in the School District Empowerment Program by submitting an application for renewal of the plan. The application for renewal shall be submitted in accordance with the requirements for submission of an application as set forth in (a) of this Section. In addition to the application criteria set forth in 210:35-3-228, the deregulation team shall consider the annual reports provided by the school district as required by (g) of this Section.

[OAR Docket #14-683; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-692]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Additional Standards for Elementary Schools
Part 13. Standard VII: The Media Program
210:35-5-74. Expenditures [AMENDED]
Subchapter 7. Additional Standards for Middle Level Schools
Part 13. Standard VII: The Media Program
210:35-7-64. Expenditures [AMENDED]
Subchapter 9. Additional Standards for Secondary Schools
Part 13. Standard VII: The Media Program
210:35-9-74. Expenditures [AMENDED]
AUTHORITY:
State Department of Education; 70 O.S. § 3-104; 70 O.S. § 3-104.4
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules establish the accreditation standard for minimum expenditures for public school media print and nonprint collections. The amendments to the rules update the examples of permissible media collection expenditures and are necessary to clarify the permissible use of media program expenditures for digital media in public school library collections.
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. ADDITIONAL STANDARDS FOR ELEMENTARY SCHOOLS

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-5-74. Expenditures

(a) **Minimum annual expenditures.** In establishing a balanced print and nonprint collection, the minimum annual media program expenditure shall be as follows:~~in the table below.~~

(1) **Fewer than five hundred (500) enrolled students**: Nine dollars ($9.00) per enrolled student.

(2) **Five hundred (500) to nine hundred ninety-nine (999) enrolled students**: Four thousand five hundred dollars ($4500.00) for the first five hundred (500) enrolled students plus five dollars ($5.00) per student for each additional enrolled student above five hundred (500) students up to nine hundred ninety-nine (999) students.

(3) **One thousand (1000) to one thousand nine hundred ninety-nine (1999) enrolled students**: Seven thousand dollars ($7000.00) for the first one thousand (1000) enrolled students plus four dollars ($4.00) per student for each additional enrolled student above one thousand (1000) students up to one thousand nine hundred ninety-nine (1999) students.

(4) **Two thousand (2000) or more enrolled students:** Eleven thousand dollars ($11,000.00) for the first two thousand (2000) enrolled students plus three dollars ($3.00) per student for each additional enrolled student above two thousand (2000) students.

(b) **Permissible media expenditures.** All materials in the school (decentralized materials) that have been processed and are cataloged by the media center may be included.~~The following~~Examples of materials that constitute permissible media expenditures include, but are not limited to: ~~may be included:~~

(1) Hardback, paperback, and/or electronic books;~~,~~

(2) Periodicals in print and/or digital formats;~~periodicals,~~

(3) Pamphlets, ~~pamphlets,~~ manuscripts, and reports, in print and/or digital formats;

(4) Prints, posters, photographic slides, filmstrips, or photographs, in print and/or digital formats;

(5) Microforms (e.g., microfilm and/or microfiche);~~microforms,~~

(6) Multimedia packages or kits;~~multimedia packages or kits,~~

(7) Scientific specimens, microscopic slides;~~specimens,~~

(8) Realia;~~realia,~~

(9) Models;~~models,~~

(10) Audio ~~audioand video~~ recordings (e.g., vinyl records, reel-to-reel tape recordings, cassettes, CDs, MP3);~~,~~

(11) Video recordings (e.g., film, video tape, DVD and Blu-ray discs,) and; ~~filmstrips,slides, computer disks, films~~, ~~compactdiscs,video discs, and~~

(11) Computer ~~computer~~ software and applications.

(c) **Impermissible expenditures.** Textbooks, equipment, and salaries may not be included. For purposes of this Section, "equipment" shall have the meaning set forth at 210:25-7-1.~~All material in the school (decentralized materials) that have been processed and are cataloged by the media center may be included.~~

(d) **Federal funds not included.** The contributions of federally funded programs shall not be included in meeting this standard.

~~ENROLLMENT~~	~~EXPENDITURES~~
~~Fewer than 500~~	~~$9 per pupil~~
~~500 to 999~~	~~$4,500 for the first 500 students plus $5 per student above 500~~
~~1000 to 1999~~	~~$7,000 for the first 1000 students plus $4 per student above 1000~~
~~2000 plus~~	~~$11,000 for the first 2000 students plus $3 per student above 2000~~

SUBCHAPTER 7. ADDITIONAL STANDARDS FOR MIDDLE LEVEL SCHOOLS

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-7-64. Expenditures

(a) **Minimum annual expenditures.** In establishing a balanced print and nonprint collection, the minimum annual media program expenditure shall be as follows:~~in the table below.~~

(1) **Fewer than five hundred (500) enrolled students**: Nine dollars ($9.00) per enrolled student.

(2) **Five hundred (500) to nine hundred ninety-nine (999) enrolled students**: Four thousand five hundred dollars ($4500.00) for the first five hundred (500) enrolled students plus five dollars ($5.00) per student for each additional enrolled student above five hundred (500) students up to nine hundred ninety-nine (999) students.

(3) **One thousand (1000) to one thousand nine hundred ninety-nine (1999) enrolled students**: Seven thousand dollars ($7000.00) for the first one thousand (1000) enrolled students plus four dollars ($4.00) per student for each additional enrolled student above one thousand (1000) students up to one thousand nine hundred ninety-nine (1999) students.

(4) **Two thousand (2000) or more enrolled students:** Eleven thousand dollars ($11,000.00) for the first two thousand (2000) enrolled students plus three dollars ($3.00) per student for each additional enrolled student above two thousand (2000) students.

(b) **Permissible media expenditures.** All materials in the school (decentralized materials) that have been processed and

are cataloged by the media center may be included.~~The following~~ Examples of materials that constitute permissible media expenditures include, but are not limited to: ~~may be included:~~

(1) Hardback, paperback, and/or electronic books;~~,~~

(2) Periodicals in print and/or digital formats;~~periodicals,~~

(3) Pamphlets, ~~pamphlets,~~ manuscripts, and reports, in print and/or digital formats;

(4) Prints, posters, photographic slides, filmstrips, or photographs, in print and/or digital formats;

(5) Microforms (e.g., microfilm and/or microfiche);~~microforms,~~

(6) Multimedia packages or kits;~~multimedia packages or kits,~~

(7) Scientific specimens, microscopic slides;~~specimens,~~

(8) Realia;~~realia,~~

(9) Models;~~models,~~

(10) Audio ~~audioand video recording~~recordings(e.g., vinyl records, reel-to-reel tape recordings, cassettes, CDs, MP3);~~,~~

(11) Video recordings (e.g., film, video tape, DVD and Blu-ray discs,) and; ~~films trips, slides,computer disks, films~~, ~~compactdiscs,video discs, and~~

(12) Computer ~~computer~~ software and applications.

(c) **Impermissible expenditures.** Textbooks, equipment, and salaries may not be included. For purposes of this Section, "equipment" shall have the meaning set forth at 210:25-7-1.~~All materials in the school (decentralized materials) that have been processed and are cataloged by the media center may be included.~~

(d) **Federal funds not included.** The contributions of federally funded programs shall not be included in meeting this standard.

~~ENROLLMENT~~	~~EXPENDITURE~~
~~Fewer than 500~~	~~$9 per pupil~~
~~500 to 999~~	~~$4,500 for the first 500 students plus $5 per student above 500~~
~~1000 to 1999~~	~~$7,000 for the first 1000 students plus $4 per student above 1000~~
~~2000 plus~~	~~$11,000 for the first 2000 students plus $3 per student above 2000~~

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 13. STANDARD VII: THE MEDIA PROGRAM

210:35-9-74. Expenditures

(a) **Minimum annual expenditures.** In establishing a balanced print and nonprint collection, the minimum annual media program expenditure shall be as follows:~~in the table below.~~

(1) **Fewer than five hundred (500) enrolled students**: Nine dollars ($9.00) per enrolled student.

(2) **Five hundred (500) to nine hundred ninety-nine (999) enrolled students**: Four thousand five hundred dollars ($4500.00) for the first five hundred (500) enrolled students plus five dollars ($5.00) per student for each additional enrolled student above five hundred (500) students up to nine hundred ninety-nine (999) students.

(3) **One thousand (1000) to one thousand nine hundred ninety-nine (1999) enrolled students**: Seven thousand dollars ($7000.00) for the first one thousand (1000) enrolled students plus four dollars ($4.00) per student for each additional enrolled student above one thousand (1000) students up to one thousand nine hundred ninety-nine (1999) students.

(4) **Two thousand (2000) or more enrolled students:** Eleven thousand dollars ($11,000.00) for the first two thousand (2000) enrolled students plus three dollars ($3.00) per student for each additional enrolled student above two thousand (2000) students.

(b) **Permissible media expenditures.** All materials in the school (decentralized materials) that have been processed and are cataloged by the media center may be included.~~The following~~Examples of materials that constitute permissible media expenditures include, but are not limited to: ~~may be included:~~

(1) Hardback, paperback, and/or electronic books;~~,~~

(2) Periodicals in print and/or digital formats;~~periodicals,~~

(3) Pamphlets, ~~pamphlets,~~ manuscripts, and reports, in print and/or digital formats;

(4) Prints, posters, photographic slides, filmstrips, or photographs, in print and/or digital formats;

(5) Microforms (e.g., microfilm and/or microfiche);~~microforms,~~

(6) Multimedia packages or kits;~~multimedia packages or kits,~~

(7) Scientific specimens, microscopic slides;~~specimens,~~

(8) Realia;~~realia,~~

(9) Models;~~models,~~

(10) Audio ~~audioand video~~ recordings (e.g., vinyl records, reel-to-reel tape recordings, cassettes, CDs, MP3);~~,~~

(11) Video recordings (e.g., film, video tape, DVD and Blu-ray discs,) and; ~~filmstrips,slides, computer disks, films~~, ~~compactdiscs,video discs, and~~

(12) Computer ~~computer~~ software and applications.

(c) **Impermissible expenditures.** Textbooks, equipment, and salaries may not be included. For purposes of this Section, "equipment" shall have the meaning set forth at 210:25-7-1.~~All materials in the school (decentralized materials) that have been processed and are cataloged by the media center may be included.~~

(d) **Federal funds not included.** The contributions of federally funded programs shall not be included in meeting this standard.

~~ENROLLMENT~~	~~EXPENDITURES~~
~~Fewer than 500~~	~~$9 per pupil~~
~~500 to 999~~	~~$4,500 for the first 500 students plus $5 per student above 500~~
~~1000 to 1999~~	~~$7,000 for the first 1000 students plus $4 per student above 1000~~
~~2000 plus~~	~~$11,000 for the first 2000 students plus $3 per student above 2000~~

[OAR Docket #14-692; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-678]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Additional Standards for Secondary Schools
210:35-9-31. Program of studies and graduation requirements [AMENDED]
AUTHORITY:
70 O.S. § 3-104; 70 O.S. § 11-103.6; § 11-103.6h; State Department of Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 1, 2013 through December 6, 2013
PUBLIC HEARING:
December 6, 2013 and December 10, 2013
ADOPTION:
December 19, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule sets forth the accreditation standards for public secondary schools relating to high school graduation requirements. The proposed changes to the rule are necessary to update the standard to reflect recent amendments to 70 O.S. § 11-103.6.

CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3 (5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. ADDITIONAL STANDARDS FOR SECONDARY SCHOOLS

PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT AND CLIMATE

210:35-9-31. Program of studies and graduation requirements

(a) **General provisions.** Every student at every high school shall have the opportunity to acquire all the competencies to matriculate at a comprehensive graduate institution of the Oklahoma State System of Higher Education without the necessity of enrolling at the university in secondary-level courses. Each student will have the opportunity to attain proficiency in the Priority Academic Student Skills.

(b) **Definitions.** The following definitions shall apply to this subsection:

(1) **"Contextual methodology"** means academic content and skills taught by utilizing real-world problems and projects in a way that helps students understand the application of that knowledge.

(2) **"Courses approved for college admission requirements"** means courses which are approved by the Oklahoma State Regents for Higher Education for admission to an institution within the Oklahoma State System of Higher Education.

(3) **"Qualified agricultural courses"** means courses that have been determined by the State Board of Education to offer the sets of competencies set forth in the Oklahoma Academic Standards for one or more science content areas and which correspond to academic science courses and are taught by teacher who is certified and considered "highly qualified" to teach in the science course taught. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.

(4) **"Rigor"** means a level of difficulty that is appropriate for the grade level and that meets state and/or national standards;

(5) **"Sets of competencies"** means instruction in those skills and competencies that are specified skills and competencies adopted by the State Board of Education without regard to specified instructional time;

(6) **"Unit"** means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.

(c) **Total minimum graduation requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete twenty-three (23) units or sets of competencies in grades nine (9) through twelve (12), which shall include either:

(1) Seventeen (17) units or sets of competencies of the college preparatory/work ready curriculum requirements set forth in (d) of this Section, plus six (6) elective units or sets of competencies; or

(2) Fifteen (15) units or sets of competencies of the core curriculum requirements set forth in (e) of this Section, plus eight (8) elective units or sets of competencies.

(d) **College preparatory/work ready curriculum requirements.** In order to graduate with a standard diploma from a public high school accredited by the State Board of Education, students shall complete the following college preparatory/work ready curriculum units or sets of competencies at the secondary level:

~~(1) Effective with the school year 2000-2001 through 2001-2002 a high school student must demonstrate competency in at least 21 units of credit or sets of competencies in Grades 9-12 which must include the state-mandated curriculum (Priority Academic Student Skills) and meet all other state and local mandates to be eligible for graduation.~~

~~(A) Language Arts: 4 units or sets of competencies~~

~~(B) Science: 2 units or sets of competencies~~

~~(C) Mathematics: 3 units or sets of competencies~~

~~(D) Social Studies: 2 units or sets of competencies (must include American History and Oklahoma History)~~

~~(E) The Arts: 2 units or sets of competencies (Visual Art and General Music)~~

~~(F) Total minimum Core Curriculum: 13 units or sets of competencies~~

~~(G) Total minimum Elective courses: 8 units or sets of competencies~~

~~(H) Total minimum graduation requirements: 21 units or sets of competencies~~

~~(2) Beginning with students graduating from high school in the school year 2002-2003, graduation requirements specified in subsection (1) of this section are superseded by requirements specified in this subsection. Units of credit required for high school graduation with a Standard Diploma (effective 2002-2003 and thereafter) are:~~

(1) Four (4) units or sets of competencies of English to include:

(A) Grammar;

(B) Composition;

(C) Literature; or

(D) Any English course approved for college admission requirements;

(2) Three (3) units or sets of competencies of mathematics, limited to:

(A) Algebra I;

(B) Algebra II;

(C) Geometry;

(D) Trigonometry;

(E) Math Analysis;

(F) Calculus;

(G) Advanced Placement Statistics; or

(H) Any mathematics course with content and/or rigor above Algebra I and approved for college admission requirements;

(3) Three (3) units or sets of competencies of laboratory science, limited to:

(A) Biology;

(B) Chemistry;

(C) Physics; or

(D) Any laboratory science course with content and/or rigor equal to or above Biology and approved for college admission requirements;

(4) Three (3) units or sets of competencies of history and citizenship skills, including:

(A) One (1) unit of American History;

(B) One-half (1/2) unit of Oklahoma History;

(C) One-half (1/2) unit of United State Government; and

(D) One (1) unit of a course that has been approved for college admission requirements in one of the following subjects:

(i) History;

(ii) Government;

(iii) Geography;

(iv) Economics;

(v) Civics; or

(vi) Non-Western culture;

(5) Two (2) units or sets of competencies in one (1) of the following:

(A) Two (2) units of the same foreign, Native American, or non-English language; or

(B) Two (2) units of computer technology approved for college admission requirements, whether taught at a high school or a technology center school, including:

(i) Computer programming;

(ii) Computer hardware;

(iii) Business computer applications (excluding keyboarding or typing courses) such as:

(I) Word processing;

(II) Databases;

(III) Spreadsheets;

(IV) Graphics;

(6) One (1) additional unit or set of competencies selected from:

(A) The categories of units or sets of competencies set forth in (1) through (5) of this subsection; or

(B) Career and technology courses approved for college admission requirements;

(7) One (1) unit or set of competencies of

(A) Fine arts such as music, art, or drama; or

(B) Speech.

(e) **Core curriculum requirements in lieu of college/work ready curriculum requirements.** Upon written approval of the parent or legal guardian of a student, a student may enroll in the core curriculum requirements in lieu of the college/work ready curriculum requirements set forth in (d) of this Section. The fifteen (15) units of credit required for high school graduation with a standard diploma in accordance with the provisions of this subsection are:

(A) Language Arts: Four (4) units or sets of competencies, to consist of:

(i) One (1) unit or set of competencies of grammar and composition;~~,~~ and

(ii) Three (3) units or sets of competencies which may include, but are not limited to, the following courses:

(I) American Literature;~~,~~

(II) English Literature;~~,~~

(III) World Literature; or~~,~~

(IV) Advanced English Courses~~,~~ or

(V) Any other English courses with content and/or rigor equal to or above grammar and composition;

(B) Mathematics: Three (3) units or sets of competencies, to consist of:

(i) One (1) unit or set of competencies of Algebra I or Algebra I taught in a contextual methodology;~~,~~ and

(ii) Two (2) units or sets of competencies which may include, but are not limited to, the following courses:

(I) Algebra II;~~,~~

(II) Geometry or Geometry taught in a contextual methodology;~~,~~

(III) Trigonometry;~~,~~

(IV) Math Analysis or Precalculus;~~,~~

(V) Calculus;~~,~~

(VI) Statistics and/or Probability;~~,~~

(VII) Computer Science, if taught by a teacher who is certified to teach mathematics;~~,~~ ~~or~~

(VIII) Other contextual mathematics courses which enhance technology preparation taught at a comprehensive high school;

(IX) Other contextual mathematics courses which enhance technology preparation taught at a technology center school by a teacher certified in the secondary subject area, when taken in the eleventh (11th) or twelfth (12th) grade, and approved by the State Board of Education and the independent district board of education; or

(X) Any other mathematics courses with content and/or rigor equal to or above Algebra I. ~~Provided credit may be granted for Applied Mathematics I and II and Computer Science whether taught at the comprehensive high school or at a career and technology center;~~

(C) Science: Three (3) units or sets of competencies, to consist of:

(i) One (1) unit or set of competencies of Biology I or Biology I taught in a contextual methodology;~~,~~ and

(ii) Two (2) units or sets of competencies in the areas of life, physical, or earth science or technology which may include, but are not limited to, the following courses:

(I) Chemistry I;~~,~~

(II) Physics;~~,~~

(III) Biology II;~~,~~

(IV) Chemistry II;,

(V) Physical Science;~~,~~

(VI) Earth Science;~~,~~

(VII) Botany;~~,~~

(VIII) Zoology;~~,~~

(IX) Physiology;~~,~~

(X) Astronomy;~~,~~

(XI) Applied Biology/Chemistry;

(XII) Applied Physics;~~,~~

(XIII) Principles of Technology;,

(XIV) ~~qualified~~Qualified agricultural education courses;~~,~~ or

(XV) Other contextual science courses which enhance technology preparation taught at a comprehensive high school;

(XVI) Other contextual science courses which enhance technology preparation taught at a technology center school when taken in the eleventh (11th) or twelfth (12th) grade, taught by a certified teacher, and approved by the State Board of Education and the independent district board of education;

(XV) ~~other~~Other science courses with content and/or rigor equal to or above Biology I. ~~Provided, credit may be granted for Applied Biology/Chemistry, Physics, and Principles of Technology whether taught at the comprehensive high school or at a career and technology center;~~

(D) Social Studies: Three (3) units or sets of competencies, to consist of:

(i) One (1) unit or set of competencies of United States History;~~,~~

(ii) One-half (1/2) to one (1) unit or set of competencies of United States Government;~~,~~

(iii) One-half (1/2) unit or set of competencies of Oklahoma History;~~,~~ and

(iv) One-half (1/2) to one (1) unit or set of competencies which may include, but are not limited to, the following courses:

(I) World History;~~,~~

(II) Geography;~~,~~

(III) Economics;~~,~~

(IV) Anthropology;~~,~~ or

(V) ~~other~~ Other social studies courses with content and/or rigor equal to or above United

States History, United States Government, and Oklahoma History; and

(E) Arts: Two (2) units or sets of competencies which may include, but are not limited to, courses in Visual Arts and General Music.

(~~F~~f) ~~**Personal Financial Literacy Passport.**~~**Other curriculum requirements.** In addition to the curriculum requirements set forth in (c) through (e) of this subsection, each secondary school shall ensure that the following curriculum requirements are met:

(~~i~~1) **Personal Financial Literacy Passport.** ~~Effective with the 2008-2009 school year and beginning~~Beginning with the seventh grade, students shall fulfill the requirements for a Personal Financial Literacy Passport in order to graduate with a standard diploma from a public high school accredited by the State Board of Education.~~with a standard diploma.~~

(A) The requirements for a Personal Financial Literacy Passport shall be the satisfactory completion and demonstration of satisfactory knowledge in all fourteen (14) areas of instruction during grades seven (7) through twelve (12). The fourteen (14) areas of instruction are:

(~~I~~i) ~~understanding~~Understanding interest, credit card debt, and online commerce;

(~~II~~ii) ~~rights~~Rights and responsibilities of renting or buying a home;

(~~III~~iii) ~~savings~~Savings and investing;

(~~IV~~iv) ~~planning~~Planning for retirement;

(~~V~~v) ~~bankruptcy~~Bankruptcy;

(~~VI~~vi) ~~banking~~Banking and financial services;

(~~VII~~vii) ~~balancing~~Balancing a checkbook;

(~~VIII~~viii) ~~understanding~~Understanding loans and borrowing money, including predatory lending and payday loans;

(~~IX~~ix) ~~understanding~~Understanding insurance;

(~~X~~x) ~~identity~~Identity fraud and theft;

(~~XI~~xi) ~~charitable~~Charitable giving;

(~~XII~~xii) ~~understanding~~Understanding the financial impact and consequences of gambling;

(~~XIII~~xiii) ~~earning~~Earning an income; and

(~~XIV~~xiv) ~~understanding~~Understanding state and federal taxes.

(~~ii~~B) Instruction in these fourteen areas must align and meet the Personal Financial Literacy ~~Priority Academic Student Skills (PASS)~~academic standards as adopted by the Oklahoma State Board of Education.

(~~iii~~C) School districts shall have the option of determining when each of the fourteen (14) areas of instruction listed above shall be presented to students in ~~Grades 7-12~~grades seven (7) through twelve (12). Options include:

(i) Integration ~~integration~~ into one or more existing courses of study;~~,~~

(ii) A ~~a~~ separate Personal Financial Literacy course;~~,~~ and/or

(iii) Use ~~use~~ of State Department of Education Personal Financial Literacy online modules of learning.

(D) The Oklahoma State Department of Education online modules of learning and the assessments shall be available to all students as determined by the local school district.

(~~iv~~E) In order to facilitate the monitoring of student progress towards achieving the Personal Financial Literacy Passport, districts shall maintain a Personal Financial Literacy Passport cumulative record. The Personal Financial Literacy Passport cumulative record shall be a uniform document used by all school districts within the state. The State Department of Education shall provide an electronic version of the Personal Financial Literacy Passport cumulative record to the districts. Completion of the fourteen (14) areas of instruction of Personal Financial Literacy shall be documented on the student's high school transcript. The Personal Financial Literacy Passport cumulative record shall accompany the student when transferring to a new district.

(~~v~~F) Elementary ~~Dependent~~ districts, PK-8, may enter into a vertical articulated curriculum agreement with an independent district, PK-12, for facilitating and sharing of the personal financial literacy curriculum and instruction.

(~~vi~~G) Teachers providing instruction in personal financial literacy shall be certified~~.~~in accordance with the provisions of the Passport to Financial Literacy Act at 70 O.S. § 11-103.6h.

(H) School districts shall assess the knowledge of all students who transfer into an Oklahoma school district from out of state after the seventh grade.

(i) If the school district determines that the transferred student has successfully completed instruction in any or all of the areas of personal financial literacy instruction at the previous school in which the student was enrolled, or if the student demonstrates satisfactory knowledge of any or all of the areas of personal financial literacy instruction through an assessment approved by the State Department of Education, the school district may exempt the student from completing instruction in that area of personal financial literacy instruction.

(ii) Students who transfer into an Oklahoma school district from out of state after the junior year of high school may be granted an exception from the requirements of the personal financial literacy passport in accordance with the provisions of 70 O.S. 11-103.6.

~~(G) Total minimum Core Curriculum: 15 units or sets of competencies~~

~~(H) Total minimum Elective courses: 8 units or sets of competencies~~

~~(I) Total minimum graduation requirements: 23 units or sets of competencies~~

(2) **Recommended curriculum.** School districts shall strongly encourage students to complete two units or sets of competencies of foreign languages and two units or sets of competencies of physical and health education.

(3) **Credit toward graduation requirements.** Credits for meeting curriculum requirements toward graduation shall be determined in accordance with all of the following provisions:

(A) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.

(B) Credit for all units or sets of competencies required in (d) and (e) of this Section shall be given when such units or sets of competencies are taken prior to ninth (9th) grade if:

(i) The teachers are certified or authorized to teach the subjects for high school credit; and

(ii) The required rigor of the course is maintained.

(C) Notwithstanding the provisions of (3)(B) of this subsection, the three units or sets of competencies in mathematics required in (d) or (e) of this Section shall be completed in the ninth (9th) through twelfth (12th) grades. If a student completes any required courses or sets of competencies in mathematics prior to ninth grade, the student may take any other mathematics courses or sets of competencies to fulfill the requirement to complete three (3) units or sets of competencies in grades nine (9) through twelve (12) after the student has satisfied the requirements of subsection (d) or (e) of this Section.

(D) Successful completion of an alternative assessment set forth in 210:10-13-16(b)(7)-(8) shall not constitute a basis for awarding a student credit for any course in which a student has failed the end-of-instruction exam and failed to attend in accordance with local district attendance policies.

(4) **Achieving Classroom Excellence Act.** The curriculum requirements for graduation set forth in (c) through (f) of this Section and 70 O.S. § 11-103.6 are in addition to and separate from the requirements of the Achieving Classroom Excellence Act set forth at 70 O.S. § 1210.523 and the accompanying regulation at 210:10-13-16. Students must fulfill the applicable requirements (or, in some cases, qualify for applicable exceptions or exemptions) of both statutes to be eligible to be awarded a standard diploma.

(g) **Additional accreditation requirements.** In addition to the curriculum requirements set forth in (c) through (f) of this Section, all public school districts shall ensure that its schools' secondary programs are designed to meet all of the following requirements:

~~(3) No student shall receive credit for high school graduation more than once for completion of the same unit or set of competencies to satisfy the core curriculum requirements.~~

~~(4) "Qualified agricultural courses" means courses that have been determined by the State Board of Education to offer the sets of competencies in the Priority Academic Student Skills (PASS) for one or more science content areas and which correspond to academic science courses. Qualified agricultural education courses shall include, but are not limited to, Horticulture, Plant and Soil Science, Natural Resources and Environmental Science, and Animal Science.~~

~~(5) A "unit" means a Carnegie Unit which is given for the successful completion of a course that meets the equivalent of 120 clock hours within the school year.~~

(~~6~~1) As a condition of receiving accreditation from the State Board of Education, all school districts shall require all students in grades nine (9) through twelve (12) ~~shall~~to enroll in a minimum of six periods, or the equivalent in block scheduling or other scheduling structure that allows for instruction in sets of competencies, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes. However, students re-enrolled in high school solely for the purpose of receiving ACE remediation in accordance with the provisions of 210:10-13-16(g) shall be exempt from this requirement.

(~~7~~2) Each high school's academic program shall be designed to prepare all students for employment and/or post-secondary education. The secondary academic program shall be designed to provide the teaching and learning of the skills and knowledge in the Priority Academic Student Skills. ~~Beginning with 1999-2000 school year all~~All high schools accredited by the State Department of Education shall offer the ~~core~~college preparatory/work ready curriculum required for the ~~Standard Diploma during a student's highschool career~~students to earn a standard diploma during grades nine (9) through twelve (12). To meet graduation requirements, local options may include courses taken by advanced placement, concurrent enrollment, correspondence courses, supplemental online courses, or courses bearing different titles.

(~~8~~3) The secondary academic programs may also provide the traditional units of credit to be offered in ~~Grades 9-12~~grades nine (9) through twelve (12) with each secondary school offering and teaching at least thirty-eight (38) units or their equivalent each school year. Four (4) of these units may be offered on a two-year alternating plan with thirty-four (34) units or their equivalent to be taught in the current school year. In schools with other than a four-year organization, these units shall be offered and taught in conjunction with the affiliated schools containing those grade levels. Career and technology center courses in which secondary students are enrolled may count toward the thirty-eight (38) required units of credit or their equivalent.

(~~9~~4) District boards of education can make exceptions to state high school graduation curriculum requirements for students who move to this state from another state after their junior year of high school.

(A) After a student from another state enrolls in an accredited Oklahoma high school the school board can make an exception to the high school graduation curriculum requirements of ~~Section 11-103.6 of Title 70 of the Oklahoma Statutes~~ 70 O.S. §11-103.63. Individual exceptions can only be made when there are differing graduation requirements between the two states and completing Oklahoma graduation requirements will extend the student's date of graduation beyond the graduation date for the student's class.

(B) The district must report all exceptions made to state graduation requirements for these senior students to the State Department of Education each school year. All exceptions made at each district high school will be forwarded to the State Department of Education on or before July 1 of each year. Districts may report the information on the Annual Statistical Report. This reporting provision does not include students who have individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA) and who satisfy graduation requirements through the individualized education program.

(~~10~~5) In order for a course offered by a supplemental educational organization to be counted for purposes of student academic credit and towards graduation requirements, the local board of education must verify that the course meets all requirements in 70 O.S. § 11-103.6.~~(11)~~Upon verification, the local school board of education's request for course approval shall be submitted to the State Board of Education for final approval.

[OAR Docket #14-678; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #14-693]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Proficiency Based Promotion
210:35-27-1. Purpose and scope [AMENDED]
210:35-27-2. Proficiency based promotion and evaluations of student placement [AMENDED]
210:35-27-3. Appropriate notation for credit in~~core~~required curriculum area(s) completed through examination [AMENDED]
AUTHORITY:
State Department of Education; 70 O.S. § 3-104; 70 O.S. §11-103.6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 9, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 4, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules set forth the requirements for use of proficiency examinations for placement of students in advanced coursework and promotion of public school students who demonstrate proficiency in a core curriculum area in lieu of successful completion of the required units of instructional time in a course. The rules also address requirement for examinations to determine appropriate grade and/or course placements for new students. The amendments to the rules are necessary to implement recent amendments to 70 O.S. § 11-103.6 during the 2013 legislative session (HB 1038), which provide that students may receive course credit for completion of sets of competencies without regard to specific instructional time. The amendments also add supplemental online courses to the list of available options for accommodating a student's needs for advancement if they have demonstrated proficiency in a core curriculum area.
CONTACT PERSON
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 27. PROFICIENCY BASED PROMOTION

210:35-27-1. Purpose and scope

This Subchapter contains rules and regulations for school districts to provide course credit and/or promotion ~~for learning~~to students in grades Kindergarten (K) through twelve (12) who demonstrate proficiency in a specified set of competencies through an evaluation and/or assessment in lieu of successful completion of all Carnegie units in a particular course. These rules~~which~~ relate to, and are in addition to, the accreditation standards set forth in Subchapters 1 through 13 of this Chapter.

210:35-27-2. Proficiency based promotion and evaluations of student placement.

(a) **General provisions.** The provisions of this Section address requirements of school district policies and procedures pertaining to use of assessments to evaluate appropriate placement of students and/or provide course credit to students who can demonstrate proficiency in sets of competencies in the areas of curriculum required by 70 O.S. § 11-103.6, provided that the provisions of this Section are not intended to preclude a district from awarding credit to a student who satisfactorily

completes all course requirements and sets of competencies for a course. The policies and procedures shall comply with the requirements of this Section and shall set forth the district's use of proficiency assessments for each of the following purposes:

(1) **Course placement.** Proficiency assessments for purposes of "course placement" refer to assessments administered solely for the purpose of evaluation of appropriate grade or course placement of students; and

(2) **Credit by examination.** Proficiency assessments for purposes of providing "credit by examination" refer to assessments administered for the purpose of providing course credit for a student who demonstrates mastery of a set of competencies through the examination in lieu of completion of Carnegie units ("proficiency based promotion").

(b) **Policies regarding use of proficiency-based assessments for appropriate grade or course placement.** School district policies and procedures regarding use of proficiency assessments shall address all of the following provisions:

(1) **Requests for proficiency assessments for evaluation of appropriate grade or course placement.** The district policies required by this Section shall clearly describe the procedures for requesting proficiency assessments for the purpose of evaluating appropriate grade or course placement of a new student or currently enrolled student and shall ensure compliance with all of the following provisions:

(A) Every school district shall provide all new students with an opportunity to request a proficiency assessment for the purpose of determining appropriate course placement within thirty (30) days of enrollment or re-enrollment in the district. School district policies shall permit a request for an assessment for this purpose to be initiated by a new student or the student's teacher, parent, or legal guardian.

(B) For purposes of this paragraph, any student currently enrolled in the district who was not enrolled in the district during all or part of the immediately preceding school term, excluding summer school terms, shall be considered a new student.

(2) **Requests for proficiency assessments for credit by examination.** The district policies required by this Section shall clearly describe the procedures for requesting proficiency assessments for the purpose of obtaining course credit by examination and shall ensure compliance with all of the following provisions:

(A) Every school district shall provide all students legally enrolled in the school district with at least two opportunities per school year to obtain course credit through examination in each required curriculum area. School district policies shall permit a request for an assessment for this purpose to be initiated by a student or the student's teacher, parent, or legal guardian.

(B) Identification as a "Gifted and Talented" student in accordance with the provisions of 70 O.S. § 1210.301 et seq. and accompanying regulations shall not be used as a prerequisite for requesting an assessment for the purpose of obtaining credit by examination.

(C) Enrollment in a course or completion of a course shall not be used as a prerequisite for requesting an assessment for the purpose of obtaining credit by examination.

(D) Students who do not successfully demonstrate proficiency by evaluation or assessment pursuant to the provisions of this Section shall be allowed to attempt the assessment again during the next available proficiency evaluation period.

(3) **Curriculum areas eligible for course credit by examination.** The district policies required by this Section shall clearly state the areas of curriculum for which evaluation of proficiency may be requested for the purpose of obtaining course credit through examination.

(A) The areas of required curriculum in which opportunities for credit by examination will be offered shall include:

(i) Social studies, history, or citizenship skills;

(ii) Language arts or English;

(iii) Visual arts, fine arts, performing arts, or speech/communication;

(iv) Non-English languages;

(v) Mathematics; and

(vi) Science

(B) Written criteria for demonstrating mastery in each required curriculum area shall be made available to a student or the student's parent or legal guardian upon request. Demonstration of proficiency in all laboratory science courses shall include a requirement of demonstration of the student's ability to perform relevant laboratory techniques. ~~Upon the request of a student, parent, guardian, or educator, a student will be given the opportunity to demonstrate proficiency in one or more areas of the core curriculum.~~

(c) **Proficiency assessment tools - requirements.** Each school district shall clearly identify the assessment tools it will use to make student placement decisions and assessment tools it will use to provide course credit by examination. The assessment tools must comply with all of the following requirements:

(1) **Proficiency assessments for purposes of evaluating appropriate grade or course placement.** Each district shall clearly identify all assessment tools used to evaluate appropriate grade or course placement of a student in absence of evidence of the student's successful completion of a previous grade level or a prerequisite course in the district. Evaluations administered for this purpose shall assess the student's proficiency in sets of competencies ~~Proficiency will be demonstrated by assessment or evaluation~~ appropriate to the curriculum area, and shall meet all of the following requirements:

(A) The evaluation shall ensure that appropriate grade and/or course placement of a student meets the requirements of (d)(2) of this Section and shall

ensure that that the academic needs of the student are met.

(B) The evaluation shall ensure that appropriate grade and/or course placement of a student complies with all other requirements of state or federal law (e.g., provisions of the Reading Sufficiency Act at 70 O.S. 1210.508A et seq. or the Achieving Classroom Excellence Act at 70 O.S. § 1210.523).

(C) Examples of types of appropriate assessment tools for making student grade or placement decisions may include, but shall not be limited to:~~for example:~~

(i) A portfolio of student work;~~,~~

(ii) A criterion-referenced test,

(iii) A student thesis, project, or product;

(iv) A~~or~~student performance or recital;

(v) Student classroom performance; or

(vi) Recommendations of the student's teacher.

~~Proficiency in all laboratory science courses will require that students are able to perform relevant laboratory techniques.~~

~~(2) Students shall have the opportunity to demonstrate proficiency in the core areas as identified in 70 O.S. § 11-103.6:~~

~~(A) Social Studies~~

~~(B) Language Arts~~

~~(C) The Arts~~

~~(D) Languages~~

~~(E) Mathematics~~

~~(F) Science~~

(2) **Course credit through examination.** Each district shall clearly identify all assessments used to determine proficiency ~~Proficiency~~ for the purpose of ~~advancing to the next level of study~~obtaining credit through examination for required courses. ~~willbe demonstrated by a (90%) or comparable performance on an assessment or demonstration.~~ Students may take assessments for this purpose before, during, or after enrollment in the course. Assessments of proficiency for this purpose shall require a demonstration of proficiency appropriate to the curriculum area and shall meet all of the following requirements:

(A) **Courses tested under the Oklahoma School Testing Program.** Credit by examination for courses that are tested under the Oklahoma School Testing Program ("OSTP") at 70 O.S. § 1210.508 shall require the student to obtain a proficient score on an assessment tool identified by the district in accordance with local school district policies.

(i) Credit by examination for secondary-level courses that are used to meet high school graduation requirements and are tested under the Oklahoma School Testing Program at 70 O.S. § 1210.508 shall require a score of at least "Proficient" or above in the criterion-referenced test that corresponds to the required course.

(ii) Credit by examination in lieu of completion of the required Carnegie units in secondary coursework for any course in a subject area identified in 70 O.S. § 1210.523 that requires an end-of-instruction examination shall require the student to obtain a score of "Proficient" or above on the end-of-instruction examination for the course administered pursuant to the provisions of 70 O.S. §§ 1210.508 and 1210.523.

(iii) Credit by examination for any elementary or middle level course shall require the student to obtain a score of "Proficient" or above on the criterion-referenced test that corresponds to the course for which the student seeks credit.

(B) **Courses not tested under the Oklahoma School Testing Program.** Credit by examination for courses not tested under the Oklahoma School Testing Program at 70 O.S. § 1210.508 shall require the student to obtain a proficient score on an assessment tool identified by the school district in accordance with local school district policies and approved by the local district board of education.

(i) Every school district shall ensure that each assessment tool identified for use to provide credit through examination pursuant to the provisions of this subparagraph meets all of the following requirements:

(I) The assessment tool for the curriculum area requires a demonstration of proficiency that is appropriate to the subject area; and

(II) The assessment tool for the curriculum area is aligned to the district's curriculum standards and accurately measures the student's demonstration of the sets of competencies in the current academic method and process standards most recently adopted by the State Board of Education.

(ii) Examples of types of appropriate assessment tools in curriculum areas not tested under the provision of the OSTP may include, but shall not be limited to:

(I) A portfolio of student work;

(II) A criterion-referenced assessment;

(III) A student thesis;

(IV) A student project;

(V) A student performance or recital.

~~(4) The opportunity for proficiency assessment will be provided at least twice each school year~~.

~~(5) Qualifying students are those who are legally enrolled in the local school district.~~

~~(6) The district may not require registration for the proficiency assessment more than one month in advance of the assessment date.~~

~~(7) Students will be allowed to take proficiency assessments in multiple areas.~~

~~(8) Students not demonstrating proficiency will be allowed to try again during the next assessment period.~~

(~~9~~3) **Students with disabilities.** Every evaluation or assessment tool administered to students in accordance with the provisions of this Section shall include necessary

accommodations set forth in a student's IEP or Section 504 plan, if any. Accommodations to a proficiency ~~standard~~ assessment may be approved by a local district for ~~those~~ students with ~~disabling conditions~~ disabilities. The appropriateness of such accommodations shall be determined on a case-by-case basis in accordance with the student's IEP or Section 504 plan.

(~~3~~d) **Results of proficiency assessments.** Each district shall establish policies for student placement and/or promotion that include consideration of the results of assessments given in accordance with the provisions of this Section. Such policies shall ensure compliance with all of the following requirements:

(1) **Unsuccessful demonstration of proficiency.** Failure to demonstrate proficiency in an assessment provided in accordance with the provisions of this Section shall not be noted on the student's transcript.

(~~b~~2) **Successful demonstration of proficiency.** Decisions regarding promotion of students who demonstrate ~~Students demonstrating~~ proficiency in a ~~core~~required curriculum area in accordance with the provisions of this Section shall be determined~~will be given credit for their learning andwill be given the opportunity to advance to the next level of study in the appropriate curriculum area~~ in accordance with local school district policies and shall meet all of the following requirements:~~.~~

(~~1~~A) The school shall ~~will~~ confer with parents in making ~~such promotion/acceleration~~ decisions regarding student placement or promotion. Such factors as social, emotional and intellectual needs of the student~~mentalgrowth~~ should be considered.

(~~2~~B) If the parent or guardian requests promotion/acceleration contrary to the recommendation of school personnel, the parent or guardian shall sign a written statement which shall be included in the permanent record of the student.

~~(3) Failure to demonstrate proficiency will not be noted on the transcript.~~

(~~4~~C) If a student is being assessed in a set of competencies that is part of a curriculum sequence, the student ~~Studentsmust progress through a curriculum area in a~~may demonstrate proficiency in any sequence recommended by the school district. ~~sequential manner.Elementary, middle level, or high school students may demonstrate proficiency.~~

~~(5) If proficiency is demonstrated in a grade 9—12 curriculum area, appropriate notation will be placed on the high school transcript. The unit shall count toward meeting the requirements for the high school diploma.~~

~~(6) Units earned through proficiency assessment will be transferable with students among school districts within the state of Oklahoma.~~

~~(c) Proficiency assessment will measure mastery of the Priority Academic Student Skills in the same way that curriculum and instruction are focused on the Priority Academic Student Skills. In other words, assessment will be aligned with curriculum and instruction.~~

(~~d~~D) Options for accommodating a student's ~~student~~ needs for advancement after ~~they have~~a student has demonstrated proficiency may include, but are not limited to, the following:

(~~1~~i) Individualized instruction
(~~2~~ii) Correspondence courses
(~~3~~iii) Independent study
(~~4~~iv) Concurrent enrollment
(~~5~~v) Cross-grade grouping
(~~6~~vi) Cluster grouping
(~~7~~vii) Grade/course skipping
(~~8~~viii) Individualized education programs
(ix) Supplemental online courses

~~(e) Each school district will disseminate materials explaining the opportunities of proficiency based promotion to students and parents in the district each year. Proficiency criteria for each core curriculum area will be made available upon request.~~

210:35-27-3. Appropriate notation for credit in ~~core~~required curriculum area(s) completed through examination

~~Appropriate notation~~All course credits earned through examination by~~will be made for~~ elementary, middle level, or high school level students ~~satisfactorily completing grade 9—12 high school~~in required curriculum areas shall be appropriately notated on the student's transcript and/or student record.~~,~~ Completion may be recorded with a letter grade or pass notation. Credits earned by a student through examination in accordance with the provisions of 210:35-27-2 shall be transferable to or from any other school districts within the State of Oklahoma in which the student was enrolled, is currently enrolled, or may be enrolled.~~This~~Credit for units of secondary coursework in curriculum ~~area will~~areas required for graduation by 70 O.S. § 11-103.6 shall count toward meeting the requirements for the high school diploma.

[OAR Docket #14-693; filed 7-7-14]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID

[OAR Docket #14-694]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 87. Rules for payments to charter schools
210:40-87-3. Distribution and reporting of state-appropriated funds to charter school sponsors and charter schools~~Guidelines for payment~~ [AMENDED]
AUTHORITY:
State Department of Education; 70 O.S. § 3-104; 70 O.S. § 3-136; 70 O.S. § 3-142; 70 O.S. § 5-135; 70 O.S. § 5-135.2; 70 O.S. 22-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 19, 2014

ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule sets forth the procedures for payments to charter schools in accordance with the requirements of 70 O.S. § 3-142(A), which requires the State Board of Education to determine the policy and procedure for making payments to a charter school. The amendments address distribution and reporting requirements for state appropriated funds necessary to ensure transparency and accountability for use of state funds by charter schools and their sponsors. The amendments also ensure that charter schools comply with financial reporting requirements in 70 O.S. § 5-135 and 5-135.2 to which charter schools are subject pursuant to the provisions of 70 O.S. § 3-136(A)(6).
CONTACT PERSON:
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 87. RULES FOR PAYMENTS TO CHARTER SCHOOLS

210:40-87-3. Distribution and reporting of state appropriated funds to charter school sponsors and charter schools ~~Guidelinesfor payment~~

(a) **Distribution and disbursement.** Distribution and disbursement of all State Aid allocations and any other state appropriated revenue to a charter school and its sponsor in accordance with the requirements of 70 O.S. § 3-142 shall be conducted in accordance with the following provisions:

(1) **Requirements for distribution of funds; sponsor administrative costs.** The State Department of Education shall not distribute state appropriated funds to a charter school sponsor for disbursement to its charter school until all of the following requirements have been met:

(A) The charter school sponsor must provide the State Department of Education with financial records documenting any state funds retained by the sponsor for administrative services rendered during the previous fiscal year. Fees for administrative services shall comply with the provisions of 70 O.S. § 3-142.

(B) Financial transactions for all state appropriated funds for the previous fiscal year have been reported to the State Department of Education by the charter school sponsor and/or the charter school in accordance with the requirements of 70 O.S. § 5-135.2.

(C) In addition to the above requirements, prior to the charter school's initial year of operation, the charter school sponsor shall ensure that the charter school has met all of the following requirements no later than June 30 prior to the charter school's initial year of operation:

(i) The charter school shall submit a copy of the approved and executed charter school charter and a copy of the approved and executed contract with the sponsor to the State Department of Education;

(ii) The charter school shall provide the State Department of Education with documentation that it has established and will maintain a student information system that meets the requirements of 70 O.S. § 18-200.1;

(iii) The charter school shall provide the State Department of Education with documentation that it has established an approved financial accounting system that meets the requirements of the Oklahoma Cost Accounting System (OCAS); and

(iv) The charter school shall have been issued a county and district identification number from the Accreditation Division of the State Department of Education.

(2) **Distribution to charter school.** A charter school sponsor shall distribute state flow-through funding to the charter school within ten (10) business days from the date of receipt of funds by electronic transfer from the State Department of Education.

(3) **Effect of disbursement.** Disbursement of funds to a charter school from the charter school's sponsor shall result in the charter school having fiscal control over the funds received.

(b) **Reporting requirements.** Charter school sponsors and charter schools shall meet the following reporting requirements:

(1) **Annual statement of income and expenditures.** Every sponsor of a charter school and every charter school shall annually prepare and submit a statement of actual income and expendures as follows:

(A) **Charter school sponsors.** No later than September 1 of each year, every sponsor of a charter school shall prepare a statement of actual income and expenditures of the sponsor for the fiscal year that ended on the preceding June 30 and transmit the income and expenditure data to the State Department of Education in accordance with the requirements of 70 O.S. § 5-135.2 The Department of Education shall post the income and expenditure data on the Department's website in a form that is accessible to the public.

(B) **Charter schools.** No later than September 1 of each year, every charter school shall prepare a statement of actual income and expenditures for the fiscal

year that ended on the preceding June 30 and transmit the income and expenditure data to the State Department of Education in accordance with the requirements of 70 O.S. § 5-135 and 5-135.2. The Department of Education shall post the income and expenditure data on the Department's website in a form that is accessible to the public.

(2) **Financial statement and estimate of needs.** No later than October 1 of each year, every charter school shall prepare and submit the following to its sponsor and the State Department of Education:

(A) A sworn financial statement showing the true fiscal condition of the charter school as of the close of the previous fiscal year ended June 30 that meets the requirements of 68 O.S. § 3002; and

(B) A written itemized statement of estimated needs and probable income from all sources for the current fiscal year that meets the requirements of 68 O.S. § 3002.

(3) **Amendments to charter school charter or sponsorship contract affecting state funding.** Within thirty (30) calendar days of the date of execution of any amendment of a charter school's charter and/or contract for sponsorship, the charter school shall notify the State Department of Education in writing of any modifications to terms of the charter/contract that could affect or potentially affect calculation and/or distribution of state funding. Examples of modifications include, but shall not be limited to amendments to the following terms:

(A) Requirements and procedures for program and financial audits;

(B) Grade levels served by the charter school;

(C) School day of early childhood and kindergarten programs (e.g., half-day or full-day);

(D) Minimum or maximum numbers of pupils served;

(E) Participation in state employee benefit programs (e.g., OTRS); and

(F) Provisions specifying disposition of property acquired by the charter school upon expiration or termination of a contract for sponsorship.

(4) **Required reports upon closure of a charter school.** Upon expiration or termination of contract for charter school sponsorship, or upon failure of the charter school to continue operations, the charter school sponsor shall be responsible for ensuring that the State Department of Education is provided with a final audit that complies with the annual audit requirements of the Oklahoma Public School Audit Law and accompanying regulations, and an itemized statement detailing the disposition of all charter school real and personal property. All statements required pursuant to the provisions of this paragraph shall be provided to the State Department of Education no later than ninety (90) days from the date of termination or expiration of the contract for sponsorship or the last date classes are held by the charter school, whichever occurs first.~~During the first year of a charter school's operation, a sponsoring school district shall disburse funding to a charter school in as equal as practicable monthly installments as possible from the effective date of its contract with the sponsoring school district, provided that the first payment shall not be made more than thirty (30) days prior to the commencement of instruction or July 1, whichever shall first occur.~~

~~(b) For fiscal years subsequent to a charter school's first year of operation, a sponsoring school district shall disburse funding to a charter school in as equal as practicable monthly installments as possible. Each charter school shall receive the State Aid Formula and state appropriated funds generated by their students. The State Department of Education shall provide the calculations used to determine such payments to the charter school.~~

~~(c) By the 15th of the following month, the district shall disburse to each charter school site the generated amount of state appropriated and state aid formula funds.~~

~~(d) Home districts receiving federal funds will disburse to the charter school by the identified student population the charter school's proportionate share of the federal funds. These funds will be disbursed by the 15th of the month following receipt of the reimbursement funds by the home district. However, if the home district and the charter school can agree for the district to provide services, no transfer of funds will occur.~~

~~(e) Disbursement shall result in each charter schoolhaving fiscal control over the funds received.~~

[OAR Docket #14-694; filed 7-7-14]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 1. GENERAL PROVISIONS

[OAR Docket #14-459]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Records and Inspections
240:1-3-3. Confidential records [AMENDED]
240:1-3-5. ~~Charges~~Copying and reproductions fees [AMENDED]
240:1-3-6. Search fees [AMENDED]
240:1-3-9. Release of confidential information to specific government agencies [AMENDED]
Subchapter 5. Local Project Funding
240:1-5-5. Affidavit of LPF officers [AMENDED]
240:1-5-6. Serial numbering of local project funding contract [AMENDED]

AUTHORITY:
40 O.S. §§4-302, 4-508 and the Oklahoma Employment Security Commission

SUBMISSION OF PROPOSED RULE TO GOVERNOR AND CABINET SECRETARY:
October 15, 2013

COMMENT PERIOD:
November 15, 2013 through December 16, 2013

PUBLIC HEARING:
December 16, 2013

ADOPTION:
January 7, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 9, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules are amended are "clean-up" amendments.
CONTACT PERSON:
Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146, e-mail address: Melissa.Copenhaver@oesc.state.ok.us .

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. RECORDS AND INSPECTIONS

240:1-3-3. Confidential records

(a) Employer and unemployment insurance claimant records made confidential under Title 40 O.S., Section 4-508, may be released upon receipt of an administrative subpoena, court order or a notarized waiver of confidentiality signed by the person with the authority to waive the confidentiality of the records. No records shall be released unless the administrative subpoena, court order or notarized waiver of confidentiality is dated within two years of the request for retrieval or reproduction of the requested records.
(b) The administrative subpoena, court order or wavier of confidentiality form shall be served on the Commission's legal division or the custodian of records twenty (20) days prior to the date on which the records are to be produced. The records requested shall be described as specifically as possible and the administrative subpoena, court order or waiver of confidentiality form shall set out the employer account number or social security number of the employer or claimant whose records are being requested.
(c) An employer or unemployment insurance claimant with proper identification can request a copy of his or her records at the Commission's local office or at the administrative office located in the Will Rogers Memorial Office Building in Oklahoma City.

240:1-3-5. ~~Charges~~Copying and reproduction fees

(a) The Commission shall charge for copies of records, as set out in this rule, and a search fee for staff time spent in obtaining the records, pursuant to 240:1-3-6, except no charge will be made for requests in furtherance of a claim for unemployment benefits or if disallowed by the provisions of 51 O.S. §24A.5.
(b) The document copying fee is twenty-five cents ($0.25) per page or One Dollar ($1.00) per page for a certified copy. This fee is to be paid prior to the release of the requested records.
(c) The reproduction fee for copying any electronic file to a CD or DVD shall be Ten Dollars ($10.00) for each CD or DVD used.
(d) The reproduction fee for an audio recording of a hearing shall be Ten Dollars ($10.00).

240:1-3-6. Search fees

The search fee shall be applicable to all confidential records requested for commercial purposes, unless it is determined by the Director, in his or her discretion, that the public interest is served to such an extent that no charge should be applicable. The search fee will be $10.00 for each account or claimant record requested. No search fee will be charged for the production of non-confidential ~~record~~records .

240:1-3-9. Release of confidential information to specific government agencies

(a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.
(b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:
(1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
(2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;
(3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
(4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
(5) Compsource Oklahoma for use in investigation of workers' compensation fraud;
(6) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
(7) The Oklahoma Workers' Compensation Court for use in investigation of workers' compensation fraud;
(8) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;

(9) The Oklahoma State Bureau of Investigation for use in criminal investigations, the location of missing persons or fugitives from justice, and the investigation of insurance fraud and health care fraud;
(10) The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;
(11) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
(12) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
(13) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;
(14) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
(15) The Oklahoma Office of State Finance to identify economic trends;
(16) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
(17) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(I);
(18) An agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A., Section 2841(b)(1), based on a showing of need made to the Commission;
(19) The national Wage Record Interchange System, at the discretion of the Commission;
(20) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;
(21) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or
(22) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.
(23) The Office of Juvenile Affairs for use in assessing results and outcomes of clients served as well as the effectiveness of state and local juvenile and justice programs including prevention and treatment programs.

SUBCHAPTER 5. LOCAL PROJECT FUNDING

240:1-5-5. Affidavit of LPF officer

The LPF officer shall be responsible for submitting an affidavit to the Director of the ~~Office of State Finance~~Office of Management and Enterprise Services certifying that the award of the local project funding contract met all criteria set forth in these rules, as well as filing all other documentation required for the ~~Office of State Finance~~ Office of Management and Enterprise Services to encumber the necessary funds and pay the local project funding contract.

240:1-5-6. Serial numbering of local project funding contracts

Each local project funding contract shall be identified by a serial number that will be cited in all correspondence to the contracting parties and the ~~Office of State Finance~~ Office of Management and Enterprise Services concerning the local project funding contract. The number shall begin with the agency number for the Commission, followed by the last two digits of the year in which the contract is made, then followed by the number assigned to the contract. The agency number, year, and contract number will be separated by dashes.

[OAR Docket #14-459; filed 6-20-14]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM

[OAR Docket #14-460]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
240:10-1-2. Definitions [AMENDED]
Subchapter 3. Benefits
Part 1. General Provisions
240:10-3-1. Purpose [AMENDED]
Part 5. Eligibility
240:10-3-23. Claims for total unemployment benefits [AMENDED]
240:10-3-27. Social Security account numbers or claim ID number [AMENDED]
Part 11. Filing Claims - Notice
240:10-3-53. High volume employers and~~Third~~third party administrators - filing requirement [AMENDED]
Subchapter 5. Contributions
Part 1. General Provisions
240:10-5-3. Notice of change of address, organization or ownership [AMENDED]
Part 3. Rates
240:10-5-10. Payment of contributions [AMENDED]
240:10-5-15. Successor acquiring the experience rating account of predecessor [AMENDED]
Part 8. Waiver of Penalty and Interest
240:10-5-41. Filing a request for waiver [AMENDED]
Subchapter 11. Assessment Board Procedure
Part 1. General Provisions
240:10-11-1. Purpose [AMENDED]
240:10-11-3. Organization [AMENDED]
240:10-11-7. Address of Appellant [AMENDED]
Part 3. Appeals to Assessment Board
240:10-11-12. Timeliness of filing - jurisdiction [AMENDED]
Part 5. Hearings

240:10-11-20. Notice of hearings [AMENDED]
240:10-11-23. Telephone hearings [AMENDED]
Subchapter 13. Appeal Tribunal Procedure
Part 3. Appeals to the Appeal Tribunal
240:10-13-20. Filing an appeal [AMENDED]
Part 5. Hearings
240:10-13-32. Telephone hearings [AMENDED]

AUTHORITY:
40 O. S. §§1-218, 2-203, 2-204, 3-106, 3-115, 4-302 and the Oklahoma Employment Security Commission.

SUBMISSION OF PROPOSED RULE TO GOVERNOR AND CABINET SECRETARY:
October 15, 2013

COMMENT PERIOD:
November 15, 2013 through December 16, 2013

PUBLIC HEARING:
December 16, 2013

ADOPTION:
January 7, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 9, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Amendments in this chapter will correct citations to the statutes, simplify wording of the rules, references to the name of the governing act are being corrected; replace wording used in the rule so that it will match the wording used in the governing statutes; require employers with a high volume of protests each month to file their protests and appeals by telefax, email addresses will be added to the contact information that must be provided by the employer; allow the Assessment Board to hear issues in all workforce system audit resolutions and allow the Director of the Appellate Division to appoint a non-hearing officer staff member to hear benefit wage protests to speed up processing of these cases; employers will be required to keep the Assessment Board advised of any changes in email addresses as well as mailing addresses; insert a good cause provision in the rule on filing deadlines due to changes made in the governing statute last year; allow notice of hearings to be sent to parties by email for those who have elected to be notified in that manner; and require pre-registration for telephone hearings in order to speed up processing.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

240:10-1-2. Definitions

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

"Commuting distance" means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

"Full-time work" means employment in thirty-two (32) or more hours of work per week.

"Good cause" means reasons beyond the control of the party seeking relief.

"Independent contractor" means:

(A) Any person who performs services according to their own methods and without control except as to results is an independent contractor, if they are:

(i) Customarily engaged in an independently-established business; or

(ii) Performing service outside the usual course of the contractor's business and outside the places of such business.

(B) In order to be considered "without control" the individual providing the service shall:

(i) Provide their own tools and equipment;

(ii) Pay their own ordinary and customary business expenses;

(iii) Risk losing money from the contract;

(iv) Be free to hire their own assistants; and

(v) Be responsible for obtaining and maintaining all business, tax registrations and all business occupational licenses required by federal, state, or local laws or ordinances.

(C) A written contract relating to such services shall be considered under 40 O.S. Section 1-210 (14), along with all other pertinent evidence in determining employment status and shall not be accorded any greater weight than any other evidence.

(D) This definition shall not be interpreted or construed as conflicting with Section 3304 (a) (6) (a) of the Federal Unemployment Tax Act.

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. §2-503 (E).

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and **"Rents"**~~[40:1-210(15)]~~ mean a contract between an owner of a business, building, or property and a leasee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the leasee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", "Mailed", and **"Mailing"**, as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. §7520(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Part-time work" means employment of less than thirty-two (32) hours of work in a week.

"Profiling" means:

(A) A systematic computer generated process that:

(i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(ii) Refers identified claimants to reemployment services; and

(iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for profiling are:

(i) Recall status;

(ii) Union hiring hall agreement;

(iii) Education;

(iv) Job tenure;

(v) Industry;

(vi) Occupation;

(vii) Unemployment rate;

(viii) Number of prior UI claims; and

(ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in profiling are:

(i) Age;

(ii) Race or ethnic group;

(iii) Sex;

(iv) Color;

(v) National origin;

(vi) Disability;

(vii) Religion;

(viii) Political affiliation; and

(ix) Citizenship.

"Reasonable cash value"~~[40:1-218]~~ means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date or, in cases involving a federal agency or federal contractor with employees who have agreed to refrain from seeking employment elsewhere as part of their terms of employment when work is ceased due to the needs of the federal government, and the federal employer or federal contractor maintains an attachment to an employee by means of its contract of employment, then a recall date will not be required.

"Wages"

(A) **"Gratuities or Tips"** The employer shall include as wages all monies paid as gratuities or tips ~~actually~~ ~~*received by an individual in the course of his work*~~ ~~[40:1-218]~~received by an individual in the course of his or her work pursuant to 40 O.S. Section 1-218 or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) **"Noncash remuneration"** Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services ~~unless such~~ ~~*meals and lodging are furnished on the business premises of the employer for the convenience of the employer*~~except for meals and lodging that are furnished on the business premises of the employer for the convenience of the employer pursuant to 40 O.S. Section 1-218(6). ~~[40:1-218(4)]~~

"Wages paid"

(A) The term "wages paid" ~~[40:1-219]~~, as defined in 40 O.S. Section 1-219, shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week"For the purpose of paying benefits and for the purpose of this Chapter, a "week" as defined in 40 O.S. §1-220 shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.

"Working day" means:

(A) For employers, any day the employer was open and conducting its regular business activities.

(B) For claimants, any day the claimant's employer or former employer scheduled the claimant to work and the claimant was present and working at his or her assigned activities for part or all of the scheduled work hours for that day.

SUBCHAPTER 3. BENEFITS

PART 1. GENERAL PROVISIONS

240:10-3-1. Purpose

This Subchapter establishes the procedures for the payment of benefits to unemployed individuals who qualify under the ~~Oklahoma Employment Security Act~~ Employment Security Act of 1980.

PART 5. ELIGIBILITY

240:10-3-23. Claims for unemployment benefits-general requirements

(a) **Definition.** An individual shall be defined as unemployed during a week whenever:

(1) the individual has been separated from ~~employment~~work with his/her last regular employer and the individual has not during the week performed services in employment for any employer; or

(2) the individual has worked less than full time for some employer and earned less than his/her weekly benefit amount plus $100.00. ~~[40:1-217]~~

(b) **Effective date.** The effective date of an initial claim, additional initial claim, or a reopened claim shall be the first day of the calendar week in which the individual first files the initial claim, additional initial claim, or reopened claim.

(c) **Failure to report/good cause.** When the Commission representative determines that a claimant had good cause for failure to report as directed, a claim may be accepted at a later date, not to exceed seven (7) calendar days from the date originally specified for his/her reporting.

(d) **Continued claim.** A claimant who is filing for benefits under the Interactive Voice Response System or the Internet may file a continued claim provided the claimant files the continued claim within fourteen (14) calendar days from the week ending date of the claim or within fourteen (14) calendar days from the date the continued claim is furnished to the claimant.

(e) **Determination of eligibility for benefits.** The Employment Security Act of 1980 prescribes the following requirements:

(1) A Commission representative shall determine claimant's eligibility for benefits.

(2) A Commission representative shall accept written and verbal statements from the claimant and the employer.

(3) A Commission representative shall take any action necessary to determine the facts and to determine the rights of both the employer and claimant.

(4) A Commission representative shall write a determination which must include the following:

(A) An explanation of the parties' appeal rights;

(B) A summary of pertinent facts;

(C) The reasons for allowing or denying benefits; and

(D) The conclusion or legal results of the decision.

(5) Any interested party may appeal a determination. The appeal shall be filed with the Commission. When the appeal is filed, all interested parties shall be notified.

(f) In computing any period of time described in this rule, the day of the event from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included. Claimants required to make a filing on a day in which the offices of the Commission are not open shall make the filing through the Internet or by telephone through the Interactive Voice Response system. Failure to file for a claim within the time allowed will result in denial of benefits for that week.

240:10-3-27. Social Security account numbers or claim ID number

(a) **Submittal by employing unit.** Each employing unit shall submit the name and Social Security account number of a worker when communicating with the Commission in connection with any report, claim, or proceeding under the ~~OES Act~~Employment Security Act of 1980 with respect to such worker.

(b) **Submittal by individual.** Any individual shall submit his/her name and Social Security account number or a claim ID number when communicating with the Commission in connection with any report, claim, or proceeding under the ~~OES Act~~Employment Security Act of 1980 with respect to such individual.

PART 11. FILING CLAIMS - NOTICE

240:10-3-53. High volume employers and~~Third~~third party administrators - filing requirement

Any employer or third party administrator that files more than 30 protests in any month during the previous calendar year in response to benefit claim notices, on behalf of its client employers, shall file the protests by telefax only to the telefax number set out on the Notice of Benefit Claim form, and shall file any appeal by telefax only to the telefax number set out on the Notice of Determination. The Oklahoma Employment Security Commission shall not accept hand delivery, postal mailing, or e-mailing of protests or appeals by employers or third party administrators meeting the volume of filings set forth above.

SUBCHAPTER 5. CONTRIBUTIONS

PART 1. GENERAL PROVISIONS

240:10-5-3. Notice of change of address, organization or ownership

Any employer who has:

(1) a change of mailing address;

(2) a change of e-mail address;~~or~~

(3) a change of organization or transfer of ownership~~,~~; or

(4) ~~who sells~~sold or otherwise ~~disposes~~disposed of a part or all of its business or assets~~,~~; shall give written notice to the Commission immediately following the effective date of ~~such~~the change, sale or disposition. ~~[40:4-302]~~

PART 3. RATES

240:10-5-10. Payment of contributions

(a) **Date payment due.** Contributions shall become due and be paid on or before the last day of the month following the calendar quarter to which they relate, provided that:

(1) If, under the provisions of 40 O.S. Section 3-306, the Commission shall declare the period for which any contribution may become due to have terminated for an employer, and assesses the contributions for such period, such contributions shall immediately become due and be paid by such employer; and

(2) If an employing unit has not previously qualified as an employer under the Employment Security Act of 1980 and first qualifies as an employer during a calendar year, the employing unit shall pay contributions for all past periods of that year for which said employer is liable for the payment of contributions, on or before the due date for that quarter in which such employing unit becomes an employer subject to the Employment Security Act of 1980. ~~[40:3-102]~~

(b) **Date of receipt defined.**

(1) Payments of contributions received through the mail shall be deemed to have been received as of the date shown by the postmark on the envelope properly addressed to the Commission's office and containing such payment.

(2) Payment of contributions received through an electronic fund transfer system shall be deemed to ~~be~~ have been received by the Commission on the date on which the electronic payment was authorized for immediate payment to the Oklahoma Employment Security Commission.

(3) All other payments of contributions shall be deemed to have been received on the date on which payments are received by a representative of the Commission.

240:10-5-15. Successor acquiring the experience rating account of predecessor

(a) **Notification to transferring employer.** When any employing unit acquires a portion of the experience rating account of an employer under the provisions of 40 O.S. Section 3-111(B), and makes written application for a transfer as provided by the ~~Act~~Employment Security Act of 1980, written notice of the application for partial transfer shall be mailed or delivered to the transferring employer by a duly authorized Commission representative after receipt of the application.

(b) **Protesting partial transfer.** Within twenty (20) days after the date of mailing or delivery of the written notice, the transferring employer may file a written protest to the transfer and request an oral hearing to present evidence in support of the protest. The hearing shall be conducted in the manner prescribed in 40 O.S. Section 3-115. Pending a final determination of the protest, no transfer of experience rating account shall be made. If it is determined that a transfer of a partial experience rating account should be made, then the accounts and contributions of the transferring and acquiring employers shall be adjusted in accordance with the transfer.

(c) **Partial transfer to non-subject employer.** In the event of a partial transfer of the experience rating account of an employer to an acquiring employing unit, who was not an employer prior to the acquisition, the contribution rate of the acquiring employing unit shall be determined in accordance with the provisions of 40 O.S., Article 3, Part I, based upon the portion of the experience rating account that was transferred. The portion of the experience rating account that was transferred shall not thereafter be used to compute a contribution rate for the transferring employer. The contribution rate computed after the transfer shall be applicable to the acquiring employing unit as of the date of the acquisition.

(d) **Partial transfer to subject employer.** If the acquiring employing unit was an employer prior to the acquisition and transfer, then the experience rating account that was transferred shall be consolidated with the employer's experience rating account prior to the acquisition, and a contribution rate computed on the combined experience under the provisions of 40 O.S., Article 3, Part I. The contribution rate computed after the transfer shall be applicable to the employer beginning with the first day of the calendar quarter in which the acquisition occurred. The portion of the experience rating account that was transferred shall not be used in computing a contribution rate for the transferring employer for any year subsequent to the year in which the transfer was effective.

PART 8. WAIVER OF PENALTY AND INTEREST

240:10-5-41. Filing a request for waiver

(a) An employer who wants a waiver of penalty and/or interest that has been assessed or accrued in his or her account, must make a request for waiver in writing and file it with the Oklahoma Employment Security Commission.

(b) Filing must be accomplished by mailing or delivering the request document to ~~the Contributions Department of the Oklahoma Employment Security Commission at~~ the following address: Oklahoma Employment Security Commission, Contributions Department, P.O. Box 52003, Oklahoma City, OK 73152-2003.

(c) A request for waiver is deemed filed on the date the request letter is received by the Oklahoma Employment Security Commission.

SUBCHAPTER 11. ASSESSMENT BOARD PROCEDURE

PART 1. GENERAL PROVISIONS

240:10-11-1. Purpose

This Subchapter establishes procedures for the Assessment Board to hear and issue decisions in the following cases:

(1) Assessments of contributions or reimbursement payments;
(2) Contribution rate notices;
(3) Successorship;
(4) Waivers of penalty or interest;
(5) Base period employer charges;
(6) Tax refund intercepts; and
(7) Workforce ~~Investment Act~~system audit resolutions.

240:10-11-3. Organization

(a) The Director of the Appellate Division of the Oklahoma Employment Security Commission shall administer the Assessment Board. The Director shall have supervisory authority over the chief hearing officer, hearing officers, and support staff of the Assessment Board. The Director, or designee, may reschedule hearings upon notice to the parties, administratively vacate decisions for good cause, grant or deny requests for continuances, and issue subpoenas in Assessment Board cases.

(b) All hearing officers appointed to the Appeal Tribunal shall also be hearing officers for the Assessment Board.

(c) The Director of the Appellate Division of the Oklahoma Employment Security Commission may appoint a qualified Appellate Division staff member who is not designated as a hearing officer, to be a special referee to hear base period employer protests to benefit wage charges made by the Commission pursuant to 40 O.S. Section 3-106.

240:10-11-7. Address of Appellant

(a) It shall be the responsibility of each party to an appeal to notify the Assessment Board, in writing, of any change of mailing address or e-mail address and maintain a good mailing address or email address for correspondence from the Assessment Board.

(b) If the party has representation, correspondence shall be mailed or e-mailed to the representative with a courtesy copy to the party. Notice shall be deemed given when mailed or e-mailed to the representative or, if no representative, to the party.

PART 3. APPEALS TO ASSESSMENT BOARD

240:10-11-12. Timeliness of filing - jurisdiction

Each protest must be filed with the Board within the time limit set out in the ~~initial~~ determination letter which is the subject of the appeal. If the appeal is filed untimely without good cause, the ~~initial~~ determination will be final and binding, and the Assessment Board will be without jurisdiction to hear the appeal.

PART 5. HEARINGS

240:10-11-20. Notice of hearings

The initial notice of hearing with regard to any case shall be mailed by the Assessment Board to all interested parties, or e-mailed to all interested parties that have elected to be notified by electronic means, no fewer than 10 days prior to the scheduled hearing, unless all interested parties waive their right to the 10 day notice. Notice of any subsequent hearings with regard to the same case may be given on the record, or by any other means reasonably calculated to provide reasonable notice of the hearing at any time before the hearing is to take place.

240:10-11-23. Telephone hearings

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be made five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the employer's name, and an explanation of the reasons for the request.

(c) Requests for in-person hearings will be considered based upon the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.
(2) Geographic location of the parties.
(3) Complexity of the issues.

If the director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

(d) Each party to a telephone hearing must exchange all documents that will be introduced as evidence with the opposing party and send a copy to the Assessment Board, at least five (5) days prior to the scheduled date of the telephone hearing.

(e) Parties must register prior to the scheduled time of the hearing. Registration may be completed on-line or by telephone. Third party administrators are required to register on-line and will not be allowed to register by telephone.

SUBCHAPTER 13. APPEAL TRIBUNAL PROCEDURE

PART 3. APPEALS TO APPEAL TRIBUNAL

240:10-13-20. Filing an appeal

With the exception of those entities who are required to file by telefax, ~~The~~the appeal should be filed with the Commission in any manner set forth in 40 O.S. Section 1-224 or by telephone through the Commission's interactive voice response system or by speaking with one of the Commission's claim representatives. A Commission representative will then forward the appeal to the Appeal Tribunal.

PART 5. HEARINGS

240:10-13-32. Telephone hearings

(a) Telephone hearings will be set at the discretion of the Director or his/her designee. If a party is dissatisfied with the telephone hearing option, the party may request the Director or designee to assign the case for an in-person hearing.

(b) A request for an in-person hearing must be received by the Director five (5) days prior to the scheduled date of the telephone hearing. The request must be in writing and include the claimant's name, and an explanation of the reasons for the request.

(c) Request for in-person hearings will be considered based on the following:

(1) Good cause shown, such as hearing impairment or language interpretation difficulties.

(2) Geographic location of the parties.

(3) Complexity of the issues.

(4) Timely disposition of cases as required by federal law.

If the Director or designee agrees that the request is reasonable, the case will be rescheduled as an in-person hearing.

(d) Parties must register prior to the scheduled time of the hearing. Registration may be completed on-line or by telephone. Third party administrators are required to register on-line and will not be accepted by telephone.

[OAR Docket #14-460; filed 6-20-14]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 21. WORKFORCE INVESTMENT ACT

[OAR Docket #14-461]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
240:21-1-1. Purpose and authority [AMENDED]
240:21-1-2. Definitions [AMENDED]
240:21-1-3. Addresses for appeals [AMENDED]
Subchapter 7. Monitoring
240:21-7-2. Monitoring report [AMENDED]
240:21-7-3. Monitoring resolution [AMENDED]
240:21-7-5. Appeal [AMENDED]
Subchapter 9. Audits
240:21-9-1. Audit requirements [AMENDED]
240:21-9-2. Delinquent audit [AMENDED]
Subchapter 11. Grievance Procedure
Part 3. Grievances Filed Directly with the OESC
240:21-11-10. Filing [AMENDED]
240:21-11-12. Contents of a grievance [AMENDED]
240:21-11-13. Referral of a grievance filed with OESC [AMENDED]
Part 5. Appeals to the OESC from Grievance Decisions of a Local Area
240:21-11-21. Appeals with OESC [AMENDED]
240:21-11-22. Time limit for filing an appeal with OESC [AMENDED]
Part 7. Informal and Formal Resolutions of Grievances
240:21-11-30. Informal resolution [AMENDED]
240:21-11-31. Hearing [AMENDED]

AUTHORITY:
40 O.S. §4-302, the Oklahoma Employment Security Commission; and Title V of the Older Americans Act Amendments of 2006.

SUBMISSION OF PROPOSED RULE TO GOVERNOR AND CABINET SECRETARY:
October 15, 2013

COMMENT PERIOD:
November 15, 2013 through December 16, 2013

PUBLIC HEARING:
December 16, 2013

ADOPTION:
January 7, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 9, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
These amendments will add Title V of the Older Americans Act Amendments of 2006 as one of the programs that will be subject to these rules; add a definition of "Director" to the rules so that that the Executive Director of the OESC can designate a person who will conduct monitoring and accept grievances; and strike the title of "Director of Workforce Services" from the rules because that title does not exist in the agency at this time.

CONTACT PERSON:
Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146, e-mail address: Melissa.Copenhaver@oesc.state.ok.us .

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

240:21-1-1. Purpose and authority

The Governor of the State of Oklahoma appointed the Governor's Council for Workforce and Economic Development (State Council) in compliance with the Section 111 of the Workforce Investment Act. The State Council assists the Governor in developing the Strategic State Workforce Investment Plan (State Plan) for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act pursuant to Section 112 of WIA. The Oklahoma Employment Security Commission (OESC), as the direct grant recipient, is responsible for the monitoring and oversight for workforce-related grants, programs and activities established and funded by the U.S. Department of Labor. The purpose of these rules is to facilitate the implementation of the WIA, U.S. Department of Labor WIA regulations, State Plan, Title V of the Older Americans Act Amendments of 2006 and workforce related grants as they related to specific OESC funding. The authority for these rules is established by Title 40 O.S. § 4-702.

240:21-1-2. Definitions

In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Assessment Board" is a hearing Board for the OESC, which is designated to adjudicate certain appeals specified herein.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in WIA section 117(c)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

"Director" means the person designated by the Executive Director of the OESC to conduct monitoring and accept grievances and appeals allowed by this chapter.

"Division of Internal Audit" means the OESC division responsible for conducting audit resolutions.

"Fiscal Agent" means an entity chosen by the CLEO to serve as OESC's subrecipient of the local area's workforce related grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Grant" means an award of WIA or workforce related financial assistance by the U.S. Department of Labor to an eligible recipient.

"Grantee" means the direct recipient of grant funds from the Department of Labor. A grantee may be referred to as a recipient.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Recipient" means an entity to which a WIA or workforce related grant is awarded directly from the Department of Labor to carry out a specific program.

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

"Subgrant" means an award of financial assistance made under a grant by a grantee or subrecipient to an eligible subrecipient.

"Subrecipient" means an entity to which a subgrant is awarded and which is accountable to the recipient, or higher tier subrecipient, for the use of the funds provided.

240:21-1-3. Addresses for appeals

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

(1) **Secretary**, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(2) **Regional Administrator**, Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.

(3) **Director ~~of Workforce Services~~** , Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.

(4) **Division of Internal Audit**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.

(5) **Assessment Board**, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.

SUBCHAPTER 7. MONITORING

240:21-7-2. Monitoring report

(a) A monitoring report will be issued by the Director ~~of Workforce Services~~ to the CLEO, local area fiscal agent, Local Board, or OESC's subrecipients after each monitoring review. A copy of this report will also be addressed to OESC's Director of Internal Audit. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements of WIA, the regulations promulgated thereunder, administrative requirements, applicable cost principles, grant agreements, and state and local policies.

(b) Monitoring reports and resolutions generated by an OESC subrecipient or Local Board must be submitted to the Director ~~of Workforce Services~~ when issued.

240:21-7-3. Monitoring resolution

(a) The Director ~~of Workforce Services~~ is responsible for monitoring resolution.

(b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, administrative findings or deficiencies.

(c) The CLEO, local area fiscal agent, Local Board or OESC's subrecipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Director ~~of Workforce Services~~. The response must contain all additional information, documents, or arguments the CLEO, local area fiscal agent, Local Board or OESC's subrecipient wants the Director ~~of Workforce Services~~ to consider in making the final determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Director ~~of Workforce Services~~ will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Director ~~of Workforce Services~~ may request additional information from the entity submitting a response, if clarification is needed. The Director ~~of Workforce Services~~ may schedule or the CLEO, local area fiscal agent, Local Board or OESC's subrecipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Director ~~of Workforce Services~~ prior to the first thirty (30) day deadline.

(d) The Director ~~of Workforce Services~~ shall issue a final determination in compliance with 240:21-7-4.
(e) The Director ~~of Workforce Services~~ will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.
(f) After follow-up procedures are completed, if the grant recipient is found in non-compliance, the Director ~~of Workforce Services~~ will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

240:21-7-5. Appeal
(a) If the CLEO, local area fiscal agent, Local Board or OESC's subrecipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.
(b) The appeal must be filed with the Director ~~of Workforce Services~~.
(c) The Director ~~of Workforce Services~~ will then forward a copy of the appeal to the Assessment Board within five (5) days from receipt.

SUBCHAPTER 9. AUDITS

240:21-9-1. Audit requirements
(a) A financial and compliance audit by an independent auditor is required annually for each subrecipient.
(1) Each subrecipient is subject to the audit requirements of 29 CFR Part 95, 29 CFR Part 97, or 29 CFR Part 99 (as appropriate) and shall comply with applicable OMB Circulars, including OMB Circular A-133.
(2) The audit shall be performed by a certified public accountant or firm, or by a public accountant or public accounting firm.
(A) Except as provided in subparagraph (B) of this paragraph, no single person or firm shall perform the annual audit for an Oklahoma WIA grant recipient for more than three (3) consecutive years.
(B) The restriction in subparagraph (A) of this paragraph is waived if WIA funds constitute less than fifty percent (50%) of a grant recipient's total budget.
(3) The audit shall be performed in accordance with standards required by the federal government, requirements issued by OESC, and guidelines established by the Generally Accepted Governmental Auditing Standards (GAGAS).
(b) If the subrecipient does not receive a sufficient amount of federal grant money to require a full audit, the OESC may require a limited scope audit in accordance with federal requirements. The OESC will be responsible for arranging and paying for all limited scope audits. The limited scope audit will address one or more of the following types of compliance requirements.
(1) Activities allowed or disallowed;
(2) Allowable cost and cost principles;
(3) Eligibility;
(4) Matching;
(5) Level of effort;
(6) Earmarking;
(7) Reporting.
(c) The OESC Internal Audit Division is charged with the responsibility of audit resolution.
(d) The subrecipient must notify the Internal Audit Division of the name and address of the person or firm that will be performing the annual audit no later than thirty (30) days after the end of the grant recipient's fiscal year. The audit report is to be filed with the Director of Internal Audit Division within thirty (30) days after the completion of the audit and no later than nine (9) months from the end of the grant recipient's fiscal year. A copy of the audit report shall be delivered to the Director ~~of Workforce Integrated Programs~~ within the same time period. If a management letter is issued to a subrecipient, the subrecipient shall submit the management letter and the responses thereto to the OESC Internal Audit Division within thirty (30) days from the receipt of the management letter.

240:21-9-2. Delinquent audit
If the audit has not been received within nine (9) months after the end of the grant recipient's fiscal year, the Director of the Internal Audit Division will send a certified letter to the subrecipient advising it that it has fifteen days to provide its reasons for failing to comply with the requirements set forth in Rule 240:21-5-1. If no response is received within fifteen (15) days, or the response received is not adequate, the Director ~~of Workforce Services~~ will send a certified letter to the subrecipient advising it that its current funding and eligibility for future contracts are suspended.

SUBCHAPTER 11. GRIEVANCE PROCEDURES

PART 3. GRIEVANCES FILED DIRECTLY WITH THE OESC

240:21-11-10. Filing
A participant or affected party may file a grievance with the Director ~~of Workforce Services~~.

240:21-11-12. Contents of a grievance
Each grievance shall be in writing and should:
(1) Be signed by the grievant or his authorized representative;
(2) Contain the grievant's name and address (or specify another means of contacting him or her);
(3) Identify the individual against whom the grievance is filed, if applicable;
(4) List the date(s) on which the acts which are the basis of the grievance occurred, or if continuing, when such acts began and describe the continuing nature;

(5) List the names and addresses of persons who may have knowledge of the facts of the grievance;

(6) Describe the grievant's allegations in sufficient detail to allow the Director ~~of Workforce Services~~ to determine whether:

(A) The Director ~~of Workforce Services~~ has jurisdiction over the grievance;

(B) The grievance was timely filed; and

(C) The grievance has apparent merit, i.e., whether the allegations if true, would violate any Title I of WIA.

240:21-11-13. Referral of a grievance filed with OESC

The Director ~~of Workforce Services~~ may refer a grievance, originally filed with the OESC, to the local area if there is a likelihood that it could be resolved at that level. If the referred grievance is not resolved within ten (10) days from the date of receipt by the local area, the Director ~~of Workforce Services~~ will attempt to resolve the issue informally.

PART 5. APPEALS TO THE OESC FROM GRIEVANCE DECISIONS OF A LOCAL AREA

240:21-11-21. Appeals with OESC

An appeal may be filed with the Director ~~of Workforce Services~~ from a grievance decision issued at the local area level if:

(1) No decision is reached within 60 days from the date the grievance is received at the local area level; or

(2) Either party is dissatisfied with the local area hearing decision.

240:21-11-22. Time limit for filing an appeal with OESC

(a) If the local area does not render a decision within sixty (60) days from the date of receipt of the grievance, an appeal must be filed with the Director ~~of Workforce Servic~~es within 30 days from the expiration of the sixty (60) day time period.

(b) If the local area renders a decision that a party is dissatisfied with, the appeal must be filed with the Director ~~of Workforce Services~~ within 30 days of the date the local area mails the decision to the party by certified mail.

PART 7. INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES

240:21-11-30. Informal resolution

The Director ~~of Workforce Services~~ or his or her designee will attempt to resolve any grievance or appeal informally by meeting with the parties in person or discussing the grievance with the parties by telephone. If the grievance is not resolved informally within fifteen (15) days from the receipt of the grievance or appeal, the Director ~~of Workforce Integrated Programs~~ will forward the grievance or appeal to the Assessment Board.

240:21-11-31. Hearing

The Assessment Board will conduct the hearing pursuant to its rules at 240:10-11-20 through 240:10-11-31. The hearing process will be completed within sixty (60) days from the date the grievance was received by the Director ~~of Workforce Services~~.

[OAR Docket #14-461; filed 6-20-14]

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

[OAR Docket #14-630]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Incorporation By Reference
252:100-2-3. [AMENDED]
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]
AUTHORITY:
Environmental Quality Board, 27A O.S. Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. Sections 2-5-101 *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 15, 2014
February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards as they existed on November 1, 2013:
40 CFR Part 51, Subpart F, Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
40 CFR Part 58, Appendix A to Part 58 - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring
40 CFR Part 60, Subpart Ga, Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
40 CFR Part 60, Subpart KKK, Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
40 CFR Part 60, Subpart LLL, Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing: SO_2 Emissions
40 CFR Part 60, Subpart CCCC, New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
40 CFR Part 60, Subpart DDDD, Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
40 CFR Part 60, Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
40 CFR Part 60, Subpart OOOO, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution

40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants

40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters

40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units

40 CFR Part 63, Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources

40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

40 CFR Part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Unit

Incorporating rules:

252:100-2-3

Appendix Q. Incorporation By Reference

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

ANALYSIS:

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. Among the changes proposed will be the addition of the model Commercial and Industrial Solid Waste Incinerator (CISWI) rule in 40 CFR Part 60, Subpart DDDD, and 40 CFR Part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Units, to coincide with the proposed modification of Subchapter 17. Also, the update will include other changes or additions to 40 CFR Part 60, New Source Performance Standards (NSPS) including the recent amendment to the oil and natural gas NSPS in 40 CFR Part 60, Subpart OOOO; Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP); and other EPA regulations referenced in Chapter 100. The update includes the recent amendment to the definition of volatile organic compounds (VOCs) in 40 CFR Section 51.100(s)(1). In addition, the Department is proposing to update language in Subchapter 2, Incorporation By Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 205.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 2. INCORPORATION BY REFERENCE

252:100-2-3. Incorporation by reference

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~September 13, 2012~~November 1, 2013.

(1) **Inclusion of 40 CFR citations and definitions.** When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.

(2) **Inconsistencies or duplications of requirements or incorporation dates.**

(A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.

(B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.

(3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.

(A) "Administrator" is synonymous with "Executive Director."

(B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality or "DEQ".

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on November 1, 2013, unless otherwise noted.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996

PART	SUBPART	DESCRIPTION
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983

PART	SUBPART	DESCRIPTION
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants

PART	SUBPART	DESCRIPTION
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

PART	SUBPART	DESCRIPTION
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO_2 Emissions From Onshore Natural Gas Processing: SO_2 Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries

PART	SUBPART	DESCRIPTION
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
60	JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride

PART	SUBPART	DESCRIPTION
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air

PART	SUBPART	DESCRIPTION
		Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

PART	SUBPART	DESCRIPTION
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) -

PART	SUBPART	DESCRIPTION
		Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

PART	SUBPART	DESCRIPTION
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants:

PART	SUBPART	DESCRIPTION
		Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

PART	SUBPART	DESCRIPTION
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

PART	SUBPART	DESCRIPTION
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

PART	SUBPART	DESCRIPTION
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation

PART	SUBPART	DESCRIPTION
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

[OAR Docket #14-630; filed 7-2-14]

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

[OAR Docket #14-621]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2. Registration of potential sources of air contaminants [AMENDED]
252:100-5-2.1. Emission Inventory [AMENDED]
252:100-5-3. Confidentiality of proprietary information [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S., Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., Sections 2-5-101, *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
June 17, 2013 through July 17, 2013
PUBLIC HEARINGS:
July 17, 2013
August 20, 2013
ADOPTION:
August 20, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
August 27, 2013
GUBERNATORIAL APPROVAL OF ADOPTED RULES:
September 10, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superceded rules:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2. Registration of potential sources of air contaminants [AMENDED]
252:100-5-2.1. Emission Inventory [AMENDED]
252:100-5-3. Confidentiality of proprietary information [AMENDED]
Gubernatorial approval:
September 10, 2013
Register publication:
31 Ok Reg 45
Docket number:
13-1208
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Department of Environmental Quality (DEQ) proposes to modify Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, for all minor sources facilities registered under a Permit by Rule (PBR) to change the emission inventory reporting schedule for these facilities. Currently, PBR facilities with actual emissions greater than 5 tons per year (tpy) are required to submit an emission inventory every year, and PBR facilities with actual emissions of 5 tons or less per year are required to submit an emission inventory at the end of every five year period. The proposed changes to OAC 252:100-5-2.1 would require all PBR facilities to submit an emission inventory for the 2014 reporting year or the first calendar year in which the facility is registered, if registered after December 31, 2014. Facilities with actual emissions greater then 5 tpy of any regulated air pollutant will be required to submit an emission inventory every National Emissions Inventory (NEI) Three-Year Cycle Inventory year. Facilities with actual emissions of 5 tpy or less of any regulated air pollutant will be required to submit an emission inventory every second NEI Three-Year Cycle Inventory year, starting with the 2020 reporting year. The DEQ also proposes to modify 252:100-5-2(b) and -2.1(b) to remove unnecessary reporting requirements. The proposed revision to 252:100-5-3 would correct the listed reference to the appropriate Oklahoma Statute.

This proposal is in response to requests received from industry during the development of the Oil and Natural Gas Permit by Rule and will help alleviate the reporting burden imposed on industry. There are no fee changes associated with this proposal.
CONTACT PERSON:
Cheryl E. Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES

252:100-5-2. Registration of potential sources of air contaminants

(a) **Filing.** In addition to any requirements for the submission of information found in any other regulation in this Chapter, the owner or operator of an air contaminant source shall, upon request, provide the Division with information necessary to evaluate the source's potential for causing air pollution.

(b) **Necessary information.** The following information shall be included for each source:

(1) Total weight of the contaminant released per ~~day~~ year.

(2) Period or periods of operation.

(3) Composition of the contaminant.

~~(4) Physical state of the contaminant.~~

(~~5~~4) Temperature ~~and moisture content~~ of the air or gas stream at the point where released into the atmosphere.

(~~6~~5) Efficiency of any control device.

(~~7~~6) Such other information as may be specifically requested by the Director.

252:100-5-2.1. Emission inventory

(a) **Requirement to file an emission inventory.** The owner or operator of any facility that is a source of ~~air contaminants~~ regulated air pollutants shall submit a complete annual emission inventory ~~annually on forms obtained from~~ through DEQ's electronic reporting system or in another manner acceptable by the Division.

(1) **General requirements.** The inventory shall cover operations during a calendar year and shall be submitted ~~prior to~~ on or before April 1 of the following year. Upon receiving a written demonstration of good cause the Director may grant an extension for submittal beyond the April 1 deadline.

(2) **Permit by rule.** The owner or operator of a facility registered under a permit by rule ~~as outlined~~ in Subchapter

7, Part 9,~~and emitting 5 tons per year or less of each regulated air pollutant is required to submit an emission inventory for that facility once every 5 years. The inventory shall cover operations during the last year of each 5-year period and be submitted by March 1 of the following year.~~shall submit, at a minimum, an annual emission inventory for the 2014 reporting year or the calendar year in which the facility is registered, if the facility is registered after December 31, 2014, and thereafter according to the following schedule:

(A) For a registered facility with actual emissions greater than 5 tons per year of any regulated air pollutant, an annual emission inventory for that facility shall be submitted every National Emissions Inventory (NEI) Three-Year Cycle Inventory year, as defined in 40 CFR Section 51.30(b).

(B) For a registered facility with actual emissions of 5 tons per year or less of any regulated air pollutant, an annual emission inventory for that facility shall be submitted every second National Emissions Inventory (NEI) Three-Year Cycle Inventory year, as defined in 40 CFR Section 51.30(b), beginning with the 2020 NEI reporting year.

(3) **Permit exempt facilities and de minimis facilities.** The owners or operators of permit exempt facilities or de minimis facilities, as these terms are defined in OAC 252:100-7-1.1, are not required to submit an annual emission inventory.

(4) **Special inventories.** Upon request by the Director, the owner or operator of a facility that emits or has the potential to emit any regulated air pollutant shall file an emission inventory with the Division. The Director is authorized to request this inventory when emission related data is necessary for program planning or compliance with State or Federal rules, regulations, standards, or requirements.

(b) **Content.** All inventories submitted to the Division shall include, but shall not be limited to, the following:

(1) For those emissions subject to a permit,~~ the permit number and~~ the permitted allowable emissions as set forth therein.

(2) The amount of the actual emissions, including quantifiable excess emissions, and the basis for such determination. If the total actual emissions of any regulated air pollutant from a facility vary from the allowable or from the previous year's actual by more than 30%, the Department may require the owner or operator to provide an explanation for the difference in order to determine compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder, or any permit condition prescribed or order issued pursuant thereto.

(3) For those emissions not the subject of a permit and when requested by the AQD, a list of all OAC 252:100 rules setting forth emission limitations applicable to the facility in question and the maximum yearly allowable for the facility.

(c) **Documentation.** All calculations and assumptions must be verified by proper documentation. All supporting data, including actual production, throughput and measurement records along with engineering calculations and other data utilized in accordance with OAC 252:100-5-2.1(d) must be maintained for at least 5 years by the current owner or operator at the facility in conjunction with facility records of the emission inventory. This information must either be submitted to the Division or made available for inspection upon request.

(d) **Method of calculation.** The best available data at the time the emission inventory is or should have been prepared shall be used to determine emissions. It shall be the burden of the owner or operator to select the best available data, based on an acceptable method of calculation. The method of calculation used to determine emissions shall be binding upon the owner or operator and the Division for the purpose of calculating fees under OAC 252:100-5-2.2 unless challenged by the owner or operator prior to September 1 of the year the inventory is due or by the Division within six (6) months after the date the inventory is received. Acceptable methods of calculation for determining actual emissions are:

(1) Emission factors utilized in the issuance of a currently applicable Oklahoma Air Quality permit(s) for the facility.

(2) Stack tests using appropriate EPA test methods, with advance notification and opportunity for observation by the Division.

(3) Stack tests using appropriate EPA test methods may be used for determining the emissions of identical equipment (i.e., same model, same location, and same operating conditions and parameters) when:

(A) Tests are performed by persons qualified by training and experience to perform said tests.

(B) Copies of the test results and methods are available for review by the Division.

(4) Continuous emissions monitoring data, when supported by required certification and calibration data.

(5) Current AP-42 factors or other factors acceptable to the Division.

(6) Manufacturer's test data, when approved by the Division as reliable.

(7) EPA and EPA-contracted industry-specific emission study data when it can be shown to be applicable to the facility in question and approved for use in the emission inventory by the Division.

(8) Fuel usage and other mass-balance methods when supported by specific records applicable to the materials on which the calculations are based and approved for use in the emission inventory by the Division.

(9) Any other method that can be shown to be reasonably accurate when supported by engineering data and calculations, and approved for use in the emission inventory by the Division.

(e) **Methods of verification.** Emission inventories determined by the Division to be substantially incomplete or substantially incorrect shall, upon the request of the Division, be subject to verification if not satisfactorily completed or corrected within a reasonable time. Verification shall be accomplished by an appropriate stack test using EPA approved

methods, installation of continuous monitoring equipment, or other methods acceptable to the Division.

(f) **Certification.** The emission inventory shall contain certification by a responsible official of the truth, accuracy, and completeness of the document. This certification shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

252:100-5-3. Confidentiality of proprietary information

[Refer to 27A O.S. ~~§~~Section 2-5-105.~~18~~17.]

[OAR Docket #14-621; filed 7-2-14]

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

[OAR Docket #14-620]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Permits for Minor Facilities
Part 9. Permits by Rule
252:100-7-60. Permit by rule [AMENDED]
252:100-7-60.5. Oil and natural gas sector [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S., Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., Sections 2-5-101, *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
March 15, 2013 through April 17, 2013
PUBLIC HEARINGS:
April 17, 2013
August 20, 2013
ADOPTION:
August 20, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
August 27, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superceded rules:
Subchapter 7. Permits for Minor Facilities
Part 9. Permits by Rule
252:100-7-60. Permit by rule [AMENDED]
252:100-7-60.5. Oil and natural gas sector [NEW]
Gubernatorial approval:
September 10, 2013
Register publication:
31 Ok Reg 47
Docket number:
13-1209
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The Department of Environmental Quality (DEQ) proposes to modify Subchapter 7, Permits for Minor Facilities, in response to recent changes in federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) that will result in a significant number of minor facilities and area sources in the oil and natural gas (O&NG) sector being required to obtain air quality permits. The DEQ proposes to establish a comprehensive O&NG Permit by Rule (PBR) in new section OAC 252:100-7-60.5 for these minor facilities and area sources that would encompass the applicable requirements contained in, but not limited to, NSPS 40 CFR Part 60, Subparts OOOO, IIII, and JJJJ and NESHAP 40 CFR Part 63, Subparts HH and ZZZZ, as well as the DEQ Air Pollution Control Rules (252:100) Subchapters 5 (emission inventory), 9 (excess emissions), 19 (particulate matter), 25 (visible emissions), 29 (fugitive dust), 31 (sulfur compounds), 33 (nitrogen oxides), 37 and 39 (volatile organic compounds), and 43 (testing, monitoring, and recordkeeping).

The DEQ also proposes to modify 252:100-7-60, which contains requirements that apply to all PBRs. The proposed revision to 252:100-7-60(b)(1) clarifies the meaning of modification in PBRs. The proposed revision to 252:100-7-60(c) makes registration under a PBR effective upon receipt of the registration request by the DEQ and includes a list of acceptable documentation of receipt of the PBR registration.

CONTACT PERSON:

Cheryl E. Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 9. PERMITS BY RULE

252:100-7-60. Permit by rule

(a) **Applicability.** ~~A minor facility may be constructed or operated under this rule and will be exempt from any other permitting requirements in this Chapter if it meets~~ A permit by rule (PBR) may be adopted for an industry(s) to streamline the air quality permitting procedures required by OAC 252:100-7-15 and -18, if there are a sufficient number of facilities that meet the requirements of ~~100-7-15(b)(1)~~ 252:100-7-15(b)(1) and ~~this Part~~ that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) A facility may be constructed or operated under this rule and will be exempt from any other permitting requirements in this Chapter if it meets the requirements of 252:100-7-15(b)(1), 252:100-7-60, and the appropriate PBR.

(2) A facility cannot be registered under more than one PBR at the same time or under a PBR and a general or individual permit at the same time. However, the owner or operator may apply for a change in a facility's registration from one PBR to another PBR if the facility meets the criteria of the "new" PBR. The owner or operator may

apply for a change in a facility's air quality permit from a general or an individual permit to registration under a PBR for which the facility qualifies.

(b) **General requirements.** No construction under a PBR may commence until the request and application fee are received by the DEQ. Operation under the PBR is not authorized beyond the time limit contained in 252:100-7-18(a) unless a request for operation under the PBR and the application fee are received by the DEQ.

(1) **Application for registration under a PBR.**

(~~1~~A) **Construction or operation.** ~~To~~ The owner or operator wishing to construct or operate a facility under a ~~permit by rule~~ PBR~~, the owner or operator should~~must submit a ~~letter to the Division requesting~~ request for registration under the ~~appropriate permit by rule~~ PBR using the form(s) provided by the DEQ for that PBR. The ~~letter~~request must contain written certification by the owner or operator that the facility will be constructed ~~or~~and/or operated in compliance with such ~~permit by rule~~ PBR. A construction ~~or~~and/or operating permit application fee, as specified in 252:100-7-3, must accompany the ~~letter~~ form(s).

(B) **Modification.** A physical change or change in the method of operation to a facility covered by a PBR that would cause the facility to no longer qualify for the PBR is a modification, and will result in a change in permit status as provided by 252:100-7-60(b)(4). Other physical or operational changes are not modifications, and do not require submittal of an amended registration.

~~(2) In accordance with the requirements of Subchapter 5, an emission inventory shall be submitted to the DEQ every year, except that facilities emitting 5 tons per year or less of each regulated pollutant are required to submit an emission inventory once every 5 years. No other reporting requirements shall apply unless required by NSPS in Subchapter 4 or NESHAP in Subchapter 41.~~

(2) **Reporting requirements.** The owner or operator of a facility covered by a PBR must comply with the reporting requirements in 252:100-7-60(b)(2)(A), (B), and (C). No other reporting requirements shall apply.

(A) The owner or operator must submit emission inventories as required by 252:100-5-2.1;

(B) The owner or operator must comply with the excess emission reporting requirements in 252:100-9; and

(C) The owner or operator must comply with reporting requirements contained in any applicable NSPS or NESHAP.

(3) **Compliance inspections.** Compliance inspections will be conducted by the DEQ in response to complaints and ~~on a random basis~~ as necessary to determine compliance.

(4) **Change in permit status.** ~~Any change that would cause a facility to no longer qualify for a permit by rule will require the~~ The owner or operator ~~to~~shall apply for an individual permit or, if applicable, coverage under a general permit in the event that a change causes a facility to no longer qualify for a PBR.

(c) **Registration.** ~~After receiving the appropriate application fee and certification, the DEQ will acknowledge in writing that the facility is registered to construct or operate under the specified permit by rule. No facility may be constructed or operated under a permit by rule until DEQ issues written acknowledgement of the registration.~~Registration under a PBR shall constitute compliance with the requirements of 252:100-7-15(a) (for construction permits) or 252:100-7-18(a) (for operating permits).

(1) Registration under the PBR will be effective upon receipt of the requisite form(s) (including the appropriate application fee) by the DEQ.

(2) Acceptable documentation of receipt of the PBR registration is the earliest of:

(A) a legible, dated U.S. Postal Service postmark (private metered postmarks are not acceptable);

(B) a dated receipt from a commercial carrier or the U.S. Postal Service; or

(C) a DEQ date-stamped registration.

(3) After receiving the appropriate PBR registration request and application fee and confirming that the facility is eligible for coverage under the PBR, the DEQ will acknowledge in writing that the facility is registered to construct or operate under the PBR.

252:100-7-60.5. Oil and natural gas sector

(a) Applicability. This PBR is issued for minor facilities and area sources in the oil and natural gas (O&NG) sector. This includes but is not limited to facilities subject to federal standards, primarily Subparts IIII, JJJJ, and OOOO of the federal NSPS, 40 CFR Part 60, and Subparts HH and ZZZZ of the federal NESHAP, 40 CFR Part 63, as cited in this PBR and incorporated by reference in OAC 252:100-2 and Appendix Q to Chapter 100. Specifically, this PBR applies to the following:

(1) **Eligible minor facilities and area sources.** New and existing minor facilities and area sources in the O&NG sector are eligible for this PBR, provided they comply with the conditions in (A) through (G) of this paragraph.

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility has potential emissions of each regulated air pollutant, except HAPs, that are less than the emission levels that require prevention of significant deterioration (PSD), nonattainment new source review (NNSR), and Part 70 permits.

(C) The facility does not emit or have potential emissions of 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(D) For the purpose of determining if a facility is eligible for registration under this PBR, the calculation of actual emissions may include emission reductions that will be made enforceable by registration under this PBR.

(E) Only for the purpose of determining if a facility is eligible for registration under this PBR, the calculation of potential emissions shall not include emission reductions resulting from any physical or operational limitation (including capacity limitations, use of air pollution control equipment, and/or restrictions on hours of operation or on the type or amount of material combusted, stored, or processed).

(F) The facility must meet the criteria in 252:100-7-15(b)(1)(C) through (E).

(G) The facility is not otherwise a Part 70 source.

(2) **Equipment and processes.** This PBR covers equipment and processes located at minor facilities and area sources in the O&NG sector that meet the criteria contained in 252:100-7-60.5(a)(1). Covered equipment and processes under this PBR include, but are not limited to:

(A) The affected facilities listed in 40 CFR Section 60.5365 of NSPS Subpart OOOO.

(B) Stationary compression ignition internal combustion engines, as specified in 40 CFR Section 60.4200 of NSPS Subpart IIII, which are located at minor facilities in the O&NG sector.

(C) Stationary spark ignition internal combustion engines, as specified in 40 CFR Section 60.4230 of NSPS Subpart JJJJ, which are located at minor facilities in the O&NG sector.

(D) The affected sources listed in 40 CFR Section 63.760(a) and (b)(2) of NESHAP Subpart HH, which are located at area sources.

(E) Stationary reciprocating internal combustion engines (RICE), as specified in 40 CFR Section 63.6585 of NESHAP Subpart ZZZZ, which are located at area sources in the O&NG sector.

(b) **Standards and requirements.**

(1) **NSPS and NESHAP requirements.** The owner or operator shall meet the applicable requirements of the following NSPS and NESHAP subparts for equipment and processes located at minor facilities or area sources in the O&NG sector.

(A) **General provisions.** The owner or operator of minor affected facilities covered by the O&NG PBR shall comply with applicable requirements of 40 CFR 60, Subpart A.

(B) **Crude oil and natural gas production, transmission, and distribution.** The owner or operator of each minor affected facility shall comply with the applicable standards and requirements of 40 CFR Part 60, Subpart OOOO.

(C) **Stationary compression ignition internal combustion engines.** The owner or operator of a stationary compression ignition internal combustion engine shall comply with the applicable emission, equipment, and work practice standards and testing, reporting monitoring, and recordkeeping requirements of 40 CFR Part 60, Subpart IIII.

(D) **Stationary spark ignition internal combustion engine.** The owner or operator of a stationary spark ignition internal combustion engine shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 60, Subpart JJJJ.

(E) **General provisions.** The owner or operator of an area source covered by the O&NG PBR shall comply with applicable requirements of 40 CFR Part 63, Subpart A.

(F) **Oil and natural gas production facilities.** The owner or operator of an affected source listed in 40 CFR Section 63.760(a) and (b) and located at an area source shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 63, Subpart HH.

(G) **Stationary reciprocating internal combustion engines.** The owner or operator of a stationary RICE located at an area source shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of 40 CFR Part 63, Subpart ZZZZ.

(H) **Equipment subject to any other NSPS or NESHAP.** The owner or operator of the facility shall comply with the applicable emission, equipment, and work practice standards and testing, reporting, monitoring, and recordkeeping requirements of any other applicable NSPS or NESHAP, including any modification to requirements of an existing applicable NSPS or NESHAP.

(2) **DEQ Air Pollution Control Rules, standards, and requirements.** The owner or operator of an O&NG facility covered by this PBR shall comply with applicable portions of the:

(A) emission inventory requirements and annual fee requirements contained in 252:100-5;

(B) excess emission reporting requirements contained in 252:100-9;

(C) particulate matter emission rates contained in 252:100-19 for fuel-burning equipment;

(D) visible emissions (opacity) limits contained in 252:100-25 for subject emission units;

(E) fugitive dust standards contained in 252:100-29;

(F) standards and requirements for the control of the emission of sulfur compounds contained in 252:100-31 for subject emission units;

(G) standards and requirements for the control of the emission of nitrogen oxides contained in 252:100-33 for subject fuel-burning equipment;

(H) standards and requirements for the control of the emission of VOCs contained in 252:100-37 and 252:100-39 for subject emission units; and

(I) testing, monitoring, and recordkeeping requirements contained in 252:100-43.

(c) **Requested process-specific limitations - storage vessel affected facilities.** An owner or operator shall designate on

the PBR registration form(s) that either of the following federally enforceable limits are applicable to a specified storage vessel affected facility. The permittee shall submit a notice of enforceability on forms provided by the DEQ to add or remove the applicability of federally enforceable limits to or from any specific emission unit.

(1) The storage vessel affected facility shall be limited to less than 6 TPY of VOC emissions, 12-month rolling total, unless another time measurement is specified under 40 CFR Part 60, Subpart OOOO. Demonstration of compliance with the VOC emission limit shall be based on records of VOC stored and monthly throughputs. Emissions shall be calculated using current EPA AP-42 methodology for working and breathing emissions or other methodology acceptable to the DEQ, and using available AQD guidance for flash emissions.

(A) In the demonstration of compliance with the VOC emission limit, a properly installed and operated vapor recovery unit (VRU) is considered to recover 100% of the VOC during the time the VRU is in use.

(B) The permittee shall maintain, for a period of five (5) years, records of VOC stored, monthly throughputs, and emissions calculations used to demonstrate compliance, including records of all periods of uncontrolled venting.

(2) The VOC storage vessel shall be limited to less than 6 TPY of VOC emissions, 12-month rolling total, unless another time measurement is specified under 40 CFR Part 60, Subpart OOOO. For any VOCs not routed through a VRU, the storage vessel affected facility shall be controlled utilizing a flare or enclosed combustion device.

(A) For each flare or enclosed combustion device, the presence of a pilot flame shall be monitored using a thermocouple or any other equivalent device, and records of pilot flame(s) outages and/or flare downtime shall be maintained.

(B) The flare or enclosed combustion device shall be operated according to the manufacturer's specifications.

(C) Demonstration of compliance with the VOC emission limit shall be based on emissions calculated from records of VOC stored and monthly throughputs using current EPA AP-42 methodology for working and breathing emissions or other methodology acceptable to the DEQ, AQD guidance for flash emissions, and a VOC control efficiency as specified.

(i) During periods when records document that the flare or enclosed combustion device was operational, the VOC emissions estimates may be calculated using a VOC destruction efficiency of 95%.

(ii) If the manufacturer of the flare or enclosed combustion device guarantees a VOC destruction efficiency greater than 95%, the VOC emissions estimates may be calculated using the VOC destruction efficiency guaranteed by the manufacturer, up to but not to exceed 99.5% during periods when records document that the control device was operational.

(iii) A properly installed and operated VRU is considered to recover 100% of the VOC during the time the VRU is in use.

(iv) The permittee shall maintain, for a period of five (5) years, records of VOC stored, monthly throughputs, and emissions calculations used to demonstrate compliance, including records of all periods of uncontrolled venting.

[OAR Docket #14-620; filed 7-2-14]

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

[OAR Docket #14-631]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Incinerators
Part 3. General Purpose Incinerators
252:100-17-2. [AMENDED]
Part 9. Commercial and Industrial Solid Waste Incineration Units
252:100-17-60. [AMENDED]
252:100-17-61. [REVOKED]
252:100-17-62. [AMENDED]
252:100-17-63. [AMENDED]
252:100-17-64. [REVOKED]
252:100-17-65. [REVOKED]
252:100-17-66. [REVOKED]
252:100-17-67. [REVOKED]
252:100-17-68. [REVOKED]
252:100-17-69. [REVOKED]
252:100-17-70. [REVOKED]
252:100-17-71. [REVOKED]
252:100-17-72. [REVOKED]
252:100-17-73. [REVOKED]
252:100-17-74. [AMENDED]
252:100-17-75. [REVOKED]
252:100-17-76. [REVOKED]
AUTHORITY:
Environmental Quality Board; 27A O.S. Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. Sections 2-5-101 *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 19, 2013
COMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 15, 2014
February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The Department is proposing to modify OAC 252:100-17, Part 3, General Purpose Incinerators and Part 9, Commercial and Industrial Solid Waste Incineration Units (CISWI), to adjust enforceable requirements and compliance dates consistent with federal requirements that were revised February 7, 2013.

The proposal incorporates changes required as a result of revisions to the emission guidelines in 40 CFR Part 60, Subpart DDDD for state plans under Sections 111(d) and 129 of the federal Clean Air Act (CAA), applicable to existing CISWI units. The proposed changes to Subchapter 17 would be included as part of the required update to Oklahoma's Section 111(d)/129 plan.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. INCINERATORS

PART 3. GENERAL PURPOSE INCINERATORS

252:100-17-2. Applicability

This part applies to any new and existing incinerator not subject to 40 CFR Part 60, Subparts E, Ea, Eb, Ec, AAAA, CCCC, or EEEE, or Parts 4, 5, 7, 9, or 11 of this subchapter.

PART 9. COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

252:100-17-60. Effective date; applicability; requirements

(a) This Part applies to each individual commercial and industrial solid waste incineration (CISWI) unit ~~for which construction was commenced on or before November 30, 1999.~~that meets the criteria in paragraphs (a)(1) through (3) of this Section.

(1) Any CISWI unit for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010 but no later than August 7, 2013.

(2) Incineration units that meet the definition of a CISWI unit as defined in 40 CFR Section 60.2875.

(3) Incineration units that do not qualify as exempt under OAC 252:100-17-63.

(b) If the owner or operator of a CISWI unit makes changes that meet the definition of modification or reconstruction on or after June 1, 2001, the CISWI unit is no longer subject to this Part and becomes subject to 40 CFR Part 60, Subpart CCCC, that has been ~~adopted~~incorporated by reference at ~~OAC 252:100-4-5.~~ 252:100-2-3.

(c) If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with this Part, such changes do not qualify as a modification or reconstruction.

(d) The owner or operator of a CISWI unit subject to this Part shall comply with applicable portions of 40 CFR Part 60, Subpart DDDD (Sections 60.2575 through 60.2875) incorporated by reference in 252:100-2-3.

(1) CISWI units in the incinerator subcategory that commenced construction on or before November 30, 1999 shall achieve final compliance by the December 1, 2005.

(2) CISWI units that commenced construction after November 30, 1999, but on or before June 4, 2010, and CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories that commenced construction before June 4, 2010 shall achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of the two dates specified in paragraphs (d)(2)(A) and (B) of this subsection.

(A) February 7, 2018.

(B) Three years after the effective date of State plan approval.

(C) For compliance schedules approved under 40 CFR Section 60.2575 or 60.2815, the CISWI unit shall submit a final control plan not more than 1 year following the effective date of State plan approval, and shall achieve final compliance as expeditiously as practicable, but not later than February 7, 2018 or three years after the effective date of State plan approval, whichever is earlier. Within the appropriate context, these dates shall be considered the "date(s) to be specified in state plan" wherever that phrase appears in the model rule and associated tables.

252:100-17-61. Definitions [REVOKED]

~~The definitions in 40 CFR 60.2265 are hereby incorporated by reference, as they exist on September 22, 2005.~~

252:100-17-62. Terminology related to 40 CFR

(a) For purposes of interfacing with 40 CFR, the following terms apply:

~~"**Affected facility**"is synonymous with "commercial and industrial solid waste incinerator (CISWI)" or "CISWI unit".~~

(1) **"Affected facility"** is synonymous with "commercial and industrial solid waste incinerator (CISWI)" or "CISWI unit".

(2) **"Administrator"** is synonymous with "Executive Director".

(b) The term **"you"** in the Model Rule of 40 CFR Sections 60.2575 through 60.2875, means the owner or operator of a CISWI unit.

252:100-17-63. Exemptions

~~(a)~~Except ~~as provided in subsections (b) through (p) of this section, each~~ for required notifications as specified, the following types of individual CISWI ~~is subject to~~ units are exempt from the requirements ~~in~~ of this Part.

(~~b~~1) **Pathological waste incineration units.** Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR ~~60.2265~~ Section 60.2875, ~~are not subject to this Part~~ if the owner or operator meets the two requirements specified in ~~paragraphs~~subparagraphs ~~(b)(1)~~(1)(A) and ~~(2)~~(B) of this~~section~~ Section.

(~~1~~A) Notifies the DEQ that the unit meets these criteria.

(~~2~~B) Keeps records on a calendar quarter basis of the weight of pathological waste, low level radioactive waste and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

~~(c) **Agricultural waste incineration units.** Incineration units burning 90 percent or more byweight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR60.2265 are not subject to this Part if the owner or operator meets the two requirements specified in paragraphs (c)(1) and (2) of this section.~~

~~(1) Notifies the DEQ that the unit meets these criteria.~~

~~(2) Keeps records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.~~

(~~d~~2) **Municipal waste combustion units.** Incineration units that ~~meet either of the two criteria specified in paragraphs (d)(1) or (2) of this section are not subject to this Part.~~

~~(1) Are regulated under~~ are subject to Part 5 of this Subchapter or 40 CFR Part 60, Subpart Ea (Standards of Performance for Municipal Waste Combustors); Subpart Eb (Standards of Performance for Large Municipal Waste Combustors~~, for Which Construction is Commenced After September 20, 1994~~); or Subpart AAAA (Standards of Performance for ~~New Stationary Sources:~~ Small Municipal Waste Combustion Units).

~~(2) Burn greater than 30 percent municipal solid waste or refuse derived fuel, as defined in 40 CFR 60, Subpart Ea, Subpart Eb, or Subpart AAAA, and that have the capacityto burn less than 35tons(32 megagrams) perdayof municipal solid waste or refuse derived fuel, if the owneror operator meets the two requirements in paragraphs (d)(2)(A) and (B) of this section.~~

~~(A) Notifies the DEQ that the unit meets these criteria.~~

~~(B) Keeps records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.~~

(~~e~~3) **Medical waste incineration units.** Incineration ~~units regulated under~~ subject to Part 7 of ~~the~~ this Subchapter or 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) ~~are not subject to this Part~~.

(~~f~~4) **Small power production facilities.** Units that meet the three requirements specified in ~~paragraphs(f)(1) through (3)~~ subparagraphs (4)(A) through (D)of ~~this section~~ Section ~~are not subject to this Part~~.

~~(1)~~(A)The unit qualifies as a small power-production facility under ~~section~~ Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(~~1~~A) The unit qualifies as a small power-production facility under ~~section~~ Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(~~2~~B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(~~3~~C) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(D) The owner or operator maintains the records specified in 40 CFR Section 60.2740(v).

(~~g~~5) **Cogeneration facilities.** Units that meet the three requirements specified in ~~paragraphs (g)(1) through (3)~~subparagraphs (5)(A) through (D) of this ~~section~~ Section ~~are not subject to this Part~~.

(~~1~~A) The unit qualifies as a cogeneration facility under ~~section~~ Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(~~2~~B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(~~3~~C) The owner or operator notifies the DEQ that the unit meets all of these criteria.

(D) The owner or operator maintains the records specified in 40 CFR Section 60.2740(w).

(~~h~~6) **Hazardous waste combustion units.** ~~Units that meet either of the two criteria specified in paragraph (h)(1) or (2) of this section are not subject to this Part.~~

~~(1) Units~~ Incineration units for which the owner or ~~operators~~ operator is required to get a permit under ~~section~~ Section 3005 of the Solid Waste Disposal Act.

~~(2) Units regulated under 40 CFR part 63, Subpart EEEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).~~

(~~i~~7) **Materials recovery units.** Units thatcombust waste for the primary purpose of recovering metals, such as primary and secondary smelters~~, are not subject to this Part~~.

(~~j~~8) **Air curtain incinerators.** Certain air curtain incinerators are exempt from portions of this Part (see 252:100-17-74).~~that burn only the materials listed in paragraphs (j)(1) through (3) of this sectionareonlyrequired to meet the requirements under40 CFR Sections 60.2245 through 60.2260 and the requirements of OAC 252:100-17-73.~~

~~(1) 100 percent wood waste.~~

~~(2) 100 percent clean lumber.~~

~~(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.~~

~~(k) Cyclonic barrel burners.~~

~~(l) Rack, part, and drum reclamation units.~~

~~(m) **Cement kilns.** Kilns regulated under 40 CFR 63, Subpart LLL, (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) are not subject to this Part.~~

(~~n~~9) **Sewage ~~sludge incinerators~~ treatment plants.** Incineration units regulated under 40 CFR Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) ~~are not subject to this Part~~.

~~(o) **Chemical recovery units.** Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds are not subject to this Part. The seven types of units described in paragraphs (o)(1) through (7) of this section are considered chemical recovery units. Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process. Units burning only spent sulfuric acid used to produce virgin sulfuric acid. Units burning only wood or coal feedstock for the production of charcoal. Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.~~

~~(1) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.~~

~~(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.~~

~~(3) Units burning only wood or coal feedstock for the production of charcoal.~~

~~(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.~~

~~(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.~~

~~(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.~~

~~(7) Units burning only photographic film to recover silver.~~

(10) **Sewage sludge incineration units.** Incineration units that combust sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter and that are subject to 40 CFR Part 60, Subpart LLLL(Standards of Performance for Sewage Sludge Incineration Units).

~~(p) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis are not subject to this Part.~~

(11) **Other solid waste incineration units.** Incineration units that are subject to Part 11 of this Subchapter or 40 CFR Part 60, Subpart EEEE (Standards of Performance for Other Solid Waste Incineration Units).

252:100-17-64. Emission limits [REVOKED]

~~On and after the date on which the initial performance test is completed or is required to be completed, whichever date comes first, no CISWI subject to this Part shall discharge into the atmosphere from that facility any gases that contain stack emissions in excess of the emission limits in Table 1 of 40 CFR 60, CCCC, which is hereby incorporated by reference as it exists on July 1, 2002.~~

252:100-17-65. Operating limits [REVOKED]

~~(a) Except for 40 CFR 60.2110(b), a CISWI shall comply with all of the requirements specified 40 CFR 60.2110, 60.2115 and 60.2120 and Table 2 of 40 CFR 60, Subpart CCCC, which are hereby incorporated by reference, as they exist on July 1, 2002.~~

~~(b) The CISWI must be operated within the operating limits established during initial performance test.~~

252:100-17-66. Standards for CISWI operator training and qualification requirements [REVOKED]

~~(a) The CISWI operator training and qualification requirements in 40 CFR 60.2070, 60.2080, 60.2085, 60.2090, 60.2095 and 60.2100 are hereby incorporated by reference, as they exist on July 1,2002.~~

~~(b) The operator training course must be completed by the latest of the three dates specified in (1) through (3) of this paragraph.~~

~~(1) December 1, 2005.~~

~~(2) Six months after CISWI unit startup.~~

~~(3) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.~~

252:100-17-67. Standards for waste management plans [REVOKED]

~~(a) The CISWI waste management plan requirements in 40 CFR 60.2055 and 60.2065, are hereby incorporated by reference, as they exist on July 1,2002.~~

~~(b) The waste management plan must be submitted to the DEQ no later than April 1, 2004.~~

252:100-17-68. Performance testing [REVOKED]

~~40 CFR 60.2125 and 60.2130 are hereby incorporated by reference as they exist on July 1, 2002.~~

252:100-17-69. Initial compliance requirements [REVOKED]

~~(a) 40 CFR 60.2135 is hereby incorporated by reference, as it exists on July 1, 2002.~~

~~(b) The initial performance test must be conducted no later than 180 days after the final compliance date or December 1, 2005, whichever is earlier.~~

252:100-17-70. Continuous compliance requirements [REVOKED]

~~40 CFR 60.2145, 60.2150, 60.2155, and 60.2160 are hereby incorporated by reference, as they exist on July 1, 2002.~~

252:100-17-71. Monitoring [REVOKED]

~~40 CFR 60.2165 and 60.2170 are hereby incorporated by reference, as they exist on July 1, 2002.~~

252:100-17-72. Reporting and recordkeeping requirements [REVOKED]

~~Except for 40 CFR 60.2175(g), 40 CFR 60.2175, 60.2180, 60.2200, 60.2205, 60.2210, 60.2215, 60.2220,60.2225, 60.2230,60.2235 and 60.2240 are hereby incorporated by reference, as they exist on July 1, 2002.~~

252:100-17-73. Part 70 permits [REVOKED]

~~(a) The owner or operator of a CISWI, that is not otherwise a Part 70 source, must submit to the DEQ a complete application for a Part 70 operating permit on or before December 1, 2003.~~

~~(b) 40 CFR 60.2242 is hereby incorporated by reference, as it exists on July 1, 2002.~~

252:100-17-74. Air curtain incinerators

~~(a) 40 CFR 60.2245, 60.2255 and 60.2260 are hereby incorporated by reference, as they exist on July 1, 2002.~~ Air curtain incinerators that burn only the materials listed in paragraphs (1) through (3) of this subsection are only required to meet the requirements set forth in 40 CFR Sections 60.2805 through 60.2870.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

~~(b) After the date the initial stack test is required or completed (whichever is earlier), the owner or operator must meet the limitations in paragraphs (b)(1) and (2) of this section.~~

~~(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (b)(2) of this section.~~

~~(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.~~

~~(c) Except during malfunctions, the requirements of OAC 252:100-17-74(b) apply at all times, and each malfunction must not exceed 3 hours.~~

252:100-17-75. Compliance schedules [REVOKED]

~~(a) Except as provided in paragraphs (b) and (c)of this section, the owner or operator of any CISWI unit, including air curtain incinerators, shall comply with all the requirements of this Part or shall close the CISWI unit(s) and take any steps necessary to render the unit(s) inoperable by December 1, 2003.~~

~~(b) The DEQ may grant an extension to December 1, 2005, for closing a CISWI if the owner or operator demonstrates that no waste disposal options exist other than onsite incineration. The owner or operator shall:~~

~~(1) Submit to the DEQ documentation of the analyses undertaken to support the need for an extension, including an explanation of why 1 year after approval of the State plan is not sufficient time to close the CISWI.~~

~~(2) Submit to the DEQ an evaluation of the option to transport the waste offsite to a commercial waste treatment and/or disposal facility on a temporary or permanent basis.~~

~~(3) Enter into a consent order to close. The closure order must include the date of plant closure.~~

~~(c) The DEQ will allow an extension to December 1, 2005, for the installation of air pollution control equipment to comply with the requirements of this Part provided the owner or operator of the CISWI:~~

~~(1) Submits a final control plan by January 1, 2004. The final control plan must include a description of the control the source will use to comply with the emission limitations and other requirements.~~

~~(2) Achieves final compliance with the emission limitations and other requirements by December 1, 2005.~~

~~(d) The owner or operator of the CISWI shall send written notification to the DEQ to confirm achievement of the events specified in (c)(2) of this section.~~

~~(1) The notification shall be postmarked no later than 10 business days after the compliance date for the requirement.~~

~~(2) The notification shall include the signature of the owner or operator.~~

~~(e) If the owner or operator fails to meet any of the compliance requirements specified in OAC 252:100-17-75(c), he shall notify the DEQ in writing within 10 business days after the compliance deadline and continue to submit reports each subsequent calendar month until compliance with that requirement is achieved.~~

252:100-17-76. CISWI closure [REVOKED]

~~(a) If the CISWI unit is closed but will be restarted prior to December1, 2005, the owner or operator shall meet the increments of progress specified in OAC 252:100-17-75.~~

~~(b) If the CISWI unit is closed but will be restarted on or after December 1, 2005, the owner or operator shall complete emission control retrofits and meet the emission limitations and operating limits on the date the CISWI unit restarts operations.~~

~~(c) If the CISWI unit is permanently closed, the owner or operator shall submit a closure notification, including the date of closure, to the DEQ by January 1, 2004.~~

[OAR Docket #14-631; filed 7-2-14]

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

[OAR Docket #14-619]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S., Sections 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., Sections 2-5-101, *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
March 15, 2013 through April 17, 2013
PUBLIC HEARING(S):
April 17, 2013
August 20, 2013
ADOPTION:
August 20, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
August 27, 2013
GUBERNATORIAL APPROVAL OF ADOPTED RULES:
September 10, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
To protect the public health and welfare, DEQ proposes to revoke the primary air quality standards in Appendix E and replace it with a new Appendix E that contains a new annual fine particulate standard of 12µ g/m^3. The form of the new primary fine particulate standard is attained when the annual mean, averaged over 3 years for each monitoring location in an area does not exceed 12µ g/m^3. These modifications maintain consistency with the changes made to the National Ambient Air Quality Standards that became effective December 14, 2012 for fine particulate matter ($PM_{2.5}$).
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max	(8) 75 ppb			40 mg/m^3 (2) 35 ppm		(9) 100 ppb	
8-hr. max				10 mg/m^3 (2) 9 ppm	(4) 0.075 ppm		
24-hr. max		(7) 150 ug/m^3	(5) 35 ug/m^3				
Rolling max. 3-month average							(3) 0.15 ug/m^3
Annual			(6) 12.0 ug/m^3			(1) 53 ppb	

(1) The standard is attained when the annual arithmetic mean does not exceed 53 ppm as provided in 40 CFR 50.11.

(2) The standard is attained when the 1-hour average concentration does not exceed 35 ppm and the 8-hour average concentration does not exceed 9 ppm as provided in 40 CFR 50.8.

(3) The standard is attained when the rolling 3-month maximum average does not exceed 0.15 ug/m^3 more than once during a 3-year period as provided in 40 CFR 50.16.

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.075 ppm, as provided in 40 CFR 50.15.

(5) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(7) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m^3, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

(8) The standard is attained when the 3-year average of the 99th percentile of the daily maximum 1-hour average at each monitor within an area does not exceed 75 ppb, as determined in accordance with 40 CFR 50, Appendix T.

(9) The standard is attained when the 3-year average of the 98th percentile of the daily maximum 1-hour average concentration at each monitor within an area does not exceed 100 ppb as determined in accordance with 40 CFR 50, Appendix S.

[OAR Docket #14-619; filed 7-2-14]

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

[OAR Docket #14-622]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Additional Rules for Recycling
Part 1. Requirements for Off-Site Recyclers
252:205-19-5. [REVOKED]
AUTHORITY:
Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 9, 2013 through October 10, 2013
PUBLIC HEARING(S):
Hazardous Waste Management Advisory Council on October 10, 2013
Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 18, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Department of Environmental Quality is proposing to revoke a portion of Subchapter 19 in order to make the existing state rules consistent with changes to the Oklahoma Statutes. 27A O.S. § 2-7-118(B) and (C) was revoked during the first Regular Session of the 54th Oklahoma Legislature. This statute prohibited, as a form of recycling, the burning of hazardous waste with a low heating value, or the blending of low-Btu fuel with other materials or wastes to create a hazardous waste fuel. The revocation of Oklahoma Administrative Code ("OAC") 252:205-19-5 is proposed to reflect that deletion and to conform the state rules to the Oklahoma Statutes.
These changes are neither more nor less stringent than the existing federal rules and, therefore, will have no substantive impact on the hazardous waste program implemented by the Department of Environmental Quality.
CONTACT PERSON:
Mike Edwards, Hazardous Waste Compliance and Inspection Section, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101 - 1677, e-mail at mike.edwards@deq.ok.gov, phone 405-702-5226, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 19. ADDITIONAL RULES FOR RECYCLING

PART 1. REQUIREMENTS FOR OFF-SITE RECYCLERS

252:205-19-5. Blending low-Btu fuel prohibited [REVOKED]

~~Blending of low fuel value hazardous waste (containing less than 5,000 Btu/pound) with other materials or waste to create a hazardous waste fuel is prohibited as a form of recycling. This waste can not be burned in any hazardous waste recycling unit in Oklahoma.~~

[OAR Docket #14-622; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 301. LABORATORY ACCREDITATION

[OAR Docket #14-623]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Quality Assurance/Quality Control General Criteria
Part 3. Standard Operating Procedures and Methods Manual
252:301-9-37 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification, § 2-4-101 et seq..
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
May 1, 2013 through June 11, 2013
PUBLIC HEARING:
Laboratory Services Advisory Council on June 11, 2013
Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 18, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated Standards:
Date of 40 CFR provisions incorporated by reference in these rules is changed to as "published July 12, 2012."
In addition, incorporation of the following standards by reference has been revised, as noted:
"Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Update I, II, IIA, IIB, III, IIIA, IIIB, and IV
Incorporating Rules:
OAC 252:301-9-37
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102 and are available to the public for examination Monday through Friday between the hours of 8:00 am and 4:30 pm.

ANALYSIS:

The proposed rulemaking amends OAC 252:301-9-37 to incorporate by reference the most recent Federal Register analytical methodology publications. These publications include 40 CFR 136, 40 CFR 141 and 40 CFR 503. These changes if adopted amend method requirements for environmental testing, clarify the explanation of modified method requirements for environmental testing, and provide quality assurance and quality control requirements for methods.

CONTACT PERSON:

The contact person is David Caldwell. He can be reached at david.caldwell@deq.ok.gov (e-mail), 405-702-1000 (phone), or 405-702-1001 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

252:301-9-37. Methodology incorporated by reference

The following EPA methods are hereby incorporated by reference:

(1) ~~"Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act:~~"National Primary Drinking Water Regulations",~~; and National Secondary Drinking Water Regulations : Analysis and Sampling Procedures", also known as the "methods update rule", 72 Federal Register 47, March 12, 2007, 40 CFR 136 and 40 CFR 141~~ 40 CFR Part 141, published~~ bound volumes dated July 2007~~July 1, 2012.

(2) "Test Methods for Evaluating Solid Waste, Laboratory Manual Physical/Chemical Methods," SW-846 Manual, Third Edition as amended by Final Update I, II, IIA, IIB, III, IIIA, IIIB, and IV. See further SW-846-ON-LINE.; and

(3) "Guidelines Establishing Test Procedures for the Analysis of Pollutants 40 CFR Part 136, published July 1, 2012.~~, Analytical Methods for Biological Pollutants in Wastewater and Sewage Sludge", 72 Federal Register 57, March 26, 2007, 40 CFR Part 136 and 40 CFR Part 503 bound volumes dated July 2007.~~

[OAR Docket #14-623; filed 7-2-14]

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

[OAR Docket #14-624]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Quality Assurance/Quality Control
Part 3. Standard Operating Procedures and Methods Manual
252:302-9-25 [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

N/A

COMMENT PERIOD:

May 1, 2013 through June 11, 2013

PUBLIC HEARING(S):

Before the Laboratory Services Advisory Council on June 11, 2013
Before the Environmental Quality Board on November 13, 2013

ADOPTION:

November 13, 2013

SUBMISSION OF ADOPTED RULES TO GOVERNOR & LEGISLATURE:

November 18, 2013

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:

June 19, 2014

EFFECTIVE:

September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated Standards:

Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 12, 2012".

Incorporating Rules:

OAC 252:302-9-25

Availability:

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102 and are available to the public for examination Monday through Friday between the hours of 8:00 am and 4:30 pm.

ANALYSIS:

The proposed rulemaking amends OAC 252:301-9-25 to incorporate by reference the most recent Federal Register analytical methodology publications. These publications include 40 CFR 136, 40 CFR 141 and 40 CFR 503. These changes if adopted amend method requirements for environmental testing, clarify the explanation of modified method requirements for environmental testing, and provide quality assurance and quality control requirements for methods.

CONTACT PERSON:

The contact person is David Caldwell. He can be reached at david.caldwell@deq.ok.gov (e-mail), 405-702-1000 (phone), or 405-702-1001 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. QUALITY ASSURANCE/QUALITY CONTROL

PART 3. STANDARD OPERATING PROCEDURES AND METHODS MANUAL

252:302-9-25. Methodology incorporated by reference

"Guidelines Establishing Test Procedures for the Analysis of Pollutants" as published on July 1, ~~2010~~2012, at 40 CFR Part 136 is hereby incorporated by reference.

[OAR Docket #14-624; filed 7-2-14]

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

[OAR Docket #14-625]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:410-1-7. Incorporation of federal regulations by reference [AMENDED]
Subchapter 10. Radioactive Materials Program
Part 30. Byproduct Material Licensing in General
252:410-10-30. 10 CFR 30 incorporations [AMENDED]
Part 31. Byproduct Material: General Licenses
252:410-10-31. 10 CFR 31 incorporations by reference [AMENDED]
Part 32. Byproduct Material: Specific Licenses for Manufacturing and Transferring Certain Items
252:410-10-32. 10 CFR 32 incorporations by reference [AMENDED]
Part 34. Industrial Radiographic Operations
252:410-10-34. 10 CFR 34 incorporations [AMENDED]
AUTHORITY:
Environmental Quality Board and Radiation Management Advisory Council powers and duties, 27A O.S.§§2-2-101, 2-2-104, 2-2-201, and 2-9-104
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
July 15, 2013, through August 14, 2013.
PUBLIC HEARING:
Radiation Management Advisory Council on August 15, 2013
Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 18, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
Incorporated standards:
Date of 10 CFR provisions incorporated by reference in these rules is changed to January 1, 2013.

In addition, the following 10 CFR provisions are being added or deleted, as noted:
10 CFR, Section 30.22
~~10 CFR, Section 31.3(a) and (d)~~
~~10 CFR, Section 32.101, Schedule B~~
~~10 CFR, Section 32.102, Schedule C~~
~~10 CFR, Section 32.103, Schedule D~~
~~10 CFR, Section 32.110, Subpart C~~
Incorporating rules:
252:410-1-7, 252:410-10-30, 252:410-10-31, 252:410-10-32, 252:410-10-34
Availability:
From the contact person listed below.
ANALYSIS:
The purpose of the proposed rulemaking is to amend OAC 252:410-1-7(a) to change the date for the incorporation of federal regulations by reference to January 1, 2013. Additional amendments to Subchapters 10 and 20 of OAC 252:410 are required to conform the Oklahoma rules to the updated federal regulations.

The changes include: (a) amend decommissioning regulations to improve decommissioning planning and thereby reduce the likelihood that any current operating facility will become a legacy site; (b) clarify the definitions of "construction" and "commencement of construction"with respect to materials licensing; (c) require licensees to provide advance notification to participating Federally-recognized Tribal governments regarding shipments of irradiated reactor fuel and certain nuclear wastes for any shipment that passes within or across their reservations; (d) make requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed, and redefining categories of devices to be used under exemptions. This will affect manufacturers and distributors of sources and devices containing byproduct material and future users of some products currently used under a general or specific license; and (e) make technical corrections, including updating the street address for Region I office, and correcting typographical and spelling errors.

The proposed changes will maintain consistency with federal regulations and will have no substantive impact on the radiation management program implemented by the Department.
CONTACT PERSON:
The contact person is Mike Broderick. He can be reached at mike.broderick@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

252:410-1-7. Incorporation of federal regulations by reference

(a) **10 CFR.** References in this Chapter to Title 10 of the Code of Federal Regulations (10 CFR) mean the ~~January 1, 2011~~ January 1, 2013 publication of 10 CFR.

(b) **40 CFR.** References in this Chapter to Title 40 of the Code of Federal Regulations (40 CFR) mean the July 1, 1998 publication of 40 CFR and 64 Fed. Reg. 5574 (February 3, 1999).

(c) **Citations incorporated.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

SUBCHAPTER 10. RADIOACTIVE MATERIALS PROGRAM

PART 30. BYPRODUCT MATERIAL LICENSING IN GENERAL

252:410-10-30. 10 CFR 30 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 30, Rules of General Applicability to Domestic Licensing of Byproduct Material:

(1) **General Provisions.**
(A) 30.1 - Scope
(B) 30.2 - Resolution of conflict
(C) 30.3(a), (c) and (d) - Activities requiring license
(D) 30.4 - Definitions
(E) 30.7 - Employee protection
(F) 30.9 - Completeness and accuracy of information
(G) 30.10 - Deliberate misconduct

(2) **Exemptions.**
(A) 30.11 - Specific exemptions
(B) 30.12 - Persons using byproduct material under certain Department of Energy and Nuclear Regulatory Commission contracts
(C) 30.13 - Carriers
(D) 30.14 - Exempt concentrations
(E) 30.15 - Certain items containing byproduct material
(F) 30.18 - Exempt quantities
(G) 30.19 - Self luminous products containing tritium, krypton-85 or promethium-147
(H) 30.20 - Gas and aerosol detectors containing byproduct material
(I) 30.21 - Radioactive drug: Capsules containing carbon-14 urea for *"in vivo"* diagnostic use for humans
(J) 30.22 - Certain industrial devices

(3) **Licenses.**
(A) 30.31 - Types of licenses
(B) 30.32 (a) through (d) and (g) through (j) - Application for specific licenses
(C) 30.33 - General requirements for issuance of specific licenses
(D) 30.34(a), (b), (c), (e)(2), (e)(4), (f), (g), (h), (i), and (j) - Terms and conditions of licenses
(E) 30.35 - Financial assurance and recordkeeping for decommissioning
(F) 30.36 - Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas, except (a)(2)
(G) 30.37 - Application for renewal of licenses
(H) 30.38 - Application for amendment of licenses
(I) 30.39 - Commission action on applications to renew or amend
(J) 30.41 - Transfer of byproduct material, except (b)(6)

(4) **Records, inspections, tests and reports.**
(A) 30.50 - Reporting requirements
(B) 30.51 - Records
(C) 30.52 - Inspections
(D) 30.53 - Tests

(5) **Enforcement.**
(A) 30.61 - Modification and revocation of licenses
(B) 30.62 - Right to cause the withholding or recall of byproduct material

(6) **Schedules.**
(A) 30.70 - Schedule A - Exempt concentrations
(B) 30.71 - Schedule B
(C) 30.72 - Schedule C - Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

(7) **Appendices.**
(A) Appendix A - Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.
(B) Appendix B - Quantities of licensed material requiring labeling.
(C) Appendix C - Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.
(D) Appendix D - Criteria relating to use of financial tests and self-guarantee for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.
(E) Appendix E - Criteria relating to use of financial tests and self-guarantee for providing reasonable assurance of funds for decommissioning by nonprofit colleges, universities, and hospitals.

PART 31. BYPRODUCT MATERIAL: GENERAL LICENSES

252:410-10-31. 10 CFR 31 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 31, General Domestic Licenses for Byproduct Material:

(1) **General provisions.**
(A) 31.1 - Purpose and scope
(B) 31.2 - Terms and conditions

(2) **General licenses.**
(A) ~~31.3(a) and (d) - Certain devices and equipment~~[RESERVED]
(B) 31.5 - Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere
(C) 31.6 - General license to install devices generally licensed in 31.5
(D) 31.7 - Luminous safety devices for use in aircraft
(E) 31.8 - Americium-241 and radium-226 in the form of calibration or reference sources

(F) 31.9 - General license to own byproduct material.
(G) 31.10 - General license for strontium 90 in ice detection devices
(H) 31.11 - General license for use of byproduct material for certain *in vitro* clinical or laboratory testing.
(I) 31.12 - General license for certain items and self-luminous products containing radium-226

(3) **Recordkeeping.** 31.21 - Maintenance of records.

PART 32. BYPRODUCT MATERIAL: SPECIFIC LICENSES FOR MANUFACTURING AND TRANSFERRING CERTAIN ITEMS

252:410-10-32. 10 CFR 32 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material:

(1) **General provisions.**
(A) 32.1(a), (b) and (c)(2) - Purpose and scope, excluding issuance of certificates of registration
(B) 32.2 - Definitions
(C) 32.3 - Maintenance of records

(2) **Subpart A - Exempt concentrations and items.**
(A) 32.13 - Same: Prohibition of introduction
(B) 32.24 - Same: Table of organ doses

(3) **Subpart B - Generally licensed items.**
(A) Byproduct material contained in devices for use under 31.5:
(i) 32.51 - Requirements for license to manufacture or initially transfer
(ii) 32.51a - Conditions of licenses
(iii) 32.52 - Material transfer reports and records
(B) Luminous safety devices for use in aircraft:
(i) 32.53 - Requirements for license to manufacture, assemble, repair or initially transfer
(ii) 32.54 - Labeling of devices
(iii) 32.55 - Quality assurance; prohibition of transfer
(iv) 32.56 - Material transfer reports
(C) Calibration or reference sources containing americium 241:
(i) 32.57 - Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer
(ii) 32.58 - Same: Labeling of devices
(iii) 32.59 - Same: Leak testing of each source
(D) Ice detection devices containing strontium-90:
(i) 32.61 - Requirements for license to manufacture or initially transfer
(ii) 32.62 - Quality assurance; prohibition of transfer
(E) 32.71 - Manufacture and distribution of byproduct material for certain *in vitro* clinical or laboratory testing under general license
(F) 32.72 - Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35
(G) 32.74 - Manufacture and distribution of sources or devices containing byproduct material for medical use

~~(4) **Subpart B Schedules.**~~
~~(A) 32.101 - Schedule B, prototype tests for luminous safety devices for use in aircraft~~
~~(B) 32.102 - Schedule C, prototype tests for calibration or reference sources containing americium-241 or radium-226~~
~~(C) 32.103 - Schedule D, prototype tests for ice detection devices containing strontium-90~~

~~(5) **Subpart C - Quality control sampling procedures.** 32.110 - Acceptance sampling procedures under certain specific licenses.~~

(~~6~~4) **Subpart D - Specifically licensed items.** 32.201 - Serialization of nationally tracked sources

PART 34. INDUSTRIAL RADIOGRAPHIC OPERATIONS

252:410-10-34. 10 CFR 34 incorporations by reference

The following provisions are hereby incorporated by reference from 10 CFR Part 34, Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations:

(1) **Subpart A; General provisions.**
(A) 34.1 - Purpose and scope
(B) 34.3 - Definitions

(2) **Subpart B; Specific licensing provisions.**
(A) 34.11 - Application for a specific license
(B) 34.13 - Specific license for industrial radiography

(3) **Subpart C; Equipment.**
(A) 34.20 - Performance requirements for industrial radiography equipment
(B) 34.21 - Limits on external radiation levels from storage containers and source changers
(C) 34.23 - Locking of radiographic exposure devices, storage containers and source changers
(D) 34.25 - Radiation survey instruments
(E) 34.27 - Leak testing and replacement of sealed sources
(F) 34.29 - Quarterly inventory
(G) 34.31 - Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers and survey instruments
(H) 34.33 - Permanent radiographic installations
(I) 34.35 - Labeling, storage and transportation

(4) **Subpart D; Radiation safety requirements.**
(A) 34.41 - Conducting industrial radiographic operations

(B) 34.42 - Radiation safety officer for industrial radiography
(C) 34.43 - Training
(D) 34.45 - Operating and emergency procedures
(E) 34.46 - Supervision of radiographers' assistants
(F) 34.47 - Personnel monitoring
(G) 34.49 - Radiation surveys
(H) 34.51 - Surveillance
(I) 34.53 - Posting

(5) **Subpart E; Recordkeeping requirements.**
(A) 34.61 - Records of the specific license for industrial radiography
(B) 34.63 - Records of the receipt and transfer of sealed sources
(C) 34.65 - Records of radiation survey instruments
(D) 34.67 - Records of leak testing of sealed sources and devices containing depleted uranium
(E) 34.69 - Records of quarterly inventory
(F) 34.71 - Utilization logs
(G) 34.73 - Records of inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers and survey instruments
(H) 34.75 - Records of alarm system and entrance control checks at permanent radiographic installations
(I) 34.79 - Records of training and certification
(J) 34.81 - Copies of operating and emergency procedures
(K) 34.83 - Records of personnel monitoring procedures
(L) 34.85 - Records of radiation surveys
(M) 34.87 - Form of records
(N) 34.89 - Location of documents and records

(6) **Subpart F; Notification** - 34.101

(7) **Appendix** - Appendix A to 10 CFR 34 - Radiographer Certification.

[OAR Docket #14-625; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #14-632]

RULEMAKING ACTION:
PERMANENT final adoption
PROPOSED RULES:
Subchapter 1. General Provisions
252:515-1-2. [AMENDED]
Subchapter 19. Operational Requirements
Part 3. Operational Requirements for All Disposal Facilities
252:515-19-36. [AMENDED]
Part 11. Additional Operational Requirements for Solid Waste Composting Facilities
252:515-19-123. [AMENDED]
Subchapter 35. Oklahoma Recycling Initiative
252:515-35-3. [AMENDED]
Subchapter 37. Landfill Gas Incentive Payments
252:515-37-7. [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201, and the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101, *et seq*.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 13, 2014
PUBLIC HEARING:
January 16, 2014 and February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to amend OAC 252:515 by correcting outdated citations through out Chapter 515.
CONTACT PERSON:
Mike Stickney, Land Protection Division, Solid Waste Compliance Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at mike.stickney@deq.ok.gov, phone 405-702-5184, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

252:515-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:515-1-3.

"Active" means, when used to describe a solid waste disposal facility or a portion thereof (e.g., active MSWLF or active cell), any solid waste disposal facility, or portion thereof, accepting solid waste as of the effective date of this Chapter, regardless of whether such facility has obtained a solid waste permit from DEQ.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities.

"Active portion" means:
(A) that part of a land disposal facility that has or is receiving waste and that has not
received either intermediate or final cover; or

(B) solid waste process and storage areas at non-land disposal facilities.

"Airport" means a public-use airport open to the public without prior permission, and without restrictions within the physical capacities of available facilities.

"Applicant" means any person who applies for a new permit or a modification to an existing permit for a solid waste disposal facility identified in OAC 252:515-3-1(a) and (b).

"Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the land disposal facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Such areas include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, block sliding, and rock fall.

"ASTM" means the American Society for Testing and Materials.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Buffer zone" means a designated waste-free area within the permit boundary of a disposal facility, to separate waste handling, processing, and/or disposal activities from adjacent areas.

"Citizen collection station" means a designated location that is established or sponsored by a governmental entity and equipped with waste receptacles for exclusive, non-commercial use by individual residents to deposit their own household waste for collection and transportation to a permitted disposal site.

"CLIMOCS" means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

"Composite liner" means a system installed at a land disposal facility composed of a recompacted clay liner overlain with a flexible membrane liner.

"C&D landfill" means a construction/demolition landfill.

"Composting facility" means a facility in which material is converted, under thermophilic conditions, to a product with a high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and stormwater run-off.

"Construction/demolition waste" means waste composed of the following:

(A) asbestos-free waste from construction and/or demolition projects that may include such materials as metal, concrete, brick, asphalt, glass, roofing materials, limited amounts of packing materials, sheetrock, or lumber;

(B) wood waste that may include such materials as yard waste, lumber, woodchips, wood shavings, sawdust, plywood, tree limbs, or tree stumps;

(C) yard waste that may include such materials as grass clippings, tree limbs, tree stumps, shrubbery, flowers, or other vegetative matter resulting from land clearing or landscaping operations; or

(D) residential lead-based paint waste.

"Contaminated stormwater" means:

(A) water such as leachate and gas collection condensate, or stormwater that has come into direct contact with solid waste or waste handling and/or treatment areas;

(B) stormwater discharged from areas of a land disposal facility with less than six inches of waste-free, compacted earthen material; or

(C) wastewater resulting from washing vehicles or areas that are or have been in direct contact with solid waste.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disease vector" means rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the final disposition of waste and shall be taken to include any discharge, deposit, injection, dumping, spilling, leaking, or placing of waste into or on the land or water so that the waste or any constituent thereof may enter the environment, including the air and any surface waters or ground waters.

"Disposal area" means that part of a land disposal facility where waste is disposed.

"Disposal facility" means disposal site as defined at 27A O.S. § 2-10-103.

"Engineer" means a licensed, professional engineer.

"EPA" means the United States Environmental Protection Agency.

"Existing" means, when used to describe a solid waste disposal facility or portion thereof (e.g. existing MSWLF or existing cell), any solid waste disposal facility, or portion thereof, that had a solid waste permit as of the effective date of this Chapter.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, and/or disposal of solid waste.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Final closure" means a disposal facility has permanently ceased to accept solid waste for disposal and all required closure activities have been completed for the entire facility in accordance with the approved closure plan. Final closure is not synonymous with phased closure.

"Flood" means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of a lake, stream, river or other body of surface water, or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood, One hundred year (100 year)" means a flood that has a one percent or greater chance of occurrence in any given one year period, or of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Flood plain" means the lowland and relatively flat areas adjoining inland waters that are inundated by the 100-year flood.

"Gas condensate" means the liquid generated as a result of gas recovery processes.

"Generator" means, in the context of NHIW, any person, by site, whose act or process produces NHIW, or whose act first causes an NHIW to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means those wastes subject to regulation under OAC 252:205.

"HBV" means hepatitis B virus.

"HIV" means human immunodeficiency virus.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household hazardous waste" means household waste that is corrosive, toxic, ignitable, or reactive, including, but not limited to: freon-containing appliances or tanks; non-empty propane tanks; oil, antifreeze, and other motor vehicle fluids; gasoline, kerosene, or diesel fuel; liquid paints; solvents; pesticides, herbicides, fungicides, or rodenticides; caustic cleaners; lead-acid batteries; swimming pool chemicals; unused firearm rounds; and acids and bases.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Injection well" means a facility subject to regulation by OAC 252:652, Underground Injection Control.

"Karst terrains" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic features of karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Land disposal facility" means a landfill, or any other discrete area of land or land excavation, where solid waste is placed for treatment, processing, and/or disposal. Land disposal facility does not include:

(A) land application where solid waste is placed onto, or incorporated into, the soil as a soil amendment, fertilizer, or other legitimate agricultural purpose;

(B) a surface impoundment that is either permitted by DEQ's Water Quality Division or is a part of an approved liquid waste management system at a permitted solid waste disposal facility;

(C) a yard waste composting facility;

(D) an injection well;

(E) a solid waste transfer station;

(F) a Used Tire Recycling Facility; or

(G) a Roofing Material Recycling Facility

"Landfill" means a discrete area of land or a land excavation in which solid waste is placed for permanent disposal.

"Large NHIW generator" means any business, by site, that generates over 10,000 tons of NHIW in Oklahoma during a calendar year. This definition does not include facilities that are permitted to receive and process solid waste generated by others.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. This includes:

(A) fluid collected in a leachate collection system, including its sumps, surface impoundments, tanks, or other similar locations;

(B) fluid collected on top of the bottom liner of a disposal cell that has received solid waste; and

(C) leachate seeps from disposal cells that have received solid waste.

"Liquid waste" means any waste that is determined to contain "free liquids" as defined by the PFLT.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Litter fence" means an easily portable fence to be located adjacent to the working face to assist with control of blowing material.

"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that will propagate flame in air at 25EC and atmospheric pressure.

"Maximum horizontal acceleration" means the maximum expected horizontal acceleration of lithified earth material, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"MSWLF" means Municipal Solid Waste Landfill; a publicly or privately owned landfill that is or has received household waste. A MSWLF may also receive other types of non-hazardous solid wastes, such as nonhazardous sludge, NHIW, special waste, and construction/demolition waste.

"Natural disaster" means a natural occurrence or event (such as a tornado, flood, or forest or prairie fire) of such magnitude that the resultant damage and destruction produce quantities of wastes that overtax available solid waste management systems.

"NHIW" means non-hazardous industrial solid waste, as defined at 27A O.S. § 2-10-103. Examples of NHIW are listed in Appendix F of this Chapter.

"Non-contaminated stormwater" means:

(A) stormwater that has not come into direct contact with solid waste, waste

handling and/or treatment areas;

(B) stormwater discharging from areas of a land disposal facility that has at least six inches of waste-free, compacted earthen material; and

(C) wastewater resulting from washing vehicles or areas that have not been in direct contact with solid waste.

"Oklahoma Uniform Environmental Permitting Act" means 27A O.S. § 2-14-101 *et seq.* and the rules adopted thereunder at OAC 252:4 ("Rules of Practice and Procedure").

"Open burning" means the combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

"Operating record" means all of the collective records of the facility relating to the site. Such records include, but are not limited to: the permit, modifications, and approvals; records concerning waste received; any sampling or analyses performed by the facility; closure, post-closure and corrective action plans; financial assurance records; inspection and compliance evaluation correspondence; reports; and scale tickets and related fee payment documentation.

"Owner/operator" means the person who owns a solid waste disposal facility and/or is responsible for the overall operation of a facility or part of a facility.

"OWRB" means the Oklahoma Water Resources Board.

"Permit boundary" means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

"PFLT" means Paint Filter Liquids Test, EPA Method 9095.

"Phased closure" means the closing of individual disposal cells at a land disposal facility as they become full. Phased closure is not synonymous with final closure.

"Piezometer" means a small-diameter well used to make groundwater elevation measurements.

"Point source discharge" means any discharge of water that, when leaving the permit boundary of a facility, has been channeled or altered by man's activity in working that site.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a land disposal facility.

"POTW" means Publicly Owned Treatment Works; a wastewater treatment system, as defined at 27A O.S. § 2-6-101(9), that is owned by a State or municipality for the treatment of municipal or industrial wastewaters.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"Recharge area" means an area where water is absorbed and added to the zone of saturation.

"Regulated medical waste" means a waste or reusable material that contains an etiologic agent and is generated in the diagnosis, treatment or immunization of human beings or animals; research pertaining to the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. Such waste includes, but is not limited to:

(A) cultures and stocks of etiologic agents or live vaccines, and culture dishes, devices, paper, and cloth that has come into contact with such cultures, stocks or live vaccines;

(B) human blood, blood products, and human body fluids, except urine or feces;

(C) pathological wastes consisting of human tissues, organs, and body parts removed during surgery, autopsy, biopsy and other medical procedures;

(D) untreated sharps;

(E) used blood collection bags, tubes, and vials;

(F) contaminated carcasses, body parts and bedding of animals intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;

(G) items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials;

(H) isolation wastes unless determined to be non-infectious by the infection control committee at the health care facility;

(I) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV;

(J) all disposable materials that have come in contact with cytotoxic or antineoplastic agents during the preparation, handling, and administration of such agents. Such wastes include, but are not limited to, masks, gloves, gowns, empty IV tubing and bags, vials, and other contaminated materials; and

(K) any other material or equipment which, in the determination of the health care facility staff, infection control committee or other responsible party, presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

"Residential lead-based paint waste" means lead-based paint debris, chips, dust, sludges, and other similar wastes generated as a result of abatement, rehabilitation, renovation, or remodeling activities in individual residences.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the uncontrolled, unorganized sorting, collecting, or removing of solid waste at the disposal site.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

"Sludge" means the definition found at 27A O.S. § 2-10-401.

"Solid waste" means the definition found at 27A O.S. §2-10-103.

"Special waste" means those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. This includes but is not limited to: sludge, septic tank pumpings, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, NHIW, tires, and asbestos wastes.

"Structural components" mean liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a land disposal facility that is necessary for protection of human health and the environment.

"Surface impoundment" means a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface water" means water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.

"SW-846" means EPA Publication SW-846, Test Methods for the Evaluation of Solid Waste Physical/Chemical Characteristics.

"Tremie pipe" means a device, usually a small-diameter flexible or rigid pipe, that carries filter pack or bentonite cement from the bottom to the top of a borehole or annular space without forming void spaces. In some cases, a well casing or hollow stem auger can be considered a tremie pipe.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components responsible for preventing releases from a land disposal facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used Tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose, but can be beneficially reused as approved by the Department.

"Used Tire Recycling Facility" means the definition found at ~~27A O.S.§ 2-11-402~~27A O.S. § 2-11-401.1(15).

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste.

"Waters of the state" means the definition found at 27A O.S. §~~2-6-101~~1-1-201(20).

"Wetlands" mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

"Working face" means the place within a land disposal facility where waste has been deposited and has not been covered with at least intermediate cover.

"Yard waste composting facility" means a composting facility that only accepts yard waste.

"Zone of aeration" means a subsurface zone containing water under a pressure lower than that of the atmosphere, including water held by capillarity; and containing air or gases generally under atmospheric pressure. This zone is bounded above by the land surface and below by the water table; and is synonymous with vadose zone and unsaturated zone.

"Zone of saturation" means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table and is synonymous with phreatic zone.

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 3. OPERATIONAL REQUIREMENTS FOR ALL DISPOSAL FACILITIES

252:515-19-36. Air criteria

(a) **Comply with Clean Air Act.** All disposal facilities shall be operated in compliance with the Oklahoma Clean Air Act, rules of the Air Quality Division of the DEQ, and any requirements of an approved State Implementation Plan.

(b) **Open burning prohibited.** Open burning of solid waste is prohibited.

(c) **Control dust.** All disposal facilities shall be operated to prevent the discharge of any visible fugitive dust emissions beyond the property boundaries so as to damage or interfere with the use of adjacent properties, or to cause air quality standards to be exceeded, or interfere with the maintenance of air quality standards.

(d) **Asbestos at land disposal facilities.** Friable asbestos received at a land disposal facility shall be managed in accordance with the DEQ's asbestos management requirements at OAC 252:100-~~41-16~~40-5.

PART 11. ADDITIONAL OPERATING REQUIREMENTS FOR SOLID WASTE COMPOSTING FACILITIES

252:515-19-123. Biosolids

Owners/operators of facilities incorporating biosolids shall:

(1) maintain internal windrow temperatures between 131E F and 140E F for a minimum of fifteen days;

(2) conduct a minimum of five turnings of the co-composting windrow, where the temperature pre- and post-turning exceeds 131E F; and

(3) comply with all applicable provisions of OAC 252:~~648~~606-8-6, "Land Application of Biosolids."

SUBCHAPTER 35. OKLAHOMA RECYCLING INITIATIVE

252:515-35-3. Reimbursement

(a) **Proper invoice.** The governmental entity shall submit a proper invoice, as defined in 62 O.S. §~~41.4c~~34.73, to the DEQ for reimbursement when the equipment, other than motor vehicles or buildings, is installed and operational.

(b) **Inspection.** The DEQ may inspect the facility to verify that the equipment is installed and operational.

(c) **Payment.** The DEQ shall reimburse the governmental entity not later than 45 days from the date on which a proper invoice is received by the Director, Land Protection Division.

SUBCHAPTER 37. LANDFILL GAS INCENTIVE PAYMENTS

252:515-37-7. Reimbursement

(a) **Submittal of invoices.** The project manager may begin submitting invoices to DEQ upon the receipt of a purchase order. Invoices shall be submitted monthly or quarterly. Each invoice shall itemize the quantities of energy generated by the project and purchased by the project's market. Each invoice shall be a proper invoice as defined at 62 O.S. §~~41.1c~~34.73.

(b) **Inspection.** The DEQ may inspect the project and may evaluate its records to verify that the project is functioning properly and that invoices submitted are accurate.

(c) **Payment.** The DEQ shall reimburse the project manager not later than 45 days from the date that a proper invoice is received by the DEQ contact identified in the contract.

[OAR Docket #14-632; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #14-633]

RULEMAKING ACTION:
PERMANENT final adoption

PROPOSED RULES:
Subchapter 19. Operational Requirements
Part 13. Wheel washes
252:515-19-132 [REVOKED]
252:515-19-133 [AMENDED]
252:515-19-134 [REVOKED]
252:515-19-135 [REVOKED]
252:515-19-136 [REVOKED]
252:515-19-137 [REVOKED]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S.§ 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201, and the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101, *et seq*.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 13, 2014

PUBLIC HEARING:
January 16, 2014 and February 21, 2014

ADOPTION:
February 21, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATION BY REFERENCE:
N/A

ANALYSIS:
The Department is proposing to amend OAC 252:515-19 by amending and revoking Part 13. Wheel Washes due to expiration of the funding mechanism. Specifically, the funding mechanism expired in June 2007.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 13. WHEEL WASHES

252:515-19-132. Eligibility deadlines [REVOKED]

~~To be eligible for reimbursement of costs under this Part, the owner/operator must comply with the following statutory deadlines.~~

~~(1) **June 30, 2007.** The owner/operator must submit a notice of intent to claim allowance to the DEQ no later than June 30, 2007.~~

~~(2) **June 30, 2008.** The system must be installed and operational no later than June 30, 2008.~~

252:515-19-133. Definitions

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

~~**"Proper invoice"** means one which is complete in all requirements for processing for payment in accordance with 27A O.S. § 2-10-802 and the rules in this Part, including but not limited to such documentation as may be required.~~

"Wheel wash system" means a permanent installation that uses an immersion bath or spray of water to clean mud, soil, rock, debris and other extraneous material from the tires and undercarriage of vehicles.

252:515-19-134. Approved costs [REVOKED]

~~Capital investment costs directly attributable to the purchase and installation of the wheel wash system that may be approved for reimbursement may include but not be limited to the following:~~

~~(1) materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~

~~(2) rental costs of machinery and equipment necessary for installation and start-up, exclusive of hand tools;~~

~~(3) premiums for all bonds and insurance, permit fees and sales, use or similar taxes related to the installation and start-up;~~

~~(4) labor, including social security and unemployment insurance, for installation and start-up; fringe benefits required by agreement or custom, and workers' compensation insurance; and~~

~~(5) additional costs of supervision and field office personnel directly attributable to the installation and start-up.~~

252:515-19-135. Disapproved costs [REVOKED]

~~Operating costs(electricity, water, flocculent, labor, and other miscellaneous recurring operating expenses) repair costs, general maintenance, and replacement of parts and equipment are not capital investment costs and are not approved for reimbursement.~~

252:515-19-136. Reimbursement process [REVOKED]

~~(a) **Installed and operational.** Once the wheel wash system is installed and operational, the owner/operator shall:~~

~~(1) **DEQ inspection.** Notify the DEQ. The DEQ may inspect the wheel wash to ensure that it meets the definition of "wheel wash system" in this Part and the water management and control standards in OAC 252:515-19-138; and~~

~~(2) **Proper invoice.** Provide the DEQ with a proper invoice and supporting documentation of the approved costs incurred.~~

~~(b) **DEQ review.** If the invoice is not a proper invoice or if costs submitted are not capital costs approved for reimbursement, the owner/operator shall be notified accordingly. The owner/operator may resubmit the invoice and documentation until the information submitted is acceptable.~~

~~(c) **Reimbursement notice.** Within 45 days after receipt of a proper invoice for approved costs, including required documentation, the DEQ shall notify the owner/operator that the invoice as submitted is approved in an amount certain and that the invoice amount is approved for reimbursement.~~

~~(d) **Reimbursement payments.** The DEQ shall reimburse eligible applicants in the order of approval of invoiced amounts until the state fiscal limitation is reached. During each subsequent fiscal year, the reimbursement to eligible applicants shall be apportioned in the percentage the approved invoice amount bears to the total reimbursements approved but not yet paid.~~

252:515-19-137. State fiscal limitation on funds [REVOKED]

~~(a) **$300,000.00 total.** If the total amount reimbursed to all eligible owners and operators reaches Three Hundred Thousand Dollars ($300,000.00) within any state fiscal year (July 1 - June 30), no owner/operator shall be entitled to reimbursement until the next state fiscal year.~~

~~(b) **Limitation notices.** If it appears that the total amount reimbursed will reach the $300,000.00 cap before the end of the fiscal year, limitation notices shall be sent to all eligible owner/operators. Notices of limitation may include pro rata reimbursement methods.~~

[OAR Docket #14-633; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #14-634]

RULEMAKING ACTION:
PERMANENT final adoption
PROPOSED RULES:
Subchapter 35. Oklahoma Recycling Initiative
252:515-35-2 [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201, and the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101, *et seq*.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
PUBLIC HEARING:
January 16, 2014 and February 21, 2014
ADOPTION:
February 21, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to amend OAC 252:515 Subchapter 35, Oklahoma Recycling Initiative, in order to simplify requirements for governmental entities. Specifically, the Department is removing burdensome and unnecessary requirements of governmental entities who are applying for reimbursement under the Oklahoma Recycling Initiative.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 35. OKLAHOMA RECYCLING INITIATIVE

252:515-35-2. Project development

(a) **Proposal content.** Any governmental entity desiring to seek reimbursement under the Oklahoma Recycling Initiative shall first submit a proposal describing the project in sufficient detail for the DEQ to determine that the project complies with 27A O.S. § 2-10-802(C)(4)(a). The proposal also shall include the following:

~~(1) a demonstration that the proposed project complements the County Solid Waste Management Plan of the County where the project is to be located and has been presented to the Board of County Commissioners for discussion in a public forum;~~

(~~2~~1) documents which detail the cost of all equipment that will be incorporated into or dedicated to the use of the project;

~~(3) a demonstration that the solid waste management and recycling program uses enterprise accounting methods which allocate all program costs to the rate base and that no class of solid waste customers is subsidized;~~

~~(4) documentation that each governmental entity served by the project has developed and implemented a recycled product procurement program;~~

~~(5) a business plan which indicates that financial, management, and educational resources are sufficient to support the project for a minimum of three years; and~~

(~~6~~2) written agreements to operate the project for a minimum of three years and to provide technical assistance upon request to other units of government considering similar recycling projects.

(b) **Encumbrance of funds.** Within 30 days after approval of a proposal, the DEQ shall present a contract to the governmental entity, committing funds for the project. The DEQ shall encumber the funds for the initial contract period, not to exceed one year. If the project is not completed during that time period, the DEQ will renew the contract, unencumbering funds for the original contract and encumbering funds for the new contract.

[OAR Docket #14-634; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #14-635]

RULEMAKING ACTION:
PERMANENT final adoption
PROPOSED RULES:
Subchapter 41. Roofing Material Recycling
252:515-41-13 Reporting requirements [NEW]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201, and the Oklahoma Solid Waste Management Act, 27A O.S. § 2-10-101, *et seq.*
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 13, 2014
PUBLIC HEARING:
January 16, 2014 and February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to amend OAC 252:515 by adding a new Subchapter 41-13 in response to recent legistlative changes to 27A O.S. § 802.2, relating to Roofing Material Recycling Facilities.
CONTACT PERSON:
Mike Stickney, Land Protection Division, Solid Waste Compliance Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at mike.stickney@deq.ok.gov, phone 405-702-5184, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 41. ROOFING MATERIAL RECYCLING

252:515-41-13. Reporting requirements

(a) **Monthly reports.** No later than the 10th of each month, each facility shall submit a report to DEQ that includes the following information for the previous month:

(1) amount of total roofing material received;

(2) amount of processed roofing material shipped for recycling;

(3) amount of non-recyclable material shipped;

(4) name and location of permitted solid waste disposal site receiving the non-recyclable material;

(5) amount of roofing material located on site.

(b) **Quarterly report and fees.** Fees shall be collected and remitted to DEQ in accordance with 27A O.S. § 2-10-802.2(A). Fees shall be reported in a format prescribed by DEQ.

[OAR Docket #14-635; filed 7-2-14]

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

[OAR Docket #14-636]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-3 [AMENDED]
Subchapter 3. Discharge Permitting Process for Individual and General Discharge Permits
252:606-3-4 [AMENDED]
Appendix D. Annual Fees for Stormwater Permits and Other General Permits [REVOKED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101 and 2-3-402; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 2, 2014
PUBLIC HEARING:
January 14, 2014 and February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND CABINET SECRETARY:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFS, Part 124, Section 124.10~~(a)(1)(v)~~(a)(1)(iv)
Incorporating rules:
252:606-1-3
Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Ok 73102.
ANALYSIS:
The Department is proposing to: (1) update the numbering of subparagraphs incorporated by reference in 40 CFR 124.10 to be consistent with the current CFR; (2) replace the provision for prorating the initial stormwater permit fees with a provision allowing the initial fee to cover the subsequent12 months; and (3) revoke Appendix D and move the fee language to Section 3-4.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. INTRODUCTION

252:606-1-3. Adoption of U.S. EPA regulations by reference

(a) **Interpretation of rules.** Narrative provisions of this Chapter apply control over any provision of regulations of the Environmental Protection Agency (EPA) which are adopted by reference. The rules set forth in this Chapter are interpreted consistently with state compliance with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(b) **Federal regulations adopted.** The following provisions of Title 40 of the Code of Federal Regulations (CFR) and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 116 (Hazardous Substances List)

(2) Part 117 (Reportable Quantities for Hazardous Substances)

(3) The following from PART 122 (NPDES PERMIT REGULATIONS):

(A) 122.1(b) - (scope of NPDES permit requirements)

(B) 122.2 - (definitions)

(C) 122.3 - (exclusions)

(D) 122.4 - (prohibitions)

(E) 122.5 - (effect of permit)

(F) 122.6 - (continuation of expiring permits)

(G) 122.7(b) and (c) - (confidential information)

(H) 122.21 - (application for a permit)

(I) 122.22 - (signatories)

(J) 122.24 - (concentrated aquatic animal production facilities)

(K) 122.25 - (aquaculture projects)
(L) 122.26 - (stormwater discharges)
(M) 122.27 - (silviculture)
(N) 122.28(a) and (b) - (general permits)
(O) 122.29 - (new sources and new dischargers)
(P) 122.30 - What are the objectives of the storm water regulations for small MS4s?
(Q) 122.31 - As a tribe, what is my role under the NPDES storm water program?
(R) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
(S) 122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?
(T) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
(U) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
(V) 122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
(W) 122.41 - (permit conditions)
(X) 122.42 - conditions for specified categories of permits)
(Y) 122.43 - establishing permit conditions)
(Z) 122.44 - (establishing permit limitations, standards and other conditions)
(AA) 122.45 - (calculating permit conditions)
(BB) 122.46 - (permit duration)
(CC) 122.47(a) - (schedules of compliance)
(DD) 122.48 - (monitoring requirements)
(EE) 122.50 - (disposal into wells)
(FF) 122.61 - (permit transfer)
(GG) 122.62 - (permit modification)
(HH) 122.63 - (minor modifications of permits)
(II) 122.64 - (permit termination)
(JJ) Appendices A through I

(4) The following from PART 124 (Procedures for Decision making):
(A) 124.1 - (introduction)
(B) 124.2 - (definitions)
(C) 124.3(a), (c), and (d) - (application for a permit)
(D) 124.5(a), (c), (d) and (f) - (modification of permits)
(E) 124.6(a), (c), (d) and (e) - (draft permit)
(F) 124.7 - (statement of basis of conditions where no fact sheet is adopted)
(G) 124.8 - (fact sheet)
(H) 124.10(a)(1)(ii), (a)(1)(iii), ~~(a)(1)(v)~~ (a)(1)(iv), (b), (c), (d), and (e) - (public notice)
(I) 124.11 - (public comments and requests for hearings)
(J) 124.12(a) and (c) - (public hearings)
(K) 124.13 - (obligation of protestors, etc., to raise all issues)
(L) 124.14 - (reopening)
(M) 124.15 - (issuance & effective dates of permits)
(N) 124.17(a) and (c) - (response to comments)
(O) 124.51(a) and (b) - (specific permitting procedures-purpose and scope)
(P) 124.52 - (permits required on a case-by-case basis)
(Q) 124.56 - (fact sheets)
(R) 124.57(a) - (public notice)
(S) 124.59 - (comments from government agencies)
(T) 124.62 - (decision on variances)
(U) 124.66 - (thermal variance procedures)

(5) The following from PART 125 (criteria and standards for NPDES):
(A) Subpart A (technology-based treatment),
(B) B (criteria for aquaculture projects),
(C) D (fundamentally different factors),
(D) H (alternative effluent limitations),
(E) I (new cooling water intakes), and
(F) J (existing cooling water intakes).

(6) 40 CFR Part 129 (Toxic Pollutant Effluent Standards)
(7) 40 CFR Part 136 (testing and laboratory)
(8) 40 CFR §§ 401-471 (Effluent Guidelines and Standards)
(9) 40 CFR § 110.6 (notice of oil discharge) and
(10) 40 CFR Part 302 (Reportable Quantities and Notification).

(c) The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:

(1) The following Sections from Part 503, Subpart A (General Provisions):
(A) 503.1 (Purpose and applicability)
(B) 503.2 (Compliance period)
(C) 503.3 (Permits and direct enforceability)
(D) 503.4 (Relationship to other regulations)
(E) 503.5 (Additional or more stringent requirements)
(F) 503.6(a)-(e), (g)-(j) (Exclusions)
(G) 503.7 (Requirement for a person who prepares biosolids)
(H) 503.8 (Sampling and analysis)
(I) 503.9 (General definitions)

(2) The following Sections from Part 503, Subpart B (Land Application):
(A) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(B) 503.11 (Special definitions)
(C) 503.12 (General requirements)
(D) 503.13 (Pollutant limits)
(E) 503.14 (Management practices)
(F) 503.15 (Operational standards - pathogens and vector attraction reduction)
(G) 503.16(a) (Frequency of monitoring)
(H) 503.17(a) (Recordkeeping)
(I) 503.18 (Reporting)

(3) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(A) 503.30 (Scope)
(B) 503.31 (Special definitions)
(C) 503.32(a), (b) (Pathogens)
(D) 503.33(a), (b)(1)-(11) (Vector attraction reduction)
(4) The following Sections from Part 503 Subpart E (Incineration):
(A) 503.40 (Applicability)
(B) 503.41 (Special definitions)
(C) 503.42 (General requirements)
(D) 503.43 (Pollutant (Metal) limits)
(E) 503.44 (Operational standard - total hydrocarbons)
(F) 503.45 (Management practices)
(G) 503.46 (Frequency of monitoring)
(H) 503.47 (Recordkeeping)
(I) 503.48 (Reporting)
(5) The following Appendices from Part 503:
(A) Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
(B) Appendix B (Pathogen treatment processes)

(d) **Exclusions.** Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

SUBCHAPTER 3. DISCHARGE PERMITTING PROCESS FOR INDIVIDUAL AND GENERAL DISCHARGE PERMITS

252:606-3-4. Fees

(a) **General.** Application fees are non-refundable and are due when an application is filed with DEQ.

(b) **Individual discharge permit fees.** The fees for individual discharge permits are as follows:
(1) **Application fees.** The application fee for:
(A) a new or amended individual discharge permit is ~~five hundred dollars ($500.00)~~ $500.
(B) renewal under an existing individual discharge permit is ~~five hundred dollars ($500.00)~~ $500.
(2) **Annual fees.** All holders of individual discharge permits shall pay an annual permit fee over the life of the permit. Payments for annual fees are due upon receipt of an invoice mailed from DEQ. ~~Payments received by DEQ shall be applied to the twelve month period following the due date of the initial invoice issued by DEQ, but shall not be applied past the expiration date of the permit.~~ Failure to pay an annual fee may result in suspension or termination of the permit. The formulas used to calculate the annual ~~fee schedules~~ fees are in Appendices B and C.

(c) **Individual permit fees for industrial users.** The fees for individual industrial user permits are as follows:
(1) **Application fees.** The application fee for:
(A) a new or amended individual industrial user permit is ~~five hundred dollars ($500.00)~~ $500.
(B) renewal under an existing individual industrial user permit is ~~five hundred dollars ($500.00)~~ $500.
(2) **Annual fees.** All holders of individual industrial user permits shall pay an annual permit fee over the life of the permit. Payments for annual fees are due upon receipt of an invoice from DEQ. ~~Payments received by DEQ shall be applied to the twelve month period following the due date of the initial invoice issued by DEQ, but shall not be applied past the expiration date of the permit.~~ Failure to pay an annual fee may result in suspension or termination of the permit. The formula used to calculate the annual ~~fee schedules~~ fee is in Appendix E.

(d) **Stormwater and other general discharge permit fees.** ~~The fees for authorizations under stormwater or other general discharge permits are as follows:~~
(1) **Application fees.** The application fee for any new or renewal request for coverage under ~~the~~ a stormwater or other general discharge permit is ~~one hundred dollars ($100.00)~~ $100.
(2) **Annual fees.** All holders of an authorization to discharge pursuant to a stormwater or other general discharge permit shall pay ~~an~~ the applicable annual fee over the life of the permit~~.~~ as follows:
(A) MS4 stormwater permits - $710.
(B) authorizations under a stormwater general permit - $330.
(C) authorizations under a general permit for all other discharges:
(i) for the first outfall - $480; and
(ii) for each additional outfall - $100.
(3) **Payments of annual fees for authorizations to discharge under the general construction stormwater discharge permit.** The annual fee for authorizations to discharge under the general construction stormwater permit is due ~~upon receipt of an invoice mailed by DEQ~~ at the time of the initial application and every 12 months after the effective date of the authorization until the authorization is terminated. ~~Payments received by DEQ~~ The annual fee shall be applied to the ~~twelve month~~ 12-month period following the ~~due date of the invoice issued by DEQ, but shall not be applied past the expiration of the authorization~~ issuance of the authorization or following the due date of the annual fee.
(4) **Failure to pay annual fee.** Failure to pay ~~such~~ the required annual fee may result in suspension or termination of the authorization.~~The annual fee schedule is in Appendix D.~~

(e) **CPI fee increase.** To assist in meeting rising costs to the Department for the permitting and enforcement activities covered by this Chapter, the fees set out in (b) and (c) of this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the

funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. ' 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(f) Fees not received within 30 days after the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(g) If the fees have not been received by the Department within 60 days after the due date set forth in the invoice, the authorization to discharge under the permit will be subject to revocation after notice and opportunity for hearing.

(h) State appropriations and federal grants will be used to offset the annual fee where possible.

(i) The fees shall only be raised in the manner stated in paragraph (e) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

APPENDIX D. FEES FOR STORMWATER PERMITS AND OTHER GENERAL PERMITS [REVOKED]

(A) The fee for MS4 stormwater permits is $710.00.

(B) The fee for all general permits, including Authorizations under general stormwater is as follows:

(1) Stormwater and non-discharging facilities - $330

(2) Discharging facilities - $480 for first outfall plus $100 for each additional outfall.

(C) The annual fee must be paid in advance by all facilities which have been authorized to discharge under a permit as of June 30 of each year.

(D) Fee payment must be made by check, draft, or money order payable to the Oklahoma Department of Environmental Quality and mailed or hand delivered to the Department's offices.

(E) The first year fee for facilities will be prorated and will cover the period beginning the issuance date of the authorization and ending June 30th of the coinciding fiscal year. A statement of the first year fee will be mailed to the applicant within 10 days of receipt of application and will be due within 20 days of receipt of application.

(F) A statement of fees due will be mailed to the permittee at the beginning of each fiscal year (July 1).

(G) Fees not received by the due date will be subject to an additional fee of ten percent (10%) of the fee set forth in the statement.

(H) If the fees have not been received by the Department within fifteen (15) days after the due date set forth in the statement, authorization to discharge under the permit will be subject to revocation after notice and opportunity for hearing.

(I) State appropriations and federal grants will be used to offset the annual fee where possible.

(J) To assist in meeting rising costs to the Department of the OPDES program associated with permitting and enforcement for stormwater and other general discharge permits, the fees set out in this Appendix shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(K) The fees listed in this Appendix shall only be raised in the manner stated in paragraph (J) above, unless a workload and budget analysis is completed, which demonstrates that an additional increase in fees is warranted.

[OAR Docket #14-636; filed 7-2-14]

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

[OAR Docket #14-626]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-4 [AMENDED]
Subchapter 5. Discharge Permit Requirements
252:606-5-2 [AMENDED]
Subchapter 11. Tests and Reports
252:606-11-3 [AMENDED]
Appendix G. Monitoring Frequencies for Backwash Discharge from Potable Water Treatment Facilities [NEW]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101 and 2-3-402; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 3, 2013, through October 8, 2013
PUBLIC HEARING:
October 8, 2013, and November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 18, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated standards:
Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2013".
Incorporating rules:
OAC 252:606-1-4
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed regulations will: (1) update the date of the incorporation by reference for federal regulations from July 1, 2012, to July 1, 2013; (2) add a requirement for the weekly average of 135mg/l TSS for lagoon effluent; and (3) replace the process control testing requirements for public water supply residuals lagoons, which are the same as those for municipal wastewater lagoons, with ones that are narrowly tailored for public water supply residuals lagoons.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. INTRODUCTION

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2012~~2013.

SUBCHAPTER 5. DISCHARGE PERMIT REQUIREMENTS

252:606-5-2. Technology-based methodologies

~~(a)~~ Technology based methodologies include:

(1) **Industrial permits.** Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in ~~OAC~~ 252:606-1-5. If there are no industry category or pollutant guidelines applicable to the applicant's industry, BPJ of the permit writer applies.

(2) **Municipal permits.**

(A) Technology based limitations for municipal discharges are based upon the definition of "secondary treatment.". The Oklahoma definition of "secondary treatment" is more stringent than the EPA definition under 40 CFR Part 133. Subparagraphs (B) through (G) of this paragraph contain the EPA approved definition of "secondary treatment" for the State of Oklahoma, which is used in the development of wasteload allocations in the municipal point source inventory.

(B) For facilities discharging to perennial streams, "secondary treatment" is defined as:

(i) A monthly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD_5. A $CBOD_5$ of 40 mg/l is considered to be equivalent to a BOD_5 of 45 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l total suspended solids (TSS).

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(C) For discharges to intermittent streams (those with 7-day, 2-year, low flow of zero) and for any discharge to a lake as defined in this ~~subsection~~ Section, secondary treatment is defined as:

(i) A monthly average of 20 mg/l BOD_5. A $CBOD_5$ of 18 mg/l is considered to be equivalent to a BOD_5 of 20 mg/l.

(ii) A weekly average of 30 mg/l BOD_5. A $CBOD_5$ of 25 mg/l is considered to be equivalent to a BOD_5 of 30 mg/l.

(iii) The monthly average percent removal for BOD_5 or $CBOD_5$ cannot be less than 85%.

(iv) A monthly average of 30 mg/l ~~total suspended solids (TSS)~~ TSS.

(v) A weekly average of 45 mg/l TSS.

(vi) The monthly average percent removal for TSS cannot be less than 85%.

(vii) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(D) For discharges where treatment is solely provided by lagoons, whether the discharge is to a perennial or an intermittent stream, secondary treatment is defined as:

(i) A monthly average of 30 mg/l BOD5. A CBOD5 of 25 mg/l is considered to be equivalent to a BOD5 of 30 mg/l.

(ii) A weekly average of 45 mg/l BOD5. A CBOD5 of 40 mg/l is considered to be equivalent to a BOD5 of 45 mg/l.

(iii) The monthly average percent removal for BOD5 or CBOD5 cannot be less than 65%.

(iv) A monthly average of 90 mg/l ~~total suspended solids (TSS)~~ TSS.

(v) A weekly average of 135 mg/l TSS.

(~~v~~vi) The pH must be maintained between the limits of 6.5 and 9.0 standard units.

(~~vi~~vii) ~~This paragraph~~ Subparagraph (D) does not apply to a discharge to a lake as defined in this ~~subsection~~ Section.

(E) For purposes of this Section, a discharge to a lake is any discharge from a point source which is either a direct discharge into a lake, or within ~~five~~ 5 river miles upstream of the conservation pool of any lake.

(F) For purposes of this Section, a lake is an impoundment of the waters of the state which exceeds ~~fifty~~ 50 acre-feet in volume which ~~either~~:

(i) is owned or operated by a unit of government, ~~or~~

(ii) appears in Oklahoma's Clean Lakes Inventory, or

(iii) is a privately-owned lake which has beneficial uses similar to those of publicly-owned or operated lakes.

(G) For purposes of this Section, percent removal is a percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the monthly average values of the raw wastewater influent pollutant concentrations to the facility and the monthly average values of the effluent pollutant concentrations for a given time period.

(3) **Municipal treatment greater than secondary.** In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, the only specific wasteload allocation numbers assigned are those that apply to facilities showing a need for treatment greater than secondary (e.g., 10 mg/l BOD_5~~;~~, 15 mg/l TSS~~;~~, and 2 mg/l NH_3-N). All other facilities receive an allocation of secondary.

(4) **Municipal secondary treatment.** In the CWA Section 208 "Water Quality Management Plan for Oklahoma," Appendix B, determination of the actual effluent limits for a facility with an allocation of secondary can be accomplished by finding the stream class (perennial or intermittent) and the current treatment process (mechanical plant or lagoon, etc.). For example, an activated sludge facility (mechanical plant) ~~which~~ that discharges into a perennial stream will have effluent limits of 30 mg/l BOD_5 and 30 mg/l ~~total suspended solids (TSS)~~ TSS as found in paragraph (2) of this ~~subsection~~ Section.

(5) **Municipal bacterial limits.** The Executive Director may establish in discharge permits limitations for ~~coliform~~ bacteria where:

(A) the proposed discharge is a "discharge to a lake" as defined in this Section, or

(B) the proposed discharge may otherwise adversely affect the beneficial uses of the waters of the state.

SUBCHAPTER 11. TESTS AND REPORTS

252:606-11-3. Municipal ~~laboratories~~ testing for permits and operations

(a) The provisions of this Section are minimum requirements.

(b) Results of all control tests must be made available to plant operators in a timely fashion for use in operational control of the facility.

(c) All plants must determine the daily flow and enter it in the operating records at the frequency specified in the permit. Flow measurements are also necessary when composite samples are collected. For plants not equipped with continuous flow recorders, occasional determinations of the flow over a 24-hour period will be necessary to establish a flow pattern so that occasional flow measurements will provide an indication of the total flow.

(d) Minimum control tests are tabulated in Appendix A of this Chapter, entitled, "Minimum Control Tests for Wastewater Treatment Facilities" and Appendix G of this Chapter, entitled, "Monitoring Frequencies for Backwash Discharge from Potable Water Treatment Facilities." In addition to these tests, routine observations, tests or measurements as to the quantity and quality of screenings, grit, sludge pumped from clarifiers, sludge/residuals drawn to drying beds or other means of disposal, the weather conditions must be entered in

the operating records. The Executive Director may require that all effluent samples be collected from the outfall pipe at the point of discharge where conditions are such that the effluent quality will likely be different at this point than it is in the final treatment or storage unit.

(e) ~~Stream monitoring requirements must be as set forth in this subsection and as specified in any applicable permit or order of the Executive Director. These requirements are established in order to determine compliance with applicable standards. Unless otherwise specified in the permit,~~ When required in a municipal facility's discharge permit, ~~collect~~ stream monitoring samples shall be collected instream above and below the point of wastewater discharge with consideration ~~being given~~ to the following factors: ease of access, mixing of plant effluent and the receiving stream, and the oxygen "sag" point of the receiving stream.

(1) Determine dissolved oxygen, temperature, pH, and stream appearance twice per month at least two weeks apart, but not more often than required in the permit for effluent sampling for BOD_5.

(2) Test for ~~coliform~~ indicator bacteria twice per month at least ~~two (2)~~ 2 weeks apart, but not more often than required in the permit for effluent sampling for ~~coliform~~ bacteria, if the permit for discharge contains ~~coliform~~ bacteria limits.

(3) The DEQ may require additional tests when problems develop in plant operation, or as necessary to determine compliance with the purposes and objectives of this Chapter.

(f) The Executive Director may grant variances from the requirements in this Section upon a written request and a showing by the permittee that the requested variance will:

(1) Not adversely affect the quality of the discharge ~~nor~~ or the environment;

(2) Avoid an excessive requirement; and

(3) Not hinder the proper operations of the treatment facility.

APPENDIX G. MONITORING FREQUENCIES FOR BACKWASH DISCHARGE FROM POTABLE WATER TREATMENT FACILITIES [NEW]

Effluent Parameter[1]	Flow (mgd)					
	0 – <0.1	0.1 - <0.5	0.5 - <1.0	1.0 - <5.0	5.0 - <10.0	≥10
Flow	2/week Instantaneous	5/week Instantaneous	Daily Totalized	Daily Totalized	Daily Totalized	Daily Totalized
TSS	1/month Grab	2/month Grab	3/month Grab	1/week Grab	5/week Grab	7/week Grab
Fe, Dissolved[2]	1/month Grab	1/month Grab	1/month Grab	2/month Grab	2/month Grab	2/month Grab
Al, Dissolved[2]	1/month Grab	1/month Grab	1/month Grab	2/month Grab	2/month Grab	2/month Grab
Mn, Dissolved[2]	1/month Grab	1/month Grab	1/month Grab	2/month Grab	2/month Grab	2/month Grab
pH	2/week Grab	2/week Grab	2/week Grab	2/week Grab	2/week Grab	2/week Grab

[1] Additional parameters may be required to be monitored in accordance with frequencies specified in OAC 252:690 for reverse osmosis, microfiltration, nanofiltration, ion exchange, electro dialysis, and other advanced technologies.
[2] Parameters to be monitored only for conventional water treatment plants.

[OAR Docket #14-626; filed 7-2-14]

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

[OAR Docket #14-627]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Procedures
252:626-3-2 [AMENDED]
252:626-3-6 [AMENDED]
Subchapter 5. General Design
252:626-5-6 [AMENDED]
Subchapter 9. Treatment
252:626-9-7 [AMENDED]
252:626-9-11 [AMENDED]
252:626-9-12 [REVOKED]
Subchapter 11. Chemical Application
252:626-11-4. [AMENDED]
Subchapter 19. Distribution System
252:626-19-2 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; 27A O.S.§ 2-3-402 and 27A O.S. §§ 2-6-103, 2-6-303, 2-6-304 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 3, 2013, through October 8, 2013
PUBLIC HEARING:
Before the Council on October 8, 2013, and before the Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed regulations will: (1) require that at least one set of construction plans be submitted on 11" x 17" paper and at least one set of specifications be loosely bound and suitable for scanning; (2) require a public water supply system to submit a copy of its water rights verification form and/or its purchase water contract when submitting an engineering report; (3) update the analytical testing equipment's capability requirements for iron and manganese removal plants; (4) add fluoride concentration testing requirement for plants that treat or blend for the reduction of naturally occurring fluoride; (5) clarify that test equipment must be able to measure phosphate from 0.1 to 20 mg/l when polyphosphates or orthophosphates are added; (6) clarify that the chlorine residual needs to be continuously monitored and recorded at the point of entry to the distribution system for systems with a population of 3,300 or more; (7) clarify that disinfection with chloramines is not allowed for primary disinfection to meet contact time (CT) requirements; (8) move the fluoridation requirements from *Subchapter 9. Treatment* to *Subchapter 11. Chemical Application* and remove requirements that are regulated by OSDH; (9) add a requirement for the inclusion of tracer wire for all non-ferrous waterline installations; and (10) make other minor corrections and clarifications.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. PERMIT PROCEDURES

252:626-3-2. Applications

(a) Submit legible applications on forms provided by the DEQ and include:

(1) the type of entity that is applying

(2) the legal description,

(3) a minimum of 2 sets of plans and specifications, with at least one set of construction plans printed on 11" x 17" paper and one set of specifications loosely bound that is suitable for scanning,

(4) a final design analysis,

(5) all appropriate fees, and

(6) engineering report approved by the DEQ for major waterworks projects, or smaller projects utilizing non-conventional processes.

(b) Public entities other than municipalities must provide certified copies of the results of the last election or appointment of the members of the governing body. Public entities must provide a citation of legal authority to own and operate the proposed facility.

(c) Applicants other than public entities must provide certified copies of documents that created them and provide a citation to their statutory authority.

252:626-3-6. Engineering report

(a) **Copies and timing.** Submit ~~three (3)~~ 3 copies of an approvable engineering report as required in OAC 252:626-3-2 for proposed new construction or modifications to PWS systems, at least 30 days prior to the submission of the application for a permit to construct.

(b) **Purpose.** The purpose of the report is to present the Engineer's findings with enough attention given to detail(s) to allow adequate review of the project by the owner and applicable regulatory agencies.

(c) **Requirements.** The report must include all information necessary for a comprehensive evaluation of the proposed construction. The report must present, at a minimum, the following:

(1) **General information.** Include the following:

(A) a description of existing water works and wastewater facilities,

(B) identification of the municipality or area served,

(C) name and mailing addresses of the owner and official custodian,

(D) a statement as to whether the project will be constructed in phases. If the project is to be constructed in phases, the statement will include the number of phases necessary to complete the project and which portions of the project will be completed in each phase,

(E) a demonstration that adequate capacity, treatment and compliance with the primary drinking water standards are maintained during construction, and

(F) a letter from the permittee approving the contents contained in the engineering report as submitted.

(2) **Extent of water works system.** Include the following:

(A) a description of the area to be served,

(B) provisions for extending the waterworks system,

(C) establish the anticipated design average and peak flows for existing and potential industrial, commercial, institutional and other water supply needs for both the current service area and potential future service areas, and

(D) a hydraulic analysis that demonstrates that a minimum of 25 psi shall be met at all times throughout the distribution system.

(3) **Alternate plan.** Where feasible and practical, provide a minimum of ~~three (3)~~ 3 alternative solutions and discuss the alternatives, including cost estimates and reasons for selecting the one recommended.

(4) **Soil, ground water conditions, and foundation problems.** The report must include a description of the following:

(A) the character of the soil where water mains are to be laid,

(B) soil conditions, which might affect foundations of proposed structures, and

(C) the approximate elevation of ground water in relation to subsurface structures.

(5) **Water use data.** Provide the following water use data:

(A) a description of the population trends as indicated by available records, and the estimated population which will be served by the proposed water supply system or expanded system,

(B) present water consumption of existing systems and the projected average and maximum daily demands that were used as the basis of the design, and

(C) present or estimated yield of supply source(s) along with a copy of the water rights verification form and/or the purchase water contract.

(6) **Fire flow requirements.** Demonstrate that the plans meet the requirements regarding fire flows pursuant to the *International Fire Code*, published by the International Code Council, Inc., 2003 Edition, *Distribution System Requirements for Fire Protection, M 31*, published by the AWWA, 3rd Edition or other recommendations of similar organizations for the fire service area

(7) **Sewer system available.** Describe the methods of disposal for sanitary and all other wastewater from the treatment plant.

(8) **Sources of water supply.** For the alternative chosen, the report must describe the proposed source or sources of water supply to be developed, the reasons for their selection, and provide information required by OAC 252:626-7 and the following:

(A) surface water sources, including:

(i) hydrological data, stream flow and weather records,

(ii) safe yield, including all factors that may affect it,

(iii) maximum flood or pool elevation,

(iv) description of watershed, noting any existing or potential sources of contamination which may affect water quality, and

(v) quality of the raw water with special reference to fluctuations.

(B) ground water sources, including:

(i) sites considered,

(ii) advantages of the site selected,

(iii) elevations with respect to surroundings,

(iv) character of formations through which the source is to be developed,

(v) geologic conditions affecting the site,

(vi) summary of exploration; test well depth and method of construction; placement of liners or screen; test pumping rates and duration; water levels and specific capacity; chemical and radiological quality of the water,

(vii) sources of possible contamination including but not limited to wastewater collection and treatment facilities, landfills, outcroppings of consolidated water-bearing formations, waste disposal wells, slush pits, irrigation wells and abandoned wells, and

(viii) industrial and other private water supply. Where pertinent, use significant ground water developments within a 1 mile radius of the proposed ground water source, giving depths, size, protective casing depth, capacity, location, type and any available information pertaining thereto.

(9) **Proposed treatment processes.** Summarize and determine the adequacy of proposed processes and unit parameters for the treatment of the water under consideration. Pilot studies may be required for innovative design. Post treatment for membrane systems shall be in accordance with OAC 252:626-9-9 (f)(6).

(10) **Residuals management.** Submit a Residuals Management Plan that discusses the wastes and volume generated by existing and proposed water treatment processes, their volume, proposed treatment of waste products, points of discharge or method of disposal or land application.

(11) **Project sites.** Address the following in the report:

(A) discussion of various sites considered and advantages of those recommended,

(B) the proximity of residences, industries, and other establishments, and

(C) any potential sources of pollution that may influence the quality of the supply or interfere with effective operation of the water works system, including but not limited to, absorption systems, septic tanks, privies, sink holes, sanitary landfills, refuse and garbage dumps.

(12) **Cost estimates.** Address the following in the report:

(A) estimated cost of integral parts of the system,

(B) detailed estimated annual cost of operation, and

(C) proposed methods to finance both capital charges and operating expenses.

(13) **Future extensions.** Summarize future needs and services.

SUBCHAPTER 5. GENERAL DESIGN

252:626-5-6. Laboratory facilities

Each public water supply must have its own equipment and facilities for routine laboratory testing necessary to ensure proper operation. Provide methods for verifying adequate quality assurances and for routine calibration of the equipment.

(1) **Testing equipment.** Laboratory equipment and facilities must be compatible with the raw water source, intended use of the treatment plant and the complexity of the treatment process involved. The laboratory must have enough equipment to perform operating control tests set forth in OAC 252:631 and provide the following laboratory equipment:

(A) a pH meter, jar testing equipment, a nephelometric turbidimeter, and titration equipment for both hardness and alkalinity for surface water treatment plants utilizing flocculation and sedimentation, including those that soften the water with lime ~~soften~~,

(B) a pH meter and titration equipment for both hardness and alkalinity for ion exchange softening plant and lime softening plant treating only ground water,

(C) for iron and manganese removal plants, test equipment capable of accurately measuring:

(i) iron to a minimum of 0.1 mg/l, ~~or~~ and/or

(ii) ~~test equipment capable of accurately measuring~~ manganese to a minimum of 0.05 ~~0.1~~ mg/l ~~for iron or manganese removal plants~~,

(D) test equipment for determining both free and total chlorine residuals for PWS systems that chlorinate,

(E) test equipment for determining fluoride concentration for PWS systems that fluoridate or that treat or use blending for the reduction of naturally occurring fluoride, and

(F) test equipment capable of accurately measuring phosphates from 0.1 to 20 mg/l for PWS systems that feed ~~poly or ortho phosphates~~ polyphosphate or orthophosphate.

(2) **Physical facilities.** Provide sufficient bench space, adequate ventilation, lighting, storage space, laboratory sinks, and auxiliary facilities.

SUBCHAPTER 9. TREATMENT

252:626-9-7. Iron and manganese control

(a) **General.** DEQ must approve treatment processes. When selecting treatment processes, local conditions must be evaluated using engineering investigations, including chemical analyses of representative samples of water to be treated. Include provisions for pH adjustment of the water to optimize the chemical reaction and to produce a non-corrosive finished water, containing not more than 0.3 ~~part per million~~ ppm of iron and 0.05 ~~part per million~~ ppm of manganese.

(1) **Removal by oxidation, detention, and filtration.**

(A) **Oxidation.** Provide oxidation through the use of chlorination, chlorine dioxide, potassium permanganate, aeration, ozonation or other approved method.

(B) **Detention.**

(i) **Reaction.** Provide a minimum detention time of 30 minutes following oxidation in order to insure that the oxidation reactions are as complete as possible. Design the detention basin as a holding tank with sufficient baffling to prevent short circuits. Provide drains for the basin.

(ii) **Sedimentation.** Provide sedimentation basins when treating water with high iron or manganese content, or where chemical coagulation is used to reduce the load on the filters.

(C) **Filtration.** Provide filtration.

(2) **Removal by the lime-soda softening process.** See ~~OAC~~ 252:626-9-10.

(3) **Removal by manganese green sand filtration.**

(A) Make provisions to apply the permanganate as far ahead of the filter as practical.

(B) Provide an anthracite media cap of at least 6 inches over the manganese green sand.

(C) Three gal/min/ft^2 is the maximum filtration rate.

(D) Normal wash rate is 8 to 10 gal/min/ft^2 of filter area.

(E) Provide air washing.

(F) Provide sample taps:

(i) prior to application of permanganate,

(ii) immediately ahead of filtration,

(iii) at a point between the anthracite media and the manganese green sand,

(iv) halfway down the manganese green sand, and

(v) at the filter effluent.

(4) **Sequestration by polyphosphates.** Do not use sequestration by polyphosphates where the concentration of iron, manganese, or the combination of the ~~2~~ two exceeds 1.0 mg/l. Do not exceed 10 mg/l of total phosphate as PO_4. Where phosphate treatment is used, provide chlorination

and maintain chlorine levels throughout the distribution system as required by OAC 252:631.

(A) Feeding equipment must meet the requirements of ~~OAC~~ 252:626-11.

(B) Do not apply polyphosphates ahead of iron and manganese removal treatment.

(b) **Sampling and testing equipment.**

(1) Provide smooth-nosed sampling taps for control purposes. Locate taps on each raw water source, treatment unit influent and effluent.

(2) Provide testing equipment with the capacity to accurately measure the iron content to a minimum of 0.1 mg/l and the manganese content to a minimum of 0.05 mg/l.

(3) ~~Where polyphosphate sequestration is practiced, provide appropriate phosphate testing equipment .~~Public water supply systems that feed polyphosphate or orthophosphate shall have test equipment capable of accurately measuring phosphates from 0.1 to 20 mg/l.

252:626-9-11. Disinfection

(a) **General.**

(1) **Surface and GWUDI.** All surface and GWUDI supplies require disinfection.

(2) **Groundwater.** Full-time disinfection of a groundwater supply is required whenever the record of bacteriological tests indicates the water is or was ever bacteriologically unsafe pursuant to ~~OAC~~ 252:626-7-4(a)(2).

(3) **Modification to disinfection process.** Do not make any changes to the disinfection process unless approved by the DEQ.

(4) **CT Standards.** Design the system to meet the CT standards in accordance with 40 CFR § 141.72. CT shall provide 4.0 log inactivation for viruses.

(5) **Accomplished log inactivation.** Total log removal/inactivation required for ~~*giardia*~~*Giardia*, ~~*cryptosporidium*~~ *Cryptosporidium* and viruses shall be accomplished through filtration and disinfection as described in the "Microbial and Disinfection Byproduct Rules Simultaneous Compliance Guidance Manual," EPA 815-R-99-015.

(b) **Chlorination.**

(1) **Chlorinators.** Provide solution-feed-gas-type chlorinators positive displacement hypochlorite feeders or tablet chlorinators. Only NSF approved tablet chlorinators are allowed.

(2) **Capacity.** Design the capacity of chlorine feeders to produce a free chlorine residual of at least 2 mg/l in the water after a contact time needed to meet the required CT Value. The equipment must accurately operate over the desired feeding range.

(3) **Stand-by equipment.** Provide stand-by equipment to replace the largest unit during shutdowns and adequate spare parts for chlorinators. Hypochlorinators of adequate capacity may temporarily replace gas-type chlorinators in small plants.

(4) **Proportioning.** Provide automatic proportioning chlorinators where the rate of flow or chlorine demand is not constant.

(5) **Contact time and point of application.**

(A) At plants treating surface water, make provisions for applying disinfectant to raw water, water applied to filters, filtered water, and water entering the distribution system. At plants treating ground water, make provisions for applying chlorine to the detention basin inlet and water entering the distribution system.

(B) Design all basins used for disinfection to minimize short-circuiting and increase contact time.

(C) If primary disinfection is accomplished using ozone, chlorine dioxide, or any other chemical that does not provide a residual disinfectant, then chlorine or chloramines must be added to provide a residual disinfectant.

(6) **Testing equipment.** Provide chlorine residual test equipment recognized in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by AWWA, APHA, and WEF. ~~Provide continuous monitoring and recording equipment for plants serving a population greater than 3,300.~~Public water supply systems that serve a population greater than 3,300 shall have equipment that continuously measures and records chlorine residuals at the entry point to the distribution system.

(7) **Chlorinator piping.** Design the chlorinator water supply piping to prevent contamination of the treated water supply by back-siphonage or cross connections with non-potable water. At all facilities treating surface water, pre-chlorination and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well.

(c) **Chloramines.** Disinfection with chloramines is not ~~appropriate~~ allowed for primary disinfection to meet CT requirements.

(d) **Chlorine dioxide.** Perform an oxidant demand study before selecting chlorine dioxide as a primary disinfectant.

(e) **Chlorine dioxide testing equipment.** When treatment with chlorine dioxide is used, provide equipment for testing concentrations of chlorine dioxide and chlorites.

(f) **Ultraviolet disinfection.** UV drinking water disinfection applications shall be closed channel reactors. Full-scale drinking water applications generally use UV low-pressure, UV low-pressure high-output, or UV medium pressure mercury vapor lamps. There are several factors to determine which lamp to use, including the number of lamps needed, lamp life, power usage, start-up time and germicidal efficiency.

(1) **Reactor dose monitoring approaches.** One of the following UV reactor dose-monitoring approaches shall be used:

(A) **UV intensity setpoint approach.** This approach relies on one or more "setpoints" for UV intensity that are established during validation testing, pursuant to the requirements contained in ~~OAC~~ 252:626-9-11(e)(2)(C), to determine UV dose. During operations, the UV intensity as measured by the

UV sensors must meet or exceed the setpoint(s) to ensure delivery of the required dose. In the UV intensity setpoint approach, UV transmittance does not need to be monitored separately. Instead, the intensity readings by the sensor account for changes in UV transmittance. The operating strategy can be with either a single setpoint (one UV intensity setpoint is used for all validation flow rates) or a variable setpoint (the UV intensity setpoint is determined using a lookup table or equation for a range of flow rates).

(B) **Calculated dose approach.** This approach uses a dose monitoring equation to estimate the UV dose based on the measured flow rate, UV intensity, and UV transmittance. The dose monitoring equation shall be developed through validation testing, pursuant to the requirements contained in ~~OAC~~ 252:626-9-11(e)(2)(C). During reactor operations, the UV reactor control system inputs the measured parameters into the dose monitoring equation to produce a calculated dose. The water system operator divides the calculated dose by the validation factor and compares the resulting value to the required dose for the target pathogen and log inactivation level.

(2) **Design.** The following criteria shall be included in the design of the UV system:

(A) **Flow rate.** Maximum ~~instanteous~~ instantaneous flow rates shall be stated in the validation report pursuant to the requirements contained in ~~OAC~~ 252:626-9-11(e)(2)(C).

(B) **Target pathogen(s) and log inactivation.** The log inactivation for the target pathogen(s) must be determined before sizing the UV reactor. The target microorganism(s) and their log-inactivation level shall be stated in the engineering report. The required UV doses for *Cryptosporidium* and *Giardia* inactivation are lower than those needed for the inactivation of viruses. Most viruses can be easily inactivated with chlorine.

(C) **Validation.** To ensure the validation testing and data analysis is conducted in a technically sound manner and without bias, a person independent of the UV reactor manufacturer shall oversee the validation testing. Individuals qualified for such oversight shall include engineers experienced in testing and evaluating UV reactors and scientists experienced in the microbial aspects of biodosimetry. Appropriate individuals should have no real or apparent conflicts of interest regarding the ultimate use of the UV reactor being tested. The range of validated operating conditions must be included in the validation testing and submittal of a validation report shall be required. The validation testing shall be completed in accordance with procedures outlined in the publication, "Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule," EPA 815-R-06-007, (2006).

(D) **Sizing.** A fouling aging factor of 0.70 shall be used to size the UV reactor.

(E) **Required UV dose.** The validation process shall determine the dose monitoring for the required dose over the range of flow, UVT, lamp aging and fouling that will occur at the water treatment plant.

(F) **Water quality.** The following water quality parameters shall be included in the design of the system:

(i) Fouling factors, which include, temperature, pH, turbidity, iron, calcium, manganese, alkalinity and total hardness;

(ii) UV transmittance at 254 mn; and

(iii) UV transmittance from 200-300 mn for MP reactors only.

(G) **Operating pressure.** Provide the expected operating pressures for the UV system. The maximum operating pressure to be withstood by the lamp sleeves and UV reactor housing.

(H) **UV sensors.** A germicidal spectral response shall be specified. A minimum of one UV sensor shall be specified per UV reactor. The actual number shall be the same as used during the validation process pursuant to the requirements contained in ~~OAC~~ 252:626-9-11(e)(2)(C). The following shall also be required:

(i) UV sensors used during validation shall read within ~~ten percent (10%)~~ 10% of the average of ~~three (3)~~ 3 or more reference sensor measurements.

(ii) UV sensors during operation shall be calibrated with ~~three (3)~~ 3 or more reference UV sensor measurements. Reference UV sensors are off-line UV sensors that shall be at least as accurate as the duty UV sensors and shall be constructed identically, unless changes are made to the reference sensor to make said sensor more accurate.

(iii) Reference UV sensors shall have calibration traceable to one of the following national standards:

(I) The National Physical Laboratory;

(II) The National Institute of Standards and Technology;

(III) Deutsche Vereinigung des Gas- und Wasserfaches (GVDW); and

(IV) Osterreichisches Normungsinstitut (ORNORM).

(I) **Hydraulics.** The following hydraulic information shall be provided:

(i) The maximum system pressure at the UV reactor;

(ii) The maximum allowable head loss through the UV reactor;

(iii) Special surge conditions that may be experienced; and

(iv) The hydraulic constraints based on the site-specific and validated conditions.

(J) **Location constraints.** Do not install UV disinfection upstream of filtration for surface and

GWUDI water treatment plants due to the potential of particles interfering with UV disinfection.

(K) **Lamp Sleeves.** The following shall be applicable to all lamp sleeves installed:

(i) Lamp sleeves shall be annealed to minimize internal stress;

(ii) Lamp sleeve specifications shall describe the type of lamp sleeve cleaning system to be used, whether an off-line chemical clean, an off-line mechanical clean, or an on-line mechanical and/or chemical clean method is used. Indicate how the capacity of the system will be affected by the chosen cleaning system; and

(iii) Provide piping and valves necessary to properly dispose of chemicals used during the cleaning of the lamp sleeves.

(L) **Alarms.** At a minimum, the following UV reactor alarms shall be specified:

(i) Lamp or ballast failure;

(ii) Low UV intensity or low validated UV dose;

(iii) High temperature;

(iv) Operating conditions outside of validated range; and

(v) Wiper failure.

(M) **Instrumentation.** At a minimum, the following signals and indicators shall be specified:

(i) UV lamp status;

(ii) UV reactor status;

(iii) All signals used in the dose monitoring algorithm (e.g. at a minimum lamp output, UV intensity, flow, and UVT);

(iv) Lamp cleaning cycle and history;

(v) Accumulated run time for individual lamps or banks of lamps and reactors; and

(vi) Influent flow rate.

(N) **Controls.** At a minimum, the following UV reactor controls shall be specified:

(i) UV dose setpoints, UV intensity set points or UV transmittance setpoints as appropriate;

(ii) UV lamps, on and off control;

(iii) UV reactor, on and off control;

(iv) UV reactor manual and automatic control;

(v) UV reactor local and remote control;

(vi) Manual lamp power level control;

(vii) Manual lamp cleaning cycle control; and

(viii) Automatic lamp cleaning cycle setpoint control.

(O) **Startup Criteria.** The equipment installed shall meet the performance requirements contained in the specifications. The following specific performance criteria shall be included in the specifications:

(i) Allowable head loss at each design flow rate;

(ii) Estimated power consumption under the design operating conditions;

(iii) Disinfection capacity of each reactor under the design water quality conditions;

(iv) Sensitivity of equipment to variations in voltage or current; and

(v) Reference UV sensor, duty UV sensor, and UV transmittance analyzer performance.

(P) **Warranties.** A physical equipment warranty for a minimum of one year is required. Lamps shall be warranted to provide the lamp intensity under design conditions and warranted for a minimum number of operating hours taking into consideration the fouling and aging of the lamp.

(Q) **UV transmittance analyzer.** When a UV transmittance analyzer is provided, a calibrated spectrophotometer is required, capable to measure UV absorbance and/or UVT at 254 nm, across a 4 cm or 5 cm pathlength.

(R) **Back-up power supply.** Power surges and the appropriate power conditioning equipment must be addressed in the specifications.

252:626-9-12. Fluoridation [REVOKED]

~~(a) **Approval of fluoridation program.** Fluoridation programs for PWS systems must be approved by the Oklahoma Department of Health. DEQ approves the installation of the facilities. The requirements include:~~

~~(1) the governing body of the water authority must authorize fluoridation by ordinance or resolution,~~

~~(2) written endorsement or resolution of the local medical and dental societies and the local health authorities,~~

~~(3) detailed plans showing the location of the equipment, piping layout, manner of control, and point of fluoride application,~~

~~(4) detailed specifications for the chemical feeding equipment including a description of the equipment and its maximum and minimum feed range,~~

~~(5) statement of the chemical to be used and plans for storage and handling,~~

~~(6) plans for dust control facilities, and~~

~~(7) methods of analysis and control to be used in making the fluoride control tests.~~

~~(b) **Fluoride compounds.** Sodium fluoride, sodium silicofluoride, and hydrofluosilicic acid that are approved by NSF are suitable for the fluoridation of PWS systems. Fully label containers used to store fluoride compounds including chemical name, purity, concentration, and supplier name and address.~~

~~(c) **Equipment.** Equipment for feeding fluoride compounds must comply with OAC 252:626-11.~~

SUBCHAPTER 11. CHEMICAL APPLICATION

252:626-11-4. Additional requirements for specific chemicals

(a) **Chlorine gas.**

(1) **Housing.** Enclose chlorine gas feed and storage and separate them from other operating areas. The chlorine room must:

(A) have a shatter resistant, clear glass inspection window installed in an exterior door or interior wall to permit the chlorinator to be viewed without entering the room,

(B) be constructed so that all openings between the chlorine room and the remainder of the plant are sealed,

(C) be provided with doors equipped with panic hardware and opening only to the building exterior,

(D) be on ground floor with easy access for handling cylinders from a ramp or dock at floor level, and

(E) provide a gas-tight room to separate gas chlorination equipment, chlorine cylinders and ozone generation equipment from other parts of the building, if the building is used for other purposes. Do not connect floor drains from the chlorine room to floor drains from other rooms. Doors to this room shall only open to the outside of the building, with panic hardware, at ground level and allow easy access to all equipment. ~~One (1) ton~~ One-ton chlorine cylinders shall have separate storage and feed areas. All doors and emergency equipment shall be compatible with chlorine.

(2) **Ventilation.**

(A) Provide each room with a ventilating fan with the capacity to provide ~~1~~ one complete air change per minute.

(B) Locate air inlets near the ceiling and the point of discharge near the floor. Locate the point of discharge to avoid contaminating air inlets to any rooms or structures.

(C) Locate switches for fans and lights outside of the room, at the entrance. Provide a labeled signal light indicating fan operation at each entrance where the fan can be controlled from more than ~~1~~ one point.

(3) **Heat.** Provide the ability to heat the room to 60EF (15EC) and protect from excessive heat. Keep cylinders at room temperature.

(4) **Storage of chlorine cylinders.** Full and empty cylinders of chlorine gas must be:

(A) isolated from operating areas,

(B) restrained in position to prevent upset,

(C) stored in rooms separate from ammonia storage,

(D) stored in areas not in direct sunlight or exposed to excessive heat, and

(E) a minimum of a ~~one (1) ton~~ one-ton chlorine container, if more than ~~one hundred and fifty pounds (150 lbs.)~~ 150 pounds of chlorine per day is needed.

(5) **Scales.** Provide corrosion-resistant accurate scales for weighing chlorine cylinders. Provide at least a platform scale. Indicating and recording scales are required.

(6) **Chlorine gas line.** Do not allow chlorinator feed lines to carry chlorine gas beyond the chlorinator room, unless gas is fed under vacuum. Lines must be extra heavy weight pipes, resistant to corrosion and slope upward from the cylinder to the chlorinator.

(7) **Water supply.** Provide an ample supply of water to operate the chlorinator. Back-up any booster pumps, according to the back-up power requirements.

(8) **Handling Equipment.** For cylinders up to ~~one hundred and fifty pounds (150 lbs.)~~ 150 pounds, provide securing restraints and a hand-truck designed for the cylinders. For ~~one (1) ton~~one-ton cylinders, provide:

(A) ~~A~~ a 4,000-pound capacity hoist ~~with 4,000 lbs. capacity~~,

(B) ~~Cylinder~~ a cylinder lifting bar,

(C) ~~Monorail~~ a monorail or hoist with sufficient lifting height to pass one cylinder over another, and

(D) ~~Cylinder~~ cylinder trunnions to allow exchanging the cylinders for proper connection.

(9) **Manifolds.** Gaseous chlorine cylinders may be connected to a manifold, if all cylinders are maintained at the same temperature or the system is designed for gas transfer from a warm container to a cool container. Do not connect liquid chlorine cylinders to a manifold.

(10) **Leak detection.** Provide an emergency response plan for chlorine leaks. Provide a bottle of 56% ammonium hydroxide solution for detecting chlorine leaks. Where ~~one (1) ton~~ one-ton containers are used, provide a leak repair kit approved by the Chlorine Institute and include caustic soda solution reaction tanks to absorb leaks. At large chlorination installations, provide automatic gas detection and related alarm equipment. Air pollution control regulations may require additional air scrubbing equipment be installed.

(11) **Evaporators.** The specifications shall demonstrate that a sufficient volume of chlorine can be supplied.

(12) **Respiratory protection.** Where chlorine gas is handled, provide respiratory air-pac protection equipment that meets the National Occupational Safety and Health (NIOSH) standards. Store the equipment and operating instructions at a convenient location outside the room where chlorine is used or stored. The units must use compressed air, with at least a 30-minute capacity. In the emergency response plan, describe how to maintain the air-pac protection equipment.

(b) **Acids and caustics.**

(1) Keep acids and caustics in closed acid-resistant or caustic resistant shipping containers or storage units.

(2) Design bulk acid and caustic storage systems with a liquid level indicator, overflow pipe, and receiving basin or drain capable of receiving accidental spills or overflows.

(3) Do not handle acids or caustics in open vessels. Pump acid or caustics in undiluted form from original containers through a suitable line to the point of treatment or to a covered day tank.

(4) Due to their potential explosive nature, do not store acids and bases together or allow discharge to a common drain.

(c) **Fluoride~~ compound storage and handling~~.** Documentation of approval from the Oklahoma State Department of Health for the use of fluoride for a PWS system shall be submitted to DEQ with the engineering report.

(1) **Approved fluoride compounds.** The following compounds may be used for the fluoridation of PWS systems when approved by NSF:

(A) sodium fluoride,

(B) sodium silicofluoride, and

(C) hydrofluosilicic acid.

(~~1~~2) **Storage.**

(A) Store fluoride chemicals so that substitution for other chemicals used in water treatment can be avoided.

(B) Provide storage facilities so fluoride dry chemicals can be stored a minimum of 6 inches from floor surface to prevent moisture build up within chemical (dry chemicals only).

(C) Store fluoride compounds in covered or unopened shipping containers inside an enclosure.

(D) Do not reuse empty fluoride shipping containers (bags, drums, or barrels).

(~~2~~3) **Chemical feed equipment and methods.**

(A) **Scales.** Provide accurate scales and loss-of-weight recorders for hydrofluosilicic acid solution feeders.

(B) **Solution feeders.** Provide a positive displacement pump having a stroke rate of not less than ~~twenty (20)~~ 20 strokes per minute for the application of fluoride solution. Do not introduce fluoride solution directly into the suction pipe of a pump or any other pipe or conduit that normally operates under atmospheric or negative pressure.

(C) **Feed lines.** Provide easily accessible feed lines made of corrosion resistant material. Protect feed lines from freezing. If using a horizontal pipe, apply the hydrofluosilicic acid into the lower half of the pipe. Provide anti-siphon devices for all fluoride feed lines. Do not add fluoride compounds before lime-soda softening or ion exchange softening.

(D) **Dry-chemical feeders.** Provide a minimum of 12 gallons of solution water per pound of sodium fluoride or silicofluoride applied. Provide agitation of the chemical and gravity feed from the solution pots. Provide a minimum retention period of 5 minutes for sodium fluoride or ~~fifteen (15)~~ 15 minutes for sodium silicofluoride in the solution pot or basin.

(~~3~~4) **Protective equipment.** Place a sign in fluoride feeding areas, stating that hands and other exposed areas must be washed with liberal quantities of water after handling fluoride materials.

(A) Provide the following protective equipment when sodium fluoride and sodium silicofluoride is utilized:

(i) gauntlet-type gloves made of neoprene, plasticized polyvinyl chloride, or other equally resistant material,

(ii) dust respirator of a type certified by the National Institute of Occupational Safety and Health (NIOSH) for toxic dusts,

(iii) an apron or other protective clothing, and

(B) Provide the following protective equipment when hydrofluosilicic acid is used:

(i) gauntlet-type gloves made of neoprene, plasticized polyvinyl chloride, or other equally resistant material,

(ii) chemical safety goggles or shield,

(iii) an acid resistant apron made of neoprene or other equally resistant material, and

(iv) an operational safety shower and eyewash device in case of emergency.

(d) **Powdered activated carbon.** Powdered activated carbon storage and handling must meet the following requirements:

(1) store activated carbon in a fireproof compartment or building. Do not store any other material in the same compartment or building with carbon. Provide explosion-proof lights, switches, and motors,

(2) install an exhaust fan with a dust collector for each room where carbon is stored or handled,

(3) provide wet carbon storage tank dust collectors at the charging point and an agitation device to keep the slurry in suspension,

(4) provide pumps for transfer of the slurry to the feeders,

(5) construct all tanks, pipes, valves, pumps, agitators, etc., which will come in contact with the carbon slurry, of materials that will withstand the corrosive action of the slurry, and

(6) the maximum slurry concentration is 1 pound of activated carbon per gallon of water.

(e) **Chlorine dioxide.**

(1) **Feed system.**

(A) Provide fiberglass reinforced vinyl ester plastic (FRP) or high density linear polyethylene (HDLPE) tanks with no internal insulation or heat probes for bulk storage of ~~25 to 38 percent~~ 25-38% solution sodium chlorite.

(B) If centrifugal pumps are used, provide Teflon packing material. Pump motors must be:

(i) totally enclosed,

(ii) fan-cooled,

(iii) equipped with permanently sealed bearings, and

(iv) equipped with double mechanical seals or other means to prevent leakage.

(C) Provide chlorinated PVC, vinyl ester or Teflon piping material. Do not use carbon steel or stainless steel piping systems.

(D) Provide glass view ports for the reactor if it is not made of transparent material.

(E) Provide flow monitoring on all chemical feed lines, dilution water lines, and chlorine dioxide solution lines.

(F) Do not use excessively hard dilution water in order to avoid calcium deposits. Dilution water must be near neutral pH.

(G) Control air contact with chlorine dioxide solution to limit potential for explosive concentrations building up within the generator.

(H) The maximum chlorine dioxide concentration in the air is ~~10 percent~~ 10% by volume.

(2) **Storage.**

(A) Designate space for storage and feeding.

(B) Do not store and handle combustible or reactive materials, such as acids or organic materials, in the sodium chlorite area.

(C) Provide non-combustible material for construction, such as concrete.

(D) Store chemicals in clean, closed, non-translucent containers.

(E) Avoid exposure to sunlight, UV light, or excessive heat.

(F) Provide a water supply near the storage and handling area for cleanup.

(G) Design the parts of the chlorine dioxide system in contact with the strong oxidizing or acid solutions of inert material.

(H) Provide adequate ventilation and air monitoring equipment.

(I) Provide gas masks and first aid kits outside the chemical areas.

(f) **Sodium chlorite.** The storage and use of sodium chlorite must be approved by the DEQ in the engineering report prior to the preparation of final plans and specifications. Provisions shall be made for proper storage and handling of sodium chlorite to eliminate any danger of fire or explosion associated with its oxidizing nature.

(1) **Storage.** Sodium chlorite shall be stored as follows:

(A) Sodium chlorite shall be stored alone in a separate room and in an outside building detached from the water treatment facility. The sodium chlorite shall be stored away from organic materials;

(B) Storage structures shall be constructed of non-combustible materials; and

(C) The storage structure shall be located in an area where water is provided for fire protection and the structure shall be in an area sufficiently cool to prevent heat induced explosive decomposition of the chlorite.

(2) **Handling.** Sodium chlorite shall be handled as follows:

(A) Sodium chlorite shall be handled to prevent spillage;

(B) An emergency operation plan shall be developed for the clean up of any spillage; and

(C) Storage drums shall be thoroughly flushed prior to recycling and/or disposal.

(3) **Feeding.** Sodium chlorite shall be fed as follows:

(A) Positive displacement feeders shall be provided;

(B) Tubing for conveying sodium chlorite or chlorine dioxide solutions shall be Type I PVC, polyethylene or materials recommended by the manufacturer;

(C) Chemical feeders installed in chlorine rooms shall provide sufficient space or facilities as approved in the specifications;

(D) Feed lines shall be installed in a manner to prevent formation of gas pockets and shall terminate at a point of positive pressure; and

(E) Check valves shall be provided to prevent backflow of chlorine into the sodium chlorite line.

(g) **Sodium hypochlorite.** Sodium hypochlorite storage and handling procedures shall be arranged to minimize the slow natural decomposition process either by contamination or by exposure. In addition, feed rates shall be regularly adjusted to compensate this progressive loss in chlorine content.

(1) **Storage.** Sodium hypochlorite shall be stored as follows:

(A) In the original shipping containers or in a sodium hypochlorite compatible container; and

(B) Storage containers or tanks shall be located in a cool area, away from any sunlight, and vented to the outside of the building.

(2) **Feeding.** Sodium hypochlorite shall be fed as follows:

(A) Positive displacement pumps shall be used;

(B) To avoid air locking, for or systems using self-priming pumps, the use of a foot valve is required;

(C) Where flooded suction is used, arrange pipe work to ease the escape of gas bubbles;

(D) Plants utilizing bulk storage of greater than 100 gallons shall be required to use calibration tubes or mass flow monitors which allow for direct physical checking of actual feed rates; and

(E) Injectors shall be removable to allow for regular cleaning.

(h) **Ammonia.** Ammonia for chloramine formation shall be added to water either as a water solution of ammonium sulfate, or as aqua ammonia (ammonia gas in water solution), or as anhydrous ammonia ~~[~~(purified 100% ammonia in liquid or gaseous form)~~]~~. Special provisions are required for each form of ammonia as follows:

(1) **Ammonium sulfate.** A water solution is made by addition of ammonium sulfate solid to water with agitation. The tank and dosing equipment contact surfaces shall be made of corrosion resistant non-metallic materials. The point of delivery to the main water stream shall be placed in a region of rapid and turbulent water flow.

(2) **Aqua ammonia.** Aqua ammonia (also known as ammonium hydroxide) feed pumps and storage shall be enclosed and separated from other operating areas. The aqua ammonia room shall be equipped as follows:

(A) A corrosion resistant, closed, unpressurized tank shall be used for bulk storage, vented through an inert liquid trap to a high point outside and an incompatible connector or lockout provisions shall be made to prevent the accidental addition of other chemicals to the storage tank.

(B) The storage tank shall be fitted with either a cooling/refrigeration and/or with a provision without

opening the system to dilute and mix the contents with water to avoid conditions where temperature increases cause the ammonia vapor pressure over the aqua ammonia to exceed atmospheric pressure.

(C) An exhaust fan shall be installed to withdraw air from high points in the room and makeup air shall be allowed to enter at a low point.

(D) The aqua ammonia feed pump, regulators, and lines shall be fitted with pressure relief vents discharging outside the building away from any air intake and with water purge lines leading back to the headspace of the bulk storage tank.

(E) The aqua ammonia shall be conveyed direct from storage to the treated water stream injector without the use of a carrier water stream unless the carrier stream is softened.

(F) The point of delivery to the main water stream shall be placed in a region of rapid and turbulent water flow.

(G) Provisions shall be made for easy access for removal of calcium scale deposits from the injector.

(3) **Anhydrous ammonia.** Anhydrous ammonia shall be readily available in pure liquefied gas form under moderate pressure in cylinders or as a cryogenic liquid, boiling at ~~negative 15 degrees Celsius~~ -15EC at atmospheric pressure. Anhydrous ammonia shall be handled as follows:

(A) Anhydrous ammonia and storage feed systems (including heaters where required) shall be enclosed and separated from work areas and constructed of corrosion resistant materials.

(B) Pressured ammonia feed lines shall be restricted to the ammonia room.

(C) An emergency air exhaust system, with an elevated intake, shall be provided in the ammonia storage room.

(D) Leak detection systems shall be fitted in all areas where the ammonia is piped.

(E) Special vacuum breaker/regulator provisions shall be made to avoid potentially violent results of backflow of water into cylinders or storage tanks.

(F) The ammonia injector shall either use a vacuum eductor or a perforated tube fitted with a closely fitting flexible rubber tubing seal punctured with a number of small slits to delay the fouling by lime deposits.

(G) A provision shall be made for the periodic removal of scale/lime deposits from injectors and carrier piping.

(H) Meet OSHA requirements for the installation of an emergency gas scrubber capable of absorbing the entire contents of the largest ammonia storage unit whenever there is a risk to the public as a result of potential ammonia leaks.

SUBCHAPTER 19. DISTRIBUTION SYSTEM

252:626-19-2. Installation of ~~mains~~ piping

(a) **Standards.** The standards in this Section apply to the installation of piping in public water supply distribution systems. Specifications must incorporate the provisions of the AWWA standards.

(b) **Bedding.** Provide continuous and uniform bedding in the trench for all buried pipe. Tamp backfill material in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. Remove all stones found in the trench to a depth of at least 6 inches below the bottom of the pipe.

(c) **Cover.** Provide all water mains with at least 30 inches of cover or with sufficient insulation to prevent freezing.

(d) **Blocking.** Provide reaction blocking, tie rods, or joints designed to prevent movement at all tees, bends, plugs and hydrants to prevent movement of the pipe.

(e) **Pressure and leakage testing.** Test the installed pipe for leakage in accordance with AWWA standard specifications. Leakage must not exceed 10 gal/inch diameter per mile of pipe per 24 hours at 150 psi testing pressure.

(f) **Disinfection and testing.** Disinfect all waterlines according to AWWA standard specifications. Obtain safe bacteriological samples on two consecutive days before placing the waterline into service.

(g) **Permeation of system by organic compounds.** Where distribution lines are installed in areas of soil or groundwater contamination by organic compounds use:

(1) pipe and joint materials that are not subject to permeation by organic compounds.

(2) non-permeable materials for all portions of the system including water mains, service connections, and hydrant leads.

(h) **Separation of water mains and sewers from contamination sources.**

(1) **Horizontal separation.**

(A) Measure the separation distance edge to edge.

(B) Locate water mains at least 10 feet horizontally from any existing or proposed sewer lines.

(C) Locate water mains at least 5 feet horizontally from any existing or proposed storm sewers, raw water lines, petroleum product lines, natural gas lines, and other buried utility lines.

(D) Locate cast iron waterlines at least 10 feet from any gasoline storage tank and lines and PVC water lines at least 50 feet horizontally from any gasoline storage tank and lines.

(E) Locate waterlines at least 15 feet from all parts of septic tanks and absorption fields, or other sewage treatment and disposal systems.

(2) **Vertical Separation.**

(A) Measure the separation distance from edge to edge.

(B) Lay waterlines crossing sewer lines to provide a minimum vertical distance of 24 inches between the water main and the sewer line. Arrange the piping so that joints in a 20-foot length of PVC or 18-foot length of cast iron sewer pipe will be equidistant from the water main. Where a water main crosses under

a sewer, provide adequate structural support for the sewer to prevent damage to the water main.

(C) Maintain a ~~two~~ 2-foot vertical separation between waterlines and any existing or proposed storm sewers, raw water lines, petroleum product lines, natural gas lines, and other buried utility lines.

(3) **Special conditions.** When it is impossible to obtain proper horizontal and vertical separation as stipulated above, design and construct the other line equal to water pipe, and pressure test it to assure water tightness of joints adjacent to the water line prior to backfilling.

(~~I~~i) **Surface water crossings.**

(1) **Above-water crossings.** Adequately support and anchor the pipe. Provide protection from damage and freezing. Make waterline accessible for repair or replacement.

(2) **Underwater crossings.** Provide a minimum cover of 2 feet over the pipe. For waterlines crossing a well defined channel bottom greater than 15 feet in width, construct the waterline as follows:

(A) design the pipe for river crossings and have flexible, restrained or welded watertight joints,

(B) provide valves at both ends of water crossings so that the section can be isolated for testing or repair. The valves must be easily accessible and not subject to flooding. The valve closest to the supply source must be in a manhole, and

(C) make permanent taps on each side of the valve within the manhole to allow insertion of a small meter for testing to determine leakage and for sampling purposes.

(j) **Tracer wire.** Install metal tracer wire on all non-ferrous piping used for public water supply mains.

[OAR Docket #14-627; filed 7-2-14]

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

[OAR Docket #14-628]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:631-1-3 [AMENDED]
Subchapter 3. Operations
252:631-3-3 [AMENDED]
252:631-3-10 [AMENDED]
252:631-3-11 [AMENDED]
252:631-3-23 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S. §§ 2-6-103, 2-6-303 and 2-6-306.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 3, 2013, through October 8, 2013
PUBLIC HEARING:
Before the Council on October 8, 2013, and before the Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND LEGISLATURE:
November 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated standards:
Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2013"
Incorporating rules:
OAC 252:631-1-3
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed regulations will: (1) update the date of the incorporation by reference for federal regulations from July 1, 2012, to July 1, 2013, which will allow for the implementation of the Revised Total Coliform Rule (RTCR), with a compliance date of April 1, 2016; (2) move disinfection process control requirements from 252:631-3-3, which relates to disinfection, to 252:631-3-10, which relates to process control tests; (3) add non-community water systems to the list of systems required to record chlorine residual twice daily in the distribution system and once daily at the point-of-entry; (4) add a requirement for purchase water systems that provide supplemental chlorination to record chlorine residual monitoring results; (5) remove language that applies to minor water systems, which are regulated in 252:624; and (6) make other minor clarifications.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. INTRODUCTION

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2012~~ 2013, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference.

SUBCHAPTER 3. OPERATIONS

252:631-3-3. Disinfection requirements

(a) **Mandatory disinfection.** Full-time disinfection is mandatory for:

(1) surface water, groundwater under the direct influence of surface water, and spring water supplies unless an alternative has been approved by the DEQ. Each of these systems shall provide disinfection in accordance with 40 CFR Section 141.72(b) and meet the monitoring requirements contained in 40 CFR Section 141.74(c).

(2) groundwater supplies or purchase water systems whenever their record of bacteriological tests show:

(A) a persistent presence of Total Coliform; or

(B) a verified Fecal Coliform, or E. Coli MCL exceedance;

(3) PWS systems that purchase water from a public water supply under mandatory disinfection, unless the purchase water system verifies chlorine residuals that are in compliance with (c) or, if chloramines are used, (d) of this Section; and

(4) any new well in a system where the initial bacteriological tests of the well do not show a safe record with the DEQ for ~~two (2)~~ 2 consecutive days after completion and testing of the well.

(b) **Modification of disinfection methods.** When any change in the disinfection process is contemplated, contact the DEQ. Submittal of an application, including plans, specifications, engineering reports, disinfection profile and disinfection benchmark justifying such a change may be required in order to obtain approval from the DEQ.

(c) **Chlorine.** The minimum free chlorine residuals shall be as follows:

(1) **Most distant points.** The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.

(2) **Point of entry.** The minimum free chlorine residual at the POE shall be at 1.0 mg/l. For supplies that document they meet or exceed the inactivation requirements in ~~OAC~~ 252:631-3-3(a)(1), the minimum free chlorine residual at the POE shall be 0.2 mg/l.

(d) **Chloramines.**

(1) **Prior public notice.** Systems must notify all users of kidney dialysis machines at least one month before introducing chloramines into the distribution system or starting chloramination.

(2) **Chloramines engineering study.** Before changing to chloramines as the residual disinfectant in the distribution system, the system must conduct and submit to the DEQ for approval an engineering study and weekly analyses for at least ~~six (6)~~ 6 weeks prior to and quarterly for one year following such a change of disinfectant. The engineering study and analysis must address the following:

(A) Select at least ~~four (4)~~ 4 sample points for each treatment plant used by the system. At least ~~twenty-five percent (25%)~~ 25% of the sample points must be at locations within the distribution system reflecting the maximum residence time of water in the system; and

(B) Collect samples from the selected points weekly for ~~six (6)~~ 6 weeks and perform the following analyses using the methods approved in 40 CFR 141.74(a)(1) before modification of treatment is initiated:

(i) Total coliform;

(ii) Fecal coliform; and

(iii) Heterotrophic Plate Count.

(3) **Continuing testing.** After modification of the treatment process, perform the bacteriological tests for samples collected at each of the selected points at quarterly intervals for one year, and then annually, when samples are collected for total trihalomethane determination. Submit the results to the DEQ.

(4) **Primary Disinfection.** A disinfectant must be added to provide the required log inactivation of *Giardia Lamblia* cysts before ammonia is added.

(5) **Total chlorine.** The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l and at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(e) **Other disinfectants.** Iodine or bromine compounds ~~must~~ shall not be used as a disinfectant. Ozone, chlorine dioxide, or ultraviolet light may be used for in-plant treatment or disinfection provided ~~an approved residual disinfectant~~ chlorine or chloramine residual is ~~added prior to distribution and~~ maintained according to this ~~chapter~~ Section. ~~Chlorine dioxide may be used as long as the requirements in this chapter are met.~~

~~(f) **Process control tests for disinfectants.** Control tests must be performed by all systems that disinfect in accordance with procedures approved by the DEQ. Sampling points must be changed regularly so that the system is sampled completely at least once each week.~~

~~(1) **Chlorine.** Systems that use chlorine must test for free chlorine and total chlorine residual twice a day in the distribution system.~~

~~(2) **Chloramines.**~~

~~(A) Systems that use chloramines must test for total chlorine residual twice a day in the distribution system.~~

~~(B) Systems that use chloramines must submit yearly Heterotrophic Plate Count from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system.~~

~~(C) The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l.~~

~~(D) Total chlorine residuals must be at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.~~

~~(3) **Other disinfectants.**~~

~~(A) Systems that use chlorine dioxide, ozone or ultraviolet light must maintain a free chlorine residual,~~

~~or total chlorine residual, where chloramines are used, in accordance with OAC 252:631-3-3(a).~~

~~(B) Systems that use ozone or chlorine dioxide must perform process control tests in accordance with 40 CFR Section 141.132.~~

252:631-3-10. Process control tests

Control tests must be performed in accordance with procedures approved by the DEQ.

(1) **Surface water, groundwater under the direct influence of surface water, and springs.**

(A) Systems that use coagulation, settling, softening or filtration must do the following chemical control tests on the filtered water twice a day, record the results on a report form provided or approved by the DEQ, and submit the form to the DEQ Water Quality Division each month, with a copy to the local DEQ representative:

(i) Alkalinity - Phenolphthalein (P);

(ii) Alkalinity - Total;

(iii) Hardness (where softening is used);

(iv) pH value; and

(v) Stability to calcium carbonate (once per day);

(B) Perform jar tests as needed to determine the optimum coagulant dosages for plant control and operation to meet turbidity requirements.

(C) Turbidity and residual disinfection samples must be collected and analyzed in accordance with 40 CFR Part 141, Subparts H and P.

(2) **Groundwater supplies.** The following tests are required for ~~community and non-transient non-community~~ public water supply systems utilizing groundwater as a source. Test results must be listed as indicated on the appropriate forms and submitted to ~~the~~ DEQ:

(A) For all public water supply systems that practice chlorination, the chlorine residual shall be tested and recorded once daily at the POE;

(B) For community and non-transient non-community public water supply systems:

(~~A~~i) Static level and pumping level of each well must be determined quarterly;

(~~B~~ii) Alkalinity, pH, and stability must be determined at least monthly for community systems and at least quarterly for non-transient non-community water systems;

~~(C) Where chlorination is practiced, determine the chlorine residual twice daily in the distribution system and once daily at the POE;~~

(~~D~~iii) Where ion-exchange softening is provided, determine the hardness of the finished water once a day; and

(~~E~~iv) Where nanofiltration, reverse osmosis or electrodialysis is provided, perform the following chemical control tests on the treated water once a day:

(~~i~~I) Alkalinity B Phenolphthalein (P),

(~~ii~~II) Alkalinity B Total,

(~~iii~~III) Hardness,

(~~iv~~IV) pH value, and

(~~v~~V) Stability to calcium carbonate.

(3) **Purchase water systems.** Purchase water ~~community~~ systems that ~~provide supplemental chlorination~~ are required to maintain a disinfection residual must determine the chlorine residual ~~twice daily in the distribution system and~~ once daily at the ~~POE~~ point(s) of connection to the wholesale system or in accordance with a sampling plan approved by DEQ.

(4) **Special tests.**

(A) Systems that remove iron or manganese must test the raw and finished water weekly for those metals.

(B) Systems that treat or blend for the reduction in concentration of regulated contaminants must monitor the raw and finished water for those contaminants daily in addition to collecting compliance samples.

(C) Threshold odor and other tests may be required by the DEQ based on local conditions.

(D) Systems that treat or blend for the reduction in concentration of nitrates must test the raw and finished water at least once a day for nitrates.

(E) Systems that apply phosphate chemicals in the treatment process must test the finished water at least once a day for phosphates.

(5) **Fluoridation.** Where fluoridation is practiced, the system must:

(A) analyze the water twice a day for fluoride content, both before and after fluoridation;

(B) forward a copy of the analytical report (DEQ form No. 631-001) to the DEQ monthly and keep a copy at the plant; and

(C) submit a sample of treated water to the DEQ State Environmental Laboratory, or to a DEQ-accredited laboratory, for analysis of fluoride content every month.

(6) **Sampling disinfectants in distribution system.** The following control tests shall be performed in the distribution system for all systems that disinfect. Sampling points shall be changed regularly so that the system is sampled completely at least once each week or in accordance with a sampling plan approved by DEQ.

(A) **Chlorine.** Systems that use chlorine shall test for free chlorine and total chlorine residual twice a day in the distribution system.

(B) **Chloramines.** Systems that use chloramines shall test for total chlorine residual twice a day in the distribution system. See 252:631-3-3(d) for the requirements for Heterotrophic Plate Counts.

(C) **Other disinfectants.** Systems that use ozone or chlorine dioxide shall perform process control tests in accordance with 40 CFR Section 141.132.

252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;
(2) Finished water turbidity exceeds ~~one (1)~~ 1 NTU;
(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within ~~four (4)~~ 4 hours;
(4) Nitrate level exceeds 10 mg/l;
(5) Verification of a positive Fecal Coliform or E. Coli sample; and
(6) Exceedance of the Chlorine Dioxide MRDL.

(b) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks on the dates sampled. The records of all laboratory checks and control tests must indicate when, where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth ~~(10th)~~ day of the following month.

(c) **Water treatment systems.**
(1) Systems that provide water treatment must keep:
(A) a daily record of the operations performed in the treatment process;
(B) observations, cost and occurrences related to the operation of the plant; and
(C) the control tests and laboratory checks previously described in ~~OAC~~ 252:631-3-10.
(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:
(A) the number of filtered water turbidity samples taken during the month;
(B) the number and percentage of turbidity samples that are less than or equal to the standards; and
(C) the date and value of any turbidity measurements that exceed ~~one (1)~~ 1 and ~~five (5)~~ 5 NTU. Where continuous monitoring is used, measurements must be recorded every ~~four (4)~~ 4 hours during plant operation.

(d) **Groundwater systems.** Operators of groundwater systems must keep a daily record of all well operations, in addition to the process control tests and laboratory checks required for ground water supplies.

(e) **Purchase water systems.** ~~Operators of systems that purchase~~ Purchase water ~~as their sole source and~~ systems that are required ~~provide supplemental chlorination~~ to maintain a disinfection residual must submit a monthly operational report to the DEQ of the operation of the system, in addition to required laboratory checks. ~~Monthly reports are not required from purchase water systems that do not add a disinfectant.~~

(f) **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least ~~ten (10)~~ 10 years unless otherwise specified.

252:631-3-23. Source water development

(a) **Continued protection for all sources.** A PWS system shall provide protection for all sources of water from potential sources of contamination through ownership, zoning, easements, leasing or other legal means.

(b) **Reservoir and lake protection.** PWS systems shall provide protection for a reservoir or lake used as a source of water. Control the marginal shoreline land by purchase or ordinance. If control is through the use of an ordinance, the ordinance must describe the water district boundaries and enforcement rules which shall include:
(1) regulating the public health aspects of the water supply, waste and sewage disposal and recreation activities;
(2) regulating the building of structures within the control area;
(3) regulating aquatic activities involving human body contact with the water, including restricting body contact with the water during recreational or other activities when the water quality or public health may be adversely affected; and
(4) regulating the removal of brush and trees to the high water elevation, regulating the protection from floods during construction within the control district, and regulating the plugging of wells which are inundated, in accordance with OWRB requirements.

(c) **Groundwater source protection.** To protect all groundwater wells from microbiological contamination:
(1) disinfect every new, modified or reconditioned groundwater well in accordance with AWWA standard specifications after completion of work on the well and the placement of the permanent pumping equipment;
(2) upon completion of the well, the PWS system shall submit a copy of the well driller's log to the DEQ;
(3) upon completion of the well, collect at least ~~two (2)~~ 2 bacteriologically safe samples on consecutive days. Collect samples after chlorine used to disinfect the well has been completely dissipated and submit the sampling records to the DEQ;
(4) if any samples show the presence of coliform bacteria, additional samples shall be taken to determine the degree of contamination and the treatment required; and
(5) if any of the samples show the presence of fecal coliform, a study shall be conducted and a determination made whether the groundwater source is under the direct influence of surface water.
~~(6) provide sufficient distance from a well to possible sources of pollution to assure that a subsurface flow of contaminated water will not reach the well. Minimum separation distances are:~~
~~(A) one hundred feet from a property line,~~
~~(B) fifty feet from all septic tank and sewer lines, and~~
~~(C) fifty feet from lateral fields, unless the percolation rate is one inch in less than five minutes, then the separation distance shall be one hundred feet.~~

[OAR Docket #14-628; filed 7-2-14]

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

[OAR Docket #14-637]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Procedures
252:656-3-1 [AMENDED]
Subchapter 5. Sanitary Sewer Standards
252:656-5-4 [AMENDED]
Subchapter 11. Lagoon Standards
252:656-11-1 [AMENDED]
252:656-11-3 [AMENDED]
Subchapter 21. Disinfection Standards
252:656-21-1 [AMENDED]
252:656-21-2 [AMENDED]
252:656-21-3 [AMENDED]
Subchapter 23. Supplemental Treatment Standards
252:656-23-1 [AMENDED]
252:656-23-2 [REVOKED]
Subchapter 25. ~~Wastewater Systems~~ Land Application of Reclaimed Water
252:656-25-2 [AMENDED]
Subchapter 27. ~~Wastewater~~ Water Reuse
252:656-27-4 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S.§ 2-2-201; and 27A O.S. §§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 2, 2014
PUBLIC HEARING:
January 14, 2014 and February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Department is proposing to: (1) require that the submission of plans include at least one set of construction plans be on 11" x 17" paper and one set of specifications be loosely bound and suitable for scanning; (2) strengthen the existing prohibition against locating lagoons in areas subject to karstification; (3) add disinfection criteria for reclaimed water systems and distinguish those criteria from the criteria required for OPDES discharges; (4) clarify that the minimum dosage for Category 3 reclaimed water design is based on MS-2 phage inactivation; (5) add traveling bridge filters as an approved method for filtration; (6) update the hydraulic loading rates for disc filters; (7) require a pilot study before designing filters to be used to polish TSS from lagoon effluent; (8) add a requirement for signage around water reuse land application sites; (9) clarify that fencing is required for Category 5 reclaimed water land application sites; (10) add a requirement for above-ground signage for existing reclaimed water piping that does not meet the purple pipe standards; and (11) make other minor clarifications and typographical corrections.

CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. PERMIT PROCEDURES

252:656-3-1. Permitting process

(a) This ~~subchapter~~ Subchapter implements the permitting process of Part 4, ~~Water~~ Wastewater and Wastewater Treatment Systems, 27A O.S. § 2-6-401 et seq., and the Oklahoma Uniform Environmental Permitting Act, ~~Title~~ 27A O.S. § 2-14-101 et seq. ~~and the rules promulgated pursuant thereto.~~

(b) Permits are required for the construction or modification of non-industrial wastewater and water reuse systems.

(c) The permit application is a two-step process:

(1) The first step is the submission of an engineering report (as described in ~~OAC~~ 252:656-3-4); and

(2) The second step is the submission of the final design report along with the required application forms and fees. The final design report shall:

(A) include ~~two (2)~~ 2 sets of plans and specifications, with at least one set of plans printed on 11" x 17" paper and at least one set of specifications loosely bound and suitable for scanning, and

(B) reflect any changes from the approved engineering report.

(d) Unless an extension is granted, a construction permit expires if construction does not begin within one ~~(1)~~year from the date the permit is issued.

(e) Permits to construct or modify non-industrial wastewater and water reuse systems shall only be issued to public entities unless all components of the proposed systems, including all service lines, are located on property:

(1) owned by the applicant, or

(2) dedicated to the applicant through a recorded easement for the installation and operation of the system.

SUBCHAPTER 5. SANITARY SEWER STANDARDS

252:656-5-4. Construction standards

(a) **Sewer.** Lay sewers in straight alignment with uniform grade between manholes. Protect all pipe from traffic load damage. Install metal tracer wire on all non-ferrous piping.~~and color code all pipe constructed.~~

(b) **Trench.** The width of the trench ~~must~~ shall be ample to allow the pipe to be laid and joined properly and to allow the backfill to be placed and compacted as needed.

(1) Trench sides ~~must~~ shall be kept as nearly vertical as possible. When wider trenches are dug, appropriate bedding class and pipe strength ~~must~~ shall be used.

(2) Provide a minimum clearance of 4 inches between all pipe and any large stones, ledge rock, or boulders.

(3) Except for ductile iron pipe, provide 30 inches of soil cover as protection from traffic load damage to the pipe. Specify the applicable ASTM standards for ductile iron pipe.

(c) **Separation.** Sanitary sewers located in the street right-of-way ~~must~~ shall be located on opposite sides of the streets from potable water lines~~. Sewer service lines crossing water lines must~~ and shall comply with ~~subsections (2) or (3).~~ the following:

(1) **Horizontal separation.** Sanitary sewers ~~must~~ shall be at least:

(A) 50 feet from petroleum product tanks unless constructed of ductile iron pipe which shall be no closer than 10 feet (joint material shall be resistant to petroleum products);

(B) 300 feet from a public water supply well;~~and~~

(C) 50 feet from a private water well;

(D) 10 feet from any existing or proposed water main; and

(E) 5 feet from electrical lines and petroleum lines. ~~(See paragraph (3) below).~~

(2) **Vertical separation (crossings).** Sanitary sewers and sewer service lines ~~must~~ shall cross at least 24 inches above or below water mains, and the crossing section centered so that the joints will be as far as possible from the water mains.

(3) **Special conditions.** When it is impossible to obtain proper horizontal and vertical separation as stipulated ~~above~~ in (1) and (2) of this subsection, design and construct the sanitary sewer ~~sewer line~~ equal to water pipe, and pressure test it to assure water tightness of joints adjacent to the water line prior to backfilling. ~~Sewer lines shall not be laid in water line trenches.~~ [See OAC ~~252:626-19-2(8)(C)~~ 252:626-19-2(h)(3) (relating to vertical separation of water mains and sewer lines).]

(4) **Prohibition against sewer and water lines in same trench.** Sanitary sewer and sewer service lines shall not be laid in the same trench as water mains and/or water service lines.

(d) **Stream crossings - aerial.** Support all joints in aerial crossings. Design crossing supports to prevent frost heave, overturning and settlement. Use concrete encasement (except around PVC pipe) or riprap where the pipe enters stream banks. Use expansion joints between above-ground and below-ground sewers and force mains, and protect them from freezing. Protect pipes that cross streams from the impact of flood waters and debris.

(e) **Stream crossings - below-grade.** The top(s) of all sewers entering or crossing stream beds ~~must~~ shall be at least ~~three~~ 3 feet below the natural bottom of the stream bed. Construct or encase the crossing with ductile iron pipe using mechanical joints. Sewers ~~must~~ shall remain watertight and free from changes in alignment or grade. Trench backfill ~~must~~ shall be stone, coarse aggregate, washed gravel or other material that will not cause siltation. Specify construction methods to minimize siltation and bank erosion.

(f) **Flood plain structures.** Protect sewer outfalls, headwalls, manholes, gate boxes and other structures located in flood plains from stream erosion. Locate structures so they do not interfere with the free discharge of flood flows.

(g) **Manholes.** Manholes shall be installed at the end of each line; at all changes in grade, size, or alignment; at all intersections; and at distances not greater than 400 feet apart for sewers 15 inches in diameter or less, and 500 feet for sewers 18 to 30 inches in diameter. Greater spacing may be permitted in larger lines, those carrying a settled effluent or where adequate modern cleaning equipment for such spacing is provided. Lampholes and cleanouts shall not be substituted for manholes nor installed at the end of laterals longer than 250 feet.~~ See OAC 252:656-5-2(c)(4), Small diameter gravity sewers, for other uses of cleanouts.~~ [See 252:656-27-2(b) (relating to separation distance requirements).]

(1) **Drop manhole.** A drop pipe is required for all sewer lines entering a manhole at an elevation of 24 inches or more above the manhole invert. Where the difference in elevation between the incoming sewer and the manhole invert is less than 24 inches, the invert ~~must~~ shall be filleted to prevent solids deposition. For drop pipes constructed outside the manhole, the entire outside drop connection ~~must~~ shall be encased in concrete. Drop pipes constructed inside the manhole, ~~must~~ shall be secured to the interior wall of the manhole and provide access for cleaning.

(2) **Diameter.** The minimum inside diameter of manholes shall be 48 inches with a conical section at top to receive a standard manhole ring and cover.

(3) **Flow channels.** The flow channels through manholes shall conform in shape and slope to that of the sewer lines.

(4) **Inlet and outlet pipes.** Join inlet and outlet pipes to the manhole with a gasket or other flexible watertight connection that allows for differential settlement of the pipe and manhole wall.

(5) **Watertight covers.** Use watertight covers on manholes that may become submerged.

(6) **Bases.** Manhole bases ~~must~~ shall be at least 8 inches thick, with a diameter 8 inches more than the largest outside diameter of the manhole. Construct with leakproof joints between the base and manhole.

(7) **Leakage Testing.** Specify the applicable ASTM standard for the test to be used.

(h) **Inverted siphons.** Inverted siphons ~~must~~ shall have at least two barrels with a pipe size at least 6 inches in diameter. Provide necessary appurtenances for convenient flushing and maintenance. Construct manholes with adequate clearance for rodding the pipes. Provide sufficient head and select a pipe size for a velocity of at least 3.0 fps for average flows. Arrange the inlet and outlet details so normal flow is diverted to one barrel and either barrel may be taken out of service for

cleaning. The vertical alignment ~~must~~ shall permit cleaning and maintenance.

SUBCHAPTER 11. LAGOON STANDARDS

252:656-11-1. Lagoon siting

(a) **Winds.** Locate lagoons to minimize wind obstructions.

(b) **Surface runoff.** Do not locate lagoons in floodways~~, and avoid flood plains~~. Divert storm water runoff around lagoons and protect embankments from erosion.

(c) **Hydrology.** Use sound sanitary and engineering practices to protect groundwater aquifers and public water supplies from pollution from lagoons. Maintain a 4-foot separation between the lagoon bottom and the highest known groundwater elevation.

(d) **Geology.** ~~Areas which may be subjected~~ Lagoons shall not be located in areas that are subject to karstification (i.e., sink holes or underground streams generally occurring in areas underlain by limestone, gypsum or dolomite)~~ are not suitable lagoon sites~~. ~~Maintain~~ There shall be a 4-foot separation between the lagoon bottom and any bedrock formation.

252:656-11-3. Lagoon construction details

(a) **Soil borings.** ~~Accurately represent the soil characteristics.~~ Provide soil boring data conducted by an independent soil-testing laboratory. Borings shall extend at least 5 feet below the proposed lagoon bottom and at least one boring shall be at least 25 feet deep or into bedrock. Borings shall be conducted during the time of highest groundwater level. Provide enough borings to ~~be~~ accurately ~~representative~~ represent the soil characteristics of the entire lagoon site. If bedrock is encountered, describe its general characteristics and identification, and the corresponding geological formation(s). Include a map showing the location of each boring, a log of soil types encountered at each boring, the elevation of the water table where encountered and the permeability of soil samples taken from the same elevation as the proposed lagoon bottom. Fill and seal all borings after testing.

(b) **Dikes.**

(1) **Material.** Construct dikes of relatively impervious material and compact them to at least ~~90 percent~~90% Standard Proctor Density to form a stable structure. Remove vegetation and other unsuitable materials before construction.

(2) **Top width.** The top of the dike ~~must~~ shall be at least ~~eight~~ 8 feet wide for maintenance vehicles.

(3) **Slope.** Inner and outer dike slopes shall not be steeper than 1 vertical to 3 horizontal (1:3). Steeper slopes will only be considered where surface construction is of soil cement or other material that will prohibit vegetation growth. Inner dikes shall not be flatter than 1 vertical to 4 horizontal (1:4).

(4) **Freeboard.** Design the lagoon to maintain at least 3 feet of freeboard above the design maximum water depth at all times.

(5) **Lagoon shape.** Round, square or rectangular lagoons with rounded corners, with a length not more than three times the width constructed without islands, peninsulas or coves.

(6) **Erosion control.** Protect inner dikes from wave action and outer dikes from runoff and floodwaters.

(A) **Seeding.** Where riprap is not used, apply at least 4 inches of fertile top soil to dikes to establish an adequate vegetative cover. Before prefilling, establish vegetation on dikes from the outside toe to 2 ~~ft~~ feet above the lagoon bottom on the interior as measured on the slope. Specify perennial, low-growing grasses that spread rapidly. Do not use alfalfa or other long-rooted vegetation for seeding since the roots of this type are apt to impair the water holding efficiency of the dikes.

(B) **Additional protection.** Provide extra protection where inner dikes may be subjected to severe wind action, such as lagoons larger than 5 acres and where the lagoon surface will often be exposed to strong winds. Also, protect areas of turbulence in aerated cells and all pipe penetrations. Install riprap, soil cement or other recognized material. Protect the inner dikes from 1 foot vertically above the high water elevation to 2 feet vertically below the minimum operating elevation. Place riprap on a filter bed at least 6 inches thick, and use material that will stay in place and resist erosion.

(c) **Lagoon seal.** The seepage rate through the lagoon bottom and inside dike shall not exceed 500 gal/day/acre (5.4 x 10^{-7} cm/s) at a ~~water depth~~ hydraulic head of 6 feet for soil and bentonite seal. Synthetic seals shall have no measurable leakage. Construct a soil seal as specified below. If native soils exceed this seepage rate, then a bentonite seal or synthetic liner ~~must~~ shall be specified. Written certification to the effect that the seal was provided and applied in accordance with specifications and that the hydraulic conductivity is equal to or less than 5.4 x 10^{-7} cm/s shall be furnished by the project engineer. Use ASTM Method 5084. Analysis of soil ~~must~~ shall include how soil will be applied.

(1) **Soil seal.**

(A) The soil used for sealing ~~must~~ shall have a high, uniform content of fine material (clay and silt). Soil containing rock or a high gravel content is not acceptable for a soil seal or for mixing with bentonite.

(B) Soil used to construct the lagoon seal and dike cores shall be relatively incompressible and compacted at a water content up to 4% above the optimum to at least 90% Standard Proctor Density.

(C) The soil used for sealing shall be at least 12 inches thick with the coefficient of permeability (K) no greater than 10^{-7} cm/s. The soil seal shall be applied in lifts no greater than 6 inches.

(D) Written certification to the effect that the seal was provided and applied in accordance with specifications and that the coefficient of permeability is equal to or less than 10^{-7} cm/s ~~must~~ shall be furnished

by the project engineer and independent soils laboratory. The written certification shall include:

(i) the number of samples taken;

(ii) a map of the location of the samples taken; and

(iii) a demonstration that the location and number of samples taken are representative of the seal of the lagoon, for both the bottom of the lagoon and all sides of the lagoon dike walls.

(2) **Bentonite seal.**

(A) The application rate shall be at least 125% of the minimum rate that is determined to be adequate by laboratory tests.

(B) The water content of the soil-bentonite mixture shall be up to 4% above the optimum for maximum compaction. Bentonite shall be applied to soil that is free of all vegetation, trash, roots, frozen soil, snow or ice, stones over 2 inches in diameter or other objectionable material.

(C) Split the material in half and apply in ~~two~~ 2 perpendicular 3-inch lifts for a finished compacted blanket thickness of at least 6 inches.

(D) After mixing and compacting, analyze a sample of the soil/bentonite mixture for permeability. If the coefficient of permeability exceeds 10^{-7} cm/s, the depth of the mixture or content of bentonite ~~must~~ shall be increased as necessary to obtain the required seal.

(E) Compact the mixture at the proper water content to at least 90% Standard Proctor Density (specifically excluding use of a sheepsfoot roller).

(F) Cover the completed seal with at least 4 inches of soil in addition to necessary erosion control.

(G) Hydrate with fresh water and keep at or above the optimum water content until the pond is prefilled.

(H) Written certification to the effect that the seal was provided an applied in accordance with specifications and that the coefficient of permeability is equal to or less than 10^{-7} cm/s shall be furnished by the project engineer and independent soils laboratory. The written certification shall include:

(i) the number of samples taken;

(ii) a map of the location of the samples taken; and

(iii) a demonstration that the location and number of samples taken are representative of the seal of the lagoon, for both the bottom of the lagoon and all sides of the lagoon dike walls.

(3) **Synthetic liner.**

(A) The synthetic liner shall be at least 30 ~~mil~~ mils (0.030 inch) thick, unless the lagoon is subject to heavy traffic, ~~then~~ in which case the liner shall be at least 60 ~~mil~~ mils (0.060 inch) thick.

(B) Remove or cover sharp objects in the subsoil with a bedding of 2 to 4 inches of clean soil or sand.

(C) Use 4-inch perforated pipe to allow venting and draining of the soil to reduce gas and hydrostatic pressures and facilitate monitoring for leakage.

(D) ~~Seal~~ The synthetic liner panels shall be laid out in a longitudinal direction and sealed with an overlap of 4 to 6 inches.

(E) The anchor trench shall be a 6-inch minimum depth and placed at least 9 to 12 inches beyond the slope break of the dike.

(F) Take adequate measures to protect the integrity of the liner. On dike slopes, backfill shall consist of at least a 3-inch layer of sand or finely textured soil and covered with at least a 3-inch layer of heavier cobble, coarse gravel or small riprap.

(4) **Uniformity.** The bottom shall be as level as possible. Finished elevations shall not deviate more than 3 inches from the average elevation.

(5) **Prefilling.** Protect the integrity of the liner by hydrating with fresh water until the lagoon is used.

(d) **Influent lines.** Influent lines shall terminate in a flow distribution manhole or control structure with the invert at least 6 inches above the maximum design high water elevation of the lagoon. Design the control structure to proportionally split the flow to the primary cells.

(1) **Placement.** Raw sewage distribution lines may be placed on the surface of the lagoon bottom. Anchor pipe to prevent floating or settling. Soil shall not be mounded over the distribution lines. The method of construction shall not alter the integrity of the lagoon seal.

(2) **Point of discharge.** To minimize short-circuiting in primary cells, terminate influent lines at the lesser of either the center of the cell or a point at least 100 feet from the inside toe of any dike. Install multiple inlets when the distance from any inlet to the toe of an adjacent dike exceeds 250 feet. Terminate influent lines for aerated cells within the mixing zone of the aeration equipment.

(3) **Discharge apron.** To control erosion of the lagoon bottom, influent lines ~~must~~ shall discharge horizontally into shallow, saucer-shaped depressions and terminate on a concrete apron. The apron shall be at least 2 feet square or 2 feet in diameter. Provide additional energy dissipating devices where influent will enter the lagoon at a high velocity.

(e) **Miscellaneous construction standards.** All pipes entering and exiting the seal shall be constructed with a seepage collar.

(f) **Control structures and interconnecting piping.**

(1) **Structure.** Provide structures to control water depth in cells, route water through the system, and measure flow at discharging facilities. Control structures in primary cells ~~must~~ shall be capable of controlling the operating depth between a minimum of 3 feet and the maximum design operating depth. For suspended solids control, the discharge structure should allow the withdrawal point to vary below the surface to obtain the best quality effluent. Valves, slide tubes, dual slide gates or removable interlocking boards are recommended, and they shall:

(A) ~~Be~~ be accessible for maintenance and adjustment of controls;

(B) ~~Control~~ control water level and flow rate, and complete shutoff;

(C) ~~Be~~ be constructed of non-corrosive materials; and

(D) ~~Be~~ be located to minimize short-circuiting within the cell.

(2) **Discharge piping.** Pipe meeting ASTM standards for sanitary sewers shall be adequately anchored but not interrupt the integrity of the seal.

(A) **Hydraulic capacity.** The hydraulic capacity for continuous discharge structures and piping ~~must~~ shall allow for a minimum of 250% ~~percent~~ of the design flow of the system.

(B) **Minimum pipe size.** All piping within the lagoon shall be at least 12 inches in diameter for facilities serving 100 PE or more and at least 8 inches for facilities serving less than 100 PE. Design influent pipe for rodding. Protect all piping between the lagoon cells from the entrance of turtles.

SUBCHAPTER 21. DISINFECTION STANDARDS

252:656-21-1. ~~Disinfection~~ General disinfection criteria

(a) **Applicability.** The requirements in this section apply to all disinfection systems.

(~~a~~b) **Design considerations.** ~~The standards in this section apply to all disinfection systems. Disinfection~~ A disinfection system used to comply with the disinfection requirements:

(1) in an OPDES permit shall be ~~required~~ designed, constructed and operated to meet ~~coliform~~bacteria limits in the Water Quality Standards and the OPDES permit.

(2) for a reclaimed water system shall be designed, constructed and operated to meet the bacteria limits in the water reuse permit and Appendix A of OAC 252:627.~~Other disinfectants may be individually approved, such as chlorine dioxide, ozone or bromine.~~

(~~b~~c) **Piping.** ~~Show the~~ The piping ~~is~~ shall be:

(1) appropriate and compatible for the ~~disinfectant~~ type of disinfection to be used. ~~Support and protect piping from temperature extremes.~~ Steel is suitable for use with dry chlorine when the correct thickness or weight is specified. Low-pressure lines made of hard rubber, saran-lined, rubber-lined, polyethylene, polyvinyl chloride (PVC), or Uscolite materials are satisfactory for liquid chlorine. Unplasticized PVC, Type I, may be used in submerged piping if the gas pressure is low and the temperature is below 140 ~~degrees Fahrenheit~~°F; and

(2) supported and protected from temperature extremes.

(~~c~~d) **Alarms.** Provide alarms to warn of equipment failures and leaks.

(~~d~~e) **~~Backups~~ Redundancy.** ~~Provide~~ All disinfection systems shall have the following available:

(1) standby equipment to replace the largest unit ~~based on peak hourly flow.~~ ;

(2) a separate backup power supply; and

(3) ~~Provide~~ spares for all parts that may break or wear.

~~(e) **Chlorine mixing.**~~

~~(1) **Mixing.** Mix the disinfectant as rapidly as possible, mixing completely in three seconds or less.~~

~~(2) **Contact period.** For chlorination systems, provide a minimum contact period of 15 minutes at peak hourly wastewater flow or maximum pumping rate after mixing.~~

~~(3) **Contact tank.** Construct chlorine contact tanks to minimize short-circuiting. "Over and under" or "end-around" baffling shall be provided to reduce short-circuiting. Design the tanks for easy maintenance and cleaning without reducing the effectiveness of disinfection. Provide duplicate tanks, mechanical scrapers or portable deck-level vacuum cleaning equipment. Provide skimming devices on all contact tanks, and provide for draining the tanks.~~

~~(f) **Gas chlorine equipment rooms.**~~

~~(1) **Separation.** If the building is used for other purposes, provide a gas-tight room to separate gas chlorination equipment, chlorine cylinders and ozone generation equipment from other parts of the building. Do not connect floor drains from the chlorine room to floor drains from other rooms. Doors to this room must open only to the outside of the building, with panic hardware, at ground level and allow easy access to all equipment. For one (1) ton chlorine cylinders separate the storage area from the feed area. Locate chlorination equipment as close to the application point as is reasonably possible. Certify the installation will meet OSHA standards, and that the doors and emergency equipment are compatible with chlorine.~~

~~(2) **Inspection window.** Install a shatter resistant, clear glass, gas tight window in an exterior door or interior wall of the chlorinator room so the units can be viewed without entering the room.~~

~~(3) **Heating.** Heat disinfection equipment rooms to maintain at least 60 degrees Fahrenheit. Protect from excess heat, and maintain cylinders at essentially room temperature.~~

~~(4) **Ventilation.** Provide mechanical ventilation capable of one air change per minute for chlorine. The entrance to the room exhaust duct shall be near the floor, and the point of discharge shall not contaminate inhabited areas or the air inlet to any buildings. Locate fresh air inlets to provide cross ventilation with air and at a temperature that will not adversely affect the chlorination equipment. Discharge the chlorinator vent hose above grade to the outside atmosphere.~~

~~(5) **Electrical controls.** Locate fan and light switches outside, at the room entrance. A labeled signal light indicating fan operation shall be provided at each entrance if the fan can be controlled from more than one point.~~

252:656-21-2. Chlorine disinfection systems

(a) **Equipment capacity.** The following requirements are for the chlorination of ~~domestic sewage~~ non-industrial wastewater. The equipment ~~must~~ shall be capable of supplying the following dosage as applicable:

(1) Trickling filter plant effluent - 10 mg/l;

(2) Activated sludge plant effluent - 8 mg/l;

(3) Tertiary filtration effluent - 6 mg/l;

(4) Nitrified effluent - 6 mg/l; and

(5) Category 2 water reuse chlorination systems - 12 mg/l or a dose sufficient to achieve high level disinfection for water reuse requirements.

(b) **Chlorine mixing.**

(1) **Mixing.** The disinfectant shall be mixed as rapidly as possible to ensure complete mixing.

(2) **Contact period.** Provide the following contact periods:

(A) For OPDES permit compliance or Categories 3 and 4 water reuse chlorination systems, provide a minimum contact period of 15 minutes at peak hourly wastewater flow or maximum pumping rate after mixing.

(B) For Category 2 water reuse chlorination systems, alone or in combination with UV, provide sufficient free chlorine residual concentration at the end of the contact tank and modal contact time sized using the anticipated design flow after mixing at a design temperature of 5 °C (41 °F) and a pH of 8.0 to meet the micro-organism log removal requirements in 252:656-27-3(a)(6).

(3) **Contact tank.** Construct chlorine contact tanks to minimize short-circuiting. "Over-and-under" or "end-around" baffling shall be provided to reduce short-circuiting. Design the tanks for easy maintenance and cleaning without reducing the effectiveness of disinfection. Provide duplicate tanks, mechanical scrapers or portable deck-level vacuum cleaning equipment. Provide skimming devices on all contact tanks, and provide for draining the tanks.

(c) **Gas chlorine equipment rooms.**

(1) **Separation.** If the building that houses the gas chlorine equipment is used for other purposes, a gas-tight room shall be provided to separate the gas chlorination equipment and chlorine cylinders from other parts of the building. Do not connect floor drains from the chlorine room to floor drains from other rooms. Doors to this room shall open only to the outside of the building, with panic hardware, at ground level and allow easy access to all equipment. For one-ton chlorine cylinders, separate the storage area from the feed area. Locate chlorination equipment as close to the application point as is reasonably possible. Certify the installation will meet OSHA standards, and that the doors and emergency equipment are compatible with chlorine.

(2) **Inspection window.** Install a shatter resistant, clear glass, gas-tight window in an exterior door or interior wall of the chlorinator room so the units can be viewed without entering the room.

(3) **Heating.** Heat disinfection equipment rooms to maintain at least 60 °F. Protect the gas chlorine cylinders from excess heat, and maintain the cylinders at essentially room temperature.

(4) **Ventilation.** Provide mechanical ventilation capable of one air change per minute for chlorine. The entrance to the room exhaust duct shall be near the floor. The point of discharge shall not contaminate inhabited areas or the air inlet to any buildings. Locate fresh air inlets to provide cross ventilation with air and at a temperature that will not adversely affect the chlorination equipment. Discharge the chlorinator vent hose above-grade to the outside atmosphere.

(5) **Electrical controls.** Locate fan and light switches outside the room near the entrance. A labeled signal light indicating fan operation shall be provided at each entrance when the fan can be controlled from more than one point.

(~~b~~ d) **Water supply.** Provide an ample supply of water to operate the chlorinator~~,~~ and protect it according to ~~OAC~~ 252:656-9-2(b). Back up any booster pumps~~,~~ according to the power requirements of ~~OAC~~ 252:656-9-2(a).

(~~c~~ e) **Scales.** Provide corrosion-resistant scales to weigh chlorine gas cylinders. Provide at least a platform scale. Provide a recording device for the weight of the chlorine gas cylinders for installation where one-ton cylinders or larger are used.

(~~d~~ f) **Containers.** One-ton containers or larger are required if more than 150 pounds of chlorine per day is needed. Limit the withdrawal rate to 40 pounds per day per cylinder for cylinders up to 150 pounds, and to 400 pounds per day for one-ton cylinders.

(~~e~~ g) **Handling equipment.** For cylinders up to 150 pounds, provide securing restraints and a hand-truck designed for the cylinders. For one-ton cylinders, provide:

(1) ~~Hoist~~ a hoist with 4,000-pound~~lb.~~ capacity;

(2) ~~Cylinder~~ a cylinder lifting bar;

(3) ~~Monorail~~ a monorail or hoist with sufficient lifting height to pass one cylinder over another; and

(4) ~~Cylinder~~ a cylinder ~~trunnions~~ trunnion(s) to allow exchanging the cylinders for proper connection.

(~~f~~ h) **Manifolds.** Gaseous chlorine cylinders may be connected to a manifold, ~~if~~ only when all cylinders are maintained at the same temperature or the system is designed for gas transfer from a warm container to a cooler one. Do not connect liquid chlorine cylinders to a manifold.

(~~g~~ i) **Leak detection and controls.** Provide an emergency response plan for chlorine leaks. Provide a bottle of 56% ammonium hydroxide solution for detecting chlorine leaks. Where one-ton containers are used, provide a leak repair kit approved by the Chlorine Institute, include caustic soda solution reaction tanks to absorb leaks. Provide automatic gas detection and related alarm equipment. Air Pollution Control regulations may also require air scrubbing equipment.

(~~h~~ j) **Evaporators.** Demonstrate the required volume of chlorine can be supplied.

(~~i~~ k) **Respiratory protection.** Where chlorine gas is handled, provide respiratory air-pac protection equipment that meets the National Institute for Occupational Safety and Health (NIOSH) standards. Store the equipment and operating instructions at a convenient location outside the room where chlorine is used or stored. The units ~~must~~ shall use compressed air, with at least a 30-minute capacity, and be compatible with units used by the local fire department. In the emergency response plan, describe how to maintain the equipment.

(~~j~~l) **Sodium hypochlorite.** Follow equipment standards in ~~252:656-11-4(g)~~ OAC 252:626-11-4(g).

(~~k~~m) **Dechlorination.** ~~All~~ When dechlorination is required by DEQ, the ~~chlorinated effluent must be dechlorinated and~~ discharges ~~must be~~ shall have less than 0.1 mg/l total residual chlorine.

(1) **Equipment.** Do not chlorinate and dechlorinate with the same units. Handle aqueous solutions of sulphite or bisulfite with positive displacement pumps. Sulfur dioxide (SO_2) feed equipment ~~must~~ shall account for the property of the gas to easily liquefy. With one-ton containers, take special precautions to prevent chemicals from liquefying. Provide multiple units to meet the operating requirements between the minimum and maximum wastewater flow rates and to avoid depleting dissolved oxygen in receiving waters.

(2) **Mixing.** Mechanical mixers are required unless the design will provide hydraulic turbulence to assure thorough and complete mixing.

(3) **Sulfonator water supply.** Provide an ample supply of water to operate the sulfonator, and protect it according to ~~OAC~~ 252:656-9-2(b). Back up ~~any~~ booster pumps~~,~~ according to the power requirements of ~~OAC~~ 252:656-9-2(a).

(4) **Housing.** Storage and feed equipment for SO_2 shall be in a separate room from chlorine gas storage and feed equipment. The same storage requirements apply to SO_2 as for chlorine gas in (c) of this Section. Mixing, storage, and feed equipment areas ~~must~~ shall be designed to contain spillage or leakage or to route it to an appropriate containment unit.

(5) **Respiratory protection.** Same as for chlorine gas in (k) of this Section.

252:656-21-3. Ultraviolet radiation disinfection systems (UV systems)

(a) **~~Application~~ Use of UV for disinfection.** ~~The effluent to be disinfected shall not exceed 15 mg/l TSS. This process shall be limited to a~~ Ultraviolet radiation disinfection systems ("UV systems") shall only be used to disinfect high quality effluent having:

(1) at least 65% ultraviolet radiation transmittance at 254 nanometers wave length~~,~~; and

(2) BOD and suspended solids concentrations no greater than 30 mg/l at any time. ~~System sizing for an activated sludge effluent with the preceding characteristics at the design peak hourly flow, a UV radiation dosage not less than 30,000 µWsec/cm² shall be used after adjustments for maximum tube fouling, lamp output reduction after 8,760 hours of operation, and other energy absorption losses.~~

~~(b) **Equipment design.** Follow recommendations of equipment manufacturers for specific construction, cleaning and design requirements.~~

(b) **Sizing and UV dosage.** The following are the sizing and dosage requirements for UV systems:

(1) A wastewater treatment system utilizing a UV system to comply with disinfection requirements in an OPDES permit and/or to disinfect Category 3 reclaimed water shall be:

(A) sized using the:

(i) design peak hourly flow for OPDES permits; or

(ii) sized using the anticipated design flow for Category 3 reclaimed water; and

(B) designed to deliver a UV dosage of no less than 30 mJ/cm² (30,000 µW • sec/cm²) based on MS-2 phage inactivation after adjustments for maximum tube fouling, lamp output reduction after 8,760 hours of operation, and other energy absorption losses.

(2) A wastewater treatment system utilizing a UV system to disinfect Category 2 reclaimed water shall be:

(A) sized using the anticipated design flow; and

(B) designed to deliver a UV dosage of no less than 210 mJ/cm² (210,000 µW • sec/cm²) after adjustments for maximum tube fouling, lamp output reduction after 8,760 hours of operation, and other energy absorption losses. This dosage is to be delivered assuming a UV transmittance of 55%. [See 252:656-27-3(a)(6) (relating to log removal requirements).]

(3) A wastewater treatment system utilizing both chlorination and UV disinfection to obtain required log removal for Category 2 reclaimed water shall be:

(A) sized using the anticipated design flow; and

(B) designed to deliver a UV dosage of no less than 40 mJ/cm² (40,000 µW • sec/cm²) after adjustments for maximum tube fouling, lamp output reduction after 8,760 hours of operation, and other energy absorption losses. This dosage is to be delivered assuming a UV transmittance of 55%. [See 252:656-27-3(a)(6) (relating to log removal requirements).]

(c) **Control system.** ~~Provide the UV system with controls capable of switching banks of lamps on or off to achieve the necessary dose proportional to flow. A slave lamp operating to check wastewater effluent absorbance is required. Include appropriate alarms, power meters, on/off indicators, elapsed time monitors, lamp output monitors, intensity indicators, and lamp and ballast panel temperature indicators. Provide for measuring the wastewater flow through each unit for adequate disinfection.~~ All UV systems shall have:

(1) controls capable of maintaining the UV dosage proportional to the wastewater flow through the system,

(2) the capacity to determine the actual wastewater flow going through the UV system,

(3) the capability to measure UV transmittance manually or automatically, and

(4) indicators for:

(A) UV intensity,

(B) lamp and ballast panel temperatures,

(C) power (on/off),

(D) lamp output,

(E) elapsed time of lamp usage,

(F) all alarms, and

(G) metering power.

(d) **Maintenance.** ~~Equip reactors with a drain and the ability to isolate modules. Provide a backup reactor so that efficiency will not be impaired during either routine or emergency maintenance. Lamps and ballasts must be accessible.~~UV systems shall:

(1) ~~Equip reactors~~ be equipped with a drain; and

(2) be designed so that ~~the ability to isolate modules~~ equipment can be isolated for maintenance.~~Provide a backup reactor so that efficiency will not be impaired during either routine or emergency maintenance. Lamps and ballasts must be accessible.~~

(e) **Safety equipment.** ~~Provide safety equipment for protection from UV radiation, such as proper goggles and clothing.~~ Proper safety equipment (i.e., goggles, clothing, etc.) shall be provided to protect persons from UV radiation.

~~(f) **Reliability.** The performance of a UV reactor is dependent upon its power supply and functioning lamps; therefore a separate backup power supply must be provided. Provide a backup reactor so that efficiency will not be impaired during either routine or emergency maintenance. Lamps and ballasts must be accessible.~~

(f) **Lamps and ballasts.** The UV system shall be constructed so that its lamps and ballasts are accessible.

(g) **Availability of spare parts.** The minimum number of spare parts necessary to ensure continuous disinfection during maintenance and repair shall be available at the facility. The spare parts required shall include lamps, ballasts, quartz sleeves, sleeve wiper rings, cleaning chemicals, and any other items required by the manufacturer, owner, and engineer.

(h) **Monitoring and alarms.** The design engineer shall be responsible for specifying what the monitoring and alarm requirements need to be in order to assure continuous disinfection in compliance with the limits in the permit.

(i) **Cleaning and maintenance.** UV systems shall be routinely and properly maintained to assure disinfection requirements are continuously met.

(j) **Additional requirements when using UV disinfection for reclaimed water.** For systems supplying Category 2 reclaimed water, filtration is required as part of the disinfection process. The particle removal system shall meet the redundancy requirements in 252:656-21-1(e) and be designed to handle the anticipated design flow.

(1) The hydraulic capacity of the inactivation step shall be sized to convey the anticipated design flow.

(2) An independent, third party bioassay based on MS-2 phage shall be used to verify the design UV requirements. Only bioassay methods described in this Section will be approved by DEQ. The UV system shall deliver the target dosage based on the equipment's derating factors described below. Before design approval, the bioassay reports for the specific equipment being considered shall be approved and on file with the DEQ, with specific sections marked confidential, if applicable. If needed, the UV equipment manufacturer shall verify that the scale up or scale down factor utilized in the design is appropriate for the specific application under consideration. Without exception, the basis for verifying the design delivered UV dose meets the requirements of this Section shall be an independent third party bioassay, signed and sealed by a professional engineer licensed by the State of Oklahoma.

(A) The bioassay procedure shall conform to an applicableprotocol in the:

(i) National Water Research Institute's Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse (August 2012);

(ii) NSF International, The Public Health and Safety Company, 40 CFR 35.6450 Environmental Technology Verification Protocol (October 2002);

(iii) USEPA Design Manual: Municipal Wastewater Disinfection, EPA/625/1-86/021 (1986); or

(iv) USEPA Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule, 815-R-06-007 (November 2006).

(B) The design equations provided by the validation report shall be developed in accordance with a standardized bioassay protocol approved by DEQ.

SUBCHAPTER 23. SUPPLEMENTAL TREATMENT STANDARDS

252:656-23-1. ~~High rate effluent~~ Effluent filtration

~~(a) **General.** Filtering lagoon effluent is not recommended. Granular media filters may be used for tertiary treatment to remove suspended solids from secondary effluents. Provide flow equalization facilities to maintain a constant filtration rate.~~

(a) **Design flow rate.** A wastewater treatment system:

(1) required to have filtration to maintain OPDES permit compliance shall be sized using the design peak hourly flow; and

(2) that produces Category 2 reclaimed water shall be sized using the anticipated design flow.

(b) **Conditions requiring pretreatment.** ~~Precede filter units~~ Filtration systems shall be preceded with a ~~pre-treatment~~ pretreatment process, such as chemical coagulation and sedimentation or other acceptable process,~~where~~ when:

(1) permit requirements for suspended solids are less than 10 mg/l,

(2) effluent quality can be expected to fluctuate significantly, ~~or~~

(3) significant amounts of algae will be present,

(4) a lagoon is used for polishing effluent, which requires pilot testing for which the protocol has been pre-approved by DEQ, or

(5) the systems supplies Category 2 reclaimed water for reuse.

(c) **Reliability.** Filtration systems shall be designed and constructed with:

(1) convenient access to all components and the media surface for inspection and maintenance without taking other units out of service; and

(2) enclosed controls and equipment with heating and ventilation equipment to control humidity.

(d) **Redundancy.** Filtration systems shall have at least 2 units with the capacity to handle the maximum wastewater flow in the OPDES permit and/or the anticipated design flow for reclaimed water systems with the largest unit out of service.

(e) **Backwash.** Filtration systems shall have the capacity to backwash all filters.

(1) The backwash filter unit pumps shall be designed to backwash any filter with the largest pump out of service.

(2) Filtration systems shall be backwashed with filtered water.

(3) Backwash wastewater shall be returned to the headworks.

(4) The return rate of backwash water from filtration systems to treatment units shall not exceed 15% of the wastewater design daily average flow rate to the treatment units.

(5) The hydraulic and organic load from the backwash water shall be taken into account in the overall design of the treatment plant.

(6) Surge tanks, if necessary, shall hold at least 2 backwash volumes.

(7) Where backwash water is pump-returned for treatment, the required pumping capacity shall be maintained with the largest unit out of service.

(f) **Back-up power.** Filtration systems shall have a back-up power source that meets the requirements of 252:656-9-1.

(g) **Drain line.** Each filter unit shall be equipped with a drain line at least 6 inches in diameter capable of draining the basin to the headworks.

(h) **Flocculation.** Flocculation shall be used prior to filtration when supplying Category 2 reclaimed water for reuse. Flocculation shall:

(1) include chemical feed equipment to meet the reclaimed water system's anticipated design flow and the ability to proportion chemical feed rates;

(2) ensure the rapid dispersion and mixing of chemicals throughout the wastewater by providing mechanical or in-line static mixers; and

(3) include a minimum of 2 flocculation basins. Each basin shall be equipped with a:

(A) method to control the speed of the paddles; and

(B) drain line at least 6 inches in diameter capable of draining it to the head of the plant.

(~~b~~ i) **Granular media filtration.** The following are the requirements when using granular media filtration:

(1) ~~**Filter types**~~ **Gravity filter use**. ~~Filters may be either gravity or pressure. Provide pressure filters with convenient access to the media for treatment or cleaning.~~ Use gravity filters where greases or similar solids are expected to be present in the wastewater.

(~~c~~2) **Filtration rates.** Filtration rates shall not exceed 5 gpm/ft^2 at the ~~maximum hydraulic design. Provide at least two units, with the capacity to handle the maximum wastewater flow~~peak hourly flow for OPDES permits or the anticipated design flow for water reuse systems with the largest unit out of service.

~~(d) **Backwash.**~~

(~~1~~3) **Backwash rate.** The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20%. The backwash system shall provide a variable backwash rate of at least 20 gpm/ft^2 for 10 minutes.

~~(2) **Backwash.** Design the backwash filter unit pumps to backwash any filter with the largest pump out of service. Backwash with filtered water and return the wastewater to the headworks.~~

(~~e~~ 4) **Filter media.**

(~~1~~ A) **Selection.** Media size will depend on the filtration rate, treatment prior to filtration, filter configuration, and effluent quality requirements.

(~~2~~ B) **Specifications.** Minimum media depths and media sizes [shown in brackets], with a uniformity coefficient of 1.7 or less, are:

(~~A~~ i) **Anthracite**

(~~i~~ I) Single-medium - none

(~~ii~~ II) Dual-media - 20 ~~in.~~ inches [1.0-2.0 mm]

(~~iii~~ III) Multi-media - 20 ~~in.~~ inches [1.0-2.0 mm]

(~~B~~ ii) **Sand**

(~~i~~ I) Single-medium - 48 ~~in.~~ inches [1.0-4.0 mm]

(~~ii~~ II) Dual-media - 12 ~~in.~~ inches [0.5-1.0 mm]

(~~iii~~ III) Multi-media - 10 ~~in.~~ inches [0.6-0.8 mm]

(~~C~~ iii) **Garnet or similar**

(~~i~~ I) Single-medium - none

(~~ii~~ II) Dual-media - none

(~~iii~~ III) Multi-media - 2 ~~in.~~ inches [0.3-0.6 mm]

(~~f~~ 5) **Filter appurtenances.** ~~Equip filters~~ Filters shall be equipped with:

(~~1~~ A) washwater troughs,

(~~2~~ B) surface wash or air scouring equipment,

(~~3~~ C) ~~effluent rate of~~ flow control for effluent rate,

(~~4~~ D) measurement and positive control of backwash rate,

(~~5~~ E) capability to measure filter head loss,

(~~6~~ F) positive means to shut off flow to filter during backwash ~~and~~,

(~~7~~ G) filter influent and effluent sampling points~~.~~,

(H) ~~Provide~~ a manual override for automatic controls and each individual valve essential to the filter operation~~.~~,

(I) ~~Design the~~ an underdrain system to uniformly distribute backwash water (and air, if provided) without clogging from solids in the backwash water~~.~~,

(J) ~~Provide for~~ a method for periodic chlorination of the filter influent or backwash water to control slime growths~~.~~, and

(K) pressure filters with convenient access to the media for treatment or cleaning.

(j) **Traveling bridge filters.** All of the requirements in (a) through (i) of this Section apply to traveling bridge filters with the following exceptions:

(1) **Filtration rates.** With one cell out of service, the peak application rate to any unit shall not exceed twice the applicable design filtration rate below:

(A) A single media filter shall have a maximum design filtration rate of 3.0 gpm/ft^2 of media surface at the peak hourly flow.

(B) A dual media filter shall have a maximum design filtration rate of 4.0 gpm/ft^2 of media surfaceat the peak hourly flow.

(2) **Backwash system.** The backwash system shall:

(A) provide a minimum of 20 gpm/ft^2 of media being backwashed at a given time;

(B) have a minimum duration of at least 20 seconds for each compartment;

(C) expand the media a minimum of 20%;

(D) provide a backwash rate, pressure and backwash water storage based on the manufacturer's recommendations; and

(E) have the ability for manual override.

(3) **Traveling bridge mechanism.** The traveling bridge mechanism shall:

(A) provide support and access to the backwash pumps and equipment;

(B) be constructed of corrosion resistant materials;

(C) have provisions for consistent tracking of the bridge;

(D) provide support of the power cords; and

(E) initiate a backwash cycle automatically when a preset head loss through the filter media occurs.

(4) **Floating material control.** A traveling filter system shall provide for automatic and regular removal of any floating material from the surface of a filter and return the floating material to the headworks.

(k) **Disc filters.** All of the requirements in (a) through (h) of this Section apply to disc filters with the following exceptions:

(1) Provide a minimum of 2 disc filter units capable of independent operation.

(2) The size of the opening in the screen material shall be a nominal 10 Fm.

(3) Base the design on:

(A) an average hydraulic loading rate of 3.25 gpm/ft^2; and

(B) a peak day hydraulic loading rate of 6.0 gpm/ft^2.

(4) Equip the filter drum motor with a variable speed drive capable of adjusting the motor speed based on the plant flow.

(5) The backwash rate, pressure and backwash water storage on the disc filter shall be based on the manufacturer's recommendations.

(6) The disc filter and backwash operation shall be managed according to manufacturer's recommendation with the ability for manual override.

(7) Each unit shall be equipped with a level sensor to initiate the backwash cycle. The design of each unit shall also include a high water level sensor with a telemetry system capable of alerting the responsible person(s) in charge in case of equipment failure.

~~(g) **Reliability.** Design each filter unit for convenient access to all components and the media surface for inspection and maintenance without taking other units out of service. The need for housing filter units will depend on expected climatic conditions at the treatment plant site. Enclose all controls and equipment with heating and ventilation equipment to control humidity.~~

~~(h) **Backwash surge control.** The return rate of backwash water to treatment units shall not exceed 15% of the wastewater design daily average flow rate to the treatment units. Consider the hydraulic and organic load from waste backwash water in the overall design of the treatment plant. Surge tanks must hold at least two backwash volumes, and consider more for operational flexibility. Where backwash water is pump returned for treatment, required pumping capacity shall be maintained with the largest unit out of service.~~

252:656-23-2. Disc filters [REVOKED]

~~(a) **Back up power.** Provide a back up power source that meets the requirements of 252:656-9-2 (a).~~

~~(b) **Flocculation.**~~

~~(1) Design chemical feed equipment to meet the plant peak demand with the largest unit out of service and the ability to proportion chemical feed rates based on the plant flow.~~

~~(2) Ensure the rapid dispersion and mixing of chemicals throughout the wastewater by providing mechanical or in-line static mixers.~~

~~(3) Provide a minimum of two flocculation basins. Equip each basin with variable speed drives to control the speed of the paddles.~~

~~(4) Equip each basin with a drain line at least 6 inches in diameter capable of draining it to the head of the plant.~~

~~(c) **Filters.**~~

~~(1) Provide a minimum of two disc filter units capable of independent operation.~~

~~(2) The size of the opening in the screen material must be between 20-30 Fm.~~

~~(3) Base the design on a hydraulic loading rate of 0.80 ft^3/ft^2 min.~~

~~(4) Equip the filter drum motor with a variable speed drive capable of adjusting the motor speed based on the plant flow.~~

~~(5) Provide a minimum of two backwash pumps. Base the backwash rate, pressure, backwash water storage on the disc filter manufacturer recommendations.~~

~~(6) The disc filter and backwash operation must be managed by an automated control system with the ability to manually override the automated settings.~~

~~(7) Each unit shall be equipped with a level sensor to initiate the backwash cycle. The design of each unit shall also include a high water level sensor with a telemetry system capable of alerting the person(s) in responsible charge, in case of equipment failure.~~

~~(8) Equip each filter unit with a drain line at least 6 inches in diameter capable of draining the basin to the head of the plant.~~

~~(9) The specifications shall require the equipment manufacturer to provide the following:~~

~~(A) Monitor the installation of the disc filter equipment.~~

~~(B) Equipment start-up and training of the plant personnel.~~

SUBCHAPTER 25. ~~WASTEWATER SYSTEMS~~ LAND APPLICATION OF RECLAIMED WATER

252:656-25-2. Slow rate land application ~~system~~ design

(a) **Treatment.** Primary treatment of wastewater shall be completed in the primary lagoon ~~cell~~ cell(s) prior to being land applied. Wastewater ~~from the primary lagoon cell~~ shall not be land applied out of a primary lagoon cell.

(b) **Loading rates.** Hydraulic loading, BOD, suspended solids, nitrogen, phosphorus and crop selection ~~must~~ shall all be considered in the process design of land applications systems. Typically loading rates of BOD and SS for municipal wastewater are far below the loading rates determined by other parameters and will not be a concern in system design.

(c) **Land area.** The total area required for a slow rate land application system includes the field area (application site), treatment and storage site (normally primary treatment lagoons and storage ponds), buffer zones and service roads.

(d) **Control.** The applicant shall show they have the right to control the use of the land application site. A long-term contract for a minimum of 20 years is required.

(e) **Buffer zone.** A buffer zone of at least 100 feet in width shall be provided between the land application site and adjacent property. Additional distance may be required where prevailing winds could cause aerosols to drift into residential areas. The buffer zone shall be a part of the permitted site. [See 252:656-27-2(b) (relating to separation distance requirements).]

(f) **Public contact.** Wastewater shall be disinfected in accordance with 252:656-21 if it is to be applied to public contact areas.

(g) **Storage.** Storage of wastewater is required for periods when available wastewater exceeds design hydraulic loading rate, and when the ground is saturated or frozen. A water balance computation is used to estimate the storage requirement. Provide water balance computations of the estimated storage needs. There shall be at least 90 days of storage in addition to the detention time required for primary treatment. The monthly available wastewater for each month shall be determined by equation (25-5) in Appendix D.

(h) **Flow measurement.** Provide for the measurement of wastewater to be land-applied. Flow measurement shall be accomplished by flow meters, or the calibration of pumps and installation of run-time meters.

(i) **Restrictions.** There shall not be any berms or other barriers on a land application site that would cause the pooling or ponding of wastewater at the land application site. Additionally, there shall not be any berms or barriers that impede the natural flow of stormwater from the site. No land application site shall exceed the maximum slope requirements at OAC 252:627-3.

(j) **Signs.** Suppliers are responsible for ensuring that the required signs, which describe the nature of the facility and advise against trespassing, are posted on signs every 200 feet around the perimeter of the permitted land application site.

(k) **Fencing.** All Category 5 reclaimed water land application sites shall be fenced to prevent unauthorized entry.

SUBCHAPTER 27. ~~WASTEWATER~~ WATER REUSE

252:656-27-4. Distribution systems

(a) ~~**Piping**~~ **Cautionary language required.** The following cautionary language is required for reclaimed water piping, valves, outlets and appurtenances in distribution systems.

(1) ~~All~~ Effective July 1, 2012, all reclaimed water piping, valves, outlets and appurtenances in distribution systems shall be colored purple (Pantone 522). ~~and shall be~~

(2) Effective July 1, 2012, reclaimed water piping in a distribution system shall be embossed or integrally stamped on opposite sides every 3 feet with a warning that includes the following language: "CAUTION: RECLAIMED WATER - DO NOT DRINK."

~~(1) the word "CAUTION;"~~

~~(2) specifies the category number of the reclaimed water; and~~

~~(3) the words "DO NOT DRINK;" (e.g.: "CAUTION: CATEGORY #3 RECLAIMED WATER DO NOT DRINK.") For all pipes, the warning shall be located on opposite sides of all pipes and repeated every three feet (3') or less.~~

(3) All reclaimed water piping installed prior to July 1, 2012, that does not comply with this subsection shall, at a minimum, be identified with above-ground signs containing the cautionary language in (2) of this subsection together with the international "Do Not Drink" symbol:

(A) every 300 feet;

(B) at every change in direction;

(C) in the road easement on both sides of the road at every road crossing; and

(D) at every outlet.

(b) **Hose bibs.** Hose bibs shall be located in locked, below-grade vaults. Reclaimed water hose bibs, hydrants and/or similar outlets shall be equipped with a warning ~~signs~~ sign containing ~~that indicate the water is not safe for drinking~~ the cautionary language required in (a)(3) of this Section.

(c) ~~**Gravity**~~ **Distribution pipes.** Reclaimed water ~~gravity~~ distribution pipes shall be designed and constructed to meet the requirements for sanitary sewer pipes in ~~of OAC~~ 252:656-5-2, ~~OAC~~ 252:656-5-3, ~~OAC~~ 252:656-5-4 and ~~OAC~~ 252:656-5-5.

(d) **Pumping stations and force mains.** Pumping stations and force mains shall be designed and constructed in accordance with ~~OAC~~ 252:656-7-1 through 4, with the following exceptions:

(1) Pump openings less than three inches (3") may be allowed when settled or filtered reclaimed water is pumped.

(2) Water reuse systems with the ability to divert all reclaimed water to the wastewater's permitted discharge point, without operator assistance, may be exempt from the requirement to equip the lift station with emergency wet well storage, backup power supply or duplicate pumps.

(e) **Reclaimed water flushing system.** Reclaimed water distribution systems shall be designed with all appurtenances necessary to adequately flush the distribution system to prevent slime growth and the regrowth of pathogens. Flushing plans shall be developed for all reclaimed water distribution systems and submitted for DEQ approval. Flushing plans shall also be included in reclaimed water systems' O&M manuals [see ~~OAC~~ 252: 656-3-10] and in suppliers' DEQ approved inspection programs [see ~~OAC~~ 252:627-1-5(f)]. All flushing systems shall include at a minimum:

(1) provisions for disposal of flushed water that prevent bypasses and discharges to waters of the state or elsewhere; and

(2) air gaps designed pursuant to ~~OAC~~ 252:656-9-2 for all discharges to sanitary sewers.

[OAR Docket #14-637; filed 7-2-14]

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

[OAR Docket #14-629]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:690-1-3 [AMENDED]
252:690-1-4 [AMENDED]
Subchapter 3. Point Source Discharges
252:690-3-46 [AMENDED]
252:690-3-65 [AMENDED]
252:690-3-72 [AMENDED]
252:690-3-80 [AMENDED]
252:690-3-86 [AMENDED]
252:690-3-87 [AMENDED]
Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [REVOKED]
Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [NEW]
Appendix J. Background Monitoring [REVOKED]
Appendix J. Background Monitoring [NEW]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. §2-2-201; and 27A O.S.§§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 3, 2013, through October 8, 2013
PUBLIC HEARING:
Before the Council on October 8, 2013, and before the Environmental Quality Board on November 13, 2013
ADOPTION:
November 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 19, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated standards:
Date of CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2013".
Incorporating rules:
OAC 252:690-1-4
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed regulations will: (1) update the definition of "$Q_{e(D)}$" to be the lesser of the design flow for a municipal POTW or the design flow listed in the Section 208 Areawide Basin Plan; (2) update the publication date of the federal rules incorporated by reference from July 1, 2012, to July 1, 2013; (3) clarify potential temperature requirements for municipalities treating industrial wastewater having a thermal component; (4) update the rules on regulatory flow to be consistent with the Water Quality Standards (WQS); (5) update text to be consistent with new definition of $Q_{e(D)}$; (6) remove fecal coliform as the bacteriological indicator organism for discharge permits to be consistent with a change to WQS; (7) clarify that the exception in 252:690-3-86(e) does not apply if it is determined that the discharge is not in compliance with WQS; (8) add color implementation to comply with changes to WQS; (9) update Appendix B to be consistent with WQS; and (10) update Appendix J to include all formulas referenced in the text.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. INTRODUCTION

252:690-1-3. Technical Acronyms

The following technical acronyms, when used in this Chapter, shall have the following meaning:

"ΔT_{max}" means the maximum temperature increase in EC at the edge of the temperature mixing zone.

"7Q2" means the 7 day low flow of a stream likely to occur with a 50% probability each year. The procedure for determining a site-specific 7Q2 is described at OAC 785:46.

"7T2" means the 7 day maximum temperature likely to occur with a 50% probability each year. The procedure for determining a site-specific 7T2 is described at OAC 785:46.

"ACD" means acute critical dilution.

"BOD_5" means 5-day biochemical oxygen demand.

"BT/C ratio" means the ratio of trigger background concentration to associated water quality criterion.

"$(BT/C)_{max}$" means the maximum BT/C ratio for a given criterion for which background monitoring is required as a permit condition.

"C_{95}" means the 95th percentile maximum likelihood effluent concentration of a substance. It is the product of $C_{E(mean)}$ and RPF_{95}.

"$C_{95(M)}$" means the 95th percentile maximum likelihood effluent concentration of a substance, accounting for the size of the effluent data set. It is the product of $C_{E(max)}$ and $RPF_{95(M)}$.

"C_A" means the acute numerical criterion for toxic substances.

"C_B" means background concentration.

"C_C" means the chronic numerical criterion for toxic substances.

"C_d" means the instream concentration of a substance resulting from a wastewater discharge.

"$C_{d(A)}$" means the instream concentration of a substance as determined by the acute mixing equation.

"$C_{d(c)}$" means the maximum instream concentration of a substance at the edge of the chronic mixing zone.

"$C_{d(FF)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh.

"$C_{d(FFW)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh and water.

"$C_{d(NRWQC)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an EPA human health criterion for the consumption of fish flesh.

"$C_{d(RAW)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a raw water column criterion.

"$C_{d(SS)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture sample standard (SS).

"$C_{d(YMS)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture yearly mean standard (YMS).

"$C_{E(max)}$" means the maximum concentration of a substance in an effluent data set.

"$C_{E(mean)}$" means mean effluent concentration.

"C_{FF}" means the numerical criterion for the protection of human health for the consumption of fish flesh.

"C_{FFW}" means the numerical criterion for the protection of human health for the consumption of fish flesh and water.

"C_{NRWQC}" means the EPA recommended national water quality criterion for the protection of human health for the consumption of fish flesh.

"C_{RAW}" means the numerical criterion for protection of the raw water column.

"C_{SS}" means agriculture sample standard numerical criterion, i.e., the historic segment averaged SS value from Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

"C_{YMS}" means agriculture yearly mean standard numerical criterion, i.e., the historic segment averaged YMS value from Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

"$CBOD_5$" means 5-day carbonaceous biochemical oxygen demand.

"CCD" means chronic critical dilution.

"CFU" means colony forming units.

"CPP" means the Continuing Planning Process document required under Section 303(e) of the Clean Water Act.

"CWAC" means cool water aquatic community.

"D" means, in the context of a discharge to a lake through a pipe, the pipe diameter in feet.

"DML" means daily maximum permit limitation.

"DML_A" means the toxic substance acute criterion DML.

"DML_C" means the toxic substance chronic criterion DML.

"DML_{CL}" means agriculture criterion-based DML for chlorides.

"DML_{FF}" means the human health/fish flesh DML.

"DML_{FFW}" means the human health/fish flesh and water DML.

"DML_{HH}" means human health-based DML.

"DML_{RAW}" means the raw water column DML.

"DML_{SO4}" means agriculture criterion-based DML for sulfates.

"DML_T" means the temperature based DML.

"DML_{TDS}" means agriculture criterion-based DML for total dissolved solids (dried at 180EC).

"DML_{TOX}" means toxic substance-based DML.

"DMR" means Discharge Monitoring Report.

"DO" means dissolved oxygen.

"gpd" means gallons per day.

"HLAC" means habitat-limited aquatic community.

"ICIS" means integrated compliance information system.

"LTA" means long term average.

"LTA_A" means the toxic substance acute numerical criterion LTA.

"LTA_C" means the toxic substance chronic numerical criterion LTA.

"LTA_{FF}" means the fish flesh human health criterion LTA.

"LTA_{FFW}" means the fish flesh and water human health criterion LTA.

"LTA_{RAW}" means the raw water column criterion LTA.

"LTA_{SS}" means the agriculture sample standard LTA.

"LTA_T" means the temperature criterion LTA.

"LTA_{TOX}" means the limiting toxic substance-based LTA, i.e., the smallest of LTA_A or LTA_C, as applicable.

"LTA_{YMS}" means the agriculture yearly mean standard LTA.

"MAL" means monthly average permit limitation.

"MAL_A" means the toxic substance acute criterion MAL.

"MAL_C" means the toxic substance chronic criterion MAL.

"MAL_{CL}" means agriculture criterion-based MAL for chlorides.

"MAL_{FF}" means the human health/fish flesh MAL.

"MAL_{FFW}" means the human health/fish flesh and water MAL.

"MAL_{RAW}" means the raw water column MAL.

"MCL" means maximum contaminant level (when used in the context of primary drinking water standards).

"MAL_{HH}" means human health-based MAL.

"MAL_{SO4}" means agriculture criterion-based MAL for sulfates.

"MAL_T" means temperature MAL.

"MAL_{TDS}" means agriculture criterion-based MAL for total dissolved solids (dried at 180EC).

"MAL_{TOX}" means toxic substance-based MAL.

"mgd" means million gallons per day.

"mg/l" means milligrams per liter.

"MQL" means minimum quantifiable level.

"N" means the number of individual data points, collected over time, in an effluent or background data set.

"N_m" means the per month monitoring frequency where a permit limitation is established. When used in the context of temperature limitations, N_m is equal to four times N_w (i.e., N_m = 4 H N_w).

"N_w" means the per week monitoring frequency where a temperature permit limitation is established.

"NRWQC" means the National Recommended Water Quality Criteria, publication no. EPA 822-Z-99-001, April 1999.

"PBCR" means Primary Body Contact Recreation.

"PCS" means Permit Compliance System, an EPA database ~~which~~ that tracks NPDES permit compliance.

"Q*" means the ratio of the regulatory effluent flow to the regulatory receiving water flow.

"Q_e" means regulatory effluent flow.

"$Q_{e(30)}$" means the Q_e ~~which~~ that is the highest monthly average flow over the two year period of record for an industrial facility.

"$Q_{e(D)}$" means the Q_e ~~which~~ that is the lesser of the design flow for a municipal POTW or the design flow listed in the Section 208 Areawide Basin Plan.

"$Q_{e(LTA)}$" means the Q_e ~~which~~ that is the arithmetic (long term) average flow over the two year period of record for an industrial facility.

"Q_u" means regulatory receiving water flow upstream of a point of wastewater discharge.

"$Q_{u(7Q2)}$" means the same as 7Q2.

"$Q_{u(LTA)}$" means the Q_u ~~which~~ that is the mean annual (long term) receiving water flow.

"$Q_{u(STA)}$" means the Q_u ~~which~~ that is the short term average receiving water flow and is equal to $Q_{u(LTA)}$ H 0.68.

"SBCR" means Secondary Body Contact Recreation

"SNC" means significant noncompliance.

"SS" means sample standard.

"s.u." means standard units for the measurement of pH.

"T_{95}" means 95th percentile effluent temperature in °C.

"T_a" means regulatory ambient temperature in °C.

"TBLL" means technically based local limits

"TDS" means total dissolved solids.

"TIE" means toxicity identification evaluation.

"TMDL" means total maximum daily load.

"TRC" means total residual chlorine.

"TRE" means toxicity reduction evaluation.

"TRO" means total residual (halogenated) oxidants.

"μg/l" means micrograms per liter.

"W" means, in the context of a discharge to a lake through an open channel (i.e., canal), the channel width in feet.

"WAL" means weekly average permit limitation.

"WAL_T" means temperature WAL.

"WET" means whole effluent toxicity.

"WLA" means waste load allocation.

"WLA_A" means ~~an~~a toxic substance acute criterion WLA.

"WLA_C" means a toxic substance chronic criterion WLA.

"WLA_{FF}" means a human health/fish flesh criterion WLA.

"WLA_{FFW}" means a human health/fish flesh and water criterion WLA.

"WLA_{RAW}" means a raw water column criterion WLA.

"WLA_{SS}" means an agriculture sample standard WLA.

"WLA_T" means a temperature criterion WLA.

"WLA_{YMS}" means an agriculture yearly mean standard WLA.

"WQMP" means the statewide Section 208 Water Quality Management Plan.

"WWAC" means warm water aquatic community.

"YMS" means yearly mean standard.

252:690-1-4. Incorporation of EPA regulations by reference

The following federal regulations at 40 CFR, as published on July 1, ~~2012~~ 2013 are incorporated by reference and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(A) **Part 260.** Hazardous Waste Management System: General, except 260.21.

(i) In 260.20, "Federal Register" is synonymous with "The Oklahoma Register."

(ii) In 260.20(e), strike the words "or a denial."

(iii) In 260.22, references to the lists in Subpart D of Part 261 and the reference to § 261.3(a)(2)(ii) or C shall mean the lists in Subpart D of Part 261

and § 261.3(a)(2)(ii) or C as adopted by reference and applicable in Oklahoma.

(iv) In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:

(I) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)];

(II) leak detection requirements for all new underground tank systems [3004(o)(4)]; and

(III) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.

(B) **Part 261.** Identification and Listing of Hazardous Waste except 261.4(b)(18) ~~which~~ that pertains to Utah only, thus should be excluded.

(i) In 261.4(e)(3)(iii) delete "in the Region where the sample is collected".

(ii) In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(iii) In 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludges meeting exemption conditions remain subject to regulation as hazardous waste if the waste exhibits a hazardous waste characteristic."

(C) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".

(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g).

(i) In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.

(ii) In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.

(iii) In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.

(iv) In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).

(i) In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.

(ii) In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.

(iii) In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.

(iv) In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.

(H) **Part 267.** Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:

(i) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;

(ii) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and

(iii) agencies, departments, or units of the federal government or the State of Oklahoma.

(I) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.

(J) **Part 270.** The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).

(K) **Part 273.** Standards for Universal Waste Management.

(L) **Part 279.** Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."

(2) **OAC 252:606 (Discharge Standards).**

(A) Part 116 (Hazardous Substances List)

(B) Part 117 (Reportable Quantities for Hazardous Substances)

(C) The following from PART 122 (NPDES PERMIT REGULATIONS):

(i) 122.2 - (definitions)

(ii) 122.24 - (concentrated aquatic animal production facilities)

(iii) 122.25 - (aquaculture projects)

(iv) 122.26 - (stormwater discharges)

(v) 122.27 - (silviculture)

(vi) 122.28(a) and (b) - (general permits)

(vii) 122.29 - (new sources and new dischargers)

(viii) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

(ix) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(x) 122.35 - As an operator of a regulated small MS4, may I share the
responsibility to implement the minimum control measures with other entities?

(xi) 122.41 - (permit conditions)

(xii) 122.42 - (conditions for specified categories of permits)

(xiii) 122.43 - (establishing permit conditions)

(xiv) 122.44 - (establishing permit limitations, standards and other conditions)

(xv) 122.45 - (calculating permit conditions)

(xvi) 122.46 - (permit duration)

(xvii) 122.47(a) - (schedules of compliance)

(xviii) 122.48 - (monitoring requirements)

(xix) 122.50 - (disposal into wells)

(xx) 122.61 - (permit transfer)

(xxi) 122.62 - (permit modification)

(xxii) 122.63 - (minor modifications of permits)

(xxiii) 122.64 - (permit termination)

(xxiv) Appendices A through J

(D) The following from PART 125 (criteria and standards for NPDES):

(i) Subpart A (technology-based treatment),

(ii) Subpart B (criteria for aquaculture projects),

(iii) Subpart D (fundamentally different factors),

(iv) Subpart H (alternative effluent limitations),

(v) Subpart I (new cooling water intakes),

(vi) Subpart J (existing cooling water intakes), and

(vii) Subpart L (disposal of sewage sludge under CWA 405)

(E) Part 129 (Toxic Pollutant Effluent Standards)

(F) Part 136 (testing and laboratory)

(G) Sections 401-471 (Effluent Guidelines 7 and Standards)

(H) Section 110.6 (notice of oil discharge)

(I) Part 302 (CERCLA exemption from NPDES permits)

(J) The following Sections from Part 503, Subpart A (General Provisions):

(i) 503.1 (Purpose and applicability)

(ii) 503.2 (Compliance period)

(iii) 503.3 (Permits and direct enforceability)

(iv) 503.4 (Relationship to other regulations)

(v) 503.5 (Additional or more stringent requirements)

(vi) 503.6(a)-(e),(g)-(j) (Exclusions)

(vii) 503.7 (Requirement for a person who prepares biosolids)

(viii) 503.8 (Sampling and analysis)

(ix) 503.9 (General definitions)

(K) The following Sections from Part 503, Subpart B (Land Application):

(i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)

(ii) 503.11 (Special definitions)

(iii) 503.12 (General requirements)

(iv) 503.13 (Pollutant limits)

(v) 503.14 (Management practices)

(vi) 503.15 (Operational standards - pathogens and vector attraction reduction)

(vii) 503.16(a) (Frequency of monitoring)

(viii) 503.17(a) (Recordkeeping)

(ix) 503.18 (Reporting)

(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

(i) 503.30 (Scope)

(ii) 503.31 (Special definitions)

(iii) 503.32(a), (b) (Pathogens)

(iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(M) The following Sections from Part 503 Subpart E (Incineration)

(i) 503.40 (Applicability)

(ii) 503.41 (Special definitions)

(iii) 503.42 (General requirements)

(iv) 503.43 (Pollutant (Metal) limits)

(v) 503.44 (Operational standard - total hydrocarbons)

(vi) 503.45 (Management practices)

(vii) 503.46 (Frequency of monitoring)

(viii) 503.47 (Recordkeeping)

(ix) 503.48 (Reporting)

(N) The following Appendices from Part 503:

(i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)

(ii) Appendix B (Pathogen treatment processes)

(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)

(4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:

(A) Part 144 (Underground Injection Control Program)

(B) Part 145 (State UIC Program Requirements)

(C) Part 146 (Underground Injection Control Program: Criteria and Standards)

(D) Part 147 (State Underground Injection Control Programs)

(E) Part 148 (Hazardous Waste Injection Restrictions)

(5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

SUBCHAPTER 3. POINT SOURCE DISCHARGES

252:690-3-46. Q* ratio for the implementation of temperature criteria to protect the Fish and Wildlife Propagation beneficial use

The following applies to the determination of Q*:

(1) **Streams.** The following apply to streams:

(A) **Industrial effluent.** Q* is the ratio of $Q_{e(30)}$ to $Q_{u(7Q2)}$.

(B) **Municipal effluent.** For municipalities treating industrial wastewater with a thermal component, Q* is the ratio of $Q_{e(D)}$ to $Q_{u(7Q2)}$.

(2) **Lakes.** Q* is not applicable to lakes.

252:690-3-65. Effluent regulatory flows for the implementation of human health criteria for toxic substances to protect the Fish Consumption beneficial use

Use the following effluent regulatory flows:

(1) **Industrial.** For industrial facilities, $Q_{e\cancel{(LTA)}(30)}$ is used as the effluent regulatory flow.

(2) **Municipal.** $Q_{e(D)}$ is used as the regulatory effluent flow. ~~The DEQ will not use a flow exceeding the approved design flow in the WQMP for permitting purposes.~~

252:690-3-72. Effluent regulatory flows for the implementation of human health and raw water criteria for toxic substances to protect the Public and Private Water Supply beneficial use

The following effluent regulatory flows are used:

(1) **Industrial.** $Q_{e\cancel{(LTA)}(30)}$ is used as the regulatory effluent flow for the human health/fish flesh and water criterion~~,~~ and ~~$Q_{e(30)}$ is used for~~ the raw water criterion.

(2) **Municipal.** ~~See OAC 252:690-3-65(b)~~ $Q_{e(D)}$ is used as the regulatory effluent flow.

252:690-3-80. Effluent regulatory flows for the implementation of mineral constituent criteria to protect the Agriculture beneficial use

For regulatory flows use the following:

(1) **Industrial.** For industries:

(A) **YMS criterion.** $Q_{e(LTA)}$ is used as the regulatory effluent flow.

(B) **SS criterion.** $Q_{e(30)}$ is used as the regulatory effluent flow.

(2) **Municipal.** ~~See OAC 252:690-3-65(b)~~ $Q_{e(D)}$ is used as the regulatory effluent flow.

252:690-3-86. Implementation of bacteriological criteria to protect the Primary Body Contact Recreation (PBCR) and the Secondary Body Contact Recreation (SBCR) beneficial use

(a) **PBCR waterbodies - May 1 through September 30.** When the use of a bacteriological indicator is determined to be necessary, the following bacteriological limitations shall apply from May 1 through September 30 to protect the PBCR beneficial use:

~~(1) **Fecal coliform.** When fecal coliform is the bacteriological indicator:~~

~~(A) The monthly geometric mean shall not exceed 200 CFU/100 ml.~~

~~(B) The daily maximum for all waterbodies shall not exceed 400 CFU/100 ml.~~

(~~2~~1) **Escherichia coli (E. coli).** When E. coli is the bacteriological indicator:

(A) The monthly geometric mean shall not exceed 126 CFU/100 ml.

(B) The daily maximum for lakes shall not exceed 235 CFU/100 ml.

(C) The daily maximum for all waterbodies other than lakes shall not exceed 406 CFU/100 ml.

(~~3~~2) **Enterococci.** When enterococci is the bacteriological indicator:

(A) The monthly geometric mean shall not exceed 33 CFU/100 ml.

(B) The daily maximum for lakes shall not exceed 61 CFU/100 ml.

(C) The daily maximum for all waterbodies other than lakes shall not exceed 108 CFU/100 ml.

(b) **PBCR waterbodies - October 1 through April 30.** When the use of a bacteriological indicator is determined to be necessary, the SBCR bacteriological limitations listed in (c) of this Section, shall apply from October 1 through April 30 to protect the PBCR beneficial use when the receiving stream is on the 303(d) list for bacteria.

(c) **SBCR waterbodies.** One of the following bacteriological limitations and monitoring requirements shall be used year round for permittees that discharge fecal coliform to waterbodies on the 303(d) list for bacteria:

~~(1) **Fecal coliform.** When fecal coliform is the bacteriological indicator:~~

~~(A) The monthly geometric mean shall not exceed 1000 CFU/100 ml.~~

~~(B) The daily maximum for all waterbodies shall not exceed 2000 CFU/100 ml.~~

(~~2~~1) **Escherichia coli (E. coli).** When E. coli is the bacteriological indicator:

(A) The monthly geometric mean shall not exceed 630 CFU/100 ml.

(B) The daily maximum for lakes shall not exceed 1175 CFU/100 ml.

(C) The daily maximum for all waterbodies other than lakes shall not exceed 2030 CFU/100 ml.

(~~3~~2) **Enterococci.** When enterococci is the bacteriological indicator:

(A) The monthly geometric mean shall not exceed 165 CFU/100 ml.

(B) The daily maximum for lakes shall not exceed 305 CFU/100 ml.

(C) The daily maximum for all waterbodies other than lakes shall not exceed 540 CFU/100 ml.

(d) **Indicators used in WLA.** Regardless of which bacteriological indicator was used in a permittee's WLA, the permit may contain ~~any one~~ either of the ~~three bacteriologic~~ bacteriological indicators listed ~~above~~ in (c) of this Section.

(e) **Exception.** This Section does not apply to discharging lagoons that were permitted and are being operated in compliance with OAC 252:656-11-2(b), unless Water Quality Standards are violated.

252:690-3-87. Implementation of criteria to protect the Aesthetics beneficial use

(a) Limitations and monitoring requirements for pollutants from previous permits are retained.

(b) Limitations and monitoring requirements may be established on a case-by-case basis to protect the aesthetics beneficial use of the receiving water established in OAC 785:45.

(c) For effluents containing lignins, tannins, dyes, and other organic or inorganic chemicals that cause true color, the narrative water quality criterion for color shall be implemented by limiting the instream concentration after mixing to 70 Platinum-cobalt true color units based on a simple mass balance calculation. The following regulatory effluent flows apply for the implementation of the color criterion to protect the Aesthetics beneficial use:

(1) for industrial facilities, $Q_{e(30)}$; and

(2) for municipal facilities, $Q_{e(D)}$.

APPENDIX B. PRIORITY AND NONPRIORITY POLLUTANTS WITH NUMERICAL CRITERIA REQUIRING REASONABLE POTENTIAL SCREENING [REVOKED]

The priority pollutants are listed in Table B-1. Those having state numerical criteria or federal numerical guidelines for the consumption of fish flesh (re: NRWQC), and which require reasonable potential screening if present in an effluent are marked with a diamond (♦). Pollutants with state numerical criteria are indicated according to type of criteria. Pollutants which have NRWQC human health/fish flesh guidelines are screened only if the Fish Consumption beneficial use applies to the discharge and there is no state criterion for the pollutant. Predicted exceedances of NRWQC guidelines will result in effluent and/or background monitoring. OWRB will be notified of pollutants predicted to exceed NRWQC guidelines in order to evaluate the need for a state water quality criterion. Nonpriority pollutants with state and federal criteria are listed in Table B-2. WET testing parameters and their STORET numbers are listed in Table B-3.

Table B-1. Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS No.	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Metals, Cyanide and Total Phenols	Antimony, total	7440360	01097	60	♦	---	---	---	---
	Arsenic, total	7440382	01002	10	♦	♦	♦	♦	---
	Beryllium, total	7440417	01012	5	---	---	---	---	---
	Cadmium, total	7440439	01027	1	---	♦	♦	♦	---
	Chromium, total	7440473	01034	10	---	♦	♦	♦	---
	Copper, total	7440508	01042	10	---	♦	---	♦	---
	Lead, total	7439921	01051	5	---	♦	♦	♦	---
	Mercury, total	7439976	71900	0.2	♦	♦	♦	♦	---
	Nickel, total	7440020	01067	40	♦	♦	♦	---	---
	Selenium, total	7782492	01147	5	♦	♦	---	♦	---
	Silver, total	7440224	01077	2	---	♦	♦	♦	---
	Thallium, total	7440280	01059	10	♦	♦	♦	---	---
	Zinc, total	7440666	01092	20	♦	♦	---	♦	---
	Cyanide, total	57125	00720	10	♦	♦	---	♦	---
	Phenols, total	108952	46000	10	---	---	♦	---	---
	2,3,7,8-Tetrachlorodibenzo-P Dioxin	1746016	34675	0.00001	♦	---	♦	---	---

[1] From National Recommended Water Quality Criteria, Pub. No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Volatile Organics	Acrolein	107028	34210	50	♦	---	---	---	---
	Acrylonitrile	107131	34215	50	♦	♦	♦	---	---
	Benzene	71432	34030	10	♦	♦	♦	---	---
	Bromoform	75252	32104	10	♦	---	---	---	---
	Carbon Tetrachloride	56235	32102	10	♦	---	♦	---	---
	Chlorobenzene	108907	34301	10	♦	---	---	---	---
	Chlorodibromomethane	124481	32105	10	♦	---	---	---	---
	Chloroethane	75003	34311	50	---	---	---	---	---
	2-Chloroethylvinyl ether	110758	34576	10	---	---	---	---	---
	Chloroform	67663	32106	10	♦	---	♦	---	---
	Dichlorobromomethane	75274	32101	10	♦	---	♦	---	---
	1,1-Dichloroethane	75343	34496	10	---	---	---	---	---
	1,2-Dichloroethane	107062	34536	10	♦	---	---	---	---
	1,1-Dichloroethylene	75354	34501	10	♦	---	---	---	---
	1,2-Dichloropropane	78875	34541	10	♦	---	---	---	---
	1,3-Dichloropropylene	542756	34561	10	♦	---	---	---	---
	Ethylbenzene	100414	34371	10	♦	---	♦	---	---
	Methyl bromide [Bromomethane]	74839	34413	50	♦	---	---	---	---
	Methyl chloride [Chloromethane]	74873	34418	50	---	---	---	---	---
	Methylene chloride	75092	34423	20	♦	---	---	---	---
	1,1,2,2-Tetrachloroethane	79345	34516	10	♦	---	---	---	---
	Tetrachloroethylene	127184	34475	10	♦	♦	♦	---	---
	Toluene	108883	34010	10	♦	♦	♦	---	---
	1,2-Trans-dichloroethylene	156605	34546	10	♦	---	---	---	---
	1,1,1-Trichloroethane	71556	34506	10	---	---	♦	---	---
	1,1,2-Trichloroethane	79005	34511	10	♦	---	---	---	---
	Trichloroethylene	79016	39180	10	♦	---	---	---	---
	Vinyl chloride	75014	39175	10	♦	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Acid Organics	2-Chlorophenol	95578	34586	10	♦	---	---	---	---
	2,4-Dichlorophenol	120832	34601	10	♦	---	---	---	---
	2,4-Dimethylphenol	105679	34606	10	♦	---	---	---	---
	4,6-Dinitro-o-cresol [2-Methyl-4,6-	534521	34657	50	♦	---	---	---	---
	2,4-Dinitrophenol	51285	34616	50	♦	---	---	---	---
	2-Nitrophenol	88755	34591	20	---	---	---	---	---
	4-Nitrophenol	100027	34646	50	---	---	---	---	---
	p-Chloro-m-cresol	59507	34452	10	---	---	---	---	---
	Pentachlorophenol	87865	39032	50	♦	♦	♦	---	---
	Phenol	108952	34694	10	♦	---	---	---	---
	2,4,6-Trichlorophenol	88062	34621	10	♦	---	---	---	---
Base/Neutral Organics	Acenapthene	83329	34205	10	♦	---	---	---	---
	Acenapthylene	208968	34200	10	---	---	---	---	---
	Anthracene	120127	34220	10	♦	---	---	---	---
	Benzidine	92875	39120	50	♦	---	---	♦	---
	Benzo(a)anthracene	56553	34526	10	♦	---	---	---	---
	Benzo(a)pyrene	50328	34247	10	♦	---	---	---	---
	Benzo(b)fluoranthene [3,4-	205992	34230	10	♦	---	---	---	---
	Benzo(ghi)perylene	191242	34521	20	---	---	---	---	---
	Benzo(k)fluoranthene	207089	34242	10	♦	---	---	---	---
	Bis (2-chloroethoxy) methane	111911	34278	10	---	---	---	---	---
	Bis (2-chloroethyl) ether	111444	34273	10	♦	---	---	---	---
	Bis (2-chloroisopropyl) ether	39638329	34283	10	♦	---	---	---	---
	Bis (2-ethylhexyl) phthalate	117817	39100	10	♦	---	---	---	---
	4-Bromophenyl phenyl ether	101553	34636	10	---	---	---	---	---
	Butylbenzyl phthalate	85687	34292	10	♦	---	---	♦	---
	2-Chloronapthalene	91587	34581	10	♦	---	---	---	---
	4-Chlorophenyl phenyl ether	7005723	34631	10	---	---	---	---	---
	Chrysene	218019	34320	10	♦	---	---	---	---
	Dibenzo(a,h)anthracene	53703	34556	20	♦	---	---	---	---
	1,2-Dichlorobenzene	95501	34536	10	♦	---	---	---	---
	1,3-Dichlorobenzene	541731	34566	10	♦	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Base/Neutral Organics	1,4-Dichlorobenzene	106467	34571	10	♦	---	---	---	---
	3,3'-Dichlorobenzidine	91941	34631	50	♦	---	---	---	---
	Diethyl phthalate	84662	34336	10	♦	---	---	---	---
	Dimethyl phthalate	131113	34341	10	♦	---	---	---	---
	Di-n-butyl phthalate	84742	39110	10	♦	---	---	---	---
	2,4-Dinitrotoluene	121142	34611	10	♦	---	---	---	---
	2,6-Dinitrotoluene	606202	34626	10	---	---	---	---	---
	Di-n-octyl phthalate	117840	34596	10	---	---	---	---	---
	1,2-Diphenylhydrazine (as Azobenzene)	122667	34346	20	♦	---	---	---	---
	Fluoranthene	206440	34376	10	♦	---	---	---	---
	Fluorene	86737	34381	10	♦	---	---	---	---
	Hexachlorobenzene	118741	39700	10	♦	---	♦	---	---
	Hexachlorobutadiene	87683	34391	10	♦	---	---	---	---
	Hexachlorocyclopentadiene	77474	34386	10	♦	---	---	---	---
	Hexachloroethane	67721	34396	20	♦	---	---	---	---
	Ideno(1,2,3-cd)pyrene	193395	34403	20	♦	---	---	---	---
	Isophorone	78591	34408	10	♦	---	---	---	---
	Napthalene	91203	34696	10	---	---	---	---	---
	Nitrobenzene	98953	34447	10	♦	---	---	---	---
	n-Nitrosodimethylamine	62759	34438	50	♦	---	---	---	---
	n-Nitrosodi-n-propylamine	621647	34428	20	♦	---	---	---	---
	n-Nitrosodiphenylamine	86306	34433	20	♦	---	---	---	---
	Phenanthrene	85018	34461	10	---	---	---	---	---
	Pyrene	129000	34469	10	♦	---	---	---	---
	1,2,4-Trichlorobenzene	120821	34551	10	♦	---	---	---	---
Pesticides	Aldrin	309002	39330	0.05	♦	♦	♦	---	---
	alpha-BHC	319846	39337	0.05	♦	---	---	---	---
	beta-BHC	319857	39338	0.05	♦	---	---	---	---
	gamma-BHC [Lindane]	58899	34266	0.05	♦	---	♦	♦	---
	delta-BHC	319868	34259	0.05	---	---	---	---	---
	Chlordane	57749	39350	0.2	♦	♦	♦	---	---
	4,4'-DDT	50293	39300	0.1	♦	♦	♦	---	---
	4,4'-DDE	72559	39320	0.1	♦	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-1 (continued). Priority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Pesticides	4,4'-DDD	72548	39310	0.1	♦	---	---	---	---
	Dieldrin	60571	39380	0.1	♦	♦	♦	---	---
	alpha-Endosulfan	959988	34361	0.1	♦	♦	---	---	---
	beta-Endosulfan	3321365	34356	0.1	♦	♦	---	---	---
	Endosulfan sulfate	1031078	34351	0.1	♦	---	---	---	---
	Endrin	72208	39390	0.1	♦	♦	♦	♦	---
	Endrin aldehyde	7421934	34366	0.1	♦	---	---	---	---
	Heptachlor	76448	39410	0.05	♦	♦	♦	---	---
	Heptachlor epoxide	1024573	39420	0.05	♦	---	---	---	---
	Toxaphene	8001352	39400	5	♦	♦	---	♦	---
PCBs	PCB-1242		39496	1	---	---	---	---	---
	PCB-1254		39504	1	---	---	---	---	---
	PCB-1221		39488	1	---	---	---	---	---
	PCB-1232		39492	1	---	---	---	---	---
	PCB-1248		39500	1	---	---	---	---	---
	PCB-1260		39508	1	---	---	---	---	---
	PCB-1016		34671	1	---	---	---	---	---
	PCBs, total		04166	1	♦	♦	♦	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-2. Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET Number	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Nonpriority Pollutants	Ammonia	7664417	00610	---	---	[3]	---	---	---
	Barium	7440393	01007	---	---	---	---	♦	---
	Bis-chloromethyl ether	542881	34268	10	♦	---	---	---	---
	Chloride	16887006	00941	---	---	---			♦
	Chlorine	7782505	50060	---	---	[3]	---	---	---
	2-(2,4,5-Trichlorophenoxy) propionic acid [2,4,5-TP Silvex]	93721	39760	2	---	♦	---	♦	---
	2,4-Dichlorophenoxyacetic acid [2,4-D]	94757	39730	---	---	---		♦	---
	Chloropyrifos [Dursban]	2921882	81403	0.04	---	♦	---	---	---
	Demeton	8065483	39560	0.07	---	♦	---	---	---
	Detergents, total		---	---	---	---	---	♦	---
	Fluoride	16984488	00951	---	---	---	---	♦	---
	Guthion [Methyl azinphos]	86500	39580	0.03	---	♦	---	---	---
	Hexachlorocyclohexane	319868	77835	---	♦	♦	---	---	---
	Hexahydro-1,3,5-trinitro-1,3,5-triazine [RDX]		81364	140	---	♦	---	---	---
	Malathion	121755	39530	0.036	---	♦	---	---	---
	Manganese	7439965	01055	---	♦	---	---	---	---
	Methoxychlor	72435	39480	0.1	---	♦	---	♦	---
	Methylene blue active substances	61734	47021	---	---	---	---	♦	---
	Mirex	2385855	39755	0.07	---	♦	---	---	---
	Nitrate	14797558	00620	---	---	---	---	♦	---
	Nitrosamines		---	---	♦	---	---	---	---
	n-Nitrosodibutylamine	924163	---	---	♦	---	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. EPA 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

[3] Ammonia and chlorine criteria apply to implementation of narrative toxicity criterion under OAC 785:45 and 40 CFR Part 122.44(d)(1)(vi).

Table B-2 (continued). Nonpriority Pollutants with State Water Quality Criteria or National Recommended Water Quality Criteria Requiring Reasonable Potential Screening

	Pollutant	CAS Number	STORET No.	MQL (µg/l)	NRWQC Human Health [1]	State Criteria [2]			
						Aquatic Toxicity	Human Health	Raw Water	Agriculture
Nonpriority Pollutants	n-Nitrosodiethylamine	55185	---	---	♦	---	---	---	---
	n-Nitrosopyrrolidine	930552	---	---	♦	---	---	---	---
	Parathion	56382	39540	0.033	---	♦	---	---	---
	Pentachlorobenzene	608935	77793	---	♦	---	---	---	---
	Phthalate esters (except butylbenzyl)		39117	---	---	---	---	♦	---
	Sulfate		00946	---	---	---	---	---	♦
	Total Dissolved Solids [TDS]		70300	---	---	---	---	---	♦
	1,2,4,5-Tetrachlorobenzene	95943	78028	---	♦	---	---	---	---
	2,4,5-Trichlorophenol	95954	81848	---	♦	---	---	---	---
	2,4,6-Trinitrotoluene		81360	69	---	♦	---	---	---

[1] From National Recommended Water Quality Criteria, Publication No. 822-R-02-047 (200) and EPA 822-F-03-012 (2003).

[2] OWRB-adopted numerical water quality criteria, OAC 785:45, Subchapter 5.

Table B-3. WET Testing and WET Limit Parameters

Parameter			STORET No.	NRWQC Human Health	State Criteria			
					Aquatic Toxicity	Human Health	Raw Water	Agriculture
48-hour Acute LC_{50}, Static Renewal, Freshwater	*Daphnia pulex*	P/F survival	TIM3D	---	♦	---	---	---
		LC_{50} effluent concentration	TAM3D	---	♦	---	---	---
		% mortality in 100% effluent	TJM3D	---	♦	---	---	---
	Pimephales promelas	P/F survival	TIM6C	---	♦	---	---	---
		LC_{50} effluent concentration	TAM6C	---	♦	---	---	---
		% mortality in 100% effluent	TJM6C	---	♦	---	---	---
	WET Limit	$LC_{50} > 100\%$	22414	---	♦	---	---	---
7-day Chronic NOEC, Static Renewal, Freshwater	*Ceriodaphnia dubia*	P/F survival	TLP3B	---	♦	---	---	---
		$NOEC_L$ (lethality)	TOP3B	---	♦	---	---	---
		% mortality in critical dilution	TJP3B	---	♦	---	---	---
		P/F reproduction	TGP3B	---	♦	---	---	---
		$NOEC_S$ (reproduction)	TPP3B	---	♦	---	---	---
		% CV	TQP3B	---	♦	---	---	---
	Pimephales promelas	P/F survival	TLP6C	---	♦	---	---	---
		$NOEC_L$ (lethality)	TOP6C	---	♦	---	---	---
		% mortality in critical dilution	TJP6C	---	♦	---	---	---
		P/F growth	TGP6C	---	♦	---	---	---
		$NOEC_S$ (growth)	TPP6C	---	♦	---	---	---
		% CV	TQP6C	---	♦	---	---	---
	WET Limit	$NOEC_L \geq$ critical dilution	22414	---	♦	---	---	---

APPENDIX J. BACKGROUND MONITORING [REVOKED]

APPENDIX J. BACKGROUND MONITORING [NEW]

Background monitoring is unnecessary if a BT/C ratio is < 1.0. The maximum BT/C ratio for which background monitoring is required, which decreases as the value of the associated criterion increases, is expressed by Equations J-1, J-2 and J-3.

BT/C_{max} = 1.0, where the criterion is ≤ 1.0 µg/l [J-1]

$$BT/C_{max} = \frac{1}{2^{\log(criterion)}}$$, where the criterion > 1.0 µg/l and ≤ 1000µg/l [J-2]

BT/C_{max} = 0.125, where the criterion is > 1000 µg/l [J-3]

(i) **Acute Toxicity Criteria**

$$BT/C_{Acute} = \frac{\left(\frac{64.63\,C_A - Q_{e(30)}\,C_{95}}{64.63 - Q_{e(30)}}\right)}{C_A}$$, where $Q_{e(30)}$ < 64.63 mgd **[J-4]**

BT/C_{Acute} = is not defined for values of $Q_{e(30)}$ ≥ 64.63 mgd

(ii) **Chronic Toxicity Criteria**

For discharges to streams, the following equations are used for values of Q* < 0.3333:

$$BT/C_{Chronic} = \frac{\left[\frac{(1+Q^*)C_C - 1.94\,Q^*C_{95}}{1-0.94\,Q^*}\right]}{C_C}$$, where Q* ≤ 0.1823 [J-5]

$$BT/C_{Chronic} = \frac{\left[\frac{(6.17 - 15.51\,Q^*)\,C_C - C_{95}}{5.17 - 15.51\,Q^*}\right]}{C_C}$$, where 0.1823 < Q* < 0.3333 **[J-6]**

$BT/C_{Chronic}$ is not defined for Q* ≥ 0.3333 (i.e., for effluent-dominated discharge situations), since C_b drops out as a component of the chronic toxicity reasonable potential equation at that point.

(iii) **Human Health/Fish Flesh Criteria**

$$BT/C_{FF} = \frac{(1+Q^*)\,C_{FF} - Q^*C_{95}}{C_{FF}} \qquad \text{[J-7]}$$

(iv) **Raw Water Column Criteria**

$$BTC/C_{Raw} = \frac{(1+Q^*)\,C_{RAW} - Q^*C_{95}}{C_{RAW}} \qquad \text{[J-8]}$$

(v) **Human Health/Fish Flesh and Water Criteria**

$$BT/C_{FFW} = \frac{(1+Q^*)\,C_{FFW} - Q^*C_{95}}{C_{FFW}} \qquad \text{[J-9]}$$

[OAR Docket #14-629; filed 7-2-14]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION

[OAR Docket #14-638]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix A. Classification of Community and Non-Transient, Non-Community Water Systems, Wastewater Systems and Laboratories (OAC 252:710-3-33) [REVOKED]
Appendix A. Classification of Community and Non-Transient, Non-Community Water Systems, Wastewater Systems and Laboratories [NEW]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201 and 59 O.S. § 1101 *et seq*; and 27A O.S. §§ 1-3-101, 2-3-202 and 2-3-402.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 2, 2014
PUBLIC HEARING:
January 14, 2014 and February 21, 2014
ADOPTION:
February 21, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 27, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Department is proposing to clarify that an entity only needs to meet one of the listed conditions set forth for a particular classification level in order to fall under that classification.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

APPENDIX A. CLASSIFICATION OF COMMUNITY AND NON-TRANSIENT, NON-COMMUNITY WATER SYSTEMS, WASTEWATER SYSTEMS AND LABORATORIES [NEW]

Required Classification for Operator	Laboratories	Waterworks	Wastewater Works
Class A	Required for supervision of laboratories using gas chromatography, mass spectrometry and atomic absorption or similar instrumentation plus requirements for Class B and C.	Required for: (1) Water treatment plants, distribution systems, or chlorinated groundwater systems serving populations greater than 50,000; or (2) All water treatment plants classified as an "A" facility by complexity by DEQ.	Required for: (1) Wastewater works and/or collection systems serving populations greater than 50,000; or (2) All wastewater works classified as an "A" facility by complexity by DEQ.
Class B	Required for supervision of bacteriological testing plus requirements for Class C.	Required for: (1) Water treatment plants, distribution systems or chlorinated groundwater systems serving populations greater than 15,000 and up to and including 50,000; or (2) All water treatment plants classified as a "B" facility by complexity by DEQ.	Required for: (1) Wastewater works and/or collection systems serving populations greater than 15,000 and up to and including 50,000; or (2) All wastewater works classified as a "B" facility by complexity by DEQ.
Class C	Required for supervision of process control testing for: (1) Wastewater: BOD, TSS, pH, Residual Chlorine, COD, DO, Ammonia, Oil and Grease; and/or (2) Water: pH, Residual Chlorine, Turbidity, Alkalinity, Hardness, Stability and Fluoride	Required for: (1) Water treatment plants, distribution systems, and chlorinated or nonchlorinated groundwater systems serving populations greater than 1,500 and up to and including 15,000; (2) Surface water treatment plants serving a population of 15,000 or less; (3) Groundwater systems utilizing any form of chemical treatment other than chlorination for disinfection only; or (4) Water treatment plants classified as a "C" facility by complexity by the DEQ.	Required for: (1) Wastewater works and/or collection system facilities serving populations greater than 1,500 and up to and including 15,000; (2) Discharging wastewater facilities serving 15,000 or less; or (3) Wastewater works classified as a "C" facility by complexity by DEQ.
Class D	N/A	Required for distribution systems or chlorinated groundwater systems serving populations of 1,500 or less.	Required for total retention lagoons and/or collection systems serving populations of 1,500 or less.

[OAR Docket #14-638; filed 7-2-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 20. OKLAHOMA EMPLOYEES INSURANCE AND BENEFITS BOARD

[OAR Docket #14-754]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:20-1-1. Purpose [NEW]
260:20-1-2. Definitions [NEW]
260:20-1-3. Regular meetings [NEW]
260:20-1-4. Special meetings [NEW]
260:20-1-5. Open Meetings Act [NEW]
260:20-1-6. Committees [NEW]
260:20-1-7. Cancellation of meetings [NEW]
260:20-1-8. Board records; release of information [NEW]
260:20-1-9. Minutes of the Board [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62. O.S. §34.28; 62 O.S. §34.3.1; 74 O.S. §1304.1; 74 O.S. §1305.1; §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rule changes are the result of state legislation that consolidates, reorganizes, and renames certain state agencies and entities.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:20-1-1. Purpose

The purpose of this chapter is to outline the structure of the Office of Management and Enterprise Services (OMES) Oklahoma Employees Insurance and Benefits Board (OEIBB).

260:20-1-2. Definitions

The following words and terms as defined by OEIBB shall have the following meaning unless the content clearly indicates otherwise:

"The Board" means the seven [7] members of the Oklahoma Employees Insurance and Benefits Board designated by statute [74 O.S. §1303(1)].

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

260:20-1-3. Regular meetings

The Board shall meet at least once each quarter in Oklahoma City, with the date, time and place determined by the Board. Four [4] members must be present to constitute a quorum in the transaction of the Board's business and a majority vote of those present shall be necessary to approve any motion before the Board. The Board shall hold an annual meeting each year at which officers shall be elected.

260:20-1-4. Special meetings

Special meetings may be called upon written notice of the Chair or by agreement of any four [4] members of the Board. Notice of a special meeting is to be delivered to all members in person or by registered or certified mail not less than seven [7] days prior to the fixed date of the meeting, unless waived.

260:20-1-5. Open Meeting Act

All meetings and notices thereof shall be held in strict accordance with the Open Meeting Act [25 O.S. §§301 et seq., as amended].

260:20-1-6. Committees

The Chair may appoint subcommittees and committees as is deemed appropriate. Such appointments shall be in writing and may be changed as needed, upon written notice to all Board members.

260:20-1-7. Cancellation of meetings

The Chair of the Board, or the Vice-Chair in the Chair's absence, shall have the power to cancel or reschedule any regular or special meeting of the Board due to anticipated lack of quorum, inclement weather or other emergency. Notice of cancellation of said meeting shall be posted as soon as reasonably possible and in the same manner as the agenda.

260:20-1-8. Board records; release of information

All official records of the Board shall be public records open to public inspection under reasonable circumstances at any reasonable time during business hours by any person, but such records shall not be taken from the OMES office. Copies of public records may be obtained pursuant to the current fee schedule as adopted by OMES.

260:20-1-9. Minutes of the Board

A summary shall be made of all proceedings before the Board which shall show those members present and absent, all matters considered, all actions taken, and the vote of each

member on any motion, and shall be open to public inspection, as prescribed in 260:20-1-20.

[OAR Docket #14-754; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 25. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #14-777]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 25. Merit System of Personnel Administration Rules [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq., 74 O.S. §292.10 and 74 O.S. §4190 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES, 3545 N.W. 58TH STREET SUITE 110, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).

[OAR Docket #14-777; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVCES CHAPTER 30. VOLUNTARY PAYROLL DEDUCTION RULES

[OAR Docket #14-778]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 30. Voluntary Payroll Deduction Rules [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:30-1-1. Purpose

The rules in this Chapter provide procedures for implementation of voluntary payroll deductions for employee association dues, educational employee organizations, employee association foundation contributions, payments to credit unions, banks, or savings associations, payments to supplemental insurance and retirement plans, payments to a college savings account, and subscriptions to Oklahoma Today magazine, as authorized for state employees by Section 34.70 of Title 62 of the Oklahoma Statutes. Other types of

voluntary payroll deductions (such as those for salary adjustment agreements under subsection B(4) of Section 34.70, U.S. Savings Bonds or charitable gifts) are not addressed by the rules in this Chapter.

260:30-1-2. Definitions

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

"Administrator" means the chief administrative officer of the Human Capital Management Division of the Office of Management and Enterprise Services. The term, as used in this Chapter, includes employees of the Human Capital Management Division of the Office of Management and Enterprise Services to whom the Administrator has delegated authority to act on his or her behalf.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Voluntary Payroll Deduction Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Complaint" means a grievance with respect to any matter relevant to the Administrator's duties under Section 34.70.

"Complainant" means a person or an organization that has submitted a complaint.

"Declaratory ruling" means an explanation of a rule or order and its applicability to a particular matter.

"Dues-paying" means, with respect to a member of an employee association, the member is either currently paying dues or has provided a valid authorization to have such dues withheld from pay and remitted to the association. [62:34.70 (B)(5)]

"Employee association" means a formal and continuing affiliation of state employees with the principle objective of speaking for and benefiting their interests as employees, in which membership is restricted to state employees but unrestricted as to the geographic location of their duty stations, and which has at least 2,000 dues-paying members. An employee organization also falls within this definition.

"Member" means:

(A) with respect to a credit union, a shareholder; and

(B) with respect to a bank or savings association, an account holder; and,

(C) with respect to an employee association, a person who has sought and been granted recognition as one of those within the field of membership as defined by the association's governing instruments.

"Participation" means the total number of state employees reported to the Human Capital Management Division of the Office of Management and Enterprise Services for which amounts withheld from pay for a given month were remitted pursuant to employee authorization to a single billing unit as identified by its Federal Employer (Tax) Identification Number.

"Party" means any person, employee association, educational employee organization, credit union, bank, savings association or insurance organization that is the subject of, or requests, action by the Administrator in connection with any matter relevant to the Administrator's duties under Section 34.70.

"Product vendor" means any of the following entities approved for state employees' voluntary payroll deduction:

(A) an entity offering a supplemental retirement plan with a minimum participation of 500 state employees;

(B) a private insurance organization with a minimum participation of 500 state employees for supplemental life, accident, or health insurance;

(C) a private insurance organization with a minimum participation of 500 state employees for legal services;

(D) the Oklahoma Tourism and Recreation Department as publisher of Oklahoma Today magazine.

"Provided for by the State" means:

(A) for insurance purposes, the basic health, life, dental, or disability plan or any other such insurance a state agency is authorized to provide for its employees as evidenced by financial participation in those policies or a group policy(s) the agency has negotiated as a basic employment benefit; and

(B) for retirement purposes, any state retirement system, deferred compensation program (commonly referred to as deferred annuities), or other retirement plan(s) a state agency is authorized to provide for its employees as evidenced by financial participation in those plans.

"Section 34.70" means Section 34.70 of Title 62 of the Oklahoma Statutes.

"State agency" means any office, department, board, commission, or institution of the State of Oklahoma."

"State employee" means any employee of a state agency.

"Supplemental" means:

(A) for insurance purposes, life, accident (including income continuation during disability), legal, and health insurance policies not provided for by the State; and

(B) for retirement purposes, plans that provide retirement income benefits and are not provided for by the State. In recognition of the powers conferred upon state institutions of higher education by Section 3905 of Title 70 of the Oklahoma Statutes, the Administrator will follow such institutions' decisions as to whether an insurance policy or retirement plan is a basic or a supplemental employee benefit.

260:30-1-3. [RESERVED]

260:30-1-4. [RESERVED]

260:30-1-5. Construction

The rules in this Chapter shall be construed liberally to effectuate the purposes and provisions of Section 34.70.

260:30-1-6. Determinations of fact and conclusions of law

All determinations of fact or conclusions of law shall be made by the Administrator. The Administrator may initiate actions when he determines it is necessary to do so in order to accomplish the objectives of Section 34.70, and to carry out his duties thereunder. The Administrator may appoint one or more employees or officers to assist in executing such duties.

260:30-1-7. Filing and inspection of documents

(a) Requests for declaratory rulings, applications for administrative actions, complaints or other communications regarding any matter relevant Section 34.70 must be directed to the Administrator, Human Capital Management Division of the Office of Management and Enterprise Services, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105-4904; telephone (405) 521-2177.

(b) Except as provided elsewhere by the rules in this Chapter, no particular form is required. Requests for blank forms and general information may be directed to the Human Capital Management Division of the Office of Management and Enterprise Services, Attention: Financial Management Services, at the same address and telephone number.

(c) A document that is required to be filed may be sent by mail or hand-delivered within the time limit, if any, for such filing. The date on which it is received at the Human Capital Management Division of the Office of Management and Enterprise Services shall be deemed to be the date of filing. The document must be signed by the party to the action, by a duly authorized representative of the party, or by the party's attorney; provided, however, an application by a credit union, bank, savings association, employee association, or educational employee organization for approval or renewal of payroll deduction status must be signed by an officer of the organization. The signature of the person signing the document constitutes a certification that such person has read the document and has personal knowledge of the facts set forth therein; that every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purposes of the rules in this Chapter, it may be stricken as sham and false and the Administrator may proceed as though the document had not been served or filed.

(d) If a party has designated an attorney to represent it, the Administrator shall communicate with the party through the attorney, and consider that the attorney can act for and bind the party.

(e) A document a party has filed may be amended, upon the party's written request and in the discretion of the Administrator, at any time prior to final action. If amended, the document shall be effective as of the date of the original filing.

(f) If a document that has been filed is not in substantial conformity with the applicable rules as to the contents thereof or is otherwise insufficient, the Administrator, on his own initiative or upon request of a party, may strike or dismiss such document, or require its amendment.

(g) All documents filed with the Administrator shall be retained in the files of the Human Capital Management Division of the Office of Management and Enterprise Services in accordance with the Records Management Act, Section 201 through 216 of Title 67 of the Statutes. The Administrator may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.

(h) Any document submitted to the Administrator with respect to a matter under Section 34.70 and that is not exempt from public disclosure; any form that may be adopted by the Administrator; all rules, written statements of policy or interpretation; and all final orders, decisions and opinions formulated or used by the Administrator are available for public inspection.

260:30-1-8. [RESERVED]

260:30-1-9. Forms

The following form has been adopted by the Administrator for use in administering Section 34.70: Form VPD-1 "Request for Approval or Renewal of Payroll Deduction Status." This form is to be used by employee associations, educational employee organizations, credit unions, banks, savings associations and insurance/retirement plan organizations to request initial approval or continuation of payroll deduction status.

260:30-1-10. Computation of time

The time within which an act is to be performed under the rules in this Chapter shall be computed by excluding the first day and including the last. When the last day for doing an act required by the rules in this Chapter falls on a day on which the Human Capital Management Division of the Office of Management and Enterprise Services is not open, then the required act may be performed on the next business day. The Administrator, for good cause shown, and with notice to all interested parties, may extend any time prescribed in the rules in this Chapter.

260:30-1-11. Amending of rules

Any party may petition the Administrator for the adoption, amendment or repeal of any rule in this Chapter. Such petition shall be in writing and shall include the party's name and address, the wording of proposed new rules or amendments, and an explanation of why the change is requested and its intended effect.

260:30-1-12. Requests for declaratory rulings

(a) A party may request that the Administrator issue a declaratory ruling with regard to any matter relating to the party's interests and involving the administration of Section 34.70. A request for declaratory ruling must be in writing and signed in accordance with the rules in this Chapter. No particular form is required. A request for declaratory ruling shall include the following:

(1) The name and address and organizational affiliation, if any, of the requesting party, and the title of any representative filing the request; and

(2) A clear and concise explanation why a declaratory ruling is needed, including such facts, names, citations of law and administrative rules that may be relevant to the matter.

(b) The Administrator will acknowledge receipt of the request for declaratory ruling within 15 days after receipt. If the request is repetitive, concerns a matter that in the Administrator's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Administrator's scope of authority, the request may be denied and the party so advised.

(c) If a request for declaratory ruling names or will directly, materially and adversely affect another party, the Administrator shall provide the other party with written notice and afford such party an opportunity to respond in writing. Any response must be filed with the Human Capital Management Division of the Office of Management and Enterprise Services within 15 days after the date notice was mailed.

(d) The Administrator will consider a request for declaratory ruling and issue a decision within 30 days after receipt, unless additional time is deemed necessary in which event the requestor will be so advised and given the reasons therefore.

SUBCHAPTER 3. ADMINISTRATIVE PROVISIONS

260:30-3-1. [RESERVED]

260:30-3-2. Deduction authorization procedure

(a) All state agencies shall implement procedures to accommodate payroll deductions requested by employees, as permitted by law and the rules in this Chapter.

(b) Agencies shall require their employees to submit signed authorizations to begin or change a payroll deduction; provided, for a change in an employee association's dues agencies shall accept the association's notice of such change in lieu of individual authorizations.

(c) An entity that receives payment through deduction must provide upon request by the Administrator or an agency the appropriate deduction amount for any specified payroll period.

260:30-3-3. [RESERVED]

260:30-3-4. Fees

The Human Capital Management Division of the Office of Management and Enterprise Services, using payment information furnished by the Office of Management and Enterprise Services, and other state agencies when necessary, will calculate and assess monthly the statutory fees for processing insurance and retirement plan deductions. Fees shall be payable on demand. If payments are not made in a timely manner, payroll deduction status may be terminated.

260:30-3-5. [RESERVED]

260:30-3-6. Consideration of applications for deduction status

The Administrator will consider an application for approval or renewal of payroll deduction status and issue a decision in writing within 30 days of receipt, unless additional time is deemed necessary in which event the applicant will be so advised and given the reasons therefore. Unless the Administrator determines a hearing is necessary to receive additional information and so orders, his decision will be based solely upon the application, accompanying information and evidence, and records in the Administrator's custody or control.

260:30-3-7. Dues for employee associations

(a) An employee association other than one specifically authorized payroll deduction for its dues by statute may request such status. The request must be made by filing a completed Form VPD-1 and providing the Administrator with information to show it is a statewide association limited to state employee membership and has at least 2,000 dues-paying members. [62:34.70 (B)(5)]

(b) Either of the following may be submitted as evidence that an employee association has at least (2,000) dues-paying members.

(1) Attestation by an independent public accountant or certified public accountant that the association had at least (2,000) members at the time of the accountant's examination of membership records, all of whom either were currently paying dues or had signed valid authorizations for payroll deduction of dues. The examination must have taken place within the 60 days preceding the date of application for payroll deduction status.

(2) Photocopies of membership application cards, showing the association name, date of membership application, member's name and address, employing state agency and signature authorizing payroll deduction of dues. These must be accompanied by an affidavit signed by a duly authorized representative of the association, attesting that all persons for whom cards are submitted are current members. Cards shall be considered valid if the dates thereon, and other evidence provided to the Administrator, indicate a regularity of continuing interest by the employees signing the cards.

(c) The Administrator may require an association that has previously been granted payroll deduction status to file a completed Form VPD-1 and to certify or demonstrate it continues to be a statewide association limited to state employees with at least (2,000) dues-paying members. The Administrator may utilize the State's payroll records to satisfy himself that there continue to be at least (2,000) dues-paying members.

(d) As evidence an employee association is a "statewide" organization in which membership is limited to state employees, the association must submit a copy of its governing instruments, demonstrating that membership is both:

(1) restricted to state employees, and

(2) open to state employees regardless of the geographic location of their duty stations.

260:30-3-7.1. Contributions to employee association foundations

(a) Any statewide employee association limited to state employee membership with a minimum membership of two-thousand (2,000) dues-paying members may request payroll deduction for contributions to its foundation organized under 26 U.S.C., Section 501(c)(3). The request must be made by filing a completed form VPD-1 with the Administrator. The form shall be accompanied by:

(1) a copy of the determination by the Internal Revenue Service that the foundation is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code; and

(2) a statement on the foundation's letterhead signed by an officer of the foundation indicating the foundation is affiliated with the employee association submitting the request.

(b) The Administrator may verify that an association has previously been granted payroll deduction status for membership dues and continues to be eligible by statute or under 260:30-3-7.

(c) After a foundation has been authorized payroll deduction status, the employee association shall be responsible for immediately notifying the Administrator in writing of any changes in the foundation's eligibility for payroll deduction status. This shall include but not be limited to copies of any communications from the Internal Revenue Service concerning the foundation's exemption from federal income tax as an organization described in section 501(3)(c) of the Internal Revenue Code. The Administrator may require an association that has previously been granted payroll deduction for its association to file a completed VPD-1 and to submit evidence that it continues to possess a 501(c)(3) exemption from the Internal Revenue Service.

260:30-3-7.2. Dues for statewide educational employee organizations

A statewide educational employee organization or association may request authorized payroll deduction status to allow instructional personnel of the Oklahoma School for the Blind or the Oklahoma School for the Deaf to pay membership dues through voluntary payroll deduction. The request may be made by filing a completed Form VPD-1 with the Administrator.

260:30-3-8. Credit unions, banks and savings associations

A credit union, bank or savings association having an office in this state may request payroll deduction status. The request must be made by filing a completed Form VPD-1 and providing the Administrator with information to show at least one branch office location in the state of Oklahoma. [62:34.70 (A)(1)]

260:30-3-9. Supplemental insurance or retirement plans

(a) A private organization, including an independent insurance agency, that was not accorded payroll deduction status as of July 1, 1988, may request such status with respect to insurance policies or retirement plans that are supplemental to those provided for by the State. Such requests must be made by filing a completed Form VPD 1. A policy or retirement plan must have received applicable regulatory approvals to qualify for payroll deduction.

(b) The Administrator shall not consider any application for payroll deduction status during a period of 12 months following the removal or revocation of such status, nor shall he consider more than 3 applications from an applicant previously denied or removed from deduction status during any 6 year period after the first denial or refusal.

(c) Upon a determination that a supplemental insurance or supplemental retirement applicant is eligible for payroll deduction status, the Administrator shall grant probationary deduction status to continue through the end of the 12th month following the month in which probationary status is granted. If participation during the 12th month is less than 500 state employees, the Administrator shall notify the applicant that deduction status will be revoked.

(d) The minimum participation requirement shall apply to each supplemental insurance billing unit, as identified by the Federal Employer (Tax) Identification Number, to which payments are payable, and to each retirement plan.

260:30-3-10. College savings accounts

College savings accounts are administered under the Oklahoma College Savings Plan Act pursuant to Section 3970.1 et seq. of Title 70 of the Oklahoma Statutes.

260:30-3-11. Subscriptions to Oklahoma Today magazine

Subscriptions to "Oklahoma Today" magazine published by the Oklahoma Tourism and Recreation Department may be paid by voluntary payroll deduction at the request of any state employee. Subscriptions to "Oklahoma Today" magazine shall be paid by a one-time (rather than monthly) deduction.

260:30-3-12. Notification of approval for payroll deduction

(a) Upon the approval of an application for payroll deduction status, the Administrator shall notify the applicant. The Administrator shall periodically distribute to state agencies a list of entities for which deduction status has been granted or withdrawn.

(b) The approval of an application does not constitute an endorsement or recommendation by the Human Capital Management Division of the Office of Management and Enterprise Services or the State of Oklahoma as to the subject of the payroll deduction, and applicants shall make no such representation.

260:30-3-13. Denial of deduction status

(a) If the Administrator determines an applicant does not meet the criteria set forth in Section 34.70 for payroll deduction status, he shall notify the applicant in writing of denial and the reasons for denial. The Administrator may reconsider an application, if an applicant submits a request and additional information within 15 calendar days after notification of denial.

(b) If the Administrator determines an entity with current deduction status no longer meets the criteria for such status, he shall notify it of his intent to terminate deduction status, giving the reason for such proposed termination. This notice will be mailed at least 30 calendar days in advance of the date the Administrator expects to notify agencies of the termination. Within 15 calendar days after the notice of the intention to terminate was mailed to the entity, the entity may submit a written request for continued status to the Administrator. The written request must be accompanied by a statement of the specific reasons why status should not be terminated, and must also be accompanied by all evidentiary material the requestor seeks to rely on. The Administrator will consider the request, reasons, and evidence presented, and will issue a decision within 5 calendar days after receipt. The decision of the Administrator is final, unless otherwise provided by the Administrative Procedures Act.

(c) The Administrator shall notify all state agencies of a termination of payroll deduction status and shall allow a reasonable period of time for adjustments to payrolls.

260:30-3-14. Procedure for requesting Voluntary Payroll Deduction

(a) A request by a state employee for voluntary payroll deduction for the payment of premiums for supplemental life, accident, and health insurance, insurance premiums for legal services, premiums or payments for retirement plans, payment of insurance premiums due to a private insurance organization, which is regulated by the State Insurance Commission, for an Oklahoma Long-Term Care Partnership Program approved policy pursuant to the Oklahoma Long-Term Care Partnership Act, salary adjustment agreements included in the flexible benefits plan, contributions to the Oklahoma College Savings Plan, membership dues in any statewide educational organization or association, payments to banks, credit unions, savings associations and subscriptions to the Oklahoma Today magazine, must be made in writing to the employing state agency. The request must include the employee's signature.

(b) A request by a state employee for voluntary payroll deduction for the payment of membership dues in an employee association may be made as described in Subsection (a) or may be made via online or electronically submitted forms. The employee association shall verify that the online or electronically submitted form accurately reflects the request of the state employee via email or another method approved by the Human Capital Management Division of the Office of Management and Enterprise Services, and shall forward a copy of such verification and membership application to the employing agency for processing.

(c) All forms for employee requests for voluntary payroll deduction, whether paper or electronic format, shall include at a minimum the employee's name, Social Security number, the amount of the voluntary payroll deduction, the vendor's name, and if applicable, the approved policy form number.

260:30-3-15. Annual distribution of employee organization materials

Appointing Authorities shall provide for the annual distribution of employee organization materials to agency employees. It shall be the responsibility of an employee organization to provide the materials to state agencies for distribution.

260:30-3-16. Product vendor access to state employees

(a) State agencies shall allow product vendors reasonable access to their employees at least once each calendar year for the purpose of providing information about their products. For the purposes of this Section, "reasonable access" shall mean the granting of access within 1 year from the date of the request. Such access shall be allowed only during scheduled breaks or during periods immediately before or after normal work hours. For facilities that operate 24 hours a day, product vendors shall be allowed access to all shifts. Such access shall not disrupt or interfere with the business of the agency, and state funds shall not be utilized to accommodate such access. State agencies may allow such access upon request, or may designate specific dates and times for product vendor access and notify product vendors of the designated dates.

(b) Product vendors may provide information only on products approved for voluntary payroll deduction, and may not provide information on any other products or services.

(c) Product vendors shall identify 1 contact through which state agencies can arrange access. Product vendors shall provide the contact name, as well as a telephone number, facsimile (fax) number, mailing address, and email address for the contact to the Human Capital Management Division of the Office of Management and Enterprise Services. State agencies may request this information from the Human Capital Management Division of the Office of Management and Enterprise Services for the purposes of facilitating vendor access. Product vendors shall be solely responsible for keeping such contact information current.

(d) Product vendors shall comply with all applicable laws, rules and policies of the state agencies they visit. Product vendors who fail to comply with laws, rules, or policies of the state agency after oral or written notification, or who cause a disruption to the business of the agency, may be denied access by the Appointing Authority to the employees of that state agency for 1 calendar year. Appointing Authorities shall give a product vendor notice and an opportunity to respond before making a decision to deny access.

SUBCHAPTER 5. COMPLAINTS AND HEARINGS

260:30-5-1. [RESERVED]

260:30-5-2. Complaints

(a) A complaint with regard to any matter relating to the administration of Section 7.10 may be made to the Administrator. A complaint shall be in writing and signed in accordance with the rules in this Chapter. Except as may be provided elsewhere by the rules in this Chapter, no particular form is required. A complaint shall include the following:

(1) the name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint; and

(2) a clear and concise statement of the nature of the complaint, including such facts, names, citations of law and administrative rules that may be relevant to the matter, and the remedy, if any, requested.

(b) The Administrator will acknowledge receipt of the complaint within 15 days of date of receipt. If the complaint is repetitive, concerns a matter that has previously been resolved, or concerns a matter beyond the Administrator's scope of authority, the complaint may be rejected and the complainant so advised.

(c) If a complaint names or will directly, materially and adversely affect another party, the Administrator shall provide the other party with written notice and afford such party an opportunity to respond in writing to the complaint. Any response must be filed with the Human Capital Management Division of the Office of Management and Enterprise Services within 15 days after the date notice was mailed. The response must contain all of the following elements:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if the respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions and denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation;

(2) A specific and appropriately detailed statement of any affirmative defense; and

(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.

(d) The Administrator will consider a complaint and issue a decision within 30 days after receipt, unless additional time is deemed necessary in which event the complainant will be so advised and given the reasons therefore. Unless the Administrator determines a hearing is necessary to receive additional information and so orders, his decision will be based solely upon the complaint, any responses to the complaint, accompanying information and evidence, and records in the Administrator's custody or control.

(e) Complaints may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.

260:30-5-3. [RESERVED]

260:30-5-4. [RESERVED]

260:30-5-5. Rules of evidence

In any proceeding, the Administrator shall not be bound by technical rules of evidence. The Administrator may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

(1) All irrelevant, immaterial, or unduly repetitive evidence shall be excluded from consideration.

(2) The Administrator shall give effect to the rules of privilege recognized by Oklahoma state law.

(3) Documentary evidence may be received in the form of copies or excerpts, if the submitting party certifies authenticity and if upon request the original is available for comparison with the copy.

(4) The Administrator may take notice of judicially or generally cognizable facts; however, before a decision is made final parties shall be notified of the material so noticed and afforded an opportunity to contest the facts so noticed.

260:30-5-6. [RESERVED]

260:30-5-7. [RESERVED]

260:30-5-8. Hearings

(a) The Administrator may hold a hearing on any matter relating to the administration of Section 34.70. The Administrator or a person designated by the Administrator as the hearing officer may conduct the hearing.

(b) The following procedures for hearings will be followed except as may be required by the provisions of Article II of the Administrative Procedures Act, Sections 309 through 323 of Title 75 of the Oklahoma Statutes:

(1) The Administrator shall give at least 10 days notice of a hearing. Notice shall be made:

(A) by posting a meeting announcement at the premises of the Human Capital Management Division of the Office of Management and Enterprise Services; and

(B) by mail to persons who have requested that they receive notice of a hearing or who, in the judgment of the Administrator, may be affected by the subject of the hearing.

(2) A meeting announcement shall include the time, date and place for the hearing, and a description of the subject of the hearing. Unless the meeting announcement contains other instruction, the meeting will begin with introductory remarks, followed by an explanation of the subject, and an opportunity for attendees to make oral comments. Oral presentations by an individual attendee, or by a group of attendees who represent a common interest, may be limited to 30 minutes. Ten minutes additional time may be allowed if necessary for responses. Written comments are encouraged but not required.

(c) This Section does not apply to meetings and hearings which are subject to the Open Meeting Act, Section 301 through 314 of Title 25 of the Oklahoma Statutes or to

Article I of the Administrative Procedures Act, Sections 250.2 through 308.2 of Title 75 of the Oklahoma Statutes.

[OAR Docket #14-778; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 35. COMMITTEE FOR INCENTIVE AWARDS FOR STATE EMPLOYEES

[OAR Docket #14-779]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
260:35-1-1. Purpose [NEW]
260:35-1-2. Definitions [NEW]
Subchapter 3. Organization [NEW]
260:35-3-1. Incentive for State Employees Committee [NEW]
260:35-3-2. The Productivity Enhancement Program coordinator [NEW]
260:35-3-3. Agency nomination evaluators [NEW]
Subchapter 5. Types of Awards [NEW]
260:35-5-1. Individual productivity incentive awards [NEW]
260:35-5-2. Individual incentive compensation [NEW]
260:35-5-3. Unit incentive pay [NEW]
260:35-5-4. Individual longevity incentive awards [NEW]
Subchapter 7. General Causes For Ineligibility [NEW]
260:35-7-1. Ineligible persons and groups [NEW]
260:35-7-2. Ineligible nominations [NEW]
Subchapter 9. General Requirements for Committee Consideration [NEW]
260:35-9-1. Cash nominations and proposals [NEW]
Subchapter 11. Protection [NEW]
260:35-11-1. Ownership of proposals [NEW]
260:35-11-2. Non-discrimination [NEW]
260:35-11-3. Promulgation, amendment or repeal of rule(s) [NEW]
260:35-11-4. Public information [NEW]
260:35-11-5. Savings clause [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et. seq. and 74 O.S. §4116 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 345, Ch. 10 and re-adopt as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:35-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq. The specific purpose of this program, known as the Productivity Enhancement Program, is to encourage state employees to participate in improving the efficiency of state government operations. It is intended to increase the motivation to identify problems and to stimulate creativity in the solution of those problems. Additionally, the program provides a means for the state to communicate, to its employees and to the public, the high value placed on constructive ideas. To accomplish these goals, this program offers rewards and recognition for ideas, programs, and projects that result *in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state.* [74:4116]

260:35-1-2. Definitions

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

"Committee" or **"program Committee"** or **"statewide PEP Committee"** or **"PEP Committee"** means the Incentive Awards for State Employees Committee described in Section 260:35-3-1.

"Coordinator" or **"program coordinator"** or **"statewide PEP coordinator"** or **"PEP Coordinator"** means the Productivity Enhancement Program coordinator described in Section 260:35-3-2.

"PEP" means the Productivity Enhancement Program.

"Title 74" means Title 74 of the Oklahoma Statutes.

SUBCHAPTER 3. ORGANIZATION

260:35-3-1. Incentive Awards for State Employees Committee

(a) **Structure of the Committee.** The Productivity Enhancement Program will be managed by a seven-member committee. The members of the Committee will be appointed to represent state employees, management, and business. The Committee will be comprised of:

(1) *The Director of Central Services or designee who shall be the chairperson;*

(2) *The Director of State Finance or designee;*
(3) *The Administrator of the Office of Management and Enterprise Services or designee;*
(4) *The chief administrative officer of a state executive agency, department, commission, or office who shall be appointed by the Governor;*
(5) *A state employee who does not occupy a supervisory position, to be appointed by the Governor;*
(6) A person who is not a state officer or employee, to be appointed by the President Pro Tempore of the Senate; and
(7) A person who is not a state officer or employee, to be appointed by the Speaker of the House of Representatives. [74:4112]

(b) **Term of Members.** Each member who is appointed by the Governor shall serve on the Committee at the pleasure of the Governor. Those members not appointed by the Governor shall serve on the Committee at the pleasure of their respective appointing authority. [74:4112] Apart from the Committee, the chairman will appoint or identify a Productivity Enhancement Program coordinator to handle administrative details, to act as an advisor to the Committee, and to act as secretary to the Committee at all meetings. The program coordinator shall have no vote.

(c) **Role of the Committee.** It shall be the responsibility of the Committee to:
(1) Promulgate rules and regulations and adopt policies and procedures to implement the Productivity Enhancement Program pursuant to the provisions of the Incentive Awards for State Employees Act. [74:4113]
(2) Review all nominations and evaluations brought before it by the program coordinator.
(3) Assure that each nomination is thoroughly and fairly investigated and reported upon by:
(A) Calling upon any state employee or officer for information on the evaluation or implementation of any nomination;
(B) Requesting any further information and investigation it deems appropriate.
(4) Encourage employees to make nominations, and explain the program to agencies and groups upon request.
(5) Periodically review and update the program rules as necessary, and waive procedural rules in individual cases in the interest of fairness and equity.
(6) Authorize awards and the amounts of awards. [74:4117]
(7) Prepare and submit to the Governor, Speaker of the House of Representatives and the President Pro Tempore of the Senate, a comprehensive annual status report on the activities, decisions, awards and recommendations of the Committee with respect to the Productivity Enhancement Program.

(d) **Operations of the Committee.**
(1) The Committee chair may cancel regularly scheduled Committee meetings if there is no business before the Committee. When meetings are canceled, the required public notices will be filed with the Secretary of State and publicly posted.
(2) The Committee may consider "revenue generation" in evaluating cash nominations.

260:35-3-2. The Productivity Enhancement Program coordinator

(a) **Status of the program coordinator.** The coordinator shall be either a classified or unclassified/exempt employee of the state, working under the general guidance of the program Committee and under the supervision of the Administrator of the Human Capital Management Division of the Office of Management and Enterprise Services. The Administrator shall provide the program coordinator with such clerical, computer, and other support and facilities as may be needed to effectively implement and sustain the program.

(b) **Role of the program coordinator.** The program coordinator, under the direction of the Committee, shall:
(1) Develop guidelines, requirements, and procedures for the administration, promotion and maintenance of the program.
(2) Administer, promote, and maintain the program.
(3) Ensure compliance with program requirements and goals by the orderly and timely processing of nominations and award payments.
(4) Provide initial screening of all nominations received by the Committee, returning those ineligible for evaluation, and provide for evaluation of appropriate proposals.
(5) Provide recommendations to the Committee for appropriate awards, recognition, and/or disposition.

260:35-3-3. Agency nomination evaluators

(a) **Status of the evaluators.** The director or administrator of each agency, department, commission, or office of state government participating in the Productivity Enhancement Program shall designate one or more qualified, objective agency nomination evaluators, who shall receive and review all nominations submitted by employees of their respective agencies and transmit to the Committee those nominations the agency deems worthy of cash awards.

(b) **Role of the evaluators.** The evaluators shall:
(1) Review and consider each nomination fairly, giving factual, complete, and prompt replies.
(2) Review each proposal for merit and implementation feasibility, including defining such modifications as may be necessary for adoption.
(3) Assess benefits and projected savings.
(4) Return rejected nominations to agency employees with explanation for actions.
(5) State any actions that approved proposal caused, such as partial or full implementation, both prior to submission of nominations to the Committee and during subsequent evaluations by the Committee.
(6) For non-cash nominations:
(A) Transmit non-cash nominations with recommendations for approval or rejection to the agency administrator (appointing authority) who shall approve or reject nominations.

(B) Transmit copies of all non-cash nominations reviewed by the agency to the statewide PEP coordinator, clearly noting the disposition of each.

(C) Develop procedures for awarding non-cash awards (lapel pins and certificates of commendation) furnished by the PEP Committee. Lapel pins and certificates will be supplied to the agency after receipt of approved non-cash nomination documentation.

(7) For cash nominations:

(A) Transmit nominations that demonstrate cost savings to their agency iscal officers for certification that cost savings or revenue generation are real and funds are therefore available for awards; costs will be determined by the formula adopted by the Committee. [74:4117]

(B) Transmit nominations approved by the agency administrator (appointing authority), with agency recommendations, to the Committee.

(C) Provide final documentation to the Committee of cost savings during a fiscal year and consequent award recommendations.

(D) Transmit to the Committee, on a timely basis, copies of all cash nominations reviewed by the agency, clearly noting the disposition of each.

SUBCHAPTER 5. TYPES OF AWARDS

260:35-5-1. Individual productivity incentive awards

(a) **Definition.** An individual productivity incentive award will consist of a certificate and lapel pin designed by the Committee. This type of award may be made by the agency administrator (appointing authority) of any state agency, office, or commission eligible to participate in the program to those eligible and nominated employees, as recommended by the agency nomination evaluator, who have demonstrated excellence by making an exceptional contribution to their respective work unit, to their agency or state government in general resulting in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state. [74:4116]

(b) **Eligibility of employees to participate.** With the exception of agencies and offices within the Legislature, the Office of the Governor, the Office of the Lieutenant Governor, and the Office of the State Auditor and Inspector, any agency, department, commission, or office of state government may participate in the incentive awards program . . . [74:4114] To be eligible for individual productivity incentive awards, an individual must be an employee of an eligible group and be nominated by a state employee occupying a supervisory position. State agency supervisors, managers and agency administrator may be nominated for noncash awards for making similar contributions. [74:4116]

(c) **Eligibility of employees to receive awards.** To be eligible for an award, the nominated employee must have demonstrated excellence by making an exceptional contribution to their respective work unit, to their agency or to state government in general resulting in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state. [74:4116]

(d) **Funding.** The cost of award certificates and lapel pins shall be reimbursed to the Committee by the agency, board, commission or office that made the nomination. [74:4116]

(e) **Exceptionally meritorious individual productivity incentive awards.** The statewide PEP Committee may review the various non-cash individual awards approval by state agency administrators to:

(1) Evaluate the quality and quantity of awards being made to state employees.

(2) Serve as a clearinghouse to share award winning ideas and actions with all state agencies.

(3) Select exceptionally deserving actions by state employees for special recognition by the PEP Committee or the Governor.

260:35-5-2. Individual incentive compensation

(a) **Definition.** An individual incentive compensation award will consist of a payment equal to at least twenty-five percent (25%) of the amount determined by the Committee to be the total unit dollar savings to the state for the level of services rendered, but shall not exceed ten thousand dollars ($10,000). The individual incentive compensation shall be paid in one lump sum if the twelve-month period mirrors the fiscal year, [otherwise, it shall be paid in two separate payments]. The calculation for two payments shall be based on the number of months in the first fiscal year of implementation for the first payment. The second payment shall come at the end of the first twelve (12) months of implementation, which falls in the second fiscal year. [74:4117]

(b) **Eligibility of employees to participate.** All employees except state agency heads eligible to participate in the individual incentive awards program (see Section 260:35-5-1) shall be eligible to participate in the individual incentive compensation program. Eligibility of state agency supervisors and managers for cash awards will be reviewed on a case-by-case basis according to Section 260:35-7-1(2).

(c) **Eligibility of employees to receive individual incentive compensation.** This type of award may be made to eligible employees, nominated for such compensation who, at a minimum, must have made an exceptional contribution similar to, but greater than, that required for an individual incentive award. Individual incentive compensation awards will be made only for proposals that result in real cost savings or revenue generation to an agency.

(d) **Funding.** Individual incentive compensation awards shall be paid from the accrued savings in the operating budget of the nominating agency, department, commission, or office. [74:4117] Incentive pay awards shall be exempt from retirement contributions and shall not be included for the purpose of computing a retirement allowance pursuant to any public retirement system of the state. [74:4119]

260:35-5-3. Unit incentive pay

(a) **Definition.** A unit incentive pay award is a cash award made to the employees of a participating agency, commission, office or department who upon determination of the Committee, has reduced its unit dollar cost of operations or increased its level of services in the eligible fiscal year. The award shall consist of a sum not in excess of twenty-five percent (25%) of the amount determined to be the total unit dollar savings to the state for the level of services rendered. The amount awarded shall be divided and distributed in equal shares to the employees of the agency, department, commission, or office except that employees who have worked for the agency, department, commission, or office less than the full twelve (12) months of the fiscal year shall receive only a pro rata share based on the fraction of the year said employees have worked for that agency, department, commission, or office. Employees voluntarily leaving the employment of state government or employees dismissed for cause shall forfeit their share. [74:4119]

(b) **Eligibility of units to participate.** With the exception of agencies and offices within the Legislature, the Office of the Governor, the Office of the Lieutenant Governor, and the Office of the State Auditor and Inspector, any agency, department, commission, or office of state government may participate in the unit incentive pay program. [74:4114]

(c) **Eligibility of units to receive unit incentive pay.** To qualify for the award of unit incentive pay to its employees, an agency, department, commission, or office shall demonstrate to the satisfaction of the Committee that said agency, department, commission, [or] office . . . has met both of the following two criteria in its operations during the fiscal year, after adjustment for inflation or deflation:

(1) Operated at a lower unit cost. "Unit cost" shall be defined as expenditures in dollars to complete a measurable unit of work.

(A) For first-time participants the unit cost for the participating year shall be compared to either the unit cost for the immediately preceding fiscal year or a standard unit cost approved by the Committee, or

(B) For participants with one or more years in the program, the unit cost for the participating year shall be compared to either the average unit cost of prior successful participating years in the program or a standard unit cost approved by the Committee; and

(2) Operated at no greater total dollar expenditures, except:

(A) In a case where unit costs are reduced but total expenditures increased due to the agency or office maintaining its level of service; or

(B) In a case where the Legislature or department head specifically mandates an increase in the workload. [74:4118]

(d) **Possible areas of award.** The Committee will consider but is not limited to the considering as legitimate savings those reductions in expenditures made possible by such items as the following:

(1) Reductions in overtime; [74:4118(C)(1)]

(2) Elimination of consultant fees; [74:4118(C)(2)]

(3) Less temporary help; [74:4118(C)(3)]

(4) Elimination of budgeted positions; [74:4118(C)(4)]

(5) Improved methods of communication; [74:4118(C)(5)]

(6) Improved systems and procedures; [74:4118 (C)(6)]

(7) Better development and utilization of manpower; [74:4118(C)(7)]

(8) Elimination of unnecessary travel; [74:4118(C)(8)]

(9) Elimination of unnecessary printing and mailing; [74:4118(C)(9)]

(10) Elimination of unnecessary payments for advertising, memberships, dues, and subscriptions; [74:4118(C)(10)]

(11) Elimination of waste, duplication, and operations of doubtful value; [74:4118(C)(11)]

(12) Improved space utilization; [74:4118(C)(12)]

(13) Proven cost-reduction techniques; [74:4118(C)(13)]

(14) Any other items considered by the Committee as representing true savings. [74:4118(C)(14)]

(e) **Causes for denial of award.** The Committee shall satisfy itself that the claimed unit dollar cost of operation is real and not merely apparent, and that it is not, in whole or in part, the result of any of the following:

(1) A lowering of the level or quality of the service rendered; [74:4118(B)(1)]

(2) Reduced pass-through on transfer expenditures; [74:4118(B)(2)]

(3) Receipts realized in excess of amounts budgeted; [74:4118(B)(3)]

(4) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding fiscal year; [74:4118(B)(4)]

(5) Failure to reward deserving employees through promotions, reclassification, award of merit salary increments, or salary increases authorized by salary range revisions; [74:4118(B)(5)]

(6) Postponement of normal purchases and repairs to a future fiscal year; [74:4118(B)(6)]

(7) Stockpiling inventories in the immediately preceding fiscal year so as to reduce requirements in the eligible fiscal year; [74:4118(B)(7)]

(8) Substitution of federal funds or any funds which are not state funds for state appropriations; [74:4118(B)(8)]

(9) Unreasonable postponement of payments of accounts payable until the fiscal year immediately following the eligible fiscal year; [74:4118(B)(9)]

(10) Shifting of expenses to another agency, department, commission, or office of government; [74:4118(B)(10)]

(11) Any other practice, event, or device which the Committee decides has caused a distortion which misrepresents that a savings or increase in level of services has occurred. [74:4118(B)(11)]

(f) **Funding.** Unit incentive pay shall be drawn from the accrued savings in the operating expenses of the agency, department, commission, or office for the eligible fiscal year. Incentive pay awards shall be exempt from retirement contributions

and shall not be included for the purpose of computing a retirement allowance pursuant to any public retirement system of the state. [74:4119]

260:35-5-4. Individual longevity incentive awards

(a) **Definition.** An individual longevity incentive award will consist of certificate of appreciation and a lapel pin provided by the Committee. State employees will be recognized for their service to the state. They will receive length of service longevity awards at five-year intervals during the month following the anniversary date of the employee as defined in Section 805.2 of Title 74 of the Oklahoma Statutes. [74:4115A]

(b) **Eligibility of employees to participate.** All state employees, classified, unclassified, and exempt are eligible to receive longevity awards, excluding members of boards, commissions, and institutions under the administrative authority of the State Regents for Higher Education, employees of public school districts and elected officials (re Section 805.2 of Title 74).

(c) **Funding.** The cost of the individual longevity incentive awards shall be billed to the employing agency. [74:4115A]

(d) **Procedure for making awards.** Appointing authorities are responsible for awarding the pins and certificates designed by the Committee, to eligible state employees at five-year intervals during the month following the anniversary date of the employee (see Section 260:35-5-4(a)). [74:4115A]

SUBCHAPTER 7. GENERAL CAUSES FOR INELIGIBILITY

260:35-7-1. Ineligible persons and groups

The following classes of persons and groups shall be ineligible for awards:

(1) Members of the Incentive Awards for State Employees Committee, the program coordinator and their assistants.

(2) Employees who submit proposals which would normally be expected in the performance of their duties and responsibilities, or for which the employees have authority to implement. (This applies to cash nominations only.)

(3) Employees who submit proposals that are a result of assigned or contracted audits, studies, surveys, reviews, or research.

(4) Employees serving on any department proposal system committee, sub-committee, or ad hoc committee are not eligible to become involved with the decision to adopt their proposals.

260:35-7-2. Ineligible nominations

In addition to those causes specifically mentioned in subchapter 5 of this Chapter, the following nominations shall be ineligible for awards:

(1) Nominations which duplicate another nomination previously eligible for consideration or for which an award has previously been granted.

(2) Nominations which concern matters which are actively being considered by supervision or management. (Note: Supporting documentation pre-dating the nomination should be available from management if requested.)

(3) Nominations which involve routine maintenance matters or requests for supplies and services that should be reported through established channels. (This applies to cash nominations only.)

(4) Nominations which, in fact, are personal grievances and complaints.

(5) Nominations concerning individual employee compensation and individual position classifications.

(6) Nominations which could result in either unit incentive pay or individual incentive compensation until the nominating agency, department, commission, or office assures that funds for said award are available, or will become available upon accrual of savings.

(7) Nominations that would result in increased costs or decreased services rendered in other department or agencies.

SUBCHAPTER 9. GENERAL REQUIREMENTS FOR COMMITTEE CONSIDERATION

260:35-9-1. Cash nominations and proposals

(a) Nominations and proposals must be submitted on forms and according to procedures prescribed by the Committee. Only those nominations and proposals forwarded to the Committee by agency administrators will be considered. Any nomination or proposal which may result in individual incentive compensation or unit incentive pay must:

(1) Be certified by the administrator of the submitting agency that funds for such award are available, or will be available through accrued savings, and those funds have been encumbered for the purpose of making any resulting award.

(2) Be accompanied by acceptable accounting procedure or guidelines to be used by the agency in documenting the actual savings during the fiscal year.

(b) If an unadopted cash nomination is subsequently adopted within one year after the date of rejection, the proposer may submit to the Committee a request for reconsideration. Such request must be submitted within 90 days of adoption of the nomination. Any unadopted nomination may be resubmitted and considered eligible after a lapse of one year. The proposer may request the Committee to re-evaluate the amount of any award or the rejection of any nominations, acted upon by the Committee, if done so within 90 days of award or rejections. However, the Committee, the coordinator, and the evaluators, while acting in good faith, shall remain faultless for disposition of nominations.

SUBCHAPTER 11. PROTECTION

260:35-11-1. Ownership of proposals

All proposals become the property of the state of Oklahoma. Use of the proposal by the state may not be the basis of any future claim of any nature against the state or the program by the proposer, his heirs, or assigns. In the event that proposals adopted by the state of Oklahoma are shared with the incentive awards programs of other states or public jurisdictions, and those jurisdictions likewise adopt the proposals, no future claim of any nature against the state of Oklahoma or the outside adopting jurisdiction may be made by the proposer, his heirs or assigns.

260:35-11-2. Non-discrimination

The Incentive Awards for State Employees Committee and the Productivity Enhancement Program will refrain from any practice which discriminates against participating employees on the basis of age, race, religion, color, national origin, sex, or handicap.

260:35-11-3. Promulgation, amendment or repeal of rule(s)

Any person seeking promulgation, amendment, or repeal of rules adopted by or to be considered by the Committee, shall do so in writing, to the chairperson of the Committee. Disposition of these will be made according to provisions of the Administrative Procedures Act.

260:35-11-4. Public information

The Committee shall make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. The Committee shall make available for public inspection all final orders, decisions, and opinions. Persons desiring to inspect those materials may do so at the administrative office of the Committee during normal business hours.

260:35-11-5. Savings clause

If any section, sentence, clause, or phrase of the rules of this Chapter for the Committee for Incentive Awards for State Employees shall be held, for any reason, to be inoperative or unconstitutional, void or invalid, the validity of the remaining portion of the rules of this Chapter shall not be affected thereby. It being the intention of the Incentive Awards for State Employees Committee, in adopting the rules of this Chapter, that no portion thereof, or provision herein, shall become inoperative or fail by reason of the unconstitutionality or invalidity of any portion or provision. And, the Incentive Awards for State Employees Committee does hereby declare that it would have severally passed and adopted the provisions contained in this Chapter, separately, and apart one from the other.

[OAR Docket #14-779; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 40. EMPLOYEE BENEFITS DEPARTMENT

[OAR Docket #14-780]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 40. Employee Benefits Department [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 74 O.S. §1361 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 87, Chapter 1, 10, 15 and 20 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477(2013). Additionally, the changes in these rules are to replace all references to the Employee Benefits Council with the Office of Management and Enterprise Services, Human Capital Management Division of the Office of Management and Enterprise Services and/or Employee Benefits Department pursuant to the provisions of HB 3053 (2012 Legislative Session).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:40-1-1. Purpose

(a) The purpose of this Chapter is to establish policies, procedures and standards that apply to the State Employee Benefits Department (EBD).

(b) The Employee Benefits Department is a department of the Human Capital Management Division of the Office of Management and Enterprise Services to implement provisions of the Oklahoma State Employees Benefits Act. The EBD is

responsible for the general administration and for the proper design, selection and operation of the benefits offered under the Flexible Benefits Plan.

260:40-1-2. Authority

The authority for the rules in this Title is the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq. The rules in this Chapter are promulgated by the Office of Management and Enterprise Services to establish the EBD's organization and its administration policies and procedures.

260:40-1-3. Definitions

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

"Act" means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.

"EGID" means the Employees Group Insurance Department.

"EBD" means the Employee Benefits Department.

"Director" means the Director of the EBD.

"Flexible Benefits Plan" means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.

"Rules" mean the Rules of the EBD.

260:40-1-4. Computation of time

To compute any period of time prescribed or allowed by this Chapter, the day of the act or event from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, legal holiday, or other day when the EBD's offices are not open for business until 4:30 p.m. In such case the period shall run through the end of the next day the offices are open until at least 4:30 p.m.

SUBCHAPTER 3. ORGANIZATION AND ADMINISTRATION

260:40-3-1. Location for information and for filing

(a) Any person may obtain information from, make submission to, or make a request of the Employee Benefits Department by writing to: Employee Benefits Department, Jim Thorpe Bldg., 2101 N. Lincoln Blvd, Rm 560, Oklahoma City, Oklahoma 73105.

(b) Written submissions and requests may be submitted in person between the hours of 8:00 a.m. and 4:45 p.m., Monday through Friday.

(c) The date on which papers are actually received at the EBD will be recorded as the date of filing.

260:40-3-2. Documents and records

(a) Documents filed with or presented to the EBD will be retained in the files of the EBD for the length of time required by state laws. Documents will be disposed of in a manner consistent with the Records Management Act, Section 201 through 216 of Title 67 of the Oklahoma statutes, and Sections 564 through 576 of Title 74 of the Oklahoma Statutes, which pertain to archive and records. The records disposition schedule for EBD will be available for public inspection.

(b) The EBD shall act at all times in accordance with the provisions of the Oklahoma Open Records Act, 51 O.S. 1991, §§ 24A.1, et seq., as amended.

(c) The public may obtain information relative to the operation of the EBD by submitting a written request in the prescribed form to the Director or his/her designee. All records shall be available for inspection and copying during normal business hours. The Director, or his/her designee, shall be available during normal business hours to receive and, where appropriate, act upon requests for record review and copying.

(d) All records of EBD shall be public unless protected by a mandatory or permissive privilege of confidentiality. In the event a request is made for the release of records subject to a permissive privilege of confidentiality, the Director shall determine whether or not disclosure is made.

(e) Provisions for copying and search fees are contained in the statute, with these exceptions being noted: no copy fee is charged to other public entities, to applicants, state employees or their representatives, or former employees seeking information from their file or employment records; and no search fee is charged to news media, schools, authors, or "taxpayers seeking to determine whether those entrusted with the affairs of its government are honestly, faithfully, and competently performing their duties as public servants." The fees listed in (1)-(4) of this Subsection may stand alone or be charged in combination. For example, a person may be charged a search fee in addition to a fee for photocopying.

(1) **Fees for photocopying.** The EBD has established a fee schedule for photocopying documents having the dimension of 8.5 × 14.0 inches or smaller:

(A) 25 cents per page;

(B) One dollar ($1.00) per copied page for a certified copy.

(2) **Fees for search.** Requests that are for a commercial purpose or clearly would cause excessive disruption of office function will be charged a search fee equal to the hourly rate of the designated Document Manager for each hour of staff time spent in the search.

(3) **Fees for other types of reproduction.** Requests for computer runs, microfilming or reproduction other than photocopying, will be charged at cost to the EBD of duplicating the information involved. Such requests are to be forwarded to the State Office where the fee will be developed with the appropriate division.

(4) **Payment of fees.** All fees are paid prior to delivering the copies, and if the request is for search only, the fee is paid before the person is allowed to review the material. All fees are paid by check or money order; cash is

not accepted. The fee payment is transmitted to the Employees benefits EBD, Attention Accounting Division. In addition, a receipt is to be given upon payment. A copy of the manual material is maintained to explain the fee schedule to interested persons.

260:40-3-3. Benefits Coordinators

(a) Each participating employer shall designate at least one person as a Benefits Coordinator to serve as a representative between the EBD and the participating employer. Each participating employer shall communicate its Benefits Coordinator designation to the EBD in writing.

(b) A Benefits Coordinator shall be responsible for assisting the EBD in handling employee enrollment and changes in the flexible benefits plans offered by the EBD. A Benefits Coordinator shall be responsible for ensuring that each participant is notified of and has an opportunity to receive flexible benefit plan enrollment materials from the EBD, materials from the vendors identified in Chapter 20 of this title, and other notifications from the EBD.

(c) A Benefits Coordinator shall keep participant enrollment information confidential.

SUBCHAPTER 5. FORMAL AND INFORMAL PROCEDURES

260:40-5-1. Purpose

The rules in this Subchapter describe general formal procedures the EBD uses to take action and make decisions.

260:40-5-2. EBD may take action

The EBD may take any action which is consistent with the rules in this Title to carry out the duties of the EBD and accomplish the objectives of any program within its authority.

260:40-5-3. [RESERVED]

260:40-5-4. [RESERVED]

260:40-5-5. General complaints

(a) Anyone may complain to the EBD about any matter under its authority. A complaint shall be in writing and shall include the following information:

(1) The name, address and telephone number of the person making the complaint;

(2) The name, address and telephone number of the organization the person represents, if applicable;

(3) The name, address, telephone number and title of any representative of the person filing the complaint;

(4) A brief, clear description of each charge, problem or issue that is the basis for the complaint including names, dates, places and actions;

(5) The numbers and headings of the laws and rules that may apply;

(6) The remedy, if any, the person making the complaint seeks;

(7) The signature of the person making the complaint; and

(8) The date.

(b) If the complaint concerns a matter that has already been resolved by the EBD, the EBD will notify the complainant of the resolution by including a copy of any document that demonstrates resolution of the matter. If the matter is outside the authority of the EBD, the EBD will notify the complainant in writing that the complaint is outside the scope of the EBD's authority.

(c) The EBD may provide others with written notice of the complaint and give them an opportunity to respond in writing within fifteen (15) days. The response must contain all of the following information:

(1) The name, address, and telephone number of the person responding;

(2) The name, address, and telephone number of the organization the person represents, if applicable;

(3) The name, address, telephone number and title of any representative of the person responding;

(4) A specific admission, denial or explanation of each charge;

(5) A brief, clear description of the facts including names, dates, places and actions;

(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;

(7) The numbers and headings of the laws and rules that may apply;

(8) The signature of the person responding; and

(9) The date.

(d) The EBD or the Director may refer complaints to informal procedures, such as telephone calls, letters, meeting, mediation, investigations or other appropriate procedures.

(e) Unless the EBD or Director determines individual proceedings are necessary, none shall be conducted.

(f) Unless the EBD requires more time, the EBD shall make a decision about a complaint within ninety (90) days after its receipt. If more than ninety (90) days is required to resolve a complaint, the Director shall notify the person filing the complaint and persons filing any responses to the complaint.

260:40-5-6. [RESERVED]

260:40-5-7. [RESERVED]

260:40-5-8. [RESERVED]

260:40-5-9. Forms

The EBD shall create forms as necessary to implement the provisions of this subchapter. The EBD shall accept written requests for hearings that are in substantial compliance with the forms.

260:40-5-10. Claims Procedure

(a) The EGID has written rules in Title 260 of the Oklahoma Administrative Code which define the EGID's benefits and grievance procedure;

(1) Employees Health, Life, and Dental Plans;

(2) The Disability Program; and

(3) Hearings Procedures.

(b) Participants covered by the plans of the EGID shall use the EGID's grievance procedure.

(c) The EBD may contract with one or more health maintenance organizations, insurance companies, or other agencies to provide benefits to a participant. If a benefit plan provides for a specific grievance process, the procedure for that benefit plan shall be used.

(d) The EBD shall make the final determination as to whether provider plans are being administered consistently with the provisions of the EBD's Basic Plan or as otherwise contracted. Upon its determination that any benefit provider is not satisfying the requirements of the Basic Plan or the terms of its contract, the EBD may order corrective action as needed.

(e) The EBD shall only have authority to determine the rights of any participant or beneficiary in a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option.

(f) If any claim for benefits under a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option is wholly or partially denied, the claimant shall be given notice in writing no later than forty-five (45) days after the claim is filed. The notice shall include the following information:

(1) The specific reason for the denial;

(2) Specific reference to the provisions used as the basis for the denial;

(3) A description of any additional materials or information necessary for the claimant to perfect the claim and an explanation why such material or information is necessary;

(4) An explanation that a full and fair review of the decision denying the claim may be requested in writing within ninety (90) days and with whom such request shall be filed; and

(5) If such request is filed, the claimant or authorized representative may review pertinent documents and submit issues and comments in writing anytime during the ninety (90) days after notice of denial but before filing the request for hearing.

(g) The request for a review of a denial of a claim for benefits under a Health Care Reimbursement Account Option or a Dependent Care Reimbursement Account Option shall be mailed or delivered to the Director at the address given in subchapter 3 of this chapter.

(h) The EBD may contract with a claims administrator to process participant claims against health care spending accounts and dependent care spending accounts. The EBD and its claims administrator, if any, shall process claims according to subsection (f) of this section.

(i) All hearings for review of the EBD or its hearing examiner conducted under this section shall be conducted no later than sixty (60) days after the EBD receives a request for a hearing. Upon notice of special circumstances by any party, the EBD may postpone the hearing but the hearing must be conducted within 120 days of the request for hearing.

260:40-5-11. Request for hearing on denial of claim [RESERVED]

260:40-5-12. Notice of hearing

Upon the receipt of a Request for Hearing form, the Director shall assign a case number and the Director shall notify the claims administrator by mail. The employee shall be notified of the hearing date by first class mail. A copy of all rules pertinent to the hearing shall be forwarded with the notice along with a statement of claimant's rights and the basis for denial.

260:40-5-13. Individual proceedings

(a) The EBD follows the provisions of Article II of the Administrative Procedures Act, Sections 309 through 323 of Title 75 of the Oklahoma Statutes, and this Chapter. The EBD or a person named as the Hearing Examiner shall conduct hearings. This section does not apply to public hearings to receive comments on proposed rules or to the EBD's selection of contractors or benefit providers.

(b) The Director shall set the date for the hearing and shall send notice of the hearing to all parties.

(c) All hearings shall be held before the EBD or a Hearing Examiner designated by the Director. The Director may set cases for original hearing by the EBD upon his determination of special policy considerations for the EBD. The EBD may agree to hear any part or all of the matter or direct any part or all of the matter to the Hearing Examiner for a hearing.

(d) Rulings on admissibility of evidence shall be made by the EBD Chairperson or Hearing Examiner. The remaining quorum of the EBD may overrule the Chairperson's decision on their own motion or upon motion of any party to the hearing. Formal rules of evidence shall not be used. The agency may admit and give effect to documents, testimony, and other evidence which tend to prove or disprove facts as commonly accepted.

(e) The Chairperson or Hearing Examiner shall have the authority to administer oaths; and the Director or designated Hearing Examiner for the EBD shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects. These subpoenas may be served by any duly qualified officer of the law, any employee of the EBD, or other person in any manner prescribed for the service of a subpoena in a civil action.

(f) All hearings shall be electronically recorded by the presiding officer. Any party may obtain a copy of the recording under OAC 260:40-3-7.

(g) Any party may request a full stenographic record of the proceedings be made by a certified court reporter. The party requesting the court reporter shall be required to post an appropriate cash deposit and shall remain responsible for the full cost of the court reporter. If transcribed, this record shall be a

part of the EBD's record of the hearing. A copy of the record shall be furnished to any other party having a direct interest in the hearing at the expense of the party requesting the copy.

(h) In all hearings, opportunity to respond and present evidence and argument on all issues involved shall be provided to all requesting parties. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments, subject to reasonable time limits set by the EBD or the Hearing Examiner.

260:40-5-14. Representation

In an individual proceeding, any party has the right to have an attorney who is licensed to practice law by the Oklahoma Supreme Court. The attorney shall be given authority to act for and bind the party he or she represents. If a party names an attorney, the EBD or Director shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.

260:40-5-15. Prehearing conference

A pre-hearing conference shall be held two (2) weeks prior to the hearing date. At the pre-hearing conference each party shall:

(1) Exchange witness and exhibit lists;
(2) Agree to a date for discovery cut-off;
(3) Submit a short written statement of facts; and
(4) Agree as to the issues to be tried at the hearing.

260:40-5-16. Informal disposition

Unless precluded by law, informal disposition may be made of any individual proceeding or other hearing, agreed settlement, consent order, or default. Other authorized representatives may request a full and fair review of decisions denying claims and may review documents and submit comments in writing within ninety (90) days after notice of denial.

260:40-5-17. Certificate of mailing

All filings, including orders, notices and briefs, shall include a certificate of mailing showing the names and mailing addresses of adverse parties, their attorneys of record, or other authorized representatives.

260:40-5-18. Final order

(a) The EBD or designated Hearing Examiner shall enter an order in all cases heard. The order shall separately state in writing all findings of fact, conclusions of law and an order denying or approving the claim. The order of the EBD shall be the final order of the agency. The order of the Hearing Examiner shall be the final order upon the expiration of ten (10) calendar days unless the Director orders the matter for further hearing by the EBD. If ordered by the Director, the Hearing Examiner's order shall be reviewed by the EBD as a proposed order. Upon review of the evidence, pleadings and record, the EBD may approve or modify the proposed order of the Hearing Examiner. If approved, the proposed or modified order shall become the final order of the agency. The EBD may hear oral arguments during its review as it determines to be useful or necessary. The EBD may limit the time of the oral arguments.

(b) The final order shall be considered a final decision of the EBD. The Director shall mark all final orders and shall provide certification of the disposition of the final orders.

260:40-5-19. Rehearings

(a) A final order of the agency shall be subject to rehearing, reopening or reconsideration by the EBD. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final order of the agency within ten (10) days from the date of entry of the order. The aggrieved party shall set forth clearly in writing all grounds for rehearing, reopening or reconsideration. The grounds for such action shall include only:

(1) Newly discovered or newly available evidence relevant to the issues;
(2) Need for additional evidence to adequately develop the facts essential to proper decision;
(3) Probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;
(4) Need for further consideration of the issues and the evidence in the public interest; or
(5) A showing that the issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) The order of the EBD granting rehearing, reconsideration or review, or the petition of a party therefore, shall set forth the grounds which justify such action.

(c) On reconsideration, reopening, or rehearing, the matter may be heard by the EBD or it may be referred to a hearing examiner. The hearing shall be confined to those: grounds upon which the reconsideration, reopening, or rehearing was ordered.

260:40-5-20. Judicial review

Any party to the hearing may have the right to appeal to District Court from final orders entered pursuant to the Administrative Procedures Act, Title 75, Section 318, of the Oklahoma Statutes.

SUBCHAPTER 7. FLEXIBLE BENEFITS PLAN

PART 1. GENERAL PROVISIONS

260:40-7-1. Purpose

(a) The purpose of this Chapter is to establish the State Employees Flexible Benefits Plan pursuant to Section 1361 et seq. of Title 74 and Article I of the Administration Procedures Act, Sections 250.3 through 308.2 of Title 75 of the Oklahoma Statutes.

(b) The Flexible Benefits Plan shall incorporate all the Benefit Plans adopted by the Plan Administrator including a cafeteria plan as defined in the Internal Revenue Code Section 125. The cafeteria plan is intended to provide benefits for election by participants as described in this Title and is intended to be a qualified plan under Section 125(d) of the Internal Revenue Code. This cafeteria plan is intended to continue as long as it qualifies under Section 125 and is advantageous to the state and state employees. The individual selections available under the cafeteria plan consist only of a choice between certain statutory taxable and nontaxable benefits as defined in Section 125(f) of the Internal Revenue Code and regulations promulgated thereunder. The Flexible Benefits Plan may also include other Benefit Plans ineligible for inclusion under Section 125 but adopted by the Plan Administrator to be offered to state employees.

260:40-7-1.1. Authority

The authority for the rules in this Title is the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq. The rules in this Chapter are promulgated by the Plan Administrator to establish the Flexible Benefits Plan for the State of Oklahoma.

260:40-7-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise, and wherever appropriate, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include the other gender.

"Account" means a record keeping account established on the books of the Plan Administrator.

"Act" means the Oklahoma State Employees Benefits Act, 74 O.S. Supp 1992, Section 1361 et seq.

"Authorized Submission Procedure" means an acceptable method of submitting enrollment and/or change documents which may include submission via electronic transmissions to the Plan Administrator.

"EGID" means the Employees Group Insurance Department

"Cafeteria plan" means an employer-maintained benefit plan under which participants are employees and the participants may choose between cash and nontaxable benefits, as defined in Internal Revenue Code Section 125(d) and regulations promulgated thereunder.

"Change in Status" means a change that a participant may be allowed to make during a Plan Year provided that the change is based on prevailing IRS guidance, is allowed by the Plan Administrator, and complies with all eligibility rules and consistency requirements.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 as it applies to an employee's right to continue certain coverage under the Flexible Benefits Plan.

"Dependent" means the primary member's spouse (if not legally separated), including common law. Dependents also include a member's unmarried or married natural born child, a step child, an adopted child, or a foster child up to the child's twenty-sixth [26th] birthday, regardless of residence, or a child under legal guardianship. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S.Supp.2006, §1303(13)].

"Effective date of the plan" means January 1, 1990 or as restated.

"Employer" or **"Employing agency"** has the same meaning as "Participating employer" as defined in Section 1363(14) of Title 74.

"Enrollment period" means the period of time, as determined and announced by the Plan Administrator each Plan Year during which eligible employees shall make an election of benefits. The period of time shall end no later than thirty (30) days before the beginning of the Plan Year for which the elections are to be effective.

"Entry date" means the first day of the Plan Year except for an employee who first satisfies the requirements for eligibility during the Plan Year (including rehired employees), in which case the entry date shall be the first day of the month next following the satisfaction of the application requirements for eligibility, in accordance with 260:40-7-1.

"FMLA" means the Family and Medical Leave Act of 1993.

"Flexible Benefits Plan" means the Flexible Benefits Plan authorized pursuant to the State Employees Flexible Benefits Act as modified by the provisions under the State Employees Benefits Act.

"Flexible Benefits Plan Rules" means the rules promulgated by the Plan Administrator to implement and administer the State Employees Flexible Benefits Plan.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, 26 USC, I et seq. as amended from time to time.

"Irrevocability Rule" means the rule that requires an enrollment election in any Plan benefit to remain in force throughout the entire Plan Year.

"Period of coverage" means the Plan Year during which coverage of benefits under the Flexible Benefits Plan is available to a participant. An employee who becomes eligible to participate during a Plan Year may participate for a period lasting until the end of that Plan Year. In this case, the interval commencing on the employee's entry date, and ending as of the last day of eligibility, for that Plan Year.

"Permitted Exception" means an exception allowed to the Irrevocability Rule by the Plan. Any changes based on these exceptions must be on account of and correspond with the underlying event.

"Plan Administrator" means the Oklahoma State Employee Benefits Department.

"QMCSO" means a Qualified Medical Child Support Order.

"Statutory nontaxable benefit" means a benefit provided to a participant under the Flexible Benefits Plan, the value of which is not included in the participant's gross income by a specific provision in the Internal Revenue Code and is permissible under the Flexible Benefits Plan in accordance with Section 125 of the Internal Revenue Code.

"USERRA" refers to the Uniformed Services Employment and Reemployment Rights Act of 1994.

PART 3. FLEXIBLE BENEFITS PLAN PROVISIONS

260:40-7-31. Adoption of the Flexible Benefits Plan

(a) Each year the Plan Administrator shall adopt the Flexible Benefits Plan, including the basic plan and other benefit plans to be made available for election by state employees.

(b) Each year the Plan Administrator shall adopt, prior to January 1, an authorized procedure appropriate to and/or electronic web enrollment transmissions, restrictions and procedures regarding the effectively administer the Flexible Benefits Plan during the year. This procedure may include, but is not limited to, enrollment forms elections of various benefit plans and levels of coverage, eligibility requirements, and information collection and retention procedures.

260:40-7-32. Benefit plans offered as part of the Flexible Benefits Plan

(a) The basic plan shall be the minimum level of benefits an employee is required to purchase and shall include the basic medical plan, the basic dental plan, the basic life plan, and the basic disability plan as referenced in 74 O.S.Supp.2006, § 1371 unless an employee opts not to choose any benefits pursuant to 74 O.S.Supp.2007, § 1370(A). The Plan Administrator shall establish all the terms, conditions, and details necessary to communicate and administer these plans. The EGID shall offer the basic medical plan of benefits as an indemnity plan. All benefits plans, whether offered by the EGID, a health maintenance organization or others shall at least meet the minimum requirements of the basic plan. The Plan Administrator shall evaluate all benefit plans to determine if this requirement has been satisfied.

(b) Only those benefit plans officially offered by the Plan Administrator shall be considered a part of the Flexible Benefits Plan. In addition to the basic plan the Plan Administrator may elect to offer other optional benefit plans. The Plan Administrator shall evaluate and select optional plans for inclusion in the Flexible Benefits Plan.

(c) Each year the Plan Administrator shall contract with each insurance provider other than the EGID. In lieu of a contract, the Plan Administrator shall deliver a letter of understanding each year to the EGID outlining the basic plan to allow the EGID to administer the EGID's offered benefit plans adopted as part of the basic plan. The EGID shall provide the Plan Administrator a complete description of any enhanced benefit plans the EGID elects to offer. The Plan Administrator shall determine that these elected plans meet the minimum benefit levels of the basic plan. All insurance providers shall provide claims and other financial information as the Plan Administrator may require.

260:40-7-33. Applicability of the Flexible Benefits Plan

The Flexible Benefits Plan shall be applicable to all employers as defined in the Act.

260:40-7-34. Flexible Benefits Plan not a contract of employment

Nothing contained in the Flexible Benefits Plan shall be construed as a contract of employment between the employer and any employee or participant, or as a right of any employee or participant to be continued in the employment of the employer, or as a limitation of the right of the employer to discharge any employee or participant with or without cause.

260:40-7-35. No rights to employer's Plan assets

No employee, participant, dependent, or beneficiary of an employee or participant, nor their heirs, successors, or assignees shall have any right to, or interest in any assets of the employer, the Plan, the Plan Administrator, the EBD or the employees, agents, representatives, or designees of same upon termination of a participant's employment or otherwise, except as provided under the Flexible Benefits Plan, and then only to the extent of the benefits payable under the Flexible Benefits Plan to such employee, participant, dependent, or beneficiary.

260:40-7-36. Non-alienation of benefits

Benefits payable under the Flexible Benefits Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the employee, prior to actually being received by the person entitled to the benefit under the terms of the Flexible Benefits Plan. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, or otherwise dispose of any right to benefits payable pursuant to the Flexible Benefits Plan, shall be void. The employer or the Plan Administrator shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any person entitled to benefits as provided in this Chapter.

SUBCHAPTER 9. FLEXIBLE BENEFITS PLAN

260:40-9-1. Plan Administrator

The Plan Administrator shall name an Director to carry out its duties in the administration of the Flexible Benefits Plan.

260:40-9-2. Records and reports of the Plan Administrator

The Plan Administrator shall keep written records as necessary or proper.

260:40-9-3. Administrative powers and duties

(a) The Plan Administrator may contract with private firms or organizations to administer the State Employees Flexible Benefits Plan. The contract(s) for the administration of the Flexible Benefits Plan may include the development of benefit standards and options, and may involve design, development, communications and administrative functions relating to the Oklahoma State Employees Benefits Act.

(b) The Plan Administrator establishes procedures as necessary for implementation and administration of the Flexible Benefits Plan.

(c) The Plan Administrator shall file or cause to be filed all annual reports, returns, schedules, descriptions, financial statements, and other information as may be required by any federal or state law or regulation, agency or authority.

260:40-9-4. Notice of claim

Prior to making any payment of benefits pursuant to the Flexible Benefits Plan, the Plan Administrator may require the participant to provide information and to complete any appropriate documents or forms necessary for the proper administration of the Flexible Benefits Plan. The Plan Administrator shall determine the rights of any participant to a benefit under the Flexible Benefits Plan in accordance with the rules in this Title.

260:40-9-5. Availability of Flexible Benefits Plan information and documents

Any participant having a question concerning the operation of the Flexible Benefits Plan or the participant's eligibility for the payment of benefits under the Flexible Benefits Plan shall contact the Plan Administrator in accordance with OAC 260:40-3-6 of this Title.

260:40-9-6. Right of the Plan Administrator to initiate action

The Plan Administrator may initiate formal or informal action to accomplish the objectives of the Act and to carry out the duties of the Plan Administrator.

SUBCHAPTER 11. AMENDMENT OR TERMINATION OF THE FLEXIBLE BENEFITS PLAN

260:40-11-1. Amendment of the Flexible Benefits Plan

Any amendments to the Flexible Benefits Plan shall conform to the provisions of the Internal Revenue Code, and the regulations promulgated thereunder, and the Act.

260:40-11-2. Termination of the Flexible Benefits Plan

The Flexible Benefits Plan is intended to be permanent; however, it may be terminated by the Plan Administrator in the event the Flexible Benefits Plan ceases to be effective under 74 O.S. Section 1345.

260:40-11-3. Preservation of rights and responsibilities

Termination or amendment of the Flexible Benefits Plan under the provisions of Section 1345 of Title 74 of the Oklahoma Statutes shall not affect the rights of any participant to claim reimbursement for expenses incurred prior to such termination or amendment, to the extent such amount is payable under the terms of the Flexible Benefits Plan, prior to the effective date of such termination or amendment. If the Flexible Benefits Plan is terminated, payroll deductions may be made for expenses included in a participant's salary adjustment agreement in accordance with the rules in this Title.

SUBCHAPTER 13. ELIGIBILITY REQUIREMENTS

260:40-13-1. Flexible Benefits Plan eligibility

Eligible individuals as defined in 74 O.S. sections 1363 and 1369 will be notified of their eligibility by the Plan Administrator or its designated representative. The method of notifying eligible individuals shall be determined by the Plan Administrator prior to the start of each enrollment period.

260:40-13-2. Enrollment period

An eligible employee who wishes to participate in the Flexible Benefits Plan must elect to

participate during one of the following periods:

(1) Before the beginning of each new Plan Year during the announced enrollment period, or

(2) Within thirty (30) days after becoming eligible during a Plan Year.

260:40-13-3. Termination of participation

(a) A participant will cease participation in the Flexible Benefits Plan as of the earliest of the following events:

(1) The last day of the month of termination of employment with the employer; or

(2) The last day of the month the participant ceases to be eligible to participate in the Flexible Benefits Plan; or

(3) The date of termination of the Flexible Benefits Plan.

(b) Benefit plan coverage shall terminate as follows:

(1) For termination as a result of voluntary election, the coverage shall terminate on the last day of the month of receipt and approval of a valid change form at the offices of the Plan Administrator.

(2) For termination of coverage as a result of ineligibility, the coverage shall terminate on the last day of the month of the event causing the loss of eligibility.

(c) No vendor, including the EGID, shall terminate coverage on any participant unless authorized by the Plan Administrator.

260:40-13-4. Elections and changes

The elections and changes are to indicate an employee's choice of flexible benefit plan options, change elections, provide personal data, or effect other actions permitted by the

provisions of this Chapter; to allow the employing agency to record the employee's choices and provide information to the Plan Administrator; for the Plan Administrator to record acceptance or denial of the employees choices and to provide procedures effecting an employee's elections or changes.

260:40-13-5. Premium collection

The employing agency of each participant shall collect premiums for all coverages in effect. The agency shall remit all premiums due to the Plan Administrator for all coverages provided to the participant.

260:40-13-6. [RESERVED]

260:40-13-7. Premium waiver during disability

During any period in which an employee is receiving disability payments from the State of Oklahoma, the premium for basic life insurance, dependent life insurance, supplemental and accidental death and dismemberment coverage shall be waived, provided that proper physician certification is submitted and accepted. The employee shall resume payment of these life insurance coverage premiums upon a return to active pay status, or if the employee is placed on any other type of leave status. Premium waiver is not retroactive.

SUBCHAPTER 15. [RESERVED]

SUBCHAPTER 17. BENEFIT PLAN ELECTION

260:40-17-1. Election of benefits and salary adjustment agreement

Prior to the first day of an applicable period of coverage, an eligible employee may elect coverage under the provisions of the Flexible Benefits Plan. The election shall be made by the eligible employee at the time and in the manner specified by the Plan Administrator. Prior to an applicable period of coverage the employer shall provide to eligible employees the necessary authorized submission procedure information prescribed by the Plan Administrator for electing coverage. This procedure shall include a method of authorizing a salary adjustment agreement whereby the participant shall agree to a reduction in compensation equal to the participant's share of the cost of each optional benefit elected under the provisions of the Flexible Benefits Plan. The eligible employee shall be required to submit an election via an authorized submission procedure and in the time and manner required by the Plan Administrator. Prior to the due date for the next ensuing applicable period of coverage, a Participant who has participated in the plan during the previous Plan Year shall elect basic and optional benefits and execute a salary adjustment agreement. Failure of such participant to submit the required election shall be deemed an election of the default benefits as defined in 74 O.S. Section 1371.

260:40-17-2. Benefits available for election by participant

In accordance with the procedures set forth in this subchapter, a participant may elect among the benefit plans adopted by the Plan Administrator as a part of the Flexible Benefits Plan.

260:40-17-3. Employee election of benefit plans

(a) Choices of benefit plans shall be made by a new eligible employee within thirty (30) days after date of employment. This thirty (30) day period shall be known as the employee's enrollment period. Each new employee failing to make such a valid election will be deemed to have elected employee-only coverage under the HealthChoice High Option Health Plan, HealthChoice Dental Plan, HealthChoice basic term life policy, and the HealthChoice disability plan.

(b) Choices of benefit plans shall be made on a Plan Year basis by the eligible employees during the enrollment period as set by the Plan Administrator. The Plan Administrator will establish eligibility requirements for all benefit plan options each year.

(c) Eligible employees are required to elect medical, dental, life and disability plans except as provided in the following paragraphs. Employees who fail to make a valid election during each designated enrollment period will be deemed to have elected the same plans elected during the most recent enrollment period during which a valid election was made. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option Health Plan and/or HealthChoice Dental.

(d) A former employee who is reemployed by the same participating employer within twenty-four (24) months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by the Plan. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at the EGID, benefits will be paid to the decedent's estate.

(e) A former active State employee who is reemployed by the State after thirty (30) days from termination will not be eligible to reenroll in vision plans, Health Care Reimbursement Accounts and Dependent Care Reimbursement Accounts throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.

(1) An eligible employee who has retired from a branch of the United States military and has been provided with health coverage through a federal plan can elect not to participate in the Flexible Benefits Plan if the following conditions are met prior to the close of each annual enrollment period:

(A) The employee must provide proof that he or she is retired from a branch of the United States military; and

(B) The employee must provide proof of health coverage through a federal plan; and

(C) The employee must make a proper election not to participate in the Flexible Benefits Plan.

(2) The EBD has the authority to determine the type of information that satisfies the requirements of this subsection.

(3) An eligible employee making an election not to participate under paragraph (1) of this subsection must make such an election each Plan Year.

(A) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection and has never previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan or may make an election not to participate under paragraph (1) of this subsection. If the employee who is eligible to, but has never previously made an election not to participate under paragraph (1) of this subsection, fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection, the employee will be deemed to have elected coverage that was in effect during the previous Plan Year. Where the plan(s) will no longer be available for the upcoming Plan Year, employees will be deemed to have elected HealthChoice High Option Health Plan and/or HealthChoice Dental.

(B) An employee who is eligible to make an election not to participate under paragraph (1) of this subsection, and has previously made an election not to participate under paragraph (1) of this subsection, may, during the enrollment period, enroll in the Flexible Benefits Plan, or may make an election not to participate under paragraph (1) of this subsection. If an employee who has previously made an election not to participate under paragraph (1) of this subsection fails to enroll in the Flexible Benefits Plan and fails to make an election not to participate under paragraph (1) of this subsection during the annual enrollment period, the employee will be deemed to have elected employee-only coverage under the HealthChoice High Option Health Plan, the HealthChoice Dental Plan, the HealthChoice basic term life policy, and the HealthChoice Disability Plan.

(4) Except as provided by the applicable provisions of OAC 260:40-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from participating in any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan at any time during the Plan Year for which he or she made the election. Upon re-entry into the state benefits package either through an acceptable midyear event or at the annual Option Period enrollment, benefit options which were declined through the opt-out election by retired military state employees will not automatically be reinstated. The retired military employee must reapply for and be approved through satisfactory evidence of coverage (EOI) before any amounts of Supplemental Life Insurance will again be issued. Only the Basic Life amount (20,000) will be automatically reinstated upon such re-entry. No Guaranteed Issue levels of Supplemental Life will be available.

(5) Except as provided by the applicable provisions of OAC 260:40-17-4, an eligible employee making an election not to participate under paragraph (1) of this subsection is prohibited from electing coverage for his or her dependents under any health plan, dental plan, life plan, supplemental life plan, dependent life plan, and disability plan prior to or at any time during the Plan Year for which he or she made the election.

(6) An eligible employee making an election not to participate under paragraph (1) of this section may continue participation in any of the following:

(A) Benefit plans available under the flexible benefit plan other than a health plan, dental plan, life plan, supplemental life plan, dependent life plan, and a disability plan;

(B) Health Care Reimbursement Account Option;

(C) Dependent Care Reimbursement Account Option; and the

(D) Insurance Premium Conversion Option.

(f) Each employee who meets the eligibility requirements but fails to make a proper election under the Flexible Benefits Plan shall be deemed a participant in the Flexible Benefits Plan.

(g) Coverage shall be effective for a new participant beginning on the first day of the month following the participant's first day in an active pay status.

(h) Eligible employees may elect to cover a dependent under the following insurance plans: health insurance, dental insurance, dependent life insurance, or vision insurance. When one eligible dependent is covered, all eligible dependents must be covered for all plans except the dependent life insurance plan. An eligible employee cannot be enrolled as a principal insured and also as a dependent for any benefit options except dependent life.

(i) Primary participants electing coverage for eligible dependents cannot enroll the dependents in a benefit plan or a coverage that differs from the benefit plan or coverage chosen by the primary participant.

(j) In order for an eligible employees to choose health plan coverage under a Health Maintenance Organization (HMO) plan, the eligible employee must reside or be employed within the selected HMO's service area.

260:40-17-4. Changes to benefit elections

(a) A participant may change an election only in accordance with the provisions of this Plan. This Section does not remove the requirement that every employee must enroll in at least the basic plan of coverage except for those employees declining participation pursuant to 260:40-17-3(c)(1).

(b) All requests for changes submitted to the Plan Administrator must be in a format as determined by the Plan Administrator.

(c) Provided that all other eligibility requirements are met, and written or electronic notice is provided to the Plan Administrator within thirty (30) days of a qualifying event, including receipt of a Qualified Medical Child Support Order, the effective date of such change of benefits coverage will be the first of the month following receipt of acceptable notice as determined by the Plan Administrator as long as the correct premium is paid. All enrollments and elections are for the entire Plan Year and are irrevocable during same Plan Year unless a change is requested based on one of the following permitted exceptions to the irrevocability rule. A change must comply with the IRS consistency rule as found in Treasury Regulations 1.125-4 as may be amended. Only the permitted exceptions provided for in this chapter shall be allowed as changes to benefits elections unless those changes are prohibited under the Premium Conversion Option, the Dependent Care Reimbursement Account Option or the Health Care Reimbursement Account Option as provided for in subchapters 23, 25, and 27 respectively. All changes shall become effective on a prospective basis and not earlier than the first day of the month following receipt of acceptable notice of the requested change which must be on account of and corresponding with the event with the exception of termination of coverage for a spouse and/or dependents who have ceased to satisfy eligibility as a result of death, which shall become effective the first of the month following the date of the event. Permitted exceptions to the irrevocability rule as allowed within Plan guidelines are as follows:

(1) HIPAA Special Enrollment Rights (marriage, birth, adoption or placement for adoption, loss of other coverage including exhaustion of COBRA coverage)

(2) Change in Employee's Legal Marital Status

(3) Change in the Number of Employee's Dependents

(4) Change in Employment Status of Employee, Spouse or Dependent that affects eligibility

(5) Event Causing Employee's Dependent to satisfy or cease to satisfy Eligibility Requirements

(6) Change in Place of Residence of Employee, Spouse or Dependent

(7) Commencement or Termination of Adoption Proceedings

(8) Judgments, Decrees or Orders (changes allowed only to Health, Health Care Reimbursement Account and Dental)

(9) Medicare or Medicaid (changes allowed only to Health and Health Care Reimbursement Account)

(10) Significant Change in Cost or a Change in Coverage (changes allowed only to Dependent Care Reimbursement Account)

(11) Changes in Coverage of Spouse or Dependent under Other Employer's Plan

(12) FMLA Leave

(13) Such other events, which may permit such modification or election under the IRS consistency rule as found in Treasury Regulations 1.125-4 and in accordance with other applicable and prevailing Internal Revenue Code regulations promulgated thereunder, and in accordance with this chapter.

(d) The following are the only permitted exceptions that may become effective on a retroactive basis beginning the first day of the event month. Such events require receipt of acceptable notice by the Plan Administrator or its designee within thirty (30) days of the event:

(1) Newborn children who may be covered from the first of the birth month provided the proper documentation is submitted within thirty (30) days of the birth event and provided that the full monthly premium is paid.

(2) Adopted eligible dependent children, those placed for adoption, and eligible children for whom guardianship has been newly granted to the insured or to the insured's spouse and for whom coverage may begin from the first day of physical custody even though a full month's premium must be paid; or at the insured's option may be covered beginning the first of the month following placement.

(e) The Plan Administrator reserves the right to make any corrections necessary if an error was made regarding the effective date.

260:40-17-5. Authorized member signature

A signature other than that of the employee will not be accepted on any enrollment form or application unless the individual signing presents a power of attorney, papers of guardianship, conservatorship, or a legal court order.

SUBCHAPTER 19. BENEFIT ALLOWANCE

260:40-19-1. Flexible benefit allowance

(a) Each participating employer shall credit to each of its participating employees the specified amount as determined by law, as a flexible benefits allowance. Each participant must use a portion or all of their flexible benefit allowance to purchase at least the basic plan.

(b) An eligible employee making an election not to participate under OAC 260:40-17-3(c)(1) will not be eligible for or credited with any amount of the employee or dependent flexible benefit allowance.

260:40-19-2. Costs in excess of flexible benefits allowance

If a participant elects benefits whose cost exceeds the participant's flexible benefits allowance, the excess cost shall be paid for with pay conversion dollars. At the participant's option, pay conversion dollars may be designated as pre-tax (premium conversion) dollars or after-tax dollars. *The elected amount shall be deducted from the participant's compensation in equal amounts each pay period over the plan year* [74 O.S.Supp.2007, §1370(F)].

260:40-19-3. Costs less than the flexible benefits allowance

If a participant elects benefits whose cost is less than the participant's flexible benefits allowance, the excess flexible benefit allowance will be paid to the participant as taxable compensation. This taxable compensation shall be paid to the participant in substantially equal amounts during the participant's period of coverage.

260:40-19-4. Effect of change in cost of benefit

During an applicable period of coverage, there shall be an automatic adjustment in the amount of flexible benefit dollars used to purchase optional benefits in the event of a change of the cost of providing the optional benefits. The automatic adjustment shall be equal to the increase (or decrease) in such cost.

SUBCHAPTER 21. NONDISCRIMINATION

260:40-21-1. Provisions to prevent discrimination

In the event the Plan Administrator determines that prohibited discrimination described under any applicable provision of the Internal Revenue Code regarding discrimination may occur, the Plan Administrator shall be authorized to cause the election made by any participants to be modified to avoid or cure such discrimination. Upon executing the requisite application for participation, these participants shall be deemed to have expressly consented to any modification of the application and salary adjustment agreement deemed necessary by the Plan Administrator to prevent the occurrence of prohibited discrimination.

260:40-21-2. Nondiscrimination not guaranteed

Neither the employer, the Plan Administrator, nor any agent or representative thereof, represents that the Flexible Benefits Plan, the benefits provided, or contributions made pursuant to the Flexible Benefits Plan are at any particular point in time nondiscriminatory as determined in accordance with the applicable provisions of the Internal Revenue Code and regulations promulgated thereunder. The employer, the Plan Administrator, and any agent or representative thereof shall be held harmless by any employee, participant, their representatives, heirs, beneficiaries, administrators, or assigns from any and all tax liability of any nature that might arise by reason of the Flexible Benefits Plan being deemed discriminatory at any time and in any regard or by reason of plan qualification requirements.

260:40-21-3. Inclusion in income

If any portion or all of a benefit or benefits becomes taxable, by reason of the Flexible Benefits Plan being deemed discriminatory, the benefit(s) shall be treated as received or accrued in the taxable year of the participant in which the Plan year ends unless applicable law requires inclusion in income at some other time, in which case, such law shall be controlling.

SUBCHAPTER 23. INSURANCE PREMIUM CONVERSION OPTION

260:40-23-1. Premium conversion option

(a) This option allows a participant to pay premiums of elected qualified benefits with pre-tax dollars. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is included as part of the cafeteria plan described in OAC 260:40-7-1.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

260:40-23-2. Definitions

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

"Qualified benefits expenses" means any expenses incurred by a participant as payment for the amount of premium expense for any benefit offered by the Plan Administrator providing those qualified benefits expenses are for those amounts that exceed the flexible benefits allowance and are employee's expenses for employee group term life insurance up to $50,000, health, dental, vision, accidental death and dismemberment, long and short term disability and similar benefits which may be offered pursuant to Section 125 of the Internal Revenue Code and regulations promulgated thereunder.

"Qualified benefits" means one or more benefits plans offered by the Plan Administrator in the Cafeteria Plan for use in the Flexible Benefits Plan. For the Cafeteria Plan, the Plan Administrator shall only permit insurance premium expenses to be made by a participant on a pre-tax basis under those insurance plans which qualify for pre-tax contributions under Section 125 of the Internal Revenue Code and regulations promulgated thereunder. The Plan Administrator shall certify its selections and related periods of coverage, a record of which shall be permanently maintained as part of the written State Employees Benefits Plan documents.

260:40-23-3. Requirements for participation

Upon submission of an application for participation any eligible employee may participate in the insurance premium conversion option for qualified insurance plans, if:

(1) The employee's total premium costs exceed the employee's benefits allowance; or

(2) Prior to the beginning of a period of coverage, the eligible employee has made application to increase insurance coverage under a qualified benefit plan offered by the Plan Administrator, the premium for which will exceed the employee's flexible benefits allowance during the ensuing period of coverage; or

(3) Any employee has an election change consistent with OAC 260:40-23-10 that causes the employee's total premium costs to exceed the benefit allowance; or

(4) If the eligible employee chooses to participate.

260:40-23-4. Amount of insurance premium expense benefit available

Subject to the limitations in the Internal Revenue Code to avoid discrimination, the amount of insurance premium expenses under the insurance premium conversion option shall be that amount required to pay the participant's portion of the premiums for coverage under each qualified insurance plan included in this plan option. For purposes of the Internal Revenue Code and regulations promulgated thereunder, the amount required to pay the participant's portion of the premiums for coverage shall be the maximum amount of benefit available.

260:40-23-5. Reduction of benefits

(a) The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that this option is nondiscriminatory in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis.

(b) Upon executing the requisite application for participation, a participant shall be deemed to have expressly consented to any modifications of the application and salary adjustment agreement which are necessary to assure nondiscrimination.

260:40-23-6. Claims for insurance premium expenses [RESERVED]

260:40-23-7. Payment of insurance premium expense

The insurance premium conversion option shall be paid for according to the participant's salary adjustment agreement.

260:40-23-9. Other governing provisions

The insurance premium conversion option shall be administered under the terms of this subchapter and Title.

260:40-23-10. Benefit election irrevocable unless a permitted exception exists

(a) Except as otherwise provided in this Section, a participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.

(b) A participant shall be entitled to modify the premium conversion option election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception which shall include all of the exceptions indicated in 260:40-17-4 unless they are prohibited herein. PROHIBITED EXCEPTIONS TO CHANGING PREMIUM CONVERSION OPTION ELECTION:

(1) Change in place of residence

(2) COBRA events

(3) Significant Cost Increases

(c) The participant shall furnish the Plan Administrator with information relative to a permitted exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria in subchapter 17-4 and is not prohibited by this subchapter, nor by the Plan, or by the prevailing Internal Revenue Code and regulations promulgated thereunder.

(d) The employee must provide a request to make a change by way of an authorized submission procedure as set forth by the Plan Administrator.

(e) Any request to make a change must be submitted by the employee to the Plan Administrator within thirty (30) days of the family status event described in subsection (b) of this Section. If the request is not submitted under an authorized submission procedure within thirty (30) days of the event the participant shall waive the option to make changes under this section during such Plan Period.

SUBCHAPTER 24. HEALTH SAVINGS ACCOUNT

260:40-24-1. Health Savings Account

(a) This is an optional benefit within the State Employees Flexible Benefits Plan. This option is qualified under Section 223 of the Internal Revenue Code(IRC) and is, therefore, included as part of the cafeteria plan described in OAC 260:40-7-1.

(b) The Plan Administrator shall, at all times, administer this option in a manner consistent with the terms and provisions hereof in a uniform and nondiscriminatory manner and in accordance with the prevailing Internal Revenue Codes and applicable regulations promulgated thereunder.

260:40-24-2. Definitions

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

"Dependent" means an individual, who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"Health Savings Account (HSA)" means the bookkeeping account maintained by the HSA Administrator/Trustee/Custodian used for crediting contributions and accounting for benefit payments.

"HSA Administrator/Trustee/Custodian" Insured banks and credit unions are automatically qualified to handle HSAs. Any bank, credit union or any other entity that currently meets the IRS standards for being a trustee or custodian for an IRA or Archer Medical Savings Account (MSA) can be an HSA trustee or custodian. The law also allows insurance companies to be HSA trustees or custodians.

260:40-24-3. Requirements for eligibility

(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan who has elected a qualified high deductable health care option shall be eligible to participate in the Health Savings Account option, provided they have not attained the age of 65 years and become Medicare eligible.

(b) Additionally, an employee enrolled in a high deductable health plan may not enroll in a Health Reimbursement account.

260:40-24-4. Amount of benefits available

(a) Subject to the limitations imposed by federal law, the maximum benefit which a participant may receive in any Plan Year for a health savings account shall be subject to the annual maximums set by the IRC 223. The maximum is indexed and is set each year. Individuals age 55 and older can also make additional "catch-up" contributions. An employee may also elect catch up benefits as directed by IRC 223 and the catch up provision is also indexed annually.

(b) The monthly or biweekly amount taken on this pre tax method will be based on the following deduction schedule as directed by the IRC Notice 2004-2. The maximum annual contribution to an HSA is the sum of the limits determined separately for each month, based on status, eligibility and health plan coverage as of the first day of the month. This will be calculated as the maximum annual limit plus catch up, if applicable, divided by 12 then multiplied by the number of monthly periods remaining in the Plan Year. If biweekly, this will be calculated as the maximum annual limit plus catch up, if applicable, divided by 26 then multiplied by the number of biweekly periods remaining in the Plan Year.

(c) Contributions to the HSA may be made pre-tax under a Section 125 Cafeteria Plan. Individual contributions are deducted pre-tax via payroll deduction. The employee, the employer, or both may make contributions to the HSA account.

(d) The non-discrimination rules applicable to a Cafeteria Plan are applicable to HSA contributions made under a Cafeteria Plan. This includes both employer and employee contributions. The following Cafeteria Plan rules do not apply to HSAs:

(1) The prohibition against a benefit that defers compensation by permitting employees to carry over unused elective contributions or plan benefits from one Plan Year to another (the Use-It-Or-Lose-It rule).

(2) The mandatory 12-month period of coverage.

(3) Change-in-status rules.

260:40-24-5. Internal Revenue Code and regulations

The health savings account option, the benefits provided thereunder, or contributions made pursuant to it, shall be in compliance with all provisions of this Plan and all applicable Internal Revenue Codes.

260:40-24-6. Mid-year changes of benefits

Section 125 plans (also known as "salary reduction" or "cafeteria" plans) must meet a different set of rules. Under these plans, contributions (both from employer and/or employee) must meet "non-discrimination" rules. These rules require the employer to ensure that contributions do not favor higher compensated employees. The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the health savings account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Enrollees may change their salary reduction amounts, prospectively, on a monthly basis. An ineligible participant will be allowed to revoke their election, prospectively.

260:40-24-7. Health Savings Account option

The Plan Administrator shall establish for each participant a health savings account for each period of coverage. Each health savings account shall initially contain zero dollars ($0.00). A participant's health savings account for a period of coverage shall be increased by the portion of the participant's salary adjustment dollars that may be accrued from month to month for that period of coverage that he or she has elected to apply toward medical care expenses. A participant's health savings account for a period of coverage shall be reduced by the amount of any health savings account transferred to the HSA Custodian per the employees signed enrollment form. The HSA Custodian will provide the employee all annual statements except for W2. The Custodian also will account for prior year payments and properly account for catch up contributions and any distributions to the employee. The Employee Benefits Department expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts. HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member.

260:40-24-8. Claims for reimbursement

A participant who has elected to participate in the health savings account option shall make application to their respective HSA Custodian for reimbursement of health care expenses incurred by the participant during the Plan Year. The Employee Benefits Department expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts. HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member.

260:40-24-9. Forfeiture of unused benefits

The Employee Benefits Department will forward all contributions to the designated HSA Custodian on a monthly basis as determined by the EBD. No Contributions will remain with the Employee Benefits Department and, as such, there cannot be any forfeiture (See 260:40-24-8).

260:40-24-10. Other governing provisions

The health savings account option shall be administered under the terms of this subchapter and Title.

260:40-24-11. Benefit changes

(a) A participant shall be entitled to modify the health savings account election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted elections as provided in IRC 223.

(b) The participant shall furnish the Plan Administrator with information and documentation relative to a request for a change in enrollment. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated thereunder and is allowed by the Plan.

(c) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.

260:40-24-12. Report to participants

Statements reflecting account balances will be accessible to participants via the Employee Benefits Department, Benefits Administration System (BAS) and shall satisfy the notification requirement reflecting contributions and transmittals to Custodians during such periods. The State will also accumulate and report on the annual W-2 statement all IRC Section 223 deductions based on the tax year the deduction was made.

SUBCHAPTER 25. DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION

260:40-25-1. Dependent care reimbursement account option

(a) This option allows a participant to receive reimbursements for dependent care expenses which are excludable from gross income. This option is intended to be qualified under Section 129 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is therefore, included as part of the cafeteria plan described in OAC 260:40-7-1.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

260:40-25-2. Definitions

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

"Dependent" means any individual who is:

(A) A dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under Section 15(c) of the Internal Revenue Code or, is otherwise, a qualifying individual as provided in Section 21(d)(2) of the Internal Revenue Code, or

(B) A dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

"Dependent care expenses" means expenses incurred by a participant which are incurred for the care of a dependent of the participant or for related household services, and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

"Dependent care reimbursement account" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Eligible period of coverage" means that time period in which the participant contributes to the dependent care reimbursement account and that the participant is on an active pay status.

"Grace Period" means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"Run Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

260:40-25-3. Requirements for participation

Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the dependent care reimbursement account option.

260:40-25-4. Amount of benefit available

(a) Subject to any limitations imposed by federal law, the maximum amount which a participant may receive in a Plan Year in the form of dependent care expenses under the dependent care reimbursement account option shall be the least of the following:

(1) The participant's earned income for the Plan Year (after all reductions in compensation including the reduction related to dependent care expenses);

(2) The earned income of the participant's spouse for the Plan Year; or

(3) $5,000 ($2,500 in the case of a married individual who files a separate income tax return,) but not to exceed the monthly maximum contribution of $416.67 as defined and allowed by the Plan Administrator.

(b) The minimum salary adjustment amount for participation in the dependent care reimbursement account option shall be $50 per month.

260:40-25-5. Internal Revenue Code and regulations

The dependent care option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

260:40-25-6. Reduction of benefits

The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the dependent care reimbursement account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this subchapter shall be forfeited per OAC 260:40-25-10.

260:40-25-7. Dependent care reimbursement account option

The Plan Administrator shall establish for each participant a dependent care reimbursement account for each Plan Year. Each dependent care reimbursement account shall initially contain zero dollars ($0.00). A participant's dependent care reimbursement account for a period of coverage shall be credited with the portion of the participant's flexible reimbursement account dollars that may be accrued from month to month for that Plan Year that he or she has elected to apply toward such account. A participant's dependent care reimbursement account for a Plan Year shall be reduced by the amount of any dependent care expenses paid to a participant.

260:40-25-8. Claims for reimbursement

A participant who has elected to participate in the dependent care reimbursement account option shall apply in writing to the Plan Administrator for reimbursement of dependent care expenses incurred by the participant during the period of coverage. The claim shall be made in a manner and on forms prescribed by the Plan Administrator.

260:40-25-9. Reimbursement or payment of dependent care expenses

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's dependent care reimbursement account for dependent care expenses incurred during the Plan Year for which the participant submits documentation in accordance with OAC 260:40-25-8. No reimbursement or payment of dependent care expenses incurred during a Plan Year shall exceed the balance available in the participant's dependent care reimbursement account.

(b) Participants shall be reimbursed for dependent expenses on a weekly or other reasonable basis during the Plan Year as determined by the Plan Administrator. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.

(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.

(d) If a participant ceases to be a participant or terminates employment, such participant shall be entitled to continue receiving benefits pursuant to the dependent care reimbursement account option to the extent of the amount remaining in the participant's dependent care reimbursement account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.

260:40-25-10. Forfeiture of unused benefits

Amounts remaining in a participant's dependent care reimbursement account following final payment of all dependent care expenses incurred during the periods described in OAC 260:40-25-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.

260:40-25-11. Report to participants

On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each participant who has received dependent care reimbursement during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to participants no less than once each calendar quarter.

260:40-25-12. Other governing provisions

The dependent care reimbursement account option shall be administered under the terms of this subchapter and rules of this title promulgated by the Plan Administrator.

260:40-25-13. Benefit election irrevocable unless a permitted exception exists

(a) A participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains except in those situations which qualify as permitted exceptions to the irrevocability rule and are not prohibited as changes by the Plan Administrator. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.

(b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the

current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 260: 40-17-4 and is not a prohibited change as indicated in this subchapter. THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE DEPENDENT CARE REIMBURSEMENT ACCOUNT OPTION:

(1) Significant Changes in Cost will not be allowed to effect any change to the Dependent Care Reimbursement Account Option if that increase is imposed by a dependent care provider who is a relative of the employee. Otherwise the exception is permitted.

(2) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Dependent Care Reimbursement Account (See subchapter 17-4 for Permitted Exceptions)

(3) COBRA events will not be allowed to effect any change to the Dependent Care Reimbursement Account

(4) Judgments, Decrees, or Orders will not be allowed to effect any change to the Dependent Care Reimbursement Account Option (See subchapter 17-4 for Permitted Exceptions)

(5) Neither Medicare nor Medicaid eligibility or loss thereof will be allowed to effect any change to the Dependent Care Reimbursement Account

(c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.

(d) The employee must provide a request for an exception in a timely manner that is compliant with the authorized submission procedure established by the Plan Administrator.

(e) Any request to make a change must be submitted to the Plan Administrator or its designee within 30 days of the event which provides the basis for an exception to the irrevocability rule as provided for in 260:40-17-4 and this subchapter. If the request is not submitted via an authorized submission procedure as determined by the Plan Administrator within thirty (30) days of the event, the participant shall waive the option to make changes under this section.

SUBCHAPTER 26. QUALIFIED TRANSPORTATION ACCOUNT OPTION

260:40-26-1. Qualified Transportation account option

(a) This option allows an employee to receive reimbursements for qualified mass transportation expenses which are excludable from gross income. This option is intended to be qualified under Section 132 of the Internal Revenue Code and is an optional benefit within the State Employee Flexible Benefits Plan. As a result, it is excluded as part of the cafeteria plan described in OAC 260:40-7-1.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

260:40-26-2. Definitions

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

"Eligible period of coverage" means that time period in which the employee contributes to the Qualified Transportation account and that the employee is on an active pay status.

"Mass Transit expense" means any pass, token, fare card, voucher, or similar item (including an item exchangeable for fare media) entitling a person to transportation. The pass must be used for transportation on a public or privately-owned mass transit system, or on transportation provided by a person in the business of transporting people in a vehicle, seating at least six adults, excluding the driver and are eligible expenses as allowed under and defined in the prevailing Internal Revenue Code and rules promulgated thereunder and as allowed by the Plan Administrator.

"Qualified Transportation account" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Run Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

260:40-26-3. Requirements for participation

Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the Qualified Transportation account option.

260:40-26-4. Amount of benefit available

The maximum amount which an employee may receive in a Plan Year in the form of Mass Transit expense reimbursement or payment under the Qualified Transportation account option shall be the maximum amount as determined on a yearly basis by the Internal Revenue Service pursuant to 26 U.S.C. Section 132(f) and 26 C.F.R. Section 1.132-9.

260:40-26-5. Internal Revenue Code and regulations

The Qualified Transportation option, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

260:40-26-6. Elections/mid-year changes

(a) Employees may elect to participate during the open enrollment Option Period prior to the plan year.

(b) New Hires and employees not previously enrolled may elect to participate during the plan year.

(c) Employees who have elected to participate may drop the option any time during the plan year. However, once the account has been dropped, the employee may not re-enroll during the same plan year. Any amounts remaining in the account after the option has been dropped are subject to forfeiture pursuant to OAC 260:40-26-10.
(d) Employees' requests to participate, or drop participation, in Qualified Transportation accounts must be made in a manner and on forms prescribed by the Plan Administrator.

260:40-26-7. Qualified Transportation account option

Each Plan Year, the Plan Administrator shall establish a Qualified Transportation account for each employee who elects to participate in a Qualified Transportation account. During the Plan Year, the applicable payroll office shall on a monthly basis deduct from the employee's payroll the amount designated by the employee and credit the employee's Qualified Transportation account. An employee's Qualified Transportation account for a Plan Year shall be reduced by the amount of any qualified Mass Transit expenses paid to the employee.

260:40-26-8. Claims for reimbursement

Claims for reimbursement of qualified Mass Transit expenses incurred during the period of coverage shall be made in a manner and on forms prescribed by the plan administrator.

260:40-26-9. Reimbursement or payment of Mass Transit expense

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the employee from the employee's Qualified Transportation account for Mass Transit expenses incurred during the Plan Year for which the employee submits documentation in accordance with OAC 260:40-26-8. No reimbursement or payment of Mass Transit expenses incurred during a Plan Year shall exceed the balance available in the employee's Qualified Transportation account. The reimbursement must be for the state employee to utilize Mass Transit. Reimbursement for spousal or dependant expenses is not allowed. The Mass Transit pass must be a monthly pass; passes less than one month will not be reimbursed.
(b) The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.
(c) Upon demand an employee shall immediately refund any overpayment made by the Plan Administrator on behalf of the employee.
(d) If an employee ceases to be an active state employee or terminates employment with the state, such employee shall be entitled to continue receiving benefits pursuant to the Qualified Transportation account option to the extent of the amount remaining in the employee's Qualified Transportation account for the expenses incurred during the eligible period of coverage in which termination of participation occurs.

260:40-26-10. Forfeiture of unused benefits

Amounts remaining in an employee's Qualified Transportation account following final payment of all Mass Transit expenses incurred during the periods described in OAC 260:40-26-9(b) shall be forfeited to pay administrative expenses of the Flexible Benefits Plan. An employee who elects to continue to enroll into a Qualified Transportation account in subsequent years, without periods of interruption, will be permitted to roll over unused amounts from previous years subject to the limitations in OAC 260:40-26-4

260:40-26-11. Report to employees

On or before January 31 of each year, or at such other time as may be specified by federal law or regulation, the Plan Administrator shall furnish each employee who has received Qualified Transportation payments during the prior Plan Year a written statement showing the amount of reimbursement during the prior Plan Year. Statements reflecting account balances shall be provided to employees no less than once each calendar quarter.

SUBCHAPTER 27. HEALTH CARE REIMBURSEMENT ACCOUNT OPTION

260:40-27-1. Health care reimbursement account option

(a) This option is an optional benefit within the State Employees Flexible Benefits Plan. This option is intended to be qualified under Section 125 of the Internal Revenue Code and is, therefore, included as part of the cafeteria plan described in OAC 260:40-7-1.
(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof in a uniform and nondiscriminatory manner and in accordance with the prevailing Internal Revenue Code and applicable regulations promulgated thereunder.

260:40-27-2. Definitions

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

"Dependent" means an individual, who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"Health care reimbursement account" means the bookkeeping account maintained by the Plan Administrator used for crediting contributions and accounting for benefit payments.

"Medical care expenses" means any expenses incurred by a participant or by a spouse or dependent of such participant for medical care as described in Section 213 of the Internal Revenue Code and subject to the limitations of section 125 and this Flexible Benefits Plan, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense through insurance or otherwise.

"Grace Period" means the period from the end of the Plan Year through March 15th of the subsequent Plan Year during which reimbursable expenses can be incurred and attributable to the previous Plan Year's account balance.

"Rollover Distributions" means distributions to a Health Savings Account of balances remaining at year end for employees who qualify pursuant to State and federal law.

"Run-Out Period" means the ninety (90) day period following a Plan Year in which claims can be made for reimbursable expenses incurred during the Plan Year.

260:40-27-3. Requirements for eligibility

(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan shall be eligible to participate in the health care reimbursement account option.

(b) A former employee who is reemployed by the same participating employer after thirty (30) days from termination will not be eligible to reenroll in a Health Care Reimbursement Account throughout the remainder of the current Plan Year unless the employee maintained the Health Care Reimbursement Account under the COBRA provisions.

260:40-27-4. Amount of benefits available

(a) Subject to the limitations imposed by federal law to avoid discrimination, the maximum benefit which a participant may receive in any Plan Year for medical care expenses under the health care reimbursement account option shall be subject to a monthly maximum of $350.00 or other amount as determined by the Plan Administrator.

(b) The minimum salary adjustment amount for participation in this option shall be $10.00 per month.

260:40-27-5. Internal Revenue Code and regulations

The health care reimbursement account option, the benefits provided thereunder, or contributions made pursuant to it, shall be in compliance with all provisions of this Plan and all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

260:40-27-6. Reduction of benefits

The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the health care reimbursement account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this section shall be forfeited.

260:40-27-7. Health care reimbursement account option

The Plan Administrator shall establish for each participant a health care reimbursement account for each period of coverage. Each health care reimbursement account shall initially contain zero dollars ($0.00). A participant's health care reimbursement account for a period of coverage shall be increased by the portion of the participant's salary adjustment dollars that may be accrued from month to month for that period of coverage that he or she has elected to apply toward medical care expenses. A participant's health care reimbursement account for a period of coverage shall be reduced by the amount of any health care expenses paid to a participant.

260:40-27-8. Claims for reimbursement

A participant who has elected to participate in the health care reimbursement account option shall apply in writing to the Plan Administrator for reimbursement of health care expenses incurred by the participant during the Plan Year. The claim for account reimbursement shall be made in a manner and on a form furnished by the Plan Administrator.

260:40-27-9. Reimbursement of health care expenses

(a) Subject to limitations contained in this section, the Plan Administrator shall reimburse the participant from the participant's health care reimbursement account for health care expenses incurred during the eligible period of coverage, for which the participant submits documentation, in accordance with OAC 260:40-27-8. No reimbursement of health care expenses incurred during a Plan Year shall exceed the maximum amount defined in the salary adjustment agreement.

(b) Participants shall be reimbursed for medical care expenses on a weekly or other reasonable basis during the Plan Year in accordance with Flexible Benefits Plan Administration Rules. Reimbursement can also be made for expenses incurred by any participant during the Grace Period. The final payment of benefits for any Plan Year may be made following the close of such Plan Year based on accepted claims filed with the Plan Administrator no later than the end of the Run Out Period.

(c) Upon demand a participant shall immediately refund any overpayment made by the Plan Administrator on behalf of the participant. Likewise, items charged to a debit card that are unacceptable to the Plan Administrator will require a participant to immediately refund such an overpayment to the Plan Administrator.

(d) If a participant ceases to be a participant or terminates employment, the participant shall be entitled to continue receiving benefits pursuant to this health care option to the extent of the amount remaining in the participant's health care reimbursement account for expenses incurred during the eligible period of coverage of the current Plan Year.

(e) If a participant ceases to be a participant or terminates employment, claims incurred after the last day of the month of termination or the date participation ceased shall not be considered for reimbursement, unless the participant elects to continue participation in this option by elected coverage continuation as provided for in this section.

(f) Any participant may continue this option under the coverage continuation guidelines for COBRA, as provided under OAC 260:40-33-1 on a post tax basis.

260:40-27-10. Forfeiture of unused benefits

Following final payment of all health care expenses incurred during the periods described in OAC 260:40-27-9(b), amounts remaining in the health care reimbursement account shall be forfeited to pay administrative expenses of the Flexible Benefits Plan.

260:40-27-11. Other governing provisions

The health care reimbursement account option shall be administered under the terms of this subchapter and Title.

260:40-27-12. Benefit election irrevocable unless a permitted exception exists

(a) Except as otherwise provided in this Section, a participant's election of benefits described in this Chapter, made in accordance with subchapter 17 of this Chapter, shall be irrevocable during the Plan Year with regard to any benefit or portion of benefit elected for the period of coverage to which the election pertains. Conversion from one type of benefit to another or modification of the salary adjustment agreement shall not be permitted during the applicable period of coverage.

(b) A participant shall be entitled to modify a benefit election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted exception to the irrevocability rule as provided for in 260:40-17-4 and is not a prohibited change as indicated in this subchapter. THE FOLLOWING ARE PROHIBITED CHANGES UNDER THE HEALTH CARE REIMBURSEMENT ACCOUNT OPTION:

(1) HIPAA Special Enrollment Rights will not be allowed to effect any change to the Health Care Reimbursement Account. (See subchapter 17-4 for Permitted Exceptions)

(2) COBRA events

(3) Significant Changes in Cost or a Change in Coverage

(4) Change in coverage of spouse or dependent under Other Employer's plan (See subchapter 17-4 for Permitted Exceptions)

(c) The participant shall furnish the Plan Administrator with information and documentation relative to a request for an exception to the irrevocability rule. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated there under and is allowed by the Plan.

(d) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.

(e) Any request to make a change must be signed by the employee and submitted to the Plan Administrator within thirty (30) days of the event described in subsection17-4 of this document. If the request is not submitted under an authorized procedure and submitted to the Plan Administrator within thirty (30) days of the event, the participant shall waive the option to make changes under this section.

260:40-27-13. Report to participants

Statements reflecting account balances shall be provided to participants no less than each calendar quarter and shall satisfy the notification requirement reflecting contributions and reimbursements during such periods.

260:40-27-14. Health Savings Accounts Distributions

The EBD has discretion to permit rollover distributions to a Health Savings Account as allowed by State and federal law.

SUBCHAPTER 28. EARLY MEDICAL ALERT OPTIONAL BENEFIT

260:40-28-1. Early medical alert optional benefit

(a) This option is a qualified benefit under Section 125 of the Internal Revenue Code. This benefit is an optional benefit within the State Employees Flexible Benefits Plan and is included as part of the cafeteria plan described in Subchapter 1 of this Chapter.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

260:40-28-2. Definitions

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

"Period of Coverage" The period of coverage for this benefit runs from January 1 through December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31.

260:40-28-3. Requirements for participation

Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the State Employees Flexible Benefits Plan shall be eligible to participate in the early medical alert optional benefit.

260:40-28-4. Internal Revenue Code and regulations

The early medical alert optional benefit, the benefits provided pursuant to it, and contributions made pursuant to it shall

be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

260:40-28-5. Period of coverage - enrollment

The period of coverage will be on a calendar year basis beginning January 1 and ending December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31. Midyear enrollees must pay the annual cost regardless of entry date. Pro-rated premiums are not available. Participation requires re-enrollment on an annual basis. Members wishing to participate for successive Plan Years must make a positive enrollment.

260:40-28-6. Enrollment

(a) Employees may elect to enroll in this benefit during the Option Period prior to each Plan Year.

(b) New Hires may elect to participate in this optional benefit when completing the new hire benefits election form within thirty (30) days following date of hire.

(c) Requests for enrollment must be made in a manner and on forms prescribed by the Plan Administrator.

260:40-28-7. Early medical alert account option

The Plan Administrator shall establish for each employee an early medical alert account for each Plan Year. An employee's early medical alert account for a period of coverage shall be credited with the portion of the employee's early medical alert account dollars that may be deducted from payroll through a single payroll deduction. An employee's early medical alert account for a Plan Year shall be reduced by the amount of any early medical alert dollars paid on behalf of the employee.

SUBCHAPTER 29. PROCESSING AND REVIEW OF HEALTHCARE AND DEPENDENT CARE SPENDING ACCOUNT CLAIMS

260:40-29-1. Processing and payment of claims

The Plan Administrator shall authorize and establish a claims reimbursement procedure under which all claims will be processed.

SUBCHAPTER 31. COVERAGE CONTINUATION AND REFUNDS

260:40-31-1. Individual remittances to the Plan Administrator

(a) The following individuals are eligible to make direct remittances to the Plan Administrator for health, life, dental, disability, and any other elected options.

(1) An eligible employee on approved leave without pay; or

(2) Disability recipients.

(b) While on suspension without pay, an employee may continue coverage. If the agency which has suspended the employee fails to pay the employee's flexible benefit allowance, the agency shall provide written notice to the Plan Administrator that the employee has been given reasonable, written notice that the agency has failed to pay the employee's flexible benefit allowance and that the premium payments must be paid by the employee if the coverage is to remain in force and in effect. Coverage is limited to ninety (90) days following the date of suspension or the duration of the administrative appeals process, whichever is greater.

(c) Unless authorized by the rules of this Chapter for a different method of payment, all premiums due shall be remitted directly to the Plan Administrator by the tenth of the month for which the payment is due. All checks, money orders, and cashier's checks shall be made payable to the Employee Benefits Department. The full amount of the payment for the coverage elected by the individual must be remitted each month. All remittances shall be the sole responsibility of the member, subject to final approval by the Plan Administrator.

(d) If payment is not received by the end of the month for which the payment is due, coverage may be canceled effective the end of the month in which the last premium was received, except those premiums withheld through the disability program. If the participant proves that the failure to pay premiums was not due to the participant's negligence, the Plan Administrator may reinstate coverage within sixty (60) days. The reinstated coverage shall be subject to payment of any required premiums and submission of evidence of insurability of the employee if required by the insurance company providing the coverage. The employee shall be notified in writing of cancellation of coverage.

(e) Coverage may be canceled if the participant's payment is returned or refused due to insufficient funds or closed account, unless the check is returned due to no fault of the participant.

260:40-31-2. Refund for over deductions

(a) It is the participant's duty to notify the agency coordinator of a change in eligibility for himself, his spouse or his dependents. Any refund of payment for any over deduction shall be made only when the Plan Administrator is notified in writing no later than sixty (60) days from the actual date of the over deduction. No refund will be made for over deductions which occurred more than sixty (60) days prior to the date written notification is received by the Plan Administrator.

(b) Refunds for excess deductions due to administrative error of the agency shall be limited to either the beginning of the Plan Year in which the error was discovered or the beginning of the calendar year in which the error was discovered, whichever is later.

(c) A refund of premium form shall be completed by the employee and submitted to the Plan Administrator for approval. If approved, the applicable payroll office will issue a payroll voucher to the employee for the amount of refund due. When the Plan Administrator does not approve a refund, the Plan Administrator shall notify the employee.

(d) Any benefits paid under this plan for an ineligible employee, spouse or dependent may be offset against any refund due for over deduction.

260:40-31-3. Family and medical leave

(a) A participant who is on approved FMLA leave may remit any optional or dependent premiums directly to the Plan Administrator under OAC 260:40-7-1.

(b) Any participant who chooses not to remit dependent or optional premiums during approved FMLA leave may resume those same coverages effective the first day of the month following the participant's return from approved family and medical leave. Any coverage that lapsed during the approved FMLA leave period shall be reinstated with no evidence of insurability or pre-existing condition exclusions for those dependents covered prior to the FMLA leave commencement date.

(c) The employing agency of a participant who is on approved FMLA leave shall remit the actual cost of the employee-only coverage for health, dental, life and disability to the Plan Administrator.

260:40-31-4. Uniformed Services Employment and Reemployment Rights Act

(a) Under USERRA, "uniformed service" means the performance of duty with the Armed Services, the Coast Guard, the Army National Guard, the Air National Guard and the Commissioned Corps of the Public Health Service and does not consider if this duty is performed on a voluntary or involuntary basis.

(b) Under USERRA the employer shall restore benefits which employees and their dependents were receiving when the uniformed service began. In addition, the employer shall make available any new benefits that may have gone into effect during the uniformed service period.

SUBCHAPTER 33. COBRA COVERAGE

260:40-33-1. Workers' compensation insurance not affected

The coverage set forth in this title is not in lieu of and does not affect any requirements for coverage by workers' compensation insurance.

260:40-33-2. Procedures and implementation

(a) Each agency or employer participating in the Flexible Benefits Plan shall advise each covered employee of his legal right to continue coverage upon separation from state employment. Each covered employee shall sign a notice of right to continue coverage. This notice shall be kept by the agency/employer in each employees' permanent personnel file. An affidavit shall be signed by each agency head/employer and the coordinator and returned to the Plan Administrator's office for permanent record.

(b) COBRA qualifying event notices are to be submitted by the Coordinator any time an employee dies, terminates employment, or reduces work hours so as to be no longer eligible for insurance coverage. Qualifying event notices on behalf of eligible spouses and dependents will also be submitted. These submissions must be sent to the Plan Administrator and or to the COBRA Administrator (Group Insurance EGID) within thirty (30) days of the qualifying event.

(c) COBRA forms are to be filled out by the covered employee or dependent if the qualifying event is divorce, legal separation or the dependent becoming ineligible, for health insurance coverage. This form must be filed within sixty (60) days from the date of the qualifying event in order to obtain continued coverage. If the qualifying event is divorce or legal separation, a copy of the petition or decree shall be furnished along with the COBRA form.

(d) After a beneficiary elects to continue coverage under COBRA, the beneficiary shall become an inactive member. The beneficiary shall remit all premiums including a two (2) percent administrative fee to the designated COBRA administrator.

(e) If the beneficiary is entitled to continue the insurance because he or she is a surviving spouse, the beneficiary shall be informed of the right to choose to continue under the health plan currently provided for survivors or to elect to continue under COBRA. If the beneficiary wishes to continue the insurance as a surviving dependent, this election must be made within sixty (60) days from the date of death of the employee. If the beneficiary wishes to keep his/her insurance through COBRA, this election shall be made within sixty (60) days of the date of the letter sent with the COBRA application from the COBRA Administrator. The beneficiary shall be informed of his/her rights under each of these options and that all election decisions are irrevocable.

260:40-33-3. COBRA administration

(a) COBRA continuation is only available to those employees and/or dependents who were covered under the plans offered by the Plan Administrator that are eligible for COBRA continuation on the date of the qualifying event or as otherwise defined in section (c) below. A leave under FMLA is not a COBRA qualifying event.

(b) New dependents may be added to coverage, including newborns, provided the employee had all eligible dependents covered at the time of the qualifying event. New dependents must be added within thirty (30) days of acquiring eligibility.

(c) A qualified beneficiary is defined as any individual who, on the day before a qualifying event, is covered under a group health plan by virtue of being on that day either a covered employee, the spouse of a covered employee, or a dependent child of a covered employee. A qualified beneficiary is also any child who is born to a covered employee or placed for adoption with a covered employee during a period of COBRA continuation coverage. A child born to or adopted by a qualified beneficiary other than the former employee is not considered a qualified beneficiary under COBRA law.

(d) If the qualifying event is termination of employment, whether voluntary or involuntary, the employing agency shall

make the determination whether or not the termination was due to gross misconduct. The Plan Administrator will not make that decision, nor will it question a decision by the employing agency on this issue. If a decision is made by the agency that the employee was terminated due to gross misconduct, the COBRA form should clearly specify that fact.

(e) Once election to continue coverage has been made, coverage will terminate in eighteen (18) months if the qualifying event is termination or reduction in hours, or thirty-six (36) months if the qualifying event is death, divorce or legal separation, or ceasing to be a dependent child. Coverage may also terminate if the Plan Administrator ceases to offer any plans eligible for COBRA continuation, or if the beneficiary fails to make timely payments of any premiums required, or if the beneficiary becomes covered under any other group plan unless the new group plan contains an exclusion or limitation with respect to any pre-existing condition of the participant.

(1) The maximum eligibility period may be extended to twenty-nine (29) months if the Social Security Administration determines that the qualified beneficiary was totally disabled under Title 11 or XVI of the Social Security Act on or before the COBRA event date or within the first sixty (60) days following the start of continuation coverage. The qualified beneficiary must provide the employer or designated COBRA administrator with a copy of the Social Security determination notice within 60 days after the determination is issued and before the end of the initial eighteen (18) months of COBRA.

(2) If the Social Security Administration reevaluates the participant's case and determines that the participant is no longer disabled, the participant must provide the agency or the designated COBRA administrator with a copy of the determination notice. This copy must be sent within thirty (30) days. Coverage will end at the end of the month that begins more that thirty (30) days after the date of the final determination. For example, if a final determination notice date is May 15, coverage would end June 30.

(3) If an employee is receiving Medicare prior to retirement or another COBRA event, he/she can continue COBRA coverage for eighteen months (18) after the retirement or other qualifying COBRA event. However, the spouse and or other qualified beneficiaries shall be allowed to have COBRA for thirty-six (36) months after the Medicare entitlement date.

(f) No evidence of insurability shall be required for continuation of coverage.

(g) The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service area. In that event, coverage is continued under the plan offered by the EGID.

(h) Each covered beneficiary has the same rights and benefits as any similarly situated person to whom a qualifying event has not occurred. There are the same limitations and exclusions, except to the extent to which it would conflict with federal law.

(i) Any election of a qualified beneficiary shall be deemed to include an election of continuation on behalf of all other qualified beneficiaries residing together, unless specified in the election.

(j) Applicable premiums shall be determined on an actuarial basis for a twelve (12) month period, on or before the start of the Plan Year each year. The premiums shall remain the same during the Plan Year.

(k) All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.

(l) If a qualified beneficiary waives continuation of coverage, he/she may revoke that waiver anytime within the 60 day election period, but no claims are payable nor will any coverage be applied to the period prior to the revocation of the waiver.

(m) It is the responsibility of the qualified beneficiary to notify the Plan Administrator if he or she is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage retroactive to the time of ineligibility.

(n) The date of the qualifying event shall be the same date as the actual loss of coverage under the previous plan. The period of continuation coverage and the applicable notification periods shall begin on the date of the actual loss of other coverage. The Plan Administrator shall have the right to make a final determination as to when the actual date of termination occurred.

SUBCHAPTER 35. GROUP HEALTH PLAN DISCLOSURE OF PROTECTED HEALTH INFORMATION TO THE PLAN ADMINISTRATOR

260:40-35-1. General Provisions

A group health plan may disclose protected health information to the Plan Administrator in its capacity as plan sponsor. The Plan Administrator will use and disclose such information in a manner consistent with the HIPAA requirements of the Standards for Privacy of Individually Identifiable Health Information including the applicable requirements of 45 CFR §164.504(f).

SUBCHAPTER 37. COMPETITIVE BIDDING CRITERIA AND PROCEDURES FOR CONTRACTS AWARDED FOR FLEXIBLE BENEFITS PLANS

260:40-37-1. Purpose

The purpose of this Chapter is to describe the rules governing the procurement requirements of the Oklahoma State Employee Benefits Department (EBD) for contracts to provide flexible benefits plan choices for active State employees and their eligible dependents. Flexible benefit plans are purchased under guidelines approved by the Oklahoma State Employee Benefits Department in compliance with all applicable State

statutes. This Chapter does not apply to any products or services required by the EBD outside the scope of flexible benefits plans as defined in the Oklahoma State Employees Flexible Benefits Act (74 O.S. §1341 et seq.). Other products or services shall be procured in accordance with the Central Purchasing Act (74 O.S. §85.1 et seq.).

260:40-37-2. Definitions

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

"Audit Clause" means in accepting any contract with the Oklahoma State Employee Benefits Department, the Bidder must agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the service provider relevant to the contract are subject to examination by the EBD, State Auditor and Inspector, or other designated entities.

"Award" or **"Contract award"** means when the EBD votes to approve the acceptance of a proposal from a qualified Bidder meeting all requirements of the procurement as determined by the EBD.

"Bidder" means any entity submitting a competitive proposal in response to a solicitation for flexible benefit plans issued under this Chapter.

"Bidder's List" means the list maintained by the Contracts Administrator setting out the names and addresses of qualified suppliers of flexible benefit plans from whom proposals can be solicited.

"Business Day" means any day except Saturday, Sunday, or a legal holiday for State employees as proclaimed by the Governor.

"Competitive Negotiation" means the method by which the EBD may contract with qualified Bidders for flexible benefits plans through best and final offer (BFO) process.

"Confidential Information" means information clearly designated in the RFP as being proprietary information and which shall be retained as confidential. All information included in or with a Bidder's proposal lacking such a designation shall be subject to the Oklahoma Open Records Act (51 O.S.2001, § 24(A)(1) et seq.).

"Contract" means when a Bidder submits a proposal, the proposal is submitted as a legal offer and any proposal, when accepted by the EBD constitutes a contract (See Award).

"Contracts Administrator" means the Contracts Administrator employed by the EBD.

"EBD" means the Oklahoma State Employee Benefits Department.

"EEOC" means Equal Employment Opportunity Commission.

"Director" means the Director employed by the EBD.

"Formal Proposal" means a proposal which must be submitted in a sealed envelope or container and in conformance with a prescribed format, to be opened at a specified time and specified place. (See also, Proposal.)

"HEDIS" means Health Plan Employer Data and Information Set.

"Ineligible Bidder" means a prospective service provider who, by reason of financial instability, unsatisfactory performance as documented by the EBD or other deficiency, does not meet the qualifications for placement on the bidder list.

"Late Bid" or **"Late Proposal"** means a bid or proposal received at the place specified in the RFP after the date and time designated for all proposals to be received.

"Proposal" means the executed document submitted by a Bidder in response to a Request for Proposal (RFP) issued by the EBD.

"Readiness Reviews" means the process by which the contracting authority makes scheduled on-site visits to the service provider for purposes of testing the readiness of the provider.

"Request for Proposal" or **"RFP"** means the solicitation document used for competitive sealed bidding.

"State" means the State of Oklahoma, acting by and through the EBD or its/their designee.

"Vision Plan" means a company, organization, group, or person who owns, operates, and provides a health care benefit plan designed for the care of the eye or the correction or enhancement of one's eyesight.

260:40-37-3. General purchasing provisions

(a) The EBD has the statutory authority to purchase flexible benefit plans for participants as defined by the Oklahoma State Employees Benefits Act. The EBD reserves the right to cancel any given procurement of flexible benefit plans at any time for any reason.

(b) Except as otherwise specifically provided by this Chapter, all flexible benefit plan contracts required by the EBD shall be acquired by competitive bidding pursuant to the terms of this Chapter. Contracts with qualified flexible benefits plans may be awarded on the basis of best and final offer (BFO) through competitive negotiation. The EBD, at its own discretion, shall have the option of bidding and contracting any flexible benefit plan through the Department of Central Services, Central Purchasing Division.

260:40-37-4. Bidder registration

(a) Any Bidder which seeks to contract to provide flexible benefit plans to the EBD must be on the Bidder's list prior to the public release of an RFP solicitation. A Bidder desiring to be on the Bidder List must register with the Contracts Administrator to receive copies of RFP solicitations. Only those Bidders qualified under Oklahoma law to perform the services requested by the EBD and who meet the Bidder registration requirements contained herein will be added to the Bidder's List.

(b) Bidder Qualifications.

(1) A Bidder has the burden of demonstrating that it has the capability to responsibly do business with the State of Oklahoma. In the interest of providing the highest level of quality to statewide active State employees and their eligible dependents for flexible benefit choices, Bidders seeking Bidder registration with the EBD to provide flexible benefit choices in response to a benefit choice RFP solicitation must provide:

(A) Proof that the benefit provider has been operational (licensed where applicable) and enrolling members within the State of Oklahoma for a period of not less than eighteen (18) months prior to the date proposals are due.

(B) Audited financial statements for the most recent two (2) full years, and

(C) Disclosure of all State and Federal regulatory actions taken against the Bidder in the preceding eighteen (18) months.

(2) The EBD can make exception to any of the aforementioned requirements in this subparagraph at its discretion when the EBD determines doing so is in the best interest of the State and members.

(c) Bidders wishing to be added to the Bidder List must request in writing to receive a Bidder registration packet. Written requests must be addressed to: Oklahoma State Employee Benefits Department, First National Center, 120 North Robinson Avenue, Suite 1100, Oklahoma City, Oklahoma 73102, Attention: Contracts Administrator. Bidders shall be provided a packet with registration information and submission forms. All Bidders must renew registrations annually on a plan year basis.

(d) The Bidder shall complete the information requested in the Bidder registration packet and return the forms to the Contracts Administrator. The Bidder registration forms must be received by the Contracts Administrator not less than seven (7) business days before the issuance of the RFP. Upon receipt, EBD shall review the Bidder registration forms for completeness and qualification and determine prior to the public release of an RFP solicitation whether or not the Bidder shall be added to the Bidder's List. The EBD shall return the Bidder registration forms in the event the forms have not been properly completed, and shall deny the registration where the form is incomplete and/or the applicant Bidder is not qualified to perform the flexible benefits plan requested in the RFP. Entities not registered as a bidder may receive copies of RFPs pursuant to the Open Records Act.

(e) The Oklahoma State and Education Employees Group Insurance EGID is exempt from the Bidder registration requirement herein.

260:40-37-5. Bidder retention and removal from bidder list

(a) To ensure Bidders perform in the best interest of the State, it is necessary to address problems in a swift and equitable manner for all concerned. The EBD has determined that Bidder misconduct can cause irreparable harm to the EBD and its eligible participants. It is therefore recognized that penalties for poor Bidder performance and/or violation of State and Federal statutes must be addressed.

(b) The EBD may remove any Bidder for any material infraction(s) as determined by the EBD to be in the best interest of the State and members, including but not limited to the following. The amount of time a Bidder is removed from the Bidder's List shall be determined by the EBD:

(1) A Bidder which has contracted with the EBD to provide flexible benefit plan(s) and which terminates its contract with the EBD prior to the contract expiration date.

(2) Financial insolvency.

(3) A conviction or plea of guilty to a felony involving fraud, bribery or corruption to the State or to any of its political subdivisions.

(4) Giving false or misleading information in an application for inclusion on the Bidder's List.

(5) Certification by the Oklahoma Human Rights Commission that the Bidder is engaging in a discriminatory practice as defined in 25 O.S. §§ 1505 and 1604.

(6) Failure on the part of the Bidder to meet EEOC and other requirements mandated by public legislation or EBC.

260:40-37-6. Submission of proposals

(a) The Bidder's proposal must be submitted in a sealed envelope or container with the name and address of the Bidder, the RFP number, and the date and time of the RFP closing clearly marked on the outside of the envelope or container. All proposals must be complete and in compliance with the instructions provided with the RFP. It is the Bidder's responsibility to read and understand the instructions, terms and conditions provided with the RFP. Failure to comply with the instructions and terms and conditions in the RFP in any material way shall disqualify the proposal as per OAC 260:40-37-9. Proposals are to be mailed or submitted in a sealed envelope or container to the offices of the EBD. Faxed proposals shall not be accepted. Any questions regarding the RFP or contract related items shall be directed to the Contracts Administrator.

(b) If a registered Bidder does not wish to bid on the RFP, the Bidder may fill in the Bidder name, address, and write "No Bid" on the RFP form or cover letter and return the "No Bid" to the Contracts Administrator.

(c) It is the responsibility of the Bidder to ensure delivery of a proposal to the EBD at or prior to the designated date and time on the RFP. The EBD shall not be responsible for, and shall not accept, late proposals. Proposals received after the RFP closing date shall be returned unopened to the Bidder. The EBD shall not accept proposals from an ineligible Bidder, pursuant to this Chapter.

260:40-37-7. Proposal openings

(a) All sealed proposals shall be stamped with the time and date upon receipt at the EBD's offices. The proposals shall be placed in a secured bid room until time for the scheduled proposal opening. Access to the room is limited to the Director, the Contracts Administrator, or their designees until the proposal opening.

(b) Proposals shall be opened at the designated date and time by the Contracts Administrator. Information clearly designated in the RFP as being proprietary or confidential shall not be made public. A proposal opening record shall be completed and maintained in the proposal file.

(c) Public openings may be requested by a Bidder and/or interested parties prior to the proposal opening. The request

may be oral or written and must include the RFP number and closing date.

(d) No award will be made at routine or public openings. Award recommendations shall be made in writing upon conclusion of the proposal evaluation. The process and procedures for each proposal evaluation shall be further described in the individual RFP.

260:40-37-8. Award of contract

(a) Contracts for health plans provided by qualified Bidder(s) may be awarded based on best and final offer BFO through competitive negotiation. In the sole discretion of the EBD, a BFO process shall be conducted with qualified Bidders if it is considered by the EBD to be in the best interest of the State. In the event the EBD considers a BFO process to be in the best interest of the State, all qualified Bidders meeting the minimum requirements of the RFP shall be afforded an opportunity to negotiate a BFO with the EBD. The EBD shall issue a written request to all qualified Bidders for a BFO. Only qualified Bidders who satisfy the minimum bid requirements specified in the RFP shall be allowed to participate in any BFO negotiation process. The EBD retains the right to accept or reject qualified Bidder(s) BFO. The EBD shall retain as confidential information contained in the initial proposals submitted by qualified Bidder(s) as well as any subsequent bid offers made by qualified Bidder(s) prior to final contract award as part of the BFO negotiation process. The BFO negotiation process shall allow for modification and alteration of Bidder(s) proposal content and Bidder(s) proposal price after proposals are submitted and during the evaluation process. Upon request for a public bid opening, only the name(s) of the qualified Bidder(s) shall be revealed; neither price nor proposal content shall be revealed and made public until after the BFO process is complete and notice of intent to award is announced by the EBD. Only the final, agreed-upon price and final, agreed-upon proposal content shall be made public after the BFO process is complete and notice of intent to award is announced by the EBD. Information clearly designated in the RFP as proprietary shall be held confidential pursuant to the Employees Benefits Act, 74 Okl.St.Ann. § 1365 A.11. After an initial proposal is received and opened by the EBD following the bid closing date and time, the initial proposal offered by qualified Bidder(s) may be discussed for clarification and/or modification if the EBD deems it advantageous to do so. In this context, "discussion" shall mean clarification, modification, and negotiation, or any of these. Discussion(s) with a qualified Bidder(s) during negotiation and/or clarification shall be conducted individually and privately with qualified Bidder(s) and may be tape recorded by the EBD. The EBD shall hold all tape recordings, transcripts and notes of discussion(s) confidential. Changes shall not be allowed in qualified Bidder(s) proposal or price after BFOs are received, unless the EBD determines, in its sole discretion, that re-submission would be in the best interest of the State. The specific criteria of the BFO shall be specified in the RFP issued by the EBD.

(b) All proposals shall be forwarded to the Contracts Administrator upon completion of the evaluation. The Contracts Administrator shall review the information to determine compliance with the RFP requirements and compliance with all EBD rules, policies and procedures. The EBD shall be the sole judge in reviewing proposals and awarding contracts.

(c) The EBD shall identify and apply criteria within the RFP and the proposals for final selection and award of contracts. The evaluation process may allow for the selection of less than all of the responsive or qualifying proposals, as allowed by law and as determined to be in the best interest of the State.

(d) The Contracts Administrator has the right to waive minor deficiencies or informalities in a proposal provided that the best interest of the State would be served without prejudice to the rights of the other Bidders.

(e) The EBD reserves the right to bid and award contracts on an all or none basis, by item or groups of items, whichever is in the best interest of the State.

(f) All awards shall be made under the terms and conditions as outlined in OAC 260:40-37-9 and any additional terms and conditions as described in the RFP.

(g) All ethics rules and laws related to conflicts of interest and doing business with public officials apply to any contract with the EBD.

260:40-37-9. Terms and conditions for acceptable proposals

(a) All proposals submitted are subject to the EBD's policies and procedures and/or any special conditions and specifications listed in this Subchapter or made part of the RFP.

(b) Sealed proposals will be opened by the EBD at the time and date set in the RFP.

(c) Proposals received after the closing time will not be considered. Envelopes or containers must contain responses to only one RFP, be sealed, and the name and address of the Bidder inserted in the upper left-hand corner. The proposal number and closing date must appear on the face of the envelope or container.

(d) The proposal shall be in strict conformity with the instructions to the Bidder and shall be submitted in the approved format. All required signatures must be original and written in ink.

(e) Any questions pertaining to the clarification of the proposal shall be directed to the Contracts Administrator.

(f) The EBD may conduct scheduled on-site visits to the service provider for purposes of testing the readiness of the provider.

(g) When submitting a proposal to the EBD, the Bidder shall agree to an audit clause which provides that books, records, documents, accounting procedures, practices or any other items of the Bidder relevant to the contract are subject to examination by the EBD, the State Auditor and Inspector, and such other entities as may be specified in the RFP.

(h) Failure to comply with the terms and conditions shall subject the proposal to disqualification.

260:40-37-10. Excessive Price

(a) The EBD shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the EBD determines the benefit price to be excessive. The EBD shall have the authority to reject any plan that does not meet the bid requirements. One way to restrict enrollment is to freeze enrollment in the plan's membership as determined to be in the best interests of the State and the members.

(b) Factors considered by the EBD in determining excessive price may include, but are not limited to utilization data and loss ratios on the State group business, a comparison to other carriers proposed prices and/or other employers' plans and prices, actuarial analyses or underwriting principles. The EBD may at its discretion, solicit a multi-part RFP which shall be designated as such. As a condition to be eligible to bid on Part II of the RFP, the EBD shall require Bidders to provide information requested in Part I of the RFP. In the event a Bidder fails to provide the information in Part I of the RFP, the EBD shall not consider the Bidder's response to the Part II of the RFP. The EBD shall retain as confidential, any proprietary information submitted by a Bidder pursuant to this paragraph.

(c) Each year, the EBD shall specify in the RFP issued by the EBD all excessive price factors that shall be considered by the EBD for that year's selection of benefit plan options. Benefits plans that bid on the RFP are deemed by the EBD to have read and accepted all excessive price factors contained in the RFP.

(d) Although the EBD shall have the authority to reject the bid, or to restrict enrollment in any benefits plan, for which the EBD determines the benefit price to be excessive, the EBD shall have no duty to do so. Despite the fact that the EBD may determine the benefit price to be excessive, the EBD nevertheless may choose not to reject the bid or restrict enrollment for reasons the EBD determines at that time to be in the best interests of the State and the members. The determining reasons will include, coverage areas where the number of other benefits plans are limited; total number of benefits plans offered; provider networks; employee participation displacement; uniformity of choices for all eligible employee groups; and premiums charged by competing plans.

(e) The particular factors that are specified in the RFP issued by the EBD for determining excessive price may vary from year to year. The specification of particular factors in prior year(s) shall serve as no precedent of the factors that may be specified in subsequent year(s). Similarly, the failure of the EBD in prior year(s) to reject a bid or restrict enrollment in any benefits plan for which the EBD determines the benefit price to be excessive, shall serve as no precedent as to the action the EBD may take in subsequent year(s).

260:40-37-11. Challenge of award

(a) Any Bidder may challenge the award of a proposal. A challenge may be based on the following grounds:

(1) The proposal of the successful Bidder(s) did not meet the RFP requirements in a material way;

(2) The bidding procedure was done in violation of the EBD's rules; or

(3) EBD acted outside the scope of its authority. In the event a Bidder raises this ground in an allegation, said Bidder shall specify the nature of the alleged act.

(b) After the award is made, the protesting Bidder will deliver a written explanation of the reason for the challenge to the office of the Contracts Administrator within seven (7) business days of the time the EBD selects and announces a successful Bidder(s).

(c) The Contracts Administrator or a designee will review the protesting Bidder's challenge of award, as well as the EBD's selection process, and rule on the challenge. The decision will be in writing and shall address each ground raised by the Bidder challenging the proposal, specifically referring to the facts and documents supporting the decision.

260:40-37-12. Administrative review

(a) If the protesting Bidder does not agree with the Contracts Administrator's decision on the challenge of award, the protesting Bidder may request an administrative review. Any protesting Bidder may appeal a decision by the Contracts Administrator to the Director. In order for the claim to be eligible for administrative review, the appeal must have been through the challenge of award process as per OAC 260:40-37-11.

(b) The protesting Bidder must file a notice of appeal with the Director within seven (7) business days of the date of the letter notifying the Bidder of the decision by the Contracts Administrator of the challenge of award by the protesting Bidder, or the postmark of such letter, whichever is later. The letter shall contain the following:

(1) The letter must state all the facts and arguments giving rise to the claim of controversy and the appeal.

(2) The letter must also state clearly and separately the alleged error by the Contracts Administrator or other EBD personnel and the relief sought with the appeal to the Director.

(3) The letter must clearly and separately state that the Bidder is requesting an opportunity to be heard in pursuit of the appeal.

(c) Upon receipt of a properly perfected notice of appeal, the Director shall review the appeal or appoint a designee to conduct the administrative review. The Director may appoint any officer of the EBD or may appoint an attorney licensed to practice law to conduct the review. The person conducting the administrative review shall promptly set a time period in which a review will be conducted that will be not more than forty-five (45) days in length beginning from the date the notice is filed. The person conducting the administrative review will set a date in which the Bidder must produce or identify all the documents or other supporting data (verbal or written) which supports the appeal, which date must be within the forty-five (45) day time period above. The person conducting the administrative review may schedule a meeting with the Bidder to discuss the appeal and issues raised, and will examine all such documents and supporting data.

(d) Within twenty (20) business days after the administrative review period, the person conducting the administrative review shall notify the protesting Bidder by certified mail. The decision by the person conducting the administrative review shall

include findings of the facts and conclusions supporting the decision to uphold the award or set the award aside.
(e) The decision shall be final.

260:40-37-13. Confidentiality

The EBD, with the cooperation of the Department of Central Services, shall be authorized to retain as confidential, any proprietary information submitted in response to the EBD's RFP; provided, however, that any such information requested by the EBD from the Bidders shall only be subject to the confidentiality provision of this paragraph if it is clearly designated in the RFP as being protected under this provision.

260:40-37-14. Vision Plan Participation

(a) A Vision Plan must notify the EBD of its intention to participate in the flexible benefits plan no later than 4:45 p.m., Central Standard Time on the first day of July prior to the beginning of each Plan Year. Such notification must conform to the requirements this section. If the first day of July is a weekend day or other day when the offices of the EBD are closed, notification of Vision Plan participation is due by 4:45 p.m., Central Time, on the next day the EBD's offices are open.
(b) Notice of a vision plan's intent to participate in the flexible benefits plan is properly provided upon submission of all of the following:
(1) A statement from the Vision Plan indicating Vision Plan's intent to participate;
(2) A list of the providers in Vision Plan's network;
(3) A document(s) indicating Vision Plan has operated in Oklahoma for at least five (5) years;
(4) Either a license issued by the Oklahoma State Insurance Department, or a certificate issued by the Oklahoma State Department of Health;
(5) A list of the rates the Vision Plan will charge during the subsequent Plan Year. Rates must be listed independently for the following categories:
(A) Employee Only,
(B) Spouse Only,
(C) One Child, and
(D) Two or More Children;
(6) Accurate product information in a format not to exceed two pages.
(c) The EBD may create forms to standardize and simply the information required by 74 O.S. § 1374 and subsection (b) of this section. If a form(s) have been created, a Vision Plan must complete the form(s) to provide proper notification.
(d) The EBD may require a Vision Plan to submit information in addition to that required in subsection (b) of this section from time to time if the EBD deems such information is essential to ensure statutory compliance.
(e) Information a Vision Plan submits to the EBD pursuant to 74 O.S. § 1374 shall be retained as confidential if such information is clearly designated as confidential when submitted.
(f) Vision Plans not eligible to be offered on a pretax basis as a part of an Internal Revenue Code Section 125 Cafeteria Plan must indicate so when the Vision Plan notifies the EBD of its desire to participate in the Flexible Benefits Plan.
(g) Vision Plans which submit notification of intent to participate in the flexible benefits plan that conform to subsection (a) of this Section and the requirements of 74 O.S. § 1374 are obligated to:
(1) Enroll employees and eligible dependents in their benefit plan, and
(2) Offer their benefit plan during the entire subsequent plan year period as that period is defined by the EBD.
(h) The EBD may remove a Vision Plan from the Flexible Benefits Plan at any time if it fails to comply or remain in compliance with 74 O.S. § 1374.

SUBCHAPTER 39. AUTHORIZED PAYROLL DEDUCTION VENDOR MATERIAL

260:40-39-1. Purpose

The purpose of this Chapter is to describe the rules governing the process by which materials from vendors that have an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes shall be placed in the annual benefit enrollment materials provided to state employees and their dependents. The provisions of this Chapter do not apply to vendors who do not have authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes.

260:40-39-2. Definitions

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

"EBD" means the State of Employee Benefits Department

"Plan Year" means the period of time, established by the EBD, for which benefits are offered to State employees and their eligible dependents.

"Vendor" means a product vendor that has been approved for an authorized payroll deduction pursuant to Section 7.10 of Title 62 of the Oklahoma Statutes or Section 1701 of Title 74 of the Oklahoma Statutes on or before the last calendar day of July prior to each Plan Year.

"Vendor Material" means a one page, front and back, eight and one-half inch by eleven inch document which, at a minimum, identifies the vendor, describes the product being offered, includes the vendor's contact information, and includes the premium or cost of the product. Vendor material must be printed on white paper with a weight equal to 50# offset or 20# bond copy paper.

260:40-39-3. General provisions

(a) A vendor must deliver its vendor material to the Employee Benefits Department no later than 4:45 p.m., Central Time, on the second Friday in August prior to the beginning of the benefits enrollment period announced by the EBD.
(b) Vendor material must be designed, printed, and reproduced by the vendor at the vendor's expense.

(c) The EBD will determine the number of copies of vendor material each vendor must supply. The amount will be communicated to vendors each year.
(d) The EBD will bind and distribute all timely and properly submitted vendor material at its own expense.
(e) The EBD may create forms to standardize and simplify the information required by this section. If a form(s) has been created, a vendor must complete the form(s) to provide proper delivery.

[OAR Docket #14-780; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 45. EMPLOYEES GROUP INSURANCE DIVISION - ADMINISTRATIVE AND GENERAL PROVISIONS

[OAR Docket #14-755]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Purpose, Definitions, Rules and References [NEW]
260:45-1-1. Purpose [NEW]
260:45-1-2. Definitions [NEW]
260:45-1-3. Rules, cumulative [NEW]
260:45-1-4. Rules in this title and benefit administration procedures or guidelines as adopted by EGID are controlling in all situations [NEW]
260:45-1-5. Disclaimer of conflicting information [NEW]
260:45-1-6. Amending of rules [NEW]
260:45-1-7. Gender reference [NEW]
Subchapter 3. Records and information [NEW]
260:45-3-1. EGID records; release of information [NEW]
260:45-3-2. Confidentiality of medical records [NEW]
260:45-3-3. Participating entities/business associate protection of confidential health information [NEW]
260:45-3-4. Authorization for release of medical records [NEW]
260:45-3-5. Right to receive and release necessary information [NEW]
260:45-3-6. Call monitoring for quality control [NEW]
260:45-3-7. Electronic records and facsimile, electronic or copies of signatures [NEW]
Subchapter 5. Grievance Panel Authority and Hearing Procedures [NEW]
260:45-5-1. Access to Grievance Panel; request for hearing [NEW]
260:45-5-2. Notice of hearing [NEW]
260:45-5-3. Prehearing conference [NEW]
260:45-5-4. The grievance hearing [NEW]
260:45-5-5. Certificate of mailing [NEW]
260:45-5-7. Final order; appeals [NEW]
260:45-5-8. Scheduling of hearings [NEW]
Subchapter 7. Declaratory Rulings [NEW]
260:45-7-1. Petitions for declaratory rulings [NEW]
260:45-7-2. Final rulings [NEW]
260:45-7-3. Judicial review [NEW]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 62. O.S. §34.28; 62 O.S. §34.3.1; 74 O.S. §1304.1; 74 O.S. §1305.1; §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to re-adopt in Title 260, Office of Management and Enterprise Services from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMER 12, 2014:

SUBCHAPTER 1. PURPOSE, DEFINITIONS, RULES AND REFERENCES

260:45-1-1. Purpose

The purpose of this chapter is to outline the structure of the Office of Management and Enterprise Services (OMES) Employees Group Insurance Division (EGID) and to identify the availability and procedures to be used to access a grievance hearing.

260:45-1-2. Definitions

The following words and terms as defined by EGID shall have the following meaning unless the content clearly indicates otherwise:

"Adverse determination" means a determination by or on behalf of EGID or its designee utilization review organization that an admission, availability of care, continued stay or other healthcare service is a covered benefit but, after review, based upon the information provided, does not meet EGID's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.

"EGID" means the Employees Group Insurance Division of the Office of Management and Enterprise Services.

"Grievance Panel" means EGID's independent constitutionally created administrative court. [Const. Art. 7. § 1.]

"Independent review organization" means EGID's Grievance Panel with exclusive authority and jurisdiction to conduct independent external reviews of all adverse determinations rendered by or on behalf of EGID or its designee utilization review organization.

"OEIBB" means the Oklahoma Employees Insurance and Benefits Board.

260:45-1-3. Rules, cumulative

The Employees Group Insurance Division of the Office of Management and Enterprise Services hereinafter "EGID" will, from time to time, adopt handbooks, policies and procedures for the implementation of the rules set forth herein. Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. The rules in this title shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.

260:45-1-4. Rules in this title and benefit administration procedures or guidelines as adopted by EGID are controlling in all situations

The rules in this title and the benefit administration procedures or guidelines as adopted by EGID shall be controlling in all situations, without exception, and any and all written information contained in any handbook, summary or other document prepared by or for EGID shall be superseded and limited by the rules in this title and the benefit administration procedures or guidelines as adopted by EGID.

260:45-1-5. Disclaimer of conflicting information

In the event there appears to be a conflict between information contained in the rules in this title and the benefit administration procedures or guidelines as adopted by EGID, and any information contained within any handbook or any other written materials, including any letters, bulletins, notices, or any other written document, or oral communication, regardless of the source, such conflict shall always be resolved by a strict application of the rules in this title or the benefit administration procedures or guidelines as adopted by EGID, and no conflict will be resolved by application of the erroneous information contained within the handbook or other written document when the result would be contrary to the limitations set forth in the rules in this title, and the benefit administration procedures or guidelines as adopted by EGID. All erroneous, incorrect, misleading or obsolete language contained within any handbook or any other written document or oral communication, regardless of the source, shall be void from the inception, and of no effect under any circumstances.

260:45-1-6. Amending of rules

This chapter may be amended or repealed from time to time and new rules adopted by EGID pursuant to the Administrative Procedures Act.

260:45-1-7. Gender reference

All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.

SUBCHAPTER 3. RECORDS AND INFORMATION

260:45-3-1. EGID records; release of information

All official records of EGID shall be public records open to public inspection under reasonable circumstances at any reasonable time during business hours by any person, but such records shall not be taken from the EGID office. Copies of public records may be obtained pursuant to the current fee schedule as adopted by EGID.

260:45-3-2. Confidentiality of medical records

(a) All information, documents, medical reports and copies thereof contained in a member's insurance file held by EGID shall be confidential and shall not be reviewed by unauthorized parties, without permission of the individual or provider, or by court order. The confidentiality of a member's information is maintained when the member's information held by EGID is utilized for health management and communicated among:

(1) employees of EGID;

(2) EGID's contracted third party administrators and consultants;

(3) providers to the member and

(4) the member, according to statutory provisions for privilege and confidentiality or written agreements to protect the confidentiality and non-disclosure of the information.

(b) Authorizations to use or share protected health information will remain valid until termination of the member's or dependent's enrollment in HealthChoice, unless a shorter period of time has been specified, or unless rescinded.

(c) A member's health information is protected by this rule and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations as codified in 45 Code of Federal Regulations Parts 160 and 164.

(1) EGID requires a signed HIPAA compliant authorization from a member or dependent before any confidential information is released to a person, company, or law firm.

(2) When individual circumstances arise in specific cases, EGID has authority to ask the member or dependent to independently confirm that EGID has permission to disclose confidential information before responding to any pending request.

(3) EGID's obligation to respond to record requests is discharged when EGID has responded to the original request, or if permission of the member or dependent is withdrawn. EGID requires a new authorization or subpoena if more records are requested after EGID has responded.

260:45-3-3. Participating entities/business associate protection of confidential health Information

(a) The participating entity/business associate may only use and disclose the member's health information for the purposes of a member's treatment, to facilitate payment for Plan benefits or for participating entity/business associate

business operations on behalf of the member. The participating entity/business associate may not use or further disclose a member's health information other than permitted by EGID rules or described in a written contract between EGID and the participating entity/business associate.

(b) Participating entities/business associates shall protect a member's confidential health information according to the following guidelines. Participating entity/business associate shall:

(1) not use or disclose a member's health information other than permitted in these rules; described in a written contract with EGID or required by law,

(2) ensure that subcontractors or agents of the participating entity/business associate maintain confidentiality of any health information provided to its subcontractors or agents,

(3) not use or disclose confidential health information for employment related actions concerning the member, unless required by law,

(4) notify EGID within five [5] working days when the participating entity/business associate becomes aware of any use or disclosure of a member's health information that is inconsistent with this rule and make an accounting of these disclosures available for EGID and each member,

(5) allow a member to access and review health information on file with the participating entity/business associate and submit amending statements for inclusion in their health information file,

(6) establish procedures to protect a member's health information and account for disclosures not authorized by these rules,

(7) identify the participating entity/business associate employees who may access a member's health information and restrict access to those persons,

(8) return to EGID or destroy a member's health information when no longer required by the participating entity/ business associate, and if not feasible, limit the use or disclosure to the required purposes,

(9) ensure that proper security is in place to protect electronically stored health information and

(10) make internal practices, books and records concerning uses and disclosures of protected health information available for inspection by the appropriate authority. A written contract between EGID and participating entity/business associate shall not limit the participating entity/business associate protection of a member's health information to an extent less than described in this rule.

260:45-3-4. Authorization for release of medical records

Through the submission of claims, each member for whom coverage is applied authorizes, without further notice or consent, EGID to obtain from any provider of medical services, all records and information pertaining to that service which will aid in the proper payment of said claims. EGID is further authorized to use and release to third party payers any information and records so obtained. In all instances, the Rules of Confidentiality shall be applied without regard to the requirements of 260:45-3-2.

260:45-3-5. Right to receive and release necessary information

For the purpose of determining applicability of and implementing the terms in this Plan or any provision of similar purpose of any other Plan, the Administrator may, without the consent of or notice of any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the Administrator deems to be necessary for such purposes. Any person claiming benefits under this Plan shall furnish to the Administrator such information as may be necessary to implement this section.

260:45-3-6. Call monitoring for quality control

The Administrator may institute procedures for monitoring of telephone calls for purposes of providing quality control.

260:45-3-7. Electronic records and facsimile, electronic or copies of signatures

Use of electronic records, electronic signatures, facsimile signatures and handwritten signatures executed to electronic records.

(1) Electronic records, electronic signatures, handwritten signatures executed to sign electronic records, handwritten signatures used to effectuate an electronic record for network contracting purposes, and facsimile or copies of signatures on EGID forms received from participating entities or members, may be used as an alternative or duplicate of paper records and handwritten signatures executed on paper to comply with any of the record and signature requirements of 12A O.S. §15-101 et seq. these rules or applicable Oklahoma law.

(2) Combinations of paper records and electronic records, electronic records and handwritten signatures executed on paper, or paper records and electronic signatures or handwritten signatures executed to sign electronic records, may be used to comply with any of the record and signature requirements of 12A O.S. §15-101 et seq., these rules or applicable Oklahoma law.

(3) The EGID Administrator or a Deputy Administrator may utilize a facsimile signature stamp to execute EGID contracts of any kind.

SUBCHAPTER 5. GRIEVANCE PANEL AUTHORITY AND HEARING PROCEDURES

260:45-5-1. Access to Grievance Panel; request for hearing

(a) **Grievance Panel Authority.** EGID has established a grievance procedure by which an independently appointed three [3] member Grievance/review Panel shall act as an appeals body and the exclusive remedy:

(1) For complaints by insured employees regarding the allowance and payment of claims, eligibility, benefits, provision of services, or other matters:

(2) To conduct independent external reviews of all adverse determinations rendered by or on behalf of the Board or its designee utilization review organization.

(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] retired active Judges licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.

(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.

(d) **Right to a Hearing.** Except for grievances settled to the satisfaction of both parties prior to a hearing, any aggrieved covered member who requests in writing a hearing before the Grievance Panel shall receive a hearing before the panel.

(e) **Exclusive remedy.** The grievance procedure provided by this Part shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.

(f) **Failure to timely submit hearing request.** Any covered member aggrieved regarding the allowance and payment or denial of claims, eligibility, benefits and provision of services, adverse determinations, or other matters may request a hearing before the Grievance Panel [hereinafter referred to as Panel] to determine the validity of the grievance. All requests for hearings must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.

(g) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a grievance panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.

(h) **Submission of Request for Hearing.** The Request for Hearing shall be in writing on a form provided by EGID for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:

(1) Name of employee, Social Security Number and address;

(2) Name of dependent for whom claim was submitted, if not the covered employee;

(3) Name of employee's employing entity, location, and identifying number;

(4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;

(5) Date claim submitted for payment, claim number;

(6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and

(7) A short statement as to the nature of the illness or injury giving rise to the claim.

(i) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to EGID to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 110, Oklahoma City, Oklahoma 73112.

260:45-5-2. Notice of hearing

Upon receipt of a Request for Hearing form, a hearing number shall be assigned thereto and notice shall be forwarded to the claims administration contractor by mail at its closest office. The employee shall be notified of the hearing date by certified mail, return receipt requested. A copy of all rules pertinent to the hearing shall be forwarded with the Notice, along with a statement of claimant's rights.

260:45-5-3. Prehearing conference

The Attorney representing EGID, the claimant, or the claimant's attorney may request a pre-hearing conference to determine legal or factual issues. The Attorney representing EGID may conduct such a conference.

260:45-5-4. The grievance hearing

(a) **Witness list.** Each party must submit, in writing, at least forty-eight [48] hours prior to the date of a grievance hearing a complete list of witnesses he or she intends to call, along with a brief comment as to the nature of the testimony. Witnesses shall not be called to testify at the hearing unless notice has been given to the opposing parties.

(b) **Assignment of Panel and Chairman.** All hearings shall be held before a three-member Grievance Panel, as assigned by the Office of the Administrative Director of the Courts. All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §301-326. At each convening of the Panel, one member shall be designated to act as the Chairman.

(c) **Admissibility of evidence.** Rulings on admissibility of evidence shall be made by the Panel Chairman; provided, however, that the remaining members of the Panel may, by affirmative vote, overrule the Chairman's decision, on their own motion or upon motion of any party to the hearing.

(d) **Oaths and subpoena.** The Chairman of the Panel shall have the authority to administer oaths for obtaining testimony for the hearing; and any member of the Panel or the Attorney representing EGID shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects for the hearing. Said subpoenas may be served by any duly qualified officer of the law, or any employee of EGID in any manner prescribed for the service of a subpoena in a civil action.

(e) **Court reporter.** The Attorney representing EGID shall cause a recording of the proceedings to be made by a certified court reporter at EGID's expense. If transcribed, such written transcript shall become a part of the official record of the hearing, and a copy shall be furnished to any other party having a direct interest therein at the request and expense of such party. The cost of preparing the written transcript of the hearing and providing a copy of the transcript to the other party shall be paid by the party on whose behalf the written transcript is requested.

(f) **Procedure.** In all hearings, opportunity shall be afforded the party or parties requesting same to respond and present evidence and argument on all issues involved. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments.

260:45-5-5. Continuance; disposition; Attorney representation

Any request for continuance may be granted by the Attorney representing EGID or the Panel if requested for any of the following reasons: illness or unavailability of the party requesting the hearing; unavailability or illness of a material witness; unavoidable conflict of schedule or other good cause. All parties to the hearing shall be notified of the continuance as soon as possible.

(1) Unless precluded by law, informal disposition may be made of any individual proceedings by stipulation, agreed settlement, consent order, or default.

(2) Any party shall at all times have the right to be represented by counsel at their own expense, provided such counsel is licensed to practice law by the Supreme Court of Oklahoma.

260:45-5-6. Certificate of mailing

All filings, including Orders, Notices and Briefs, shall include a Certificate of Mailing showing the names and mailing addresses of adverse parties or their attorneys of record.

260:45-5-7. Final order; appeals

(a) **Final Order.** The Panel shall enter a Final Order within no more than forty-five [45] days after the date of the hearing in all cases in which evidence and testimony has been offered and admitted. The Final Order shall separately state all Findings of Fact, Conclusions of Law and an Order approving or denying the claim.

(b) **District Court appeals.** The Panel's Final Order shall be considered a final decision of EGID for purposes of appeal. Any party to the hearing has the right to appeal to District Court from Final Orders entered by the Panel. This appeal shall be governed by the Administrative Procedures Act, 75 O.S. §301, et seq., and by other pertinent statutes such as 74 O.S. §1301, et seq.

260:45-5-8. Scheduling of hearings

All requests for hearings regarding the allowance and payment or denial of claims, eligibility, benefits, provision of services, adverse determinations, or other matters shall be presented to, and heard by the Grievance Panel in open court within sixty [60] days of receipt of the properly submitted written request, unless the matter is: settled to the satisfaction of both parties; continued by agreement of the parties; or the Panel orders a continuance for good cause shown.

SUBCHAPTER 7. DECLARATORY RULINGS

260:45-7-1. Petitions for declaratory rulings

Petitions for declaratory rulings as to the applicability of any rule or order of EGID shall be in writing and must be filed with EGID. The petition must state with clarity the issues to be decided and any legal authority which may be applicable.

260:45-7-2. Final rulings

Following a hearing on the issues set forth in the Petition for a Declaratory Ruling, the Grievance Panel shall issue a written final ruling within sixty [60] days of hearing a petition for declaratory ruling. The final ruling shall be mailed to the person requesting the ruling and shall be kept on file in the EGID office for public inspection.

260:45-7-3. Judicial review

Final declaratory rulings of EGID are subject to judicial review pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.

[OAR Docket #14-755; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 50. EMPLOYEES GROUP INSURANCE DIVISION - HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #14-756]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Chapter 50. Employees Group Insurance Division - Health, Dental, Vision and Life Plans [NEW]

AUTHORITY:
The Director of the Office of Management and Enterprise Services; 74 O.S. §1304(12); §1306(12), §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to re-adopt in Title 260, Office of Management and Enterprise Services from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. PURPOSE AND DEFINITIONS

260:50-1-1. Purpose

The purpose of this chapter is to outline definitions, plan administration, coverage, and exclusions pertaining to health, dental, vision and life benefits.

260:50-1-2. Definitions

The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:

"Administrative error" occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective. If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.

"Administrator" means the Administrator of the Employees Group Insurance Division or a designee.

"Allowable fee" means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.

"Attorney representing EGID" means any attorney designated by the Administrator to appear on behalf of EGID.

"The Board" means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].

"Business Associate" shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.

"Carrier" means the State of Oklahoma.

"Comprehensive benefits" means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in-hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a copayment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]

"Cosmetic procedure" means a procedure that primarily serves to improve appearance.

"Current employee" means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]

"Custodial care" means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.

"Dependent" means the primary member's spouse (if not legally separated by court order), including common-law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child or child legally

placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(13)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 260:50-3-18.

"Durable medical equipment" means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.

"Emergency" means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.

"Enrollment period" means the time period in which an individual may make an election of coverage or changes to coverage in effect.

"Facility" means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).

"Fee schedule" means a listing of one or more allowable fees.

"Former participating employees and dependents" means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.

"Health information" means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.

"Home health care" means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.

"Hospice care" means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.

"Initial enrollment period" means the first thirty [30] days following the employee's entry-on-duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.

"Insurance Coordinator" means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.

"Maintenance care" means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.

"Medically necessary" means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.

"Members" means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.

"Mental health and substance abuse" means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.

"Network provider" means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates and/or is accredited by a nationally recognized accrediting organization such as The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.

"Non-Network out-of-pocket" means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by

the non-Network provider after the HealthChoice allowable fees have been paid.

"OEIBB" means Oklahoma Employees Insurance and Benefits Board.

"Open enrollment period" means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.

"Option period" means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.

"Orthodontic limitation" means an individual who enrolls in the Dental Plan will not be eligible for any orthodontic benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontic services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.

"Other hospital services and supplies" means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.

"Participating entity" means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.

"The Plan or Plans" means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.

"Primary insured" means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.

"Prosthetic appliance" means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.

"Provider" means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.

"Schedule of benefits" means the EGID plan description of one or more covered services.

"Skilled care" means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.

SUBCHAPTER 3. ADMINISTRATION OF PLANS

260:50-3-1. Open enrollment period

The Board or the Legislature may, at its discretion, declare an open enrollment period during which time eligible individuals may enroll in optional coverage on behalf of themselves or eligible dependents.

260:50-3-2. Approval of exceptional claims and eligibility matters

The Administrator shall have the authority to approve individual exceptional claims or eligibility matters when circumstances require. The Administrator shall provide a regular report on exceptional claims approved to the Board or a committee designated by the Board.

260:50-3-3. Insurance/Benefits Coordinator for Education, Local Government, and State Employees

The appointing authority or governing body of each participating entity shall designate an Insurance/Benefits Coordinator and at least one [1] Alternate to properly enroll members of the entity. Any information given by an Insurance/Benefits Coordinator shall not supersede or modify the statutes, rules in this title or any Insurance/Benefits Coordinator Guide governing the Group Insurance Plan. Insurance/Benefits Coordinator representing retirees may be provided by the retirement system from which the retiree is receiving benefits. It is the employee's duty to notify his Insurance/Benefits Coordinator of a change in eligibility for himself, his spouse or his dependents. It is the Coordinator's duty to notify EGID within ten [10] working days of the employee's notice of change. EGID is not obligated to accept untimely notifications of change, and may elect to refuse to permit said changes.

260:50-3-4. Right of recovery

(a) **Error in payment.** Any benefits paid erroneously by EGID are fully recoverable from the recipient. No such erroneous payment shall constitute waiver or estoppel or result in any equitable obligation by EGID to pay any benefits which are not specifically payable according to the rules in this title and the benefit administration procedures or guidelines as adopted by the Board. [74 O.S. §1321]

(b) **Excessive amounts.** Whenever payments have been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at the time to satisfy the intent of this part, the Administrator shall have the right to recover such excess, from any person, organization or company with respect to whom such payments were made.

(c) **Right to Audit.** EGID reserves the right to audit any enrollment or insurance change form and to require that supporting documentation showing the participant's eligibility, including (but not limited to) proof of a qualifying event, be provided. EGID may retroactively terminate coverage on any individual who was not eligible to be enrolled in the Plan and recover any claims paid on the individual's behalf.

260:50-3-5. Responsibility for premium payment

(a) **Participating entity premiums.** Employer and employee premiums for participating entities are due to EGID no later than the tenth [10th] day of each month following the month of coverage. The first payroll deductions for insurance premiums of individuals paid bi-weekly will be withheld from the first pay period that extends into the month during which insurance coverage begins. It is ultimately the employing agency's responsibility to check and verify that premiums paid to EGID are a true and accurate accounting of the member's approved coverage selections. If premium for coverage selected by the employee differs from the amount deducted from the member's check, then the participating entity is responsible for payment to EGID for any deficiencies in premium for the member's coverage. Any shortage of premiums due and payable will result in suspension of benefits for Plan participants.

(1) An employee may continue coverage while on approved leave without pay status for up to twenty-four [24] months as long as the entity continues to remit premiums with the entity's monthly payment. The twenty-four [24] month limitation shall be extended to eight [8] years for education employees who are absent from employment because of election or appointment as a local, state, or national education association officer. Except as protected by federal statute, employees on leave whose premiums are not remitted in a timely manner shall have their coverage terminated at the end of the month for which last payment was received. If coverage is terminated for non-payment all coverage is terminated. Upon return to work, the employee may re-enroll. All Plan limitations apply and evidence of insurability is required to re-enroll in any life coverage.

(2) Provided that if a State employee is on leave without pay due to an injury or illness arising out of the course of his employment, the employee may continue the insurance during the maximum period of the time allowed by law, and the employing agency shall pay the entire employee premium.

(3) An employee may continue coverage while on suspension without pay for up to ninety [90] days following the date of suspension or the duration of the administrative appeals process, whichever is greater, as long as premiums are remitted by the entity for the coverage.

(4) Collecting any employee share from an employee on leave without pay or suspension without pay is the responsibility of the entity.

(b) **Premiums remitted by retirement systems.** Any State of Oklahoma retirement system establishing a withholding system for its retired employees shall forward the retirement contribution and employees' withholding to EGID by the tenth [10th] of the month following the month for which payment is due. This same time frame also applies to members receiving disability benefits.

(c) **Premiums remitted by former employees, COBRA participants or survivors.** Premiums are due by the twentieth [20th] day of the month of coverage. All premiums due, in excess of the retirement system contributions, shall be paid by the member. The member may elect to have the premiums withheld from their retirement benefit if the retirement benefit is sufficient to cover the entire premium. If the total monthly premium is the same as or greater than the retirement benefit, the member shall remit the entire amount due directly to EGID.

260:50-3-6. Cancellation of coverage

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, coverage may be cancelled.

(1) **Cancellation of coverage due to non-payment of premium.** If payment is not received by the end of the month in which the payment is due, coverage shall be canceled effective the end of the month for which the last premium was received. EGID may reinstate coverage within sixty [60] days after the date EGID canceled coverage, if it is shown that the failure to pay premiums was not due to the member's negligence, subject to payment of any required premiums. The employee shall be notified in writing by EGID of cancellation of coverage and provided an opportunity for a hearing.

(2) **Cancellation of coverage due to insufficient funds.** In the event the member's payment is returned or refused due to insufficient funds or closed account, coverage may be cancelled unless the check is returned due to no fault of the member.

(3) **All coverage canceled.** If coverage is canceled for either of the reasons listed above all coverage will be terminated. When the employee is eligible to re-enroll, all Plan limitations apply and evidence of insurability is required to enroll in any life coverage.

(4) **Cancellation of coverage for Medicare members.** If payment is not received by the twentieth [20th] of the month, Medicare members will be notified of the delinquency and given thirty [30] days to make the payment. If payment is not made within the thirty [30] day grace period, coverage will be terminated effective the first [1st] day of the following month.

260:50-3-7. Underpaid premiums

When premiums are underpaid for coverage which has been selected and provided, future payments will first be applied to the shortage and the shortage will be rolled forward. Employees may not choose to retroactively cancel coverage that was selected. The full amount of the underpaid premium shall be submitted within sixty [60] days after the date EGID notifies the insured or the insured's employer of the error. When the underpayment occurs because an employee has entered into a salary reduction agreement pursuant to the Internal Revenue Code, and the insured's employer has erroneously failed to withhold and submit the proper premiums to EGID, the insured's employer shall be solely responsible for the payment of outstanding underpaid premiums to EGID. Failure to submit premiums could result in loss of coverage in accordance with 260:50-3-5(a)(3).

260:50-3-8. Refunds for overpayment

Any refund of payment for any premium overpayment shall be made only when EGID is notified in writing no later

than sixty [60] days after the actual date of the overpayment, unless lack of notification is beyond control as determined by EGID.

(1) Refunds for overpayment due to administrative error, as limited and defined in the rules in this title, of the Insurance/Benefits Coordinator or the payroll clerk for EGID, shall be made at one hundred percent [100%].

(2) Refunds on behalf of employees shall be paid to the entity. In order to receive a refund the entity must have a credit balance.

260:50-3-9. Payment of health, dental and life benefits

(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to EGID at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with EGID, benefits will be paid to the decedent's estate.

(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, EGID, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of EGID's obligation to the extent of the amount paid.

(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.

260:50-3-10. Timely filing of health, dental and life claims

Proof of loss must be furnished no later than the last day of the calendar year immediately following the calendar year in which loss is sustained. If such proof is not furnished within the time allowed, the claim will still be considered if the employee shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.

260:50-3-11. Examination

EGID reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.

260:50-3-12. Action to recover

No action at law or in equity shall be brought to recover on this Plan unless brought pursuant to the Administrative Procedures Act, nor shall such action be brought at all unless brought within three [3] years from the expiration of the time within which proof of loss is required by the policy.

260:50-3-13. Rights of eligible former employees to continue in the Group Health, Dental, and Vision Insurance Plan

(a) Health, dental and vision coverage may be elected as determined by State Statute or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if such election to continue in force or begin is made within thirty [30] days from the date of termination of service, and if the following conditions are met:

(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.

(2) The election must be received by EGID no later than thirty [30] days after the date of termination of service.

(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected, the coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.

(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:

(1) During an open enrollment period; or

(2) Eligible dependent(s) not covered at the time of the former employee's termination from active employment, as long as the dependent election is made within thirty [30] days of the termination date.

(3) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new dependent[s].

(4) If the dependent has lost other group health or dental insurance coverage and notice has been given to EGID within thirty [30] days after the loss of the other coverage.

(d) During an option period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage. Vision coverage cannot be dropped mid-year except as allowed at 260:50-3-22(c).

(e) If an eligible former employee has a spouse who is participating in the Plan as an employee of a participating entity, the former employee may transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:

(1) Coverage must remain continuous; and

(2) All eligible dependents must be insured unless they have other verifiable group coverage.

(3) The eligible former employee, at a later date, may defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Plan has remained continuous, and the former employer of the eligible former employee continues to participate in the Plan.

(f) An individual who has retained health, dental or vision coverage who is returning to current employment for a participating entity and meets the eligibility criteria for a current employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.

(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for a current employee is not entitled to coverage through that employer.

(h) In the event an otherwise eligible former employee returns to current employment who did not retain health coverage upon termination of employment, the eligibility requirements of a new employee must be met in order to obtain coverage through the employer. Such individuals must work for three [3] years in order to qualify for retaining any benefits not previously elected upon ceasing current employment when they re-retire. This includes members who terminated from employers not participating in the Group Plans authorized by the Oklahoma State Employees Benefits Act [74 O. S. §1301] when they originally ended employment.

260:50-3-14. Coverage for eligible non-vested employee

A non-vested employee must apply for continuation of coverage thirty [30] days after the date of termination of employment. Coverage must be continuous and eligibility to continue must be based upon the length of service required by statute. [74 O.S. §1316.2; 74 O.S. §1316.3]

260:50-3-15. Effective dates of coverage for current employees

An employee other than an education employee is eligible to participate if not classified as seasonal or temporary and whose actual performance of duties normally requires one thousand [1,000] hours per year or more. An education employee who is a member of or eligible to participate in the Oklahoma Teacher's Retirement System and working a minimum of four [4] hours per day or twenty [20] hours per week may participate in the Plan. Part-time education employees are those who meet the requirements of a half-time employee as defined by the Oklahoma Teachers Retirement System. Eligible employees shall be covered on the first [1st] day of the month following the month in which the employee is in an eligible status.

(1) If an employee is absent due to accident or illness on the date the employee coverage would normally become effective, benefits shall not be payable until the employee returns to the job. If the employee is absent from work because of a holiday, vacation or nonscheduled working day and the employee was on the job on a scheduled working day immediately preceding the effective date, this effective date will not be changed. An employee coming to work during the latter part of a payroll period who is not able to complete an insurance change form should be placed on the appropriate plans on the first [1st] day of the following month with employee only coverage, so that the employee life, dental and health will be in effect. Members may add optional coverages within the member's initial thirty [30] day enrollment period to be effective the first [1st] day of the month following the date the member enrolled for optional coverages.

(2) Participating entities shall forward members' enrollment information and any changes to enrollment information during the initial enrollment period to the Administrator within ten [10] days after the last day a member may enroll.

(3) If an employee leaves a participating entity and is hired by another participating entity within the following thirty [30] day period, premiums must be forwarded to EGID to avoid a break in coverage.

(4) An enrolled member who terminates employment or is in leave without pay status and whose spouse is also an enrolled employee may transfer coverage to their spouse to be insured as a dependent. The health, dental, vision and basic life may be transferred. The employee's basic life amount will transfer to a dependent spouse amount. If there are dependent children, they must also be insured unless they have other verifiable group coverage.

(5) An employee that terminates from a participating employer and is hired by another participating employer shall be entitled to be treated as a new employee with new health, dental, vision and life benefit options available. A rehired employee returning to a former employer has new health, dental and vision benefit options only after a thirty [30] day break in coverage and may be subject to orthodontic limitations.

(6) Except as provided by statute, an individual employee may choose not to be enrolled in the health or dental plans or may disenroll from these plans because of other group health or dental coverage or by reason of eligibility for military or Indian health services within thirty [30] days after the date the employee becomes eligible for the other group health or dental coverage. Such employees who subsequently lose the other group coverage or eligibility for military or Indian health services may enroll in the corresponding health or dental plans offered through EGID if the election is made no later than thirty [30] days after the date of loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the dental limitation, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost the previous group coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following the election of health and/or dental coverage, and any break in coverage shall result in the application of the dental limitations.

260:50-3-16. Participating entities

(a) **Participation in plans offered by EGID.** Entities electing to participate in the dental, life, vision, or disability plans offered by EGID must participate in the health plan, unless the Administrator grants a waiver. Coverage offered by EGID to eligible education employees will also be offered to all elected members of the school board for that entity.

(b) **Enrollment in group term life benefits.** An entity may elect to participate in the group term life coverage offered by EGID. This includes basic and optional supplemental life coverage for the employee and dependent life coverage. Entities electing to participate in the life plan offered by EGID must participate in the health plan, unless the Administrator grants a waiver.

(c) **Non-participating entities in other group plans.** The group plans offered by EGID shall not be offered to any entity which is participating in any other group insurance program, regardless of the percentage or number of employees eligible to enroll, unless the Administrator grants a waiver.

(d) **Right of Board to approve or deny applications for coverage.** EGID shall retain the right to approve or deny any employer group applications for coverage. Upon approval, coverage will become effective at 12:01 a.m. on the first [1st] day of the month following the month in which approval is granted unless a subsequent month is requested and approved in advance.

(e) **Coverage without preexisting conditions.** When an entity enrolls all employees of the new entity are covered without penalty for preexisting conditions.

(f) **Enrollment of all individuals presently insured.** Upon the group initial enrollment of an institution of higher education, all individuals presently insured by the institution's previous group health plan may become enrolled. If any such individual does not meet the eligibility requirements of this plan, they are eligible for coverage only for the remaining period of the institution's contractual liability. The institution must provide written proof of its contractual liability at the time of said individual's enrollment.

(g) **Attestation of continuous coverage for retirees.** Upon beginning or reinstating participation in health coverage offered by EGID, the entity must provide EGID with an attestation that retirees over age sixty-five [65] that will gain coverage through EGID have had continuous creditable coverage for prescription drugs (coverage that is at least as good as Medicare's) since the retirees became eligible for Medicare. The entity must provide an accurate list of any retiree over age sixty-five [65] that does not meet this requirement in order for EGID to properly report uncovered months to Medicare.

260:50-3-17. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other group coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life.

(1) When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan. HealthChoice newborn limited benefit: a newborn has limited coverage for a birth for the first forty-eight [48] hours following a vaginal delivery or for the first ninety-six [96] hours following a C-section delivery without an additional premium. There are no benefits for services in addition to the routine hospital stay if the newborn is not enrolled for the month of the birth and premiums are not paid for that month. A Newborn Benefit Waiver must be completed to exclude a newborn from the Newborn Benefit.

(2) Newborns must be added the first of the month of the child's birth by filling out an Insurance Change Form within thirty [30] days after birth of the newborn.

(3) When one or more eligible dependents are currently covered, the newborn must be added to the same coverage.

(4) Where a newborn is added to coverage, all other eligible dependents must be enrolled in coverage if they are not currently enrolled. A member can waive health or dental coverage for their spouse.

(5) If a member accepts newborn benefits for the birth of his or her child but does not retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) as a result of the member's failure to furnish his or her Insurance/Benefits Coordinator with a completed insurance change form and any appropriate premium for the month of the newborn's birth within thirty [30] days after the birth of the newborn:

(A) There is no additional premium for the newborn benefit.

(B) Enrollment of other eligible dependents is not required.

(6) If optional coverage is not selected until after the employee's effective date, but within the member's initial thirty [30] day enrollment period, the optional coverage

will be effective the first [1st] day of the month following the date the optional coverage was selected.

(7) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.

(8) Eligible dependents who lose other group health, dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through EGID within thirty [30] days after the loss of other group insurance coverage without penalty for orthodontics if those dependents have been continuously covered by other group dental insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the orthodontic limitations, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage, and any break in coverage will result in the application of the orthodontic limitations.

(9) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by EGID. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to EGID of the qualified event except for newborn or adopted dependent children.

(10) Provided all other eligibility requirements are satisfied, adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to EGID within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(11) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of placement, or at the next option period as established by EGID.

(12) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other unmarried children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide an Application for Coverage for Other Dependent Children form prescribed by the Plan; and (3) coverage, if approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. EGID shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

260:50-3-18. Eligibility criteria for disabled dependent children over the age of twenty-six [26]

Eligibility criteria for covering a disabled dependent child over the age of twenty-six [26] pursuant to 74 O. S. §1303(13) are as follows, provided all other eligibility requirements are also satisfied:

(1) It is intended that the following dependent children over the age of twenty-six [26] are eligible for coverage under this provision:

(A) A child who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years; and

(B) The child is the primary member's natural child, an adopted child, a child for whom the primary member has been granted guardianship, or a child of the primary member's spouse when the spouse has been ordered by a Court to provide health insurance for the child; and

(i) Eligibility through court appointed guardianship will be accepted only for individuals considered to be the primary member's immediate family members (such as a child or grandchild). Guardianship for others not listed herein will not be considered as documentation supporting eligibility for coverage as a disabled dependent. The assessment/application for coverage must be submitted within thirty [30] days of obtaining legal guardianship. Power of attorney, including durable power of attorney, does not qualify as guardianship; and

(ii) Coverage ceases at the end of the month in which the primary member's appointment as guardian is terminated.

(2) Other criteria required for disabled dependent status are:

(A) For an individual who is a new hire or a re-hire, assessment/application for disabled dependent status must be completed and submitted to EGID within thirty [30] days of primary member's initial enrollment;

(B) Primary members must submit a copy of their federal and/or state income tax returns for the prior year reflecting their support of the dependent.

(C) Dependents are eligible only for the coverage in which the primary insured is enrolled. Only dependent life insurance can be carried by both parents if each is a primary member under the plan; and

(D) Primary members must apply for disabled dependent status for an eligible child at least thirty [30] days prior to the dependent's twenty-six [26th] birthday.

(3) Disabled dependent status must be continued for a minimum of one [1] year. If the dependent having the disabled status is dropped from coverage, the primary member may not reapply for disabled dependent status for the dependent for a period of twelve [12] months. The twelve [12] month requirement does not apply when the dependent has lost other group coverage.

260:50-3-19. Termination of dependent coverage

(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve [12] months. Reinstated coverage shall be subject to penalty for orthodontic limitations.

(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other group health, dental, vision and/or life insurance coverage and is seeking reinstatement pursuant to Rule 260:50-3-17(8).

(c) **Dependent reaches age twenty-six [26].** Coverage will be terminated for dependents reaching age twenty-six [26] on the first [1st] day of the month following their twenty-sixth [26th] birthday, except disabled dependents who are incapable of self-support and who have been deemed eligible for coverage by EGID.

260:50-3-20. Withdrawal from plan; termination or loss of coverage

(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that elect to withdraw cannot re-enter the Plan for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to EGID thirty [30] days prior to the actual withdrawal date.

(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other group health and/or dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by EGID prior to enrollment.

(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by the Oklahoma State and Education Employees Group Insurance Board provided that he is eligible through a participating entity. The orthodontic limitations will apply.

(d) **Loss of other group health, dental or life insurance coverage.** The twelve [12] month requirement does not apply when the individual member has lost other group health, dental and/or life insurance coverage and is seeking reinstatement pursuant to Rule 260:50-3-20(c).

260:50-3-21. Continuation of coverage for survivors

(a) The surviving dependents of a deceased employee who was on current work status or authorized leave at time of death, or of a participating retiree, or any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, may continue the health or dental benefits in force provided said dependents pay the full cost of such coverage and they were covered as eligible dependents at the time of such death. Such election must be made within sixty [60] days after death and coverage must be continuous. The eligibility for said benefits shall terminate for the surviving children when such children cease to qualify as dependents under the provisions of this plan.

(b) The surviving spouse of a deceased employee who was on active work status or authorized leave at time of death, or a surviving spouse of a participating retiree, or surviving spouse of any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, and who had elected the optional dependent life benefit prior to his or her death, may continue the dependent life coverage for the surviving spouse and children that were covered as dependents on the date of deceased employee's death, provided the surviving spouse pays the full cost of such coverage and the surviving spouse and children were eligible dependents on the date of the deceased employee's death. Such election must be made within sixty [60] days after the date of the deceased employee's death and coverage must be continuous. The eligibility for life benefits shall terminate for the surviving spouse's children when the children cease to qualify as dependents under the provisions of this plan.

(1) Upon the death of the surviving spouse, life benefits granted under this paragraph are payable to the beneficiary designated by the surviving spouse.

(2) Upon the death of any covered dependent children under this paragraph, life benefits are payable to the surviving spouse.
(3) The amount of life insurance coverage elected by the surviving spouse or, if no spouse, the surviving eligible dependent children shall not exceed the amount elected by the deceased employee prior to the date of the employee's death.
(4) Coverage for all dependent children of the surviving spouse, if any, terminates simultaneously with the death of the surviving spouse or termination of the surviving spouse's life insurance coverage.

260:50-3-22. Mid-year benefit election changes

(a) Mid-year elections will be allowed in accordance with and under those circumstances stated within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code. The determination of Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code compliance for the current employee will be through certification from the employer.
(b) EGID will accept any change for any current employee certified as being compliant by the employer of that current employee so long as the notification of change is received by EGID within thirty [30] days of the employee's mid-year plan election. The employer must further certify that the documentation supporting compliances is available to EGID and will be provided upon written request. An employer's cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in Title 26 Treasury Regulations 1.125-4. This is discretionary with the employer. Employees should be aware that Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code does not require a cafeteria plan to permit any of these changes.
(c) For all other members not on current employee status or whose employer does not operate his employee benefit plan under a Section 125 plan, the rules for mid-year changes will be subject to the Section 125 guidelines as detailed in Title 26 Treasury Regulations 1.125-4.
(d) In all cases, mid-year election changes will only be considered in the event of a qualifying status change as described within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code. All other changes not in conjunction with a qualifying event can only be made during the annual Option Period.

260:50-3-23. Corrections to benefit elections

Members shall review their confirmation of coverage statement to ensure that the coverage elected is correct. Any corrections shall be submitted to the member's Insurance/Benefits Coordinator and EGID within sixty [60] days of the election. Errors reported after the sixty [60] days shall be effective the first [1st] day of the month following the notification of the error.

260:50-3-24. Double coverage prohibited

An eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured, except for dependent life. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.

260:50-3-25. Basic disclosure plan for Medicare beneficiaries

(a) The following words and terms as defined by EGID, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.
(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans; EGID shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:
(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under EGID's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.
(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.
(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan coverage for the upcoming year. The confirmation of benefit form shall further detail any identified preexisting exclusions, and provide a description of an appeal process.
(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide information of the appeals process available to the Medicare beneficiary.
(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that EGID by law has been directed to provide.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 1. POLICY PROVISIONS

260:50-5-1. Selection of health plans

(a) **Requirements for selection of HMO.** Eligible employees may select either the state's comprehensive health plan (HealthChoice) or an HMO option. In order to select an HMO option, the employee must reside or be employed within the selected HMO's service area. The HMO election will apply not only to the employee, but also to all covered dependents. Eligible retirees, vested, non-vested, COBRA or survivor members and eligible dependents must reside within the selected HMO's service area to participate in the HMO.

(b) **Selection of HMO during enrollment period.** A choice of comprehensive benefits or the HMO may be made on an annual basis by the member during the enrollment period as set by EGID. The eligibility requirements set by EGID as applied to the comprehensive health plan will apply to the HMO. Eligible members in all cases will retain eligibility for dental, basic life and AD&D. Selection of the comprehensive health plan or the HMO option will not affect eligibility for life and AD&D, dependent dental, or dependent Life.

260:50-5-2. Schedule of benefits and benefit administration procedures or guidelines as adopted by EGID

All benefits for plans offered through EGID as described in the rules in this title shall be paid according to the handbooks, schedule of benefits and benefit administration procedures or guidelines as adopted by EGID. The schedule of benefits and benefit administration procedures or guidelines as adopted by EGID shall be available for inspection by the public during regular office hours at 3545 N. W. 58, Suite 110, Oklahoma City, Oklahoma 73112.

260:50-5-3. Approval for emergency treatment by non-Network providers

Members may have benefits available for medical emergencies when non-Network services occur. Notification to EGID is required.

PART 3. THE PLANS

260:50-5-10. Plan limits

(a) **Deductible.** Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.**Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.

(b) **Network out-of-pocket maximum.** Per person and family calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based on coinsurance and copayments. When the member or dependent exceeds the specified out-of-pocket calendar year maximum EGID will pay one hundred percent [100%] of the allowable fee for treatment provided by a Network provider. The one hundred percent [100%] payment of the allowable fee will be made by HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-Network out-of-pocket accumulations. The out-of-pocket maximum does not include charges for non-covered services and balance billing charges from non-Network providers.

(c) **Non-Network out-of-pocket.** The Plan will pay one hundred percent [100%] of the allowable fee for treatment provided by a non-Network provider, once the member or dependent exceeds the specified out-of-pocket calendar year threshold. The one hundred percent [100%] payment of the allowable fee will be made by the Plan for the remainder of the calendar year. Specific HealthChoice plans may apply non-Network out-of-pocket accumulations to the Network out-of-pocket maximums. Unlike Network providers, non-Network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to Network and non-Network providers. Allowable fees are not the same as charges billed by providers. Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-Network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed charges for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket charges for treatment by the non-Network provider. The out-of-pocket maximum does not include charges for non-covered services, balance billing charges from non-Network providers and copays. Copayments apply to the Network out-of-pocket maximum.

(d) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by the Plan for a member or dependent, with regard to pharmacy benefits.

(e) **Treatment by non-Network providers.** Any treatment at a non-Network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by EGID at any non-Network hospital or provider are subject to the limited maximum allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-Network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.

260:50-5-11. Covered charges

Items which will be considered for payment under the state's comprehensive health plan (HealthChoice) will be referred to as covered charges that are medically necessary and are as follows:

(1) **Hospital services.** Charges made by a hospital for:

(A) Semi-private room and board;

(B) Other hospital services and supplies used for treatment;

(C) Charges for use of intensive care facility, coronary care facility and other special care facilities;

(D) Outpatient expense incurred within twenty-four [24] hours of a surgical operation or injury.

(2) **Provider's services.** Charges for the services of a duly qualified provider for:

(A) Performing a surgical procedure;

(B) In-hospital medical treatment by a provider other than the surgeon;

(C) Care and treatment of an illness;

(D) Approved preventive medical treatment.

(3) **Skilled Nurse facility expense.** Coverage for facility expenses applies only when the skilled nursing care to be provided is medically necessary as evidenced by a written statement from the attending provider and approved by the managed care vendor. The maximum number of days per benefit period shall be no greater than one hundred [100] days.

(4) **Skilled Nurse care.** Skilled Nurse care that is rendered in the home must be medically necessary as evidenced by a written order and treatment plan from the attending provider and approved by the Health Care Management Unit. Services must be provided by an agency that is Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). The maximum number of visits per benefit period shall be according to the benefit administration procedures or guidelines as adopted by EGID.

(5) **Dentist's or oral surgeon's services.** Charges made by a duly qualified dentist or oral surgeon for treatment of fractures and dislocations of the jaw, and for cutting procedures and treatment covered under the oral surgery benefit. Dental services by Network providers shall be covered by HealthChoice for oral surgeries and related expenses which are covered medical benefits.

(6) **Oral surgery.** Reimbursement for oral surgeries for removal of exostosis, tumors, or cysts when medically necessary; for surgical correction of prognathism, retrognathism, hyperplasia, temporomandibular joint dysfunction, dysfunctional mandibular disorder. Hospital confinement and related ancillary services [including anesthesia] for dental surgery when the confinement is necessary for illness, severe disability, a minor eight [8] years of age or under, or other health conditions, even though the surgery itself may not be covered.

(7) **Rehabilitative care.** Charges for medical care that are considered primarily rehabilitative will be covered under the Plan. Out-of-hospital care must be prescribed by a provider and must begin within twelve [12] months after the onset of the condition being treated. Inpatient care must be rendered in a facility Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). Both inpatient and outpatient care must be approved.

(8) **Outpatient expense.** This coverage includes services and supplies provided by the hospital or licensed surgical center, or any center duly licensed for performing certain other surgical procedures, within twenty-four [24] hours following and in connection with a surgical procedure. The limit for outpatient expense incurred for any one surgery is stated in the benefit administration procedures or guidelines as adopted by EGID.

(9) **Hospice care.** Professional services provided by personnel recognized by this Plan as practitioners of the healing arts will be reimbursed according to the benefit administration procedures or guidelines as adopted by EGID. Specific criteria and limitations apply.

(10) **Approval of exceptional claims**

(A) The Health Care Management Unit may recommend exceptions to the benefits provided by the plan for situations which would otherwise be denied or subject to limited coverage.

(B) Each request for exception must first be reviewed by the Health Care Management Unit on an individual basis. All responsibility for providing the documentation necessary to complete the review falls to the member. Recommendations will then be given to the Medical Director and Administrator both of whom must review all requested exceptions. Exceptions that have been reviewed but not approved in writing by the Medical Director and Administrator are deemed not approved. Approval of exceptions shall not establish precedent for other requests. All requests shall confirm that the requested exception is:

(i) medically necessary, and

(ii) within the standards of the community, and

(iii) cost effective, and/or

(iv) in compliance with all criteria as established by the Medical Director or designee.

260:50-5-12. Health plan limitations and exclusions

For the health plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:

(1) Expenses incurred prior to the effective date of an individual's coverage, or for expenses incurred during a period of confinement which had its inception prior to the effective date of an individual's coverage hereunder.

(2) Injury or any sickness which is covered under an "extended benefits" provision of the previous group health coverage, until such time as such individual has exhausted all extended benefits available thereunder.

(3) Hospitalization or other medical treatment furnished to the insured or dependent after coverage has terminated.

(4) Confinement to a facility unless approved by EGID or its designee.
(5) Medical and surgical services and supplies which are in excess of the fee schedule for such service and supply.
(6) Expenses to the extent that the insured person is reimbursed or is entitled to reimbursement; or is in any way indemnified for such expenses by or through any public program, State or Federal, or any such program of medical benefits sponsored and paid for by the Federal Government or any agency or subdivision thereof.
(7) Bodily injury or illness arising out of or in the course of any employment not specifically excluded by 85 O.S. §2.1 or 2.6 (of the Workers' Compensation Act).
(8) Any treatment or procedure considered experimental or investigational. This restriction will also apply to any facility, appliance, device, equipment or medication. Clinical Trials may be eligible when certification and other criteria are met.
(9) Medical and/or mental health treatment of any kind, including hospital care, medications, or any medical care or medical equipment which is excessive or where medical necessity has not been proven.
(10) Medications available for purchase without a written prescription.
(11) Medical care and supplies for which no charge is made or no payment would be requested if the insured individual did not have this coverage.
(12) Complications from any non-covered or excluded treatments, items or procedures.
(13) Any medication, device, or procedure, not FDA approved for general use or sale in the United States.
(14) Surgical procedures or treatment performed for cosmetic or elective reasons unless such procedure is specifically included as a covered charge or is necessary as a result of an accident. Coverage must have been continuous from the date of the accident to the date of corrective surgery.
(15) Dental expenses unless incurred as the result of an accidental bodily injury to natural teeth or gums while the coverage is in effect. Coverage must have been continuous from the date of the accident to the date of corrective surgery. Broken or lost artificial teeth, bridges or dentures, are not covered.
(16) Illness, injury, or death as a result of committing or attempting to commit an assault or felony, including participation in a riot or insurrection as an aggressor.
(17) Intentionally self-inflicted injury, or for attempted suicide whether sane or insane except when the injury results from a physical or mental medical condition covered under the health plan.
(18) Wrongful act or negligence of another when an employee or dependent has released the responsible party, unless subrogation has been waived or reduced in writing in an individual case, solely at EGID's option, and only for good cause.
(19) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.

SUBCHAPTER 5. LIFE BENEFITS

260:50-5-20. Term life coverage

(a) **Group Term Life Benefits.** A former employee who is reemployed by the same participating employer within twenty-four [24] months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by EGID. However, to elect this benefit, the member must be either a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other group health coverage. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at EGID, benefits will be paid to the decedent's estate.
(b) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID, during which coverage based on evidence of insurability submitted to EGID can be contested, if it is found that materially erroneous, false, inaccurate, or misleading information was provided in order to obtain optional or supplemental coverage in excess of any guaranteed amounts of coverage. In the event EGID determines coverage was granted based upon erroneous, false, inaccurate or misleading information, and that such information was material to EGID providing any optional or supplemental coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary.

260:50-5-21. Optional dependent life coverage

(a) **Current employees.** Current employees may select life insurance coverage for eligible dependents if the employee is enrolled in basic life. This coverage does not include accidental death or dismemberment benefits. This benefit is available even if the dependent is a participating employee.
(b) **Former employees.** Former employees may continue this coverage if the member is enrolled in basic life.

260:50-5-22. Optional supplemental life coverage for eligible employees

(a) **Supplemental life coverage.** Supplemental life coverage is available for eligible employees who are covered by the basic term life coverage.
(b) **Enrollment.** At the time of initial enrollment, supplemental life may be requested up to the pre-established level set forth in the benefit administration procedures or guidelines as adopted by EGID, without submitting evidence of insurability. All supplemental life insurance requested which exceeds

the pre-established level will require evidence of insurability. Coverage selected in the supplemental life insurance program begins on the first [1st] day of the month following the date of employment. Optional coverages not selected within the member's initial enrollment period may be added only during the next enrollment period. Members who waive or do not select supplemental life insurance coverage shall be required to obtain approval of current evidence of insurability to obtain coverage at a later date. Coverage obtained under this provision will be subject to certain additional restrictions as adopted by EGID. Individuals who waived this coverage because they were covered by other group life insurance coverage will be allowed to enroll without being subject to these additional restrictions if they request the coverage in writing and supply proof of the loss of other group coverage within thirty [30] days following the loss of the other group life coverage.

(c) **Changes in levels of coverage.** Increases or reductions in coverage limits (except termination of coverage) are only accepted during the option period. Beneficiary changes may be made at any time, but must be communicated to EGID in writing. All changes in coverage levels will be subject to the benefit administration procedures or guidelines as adopted by EGID.

(d) **Waiver of life insurance premiums.** In the event the employee becomes disabled, life insurance premiums may be waived for employee and dependent life insurance coverage. Provider certification shall be required, as specified by EGID, and premium waiver shall start on the first [1st] day of the month after the employee has been disabled for thirty [30] consecutive days, and shall continue for as long as the employee remains disabled. The waiver shall terminate on the earliest of the following events: the employee has been found to be able to return to current duty in any capacity by any provider; the employee returns to any active duty for any period of time; the employee changes in status to former or retired; the employee notifies EGID in writing that life insurance coverage is to be terminated; the employee is terminated for any reason, including, but not limited to resignation or discharge from his or her position; any termination of life insurance coverage occurs as set forth in 260:50-7-1.

(e) **Accidental Death and Dismemberment and loss of sight benefit.** The basic term life and the first twenty thousand dollars [$20,000] of the supplemental life coverage includes the accidental death and dismemberment and loss of sight benefit and will pay a scheduled benefit in the event of accidental death and dismemberment or loss of sight injury within ninety [90] days after the date of accident or accidental injury. Death must be a direct result of the accidental bodily injury independent of all other causes.

260:50-5-23. Rights of retired and vested employees to continue life insurance coverage

(a) **Continuation of coverage.** Any person who retires or who has elected to receive a vested benefit under the provisions of the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, or the spouse or dependent of any such employee, may continue in force life benefits purchased prior to severance in a face amount of no less than one-fourth [1/4] of the basic life coverage amount in five thousand dollar [$5,000.00] increments, and the full amount of any additional life insurance that was in effect prior to the date of retirement. Said individual shall pay actuarially determined cost of such coverage and shall make such election within thirty [30] days following the date of severance. Said election to continue coverage becomes effective on the first [1st] day of the month following termination of current employment. Eligible employees may continue in force the dependent life coverage in effect at time of termination of employment in five hundred dollar [$500] increments per dependent if the member is enrolled in basic life coverage.

(b) **Decrease or termination of coverage.** Coverage may be decreased or terminated after severance from current employment, but shall not be increased or reinstated after severance, except as permitted by rule or statute.

(c) **Unavailability to retirees, vested or eligible non-vested members or dependents.** accidental death and dismemberment and loss of sight benefits are not available to retired, vested, or eligible non-vested members or dependents.

(d) **Retirees returning to active employment.** When an individual has retired and then returns to active employment, that individual may not retain any more life insurance upon termination of active employment than the amount that was retained when the individual initially retired, unless the period of active employment is for at least three [3] years.

SUBCHAPTER 7. LIMITATIONS AND EXCLUSIONS FOR LIFE PLANS

260:50-5-24. Limitations and exclusions for life plans

For the life plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:

(1) There is no coverage for employee life or dependent life benefits during the first twenty-four [24] months of coverage when death is the result of suicide. The twenty-four [24] month exclusion for death by suicide will begin on the effective dates of all elective increases in coverage, and will apply to all increased amounts of coverage which have been in effect for less than twenty-four [24] months on the date of the act causing the insured's death.

(2) There is no coverage for accidental death and dismemberment benefits or loss of sight benefits when such occurs as a result of the following:

(A) Suicide, attempted suicide or intentional self destruction, or intentionally self-inflicted injury while sane or insane,

(B) Committing an assault or felony, including participation as an aggressor in a riot or insurrection,

(C) Wholly or partly, directly or indirectly, by disease, physical or mental, or by medical or surgical treatment or the diagnosis of any of the foregoing,
(D) Wholly or partly, directly or indirectly by bacterial infection, other than septic infection of and through a visible wound sustained solely through external and accidental means,
(E) Any narcotic, drug, poison, gas or fumes, voluntarily taken, administered, absorbed or inhaled, unless prescribed for the exclusive use of the deceased, or administered by a licensed provider for a legal purpose,
(F) Hang gliding, sky diving and flying experimental aircraft.

PART 9. DENTAL BENEFITS, LIMITATIONS, AND EXCLUSIONS

260:50-5-30. Scope of coverage; four classes of coverage

The dental expense benefit applies to eligible covered employees and dependents. This benefit provides payment for dental expenses incurred in excess of any applicable deductible. However, to elect this benefit, the member must either be a) enrolled in one of the group health plans offered through EGID or b) be enrolled in other group coverage. It is not necessary for dependents to be covered by health benefits to receive the benefits of this Plan. Coverage under this Plan is divided into four classes which are: Class A, Class B, Class C, and Class D.

260:50-5-31. Plan limits

(a) **Deductible.** The deductible amounts are the out-of-pocket expenses for a class of benefits incurred by the employee for himself or on behalf of a covered dependent during each calendar year.
(b) **Family deductible.** During any benefit period, EGID will pay a percentage of the covered charges incurred which exceed the family deductible amount, if applicable.
(c) **Maximum benefits.** The dental plan has a maximum benefit on a calendar year basis as established by EGID.

260:50-5-32. Dental limitations and exclusions

For the dental plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:
(1) Dental care and supplies for which there are no charges made or no payment would be required if the insured individual did not have coverage.
(2) Charges incurred after the covered individual's benefit ends.
(3) Dental care or supplies which are furnished in a facility operated under the direction of or at the expense of the U.S. Government [or its Agency] or by a provider employed by such a facility.
(4) Dental care or supplies to the extent that they are payable under other provisions of the policy.
(5) Charges for any dental services and supplies which are in excess of the fee schedule and deductible for such services and supplies.
(6) Adult orthodontic without a diagnosis of temporomandibular joint dysfunction.
(7) Cosmetic procedures.
(8) Medical expenses for the treatment of temporomandibular joint dysfunction.
(9) Medical services treating an oral condition.
(10) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.
(11) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.
(12) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.
(13) Expenses relating to an intentionally self-inflicted injury, except when the injury results from a physical or mental medical condition covered under the health plan.
(14) Charges for treatment of accidental injury to natural teeth or gums.
(15) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.
(16) Orthodontic benefits are only available to plan participants who have been enrolled in the HealthChoice dental plan for at least one year.

PART 11. MEDICARE SUPPLEMENT

260:50-5-40. Medicare Supplement and Medicare Part D Prescription Drug Plan (PDP)

Members who are eligible for Medicare will be assumed to be enrolled in both Parts A and B of Medicare. Benefits payable under the Medicare Supplement will be determined in accordance with this assumption. The Medicare Supplement is either connected with a Medicare Part D Prescription Drug Plan or contains pharmacy benefits that are considered creditable coverage by Medicare.

260:50-5-41. Primary insurer of current employees

The health plan(s) offered through EGID may be primary for current employees eligible for Medicare and their eligible covered dependents as set forth in the Federal statutes governing Medicare.

260:50-5-42. Limitations of Medicare Supplement

The Medicare Supplement health coverage is a supplement to the coverage provided by Medicare.
(1) This Supplement applies only after Medicare benefits are determined.
(2) Coverage is limited to Medicare's scheduled amount.

260:50-5-43. Enrollment in Medicare Supplement

(a) **Medicare Supplement coverage enrollment required regardless of age.** All covered individuals who are eligible for Medicare, except current employees and their dependents as addressed in 260:50-5-41, must be enrolled in a Medicare Supplement Plan, offered through EGID, regardless of age.

(b) **Effective date of Medicare Supplement coverage.** Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date EGID receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(c) **Non-Medicare eligible individuals.** Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in EGID's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded and are presumed to be enrolled in both Parts A and B of Medicare.

SUBCHAPTER 13. COORDINATION OF HEALTH AND DENTAL BENEFITS

260:50-5-44. Application of retiree benefit allowance

When calculating premium rates for the retired population, EGID shall first apply in whole or in part, benefit allowances funded by the retirement systems to offset costs projected for the pharmacy portion of the health insurance plan. Remaining amounts, if any, will then be applied toward the medical coverage premium.

260:50-5-45. Definitions

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

"Allowable expense" means any medically necessary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom the claim is made except where a statute requires a different definition. An expense or service, or a portion of an expense or service that is not covered by EGID's medical and or dental plan is not an allowable expense. The maximum liability under EGID's medical and or dental plan as a secondary or subordinate payor is the member's actual liability under any coordinating plan or EGID's standard benefit, whichever is less. However, items of expense under coverage such as, but not limited to dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an allowable expense, except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

"Plan" means the following:

(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:

(i) group, blanket or franchise insurance coverage,

(ii) service plan contracts, group practice, individual practice and other prepayment coverage,

(iii) any coverage under labor-management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and

(iv) any coverage under governmental programs, and any coverage required or provided by any statute.

(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.

(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group-type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.

(D) The definition of a "Plan" within the coordination of benefits provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:

(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this part and in (E) of this definition.

(ii) May include all group or group subscriber contracts as well as such group-type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition, at the option of the insurer and its

policyholder client, whether or not individual policy forms are utilized and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.

(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group-type basis may be included.

(F) Interpretation of the definition of a "Plan" may not include group or group-type hospital indemnity benefits (written on a non-expense incurred basis) of thirty dollars [$30] per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits at the time of the claim. In any event, the amount of group and group-type hospital indemnity benefits which exceed thirty dollars [$30] per day may be construed as being included under the definition of "Plan".

(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken into consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a twenty-four [24] hour basis or "to and from school" for which the parent pays the entire premium.

(H) If "Medicare" or similar governmental benefits are included in the definition of "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.

(I) A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:

(i) another plan exists; or

(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another plan; or

(iii) the claimant has elected an option under another plan providing a lower level of benefits than another option for which the claimant was eligible.

(J) With regard to plans offered by EGID an eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent. **"This Plan"** means that portion of the benefits that are subject to this part.

260:50-5-46. Effect on benefits

(a) **Determining benefits.** This section shall apply in determining the benefits as to a person covered under the plan for any claim determination period if, for the allowable expense incurred as to such person during such period, the sum of:

(1) the benefits that would be payable under this plan in the absence of this provision, and

(2) the benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to this provision would exceed such allowable expenses.

(b) **Claim determination period.** As to any claim determination with respect to which this section is applicable, the benefits that would be payable under this plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in (c) of this section, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefore.

(c) **Coordination of benefits.** The benefits of another plan will be ignored for the purpose of determining the benefits under this plan if:

(1) the other plan which is involved in (b) of this section and which contains a provision coordinating its benefits with those of this plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and

(2) the rules are set forth in (d) of this section would require this plan to determine its benefits before such other plan.

(d) **Order of benefit determination.** For the purpose of (c) of this section, the rules establishing the order of benefit determination are:

(1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.

(2) The following guidelines apply with respect to claims regarding dependent children:

(A) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on which expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, shall be determined before the benefit of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this paragraph regarding dependents, which results either in each plan determining benefits before the other or in each plan determining its benefits after the other, the provisions of this paragraph shall not apply, and the rule set forth in the plan which does not have the

provisions of this paragraph shall determine the order of benefits.

(B) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.

(C) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parents without custody.

(D) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, then, notwithstanding (B) and (C) of this paragraph, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.

(3) When (1) and (2) of this subsection do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time, provided that:

(A) the benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee, or dependent of such person, shall be determined after the benefits of any other plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person; and

(B) if either plan does not have a provision regarding laid-off or retired employees, which results in each plan determining its benefits after the other, then the provisions of (A) above shall not apply.

(4) When a claim under a plan with a coordination of benefits provision involves another plan which also has a coordination of benefits provision, the carriers involved should use the rules in (1) through (3) of this subsection to decide the order in which the benefits payable under the respective plans will be determined. Note:

(A) In determining the length of time an individual has been covered under a given Plan, two successive plans of a given group shall be deemed to be one continuous plan so long as the claimant concerned was eligible for coverage within twenty-four [24] hours after the prior plan terminated. Thus, neither a change in the amount of scope of benefits provided by a plan, a change in the carrier insuring the plan, nor a change from one type of plan to another, (e.g. single employer to multiple employer plan, or vice versa, or single employer to a Taft-Hartley Welfare Plan) would constitute the start of a new plan for purposes of this paragraph.

(B) If a claimant's effective date of coverage under a given plan is subsequent to the date the carrier first contracted to provide the plan for the group concerned (employer, union, association, etc.), then, the absence of specific information to the contrary, the carrier shall assume, for purposes of this paragraph, that the claimant's length of time covered under that plan shall be measured from claimant's effective date of coverage. If a claimant's effective date of coverage under a given plan is the same as the date the carrier first contracted to provide the plan for the group coverage, then the carrier shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time his coverage under that plan has been in force.

(5) A plan with order of benefit determination rules which complies with this section (herein called a Complying Plan) may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this section (herein called a Noncompliance Plan) on the following basis:

(A) If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis.

(B) If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary plan. In such a situation, such payment shall be the limit of the Complying Plan's liability.

(C) If the Noncompliance Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncompliance Plan are identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncompliance Plan.

260:50-5-47. Facility of benefit payment

Whenever payments which should have been made under this plan in accordance with this section have been made under any other plans, EGID shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to

be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, EGID shall be fully discharged from liability under this plan.

260:50-5-48. Right of recovery

Whenever payment has been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, EGID shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as EGID shall determine:

(1) any persons to or for or with respect to whom such payments were made;

(2) any other insurers; or

(3) service plans or any other organizations.

PART 15. SUBROGATION

260:50-5-49. Right of subrogation

(a) EGID reserves the right to recover funds from members, dependents, tortfeasors, liability policies, underinsured/uninsured motorist policies, medical payments policies and/or other identifiable sources of funds, in amounts equal to any and all claim payments made on behalf of a member or dependent for injury caused by a third party's wrongful act or negligence.

(b) EGID has the right to recover any sums collected by or on behalf of a member or dependent even if the member or dependent has not been made whole. EGID is entitled to reimbursement from any recovery even if the recovery does not fully compensate the member or dependent for their injury. The make-whole doctrine shall not apply. The sole exception to this paragraph exists only to the limited extent that EGID voluntarily elects to invoke its exclusive statutory authority to waive or reduce EGID's subrogation interest in an individual case.

(c) The act of submitting claims by or on behalf of a member or dependent constitutes notice and acceptance of EGID's right of recovery against the third party and creates a lien upon any identifiable funds referenced in (a) above.

(d) A member or dependent will not take any action to prejudice EGID's right of subrogation, such as settlement of the claim without first giving notice of EGID's subrogation rights to the responsible party and any and all known liability or other insurers.

(e) The member or dependent will cooperate in doing what is reasonably necessary to assist EGID in any recovery, including but not limited to promptly providing all information requested by EGID.

(f) Subrogation will exist only to the extent of plan benefits paid.

(g) Claims submitted after a member or dependent has released the responsible party may be denied at the option of EGID, by the issuance of routine written notice to the member, dependent, or their attorney.

(h) If claims relating to a specified injury are paid by EGID after the member or dependent has released the responsible party, when the member or dependent has failed to inform EGID in a timely manner prior to executing a release, EGID at its option, may require reimbursement from the member, dependent or provider.

(i) Claims submitted will initially be pended as incomplete and subsequently denied if information regarding possible third party responsibility is not voluntarily provided to EGID within a reasonable time period [not less than ninety (90) days] after the date the information was first requested in writing by or on behalf of EGID.

SUBCHAPTER 7. TERMINATION OF BENEFITS

260:50-7-1. Termination of benefits

(a) **Termination of coverage.** The coverage under this plan will terminate at the earliest time stated below:

(1) On the last day of the calendar month in which employment terminates.

(2) When the plan is discontinued.

(3) When any required premiums cease to be paid.

(4) The individual does not begin or continue coverage as an eligible participating former employee and/or dependent.

(5) For a dependent when said dependent becomes ineligible for coverage.

(6) A participating entity ceases to participate in this plan.

(b) **Representation of eligibility.** Individuals who enroll a family member in the plan are representing that the individual is eligible under the terms of the plan and must provide evidence of eligibility upon request. The plan relies upon the member's representation of eligibility in accepting the enrollment of the family member, and the intentional provision of false evidence or the failure to provide required evidence of eligibility is evidence of fraud and material misrepresentation. The intentional provision of false evidence or the failure to provide evidence of eligibility will result in disenrollment of the individual, which may be retroactive to the date as of which the individual became ineligible for plan coverage, as determined by the plan.

(c) **Rescission of coverage obtained through false information.** If material facts are submitted as a result of fraud, substantive error, inaccuracy, omission, misrepresentation, or any illegal or unauthorized activity, on any form or application for insurance coverage by or on behalf of a member or dependent, the coverage will be rescinded retroactively to the effective date. Written notice shall be sent by first class mail by EGID to the member's last known address of record no less than thirty [30] days prior to retroactive rescission of coverage. EGID reserves the right to recover the costs of any and all claims paid through such falsely obtained coverage from the ineligible member and/or dependent through all available means, at the discretion of EGID.

(d) **Dependent termination of coverage.** In addition to (a), (b), (c) and (e) of this section, the coverage terminates with respect to an individual dependent on the last day of the calendar month in which such person ceases to be an eligible dependent.

If a covered individual is found to be ineligible, coverage will be terminated effective on the first [1st] day of the month the coverage of the ineligible person was discovered by EGID.

(e) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID during which coverage based on materially false information submitted to EGID can be rescinded, if it is found that information as listed above in paragraph (c) was provided in order to obtain coverage, and that such information was material to EGID providing such coverage.

SUBCHAPTER 9. COBRA HEALTH INSURANCE CONTINUATION

260:50-9-1. Procedures and implementation

Notice of right to continue coverage. Each agency or employer participating in the EGID Plan shall advise each covered employee of his right to continue coverage under Federal COBRA provisions. COBRA coverage applies only to health, dental, and vision benefits. Life and disability coverage are not available through COBRA.

260:50-9-2. COBRA administration

(a) **COBRA coverage is identical to coverage provided at date of the qualifying event.** The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service area. In that event, coverage is continued under HealthChoice, EGID's self-insured plan.

(b) **Payment of back premiums.** All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.

(c) **Responsibility of qualified beneficiary to inform EGID of ineligibility.** It is the responsibility of the qualified beneficiary to provide timely notice if he is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage, retroactive to the time of ineligibility.

(d) **Primary member premium.** For any benefit continued under COBRA, one person must pay the primary member premium. In cases where a spouse, child, or children are insured for a particular benefit where the primary member did not retain coverage, one person will be billed at the primary member rate.

(e) **Federal regulations.** Federal regulations regarding COBRA extension of coverage shall be controlling in all situations where applicable.

[OAR Docket #14-756; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 55. EMPLOYEES GROUP INSURANCE DIVISION - THE DISABILITY PLAN

[OAR Docket #14-757]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
260:55-1-1. Purpose [NEW]
260:55-1-2. Definition [NEW]
260:55-1-3. Gender reference [NEW]
260:55-1-4. Absence on eligibility date [NEW]
260:55-1-5. Commencement of disability [NEW]
260:55-1-6. Multiple disability claims [NEW]
260:55-1-7. Recurrent disability [NEW]
260:55-1-8. Partial disability [NEW]
260:55-1-9. Preexisting conditions [NEW]
260:55-1-10. Proof of claim [NEW]
260:55-1-11. Duration and amounts of benefits [NEW]
260:55-1-12. Benefit offsets [NEW]
260:55-1-13. Payment of benefits [NEW]
260:55-1-14. Direct deposit and insurance premium deductions [NEW]
260:55-1-15. Lump sum settlement [NEW]
260:55-1-16. Examination [NEW]
260:55-1-17. Rehabilitation [NEW]
260:55-1-18. Suspension or termination of benefits [NEW]
260:55-1-19. Termination of benefits [NEW]
260:55-1-20. Termination of coverage [NEW]
260:55-1-21. Termination of plan [NEW]
260:55-1-22. Retention of other insurance [NEW]
260:55-1-23. Recovery of FICA contributions [NEW]
260:55-1-24. Insurance/Benefits Coordinator [NEW]
260:55-1-25. Exclusions [NEW]
260:55-1-26. Penal institution [NEW]
260:55-1-27. Rules, cumulative [NEW]
260:55-1-28. Amending of rules [NEW]

AUTHORITY:
The Director of the Office of Management and Enterprise Services; 74 O.S. §1304(12); §1306(12), §1308.1(1) and §1332(A)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 18, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this proposed rulemaking action is to re-adopt in Title 260, Office of Management and Enterprise Services from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:55-1-1. Purpose

The rules of this chapter outline the coverage and limitations available under the Disability plan.

260:55-1-2. Definitions

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

"Base compensation" means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.

"Benefit period" means the first [1st] day of the benefit period will be the day benefits commence as defined at 260:55-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 260:55-1-11(d). A recurrent disability as defined at 260:55-1-7 will not alter the beginning date of the benefit period.

"Disability" means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive calendar days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan.

"EGID" means the Employees Group Insurance Division of the Office of Management and Enterprise Services.

"Eligibility period" means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period. Employees reinstated to eligibility to participate in the disability plan after having waived disability coverage pursuant to 74 O.S. §1308.3 will be considered to have no prior service and no continuous employment prior to their reinstated eligibility.

"Elimination period" means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

"Employee" means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Plan or who meet each and every requirement of this Disability Plan.

"Furlough" means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

"Illness" means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the Plan.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the Plan.

"Participation" means participation in the Disability Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.

"Physician" means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

"Preexisting condition" means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry-on-duty (EOD) date. The term "preexisting condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full-time duties for remuneration with an entity participating in the Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

260:55-1-3. Gender reference

All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.

260:55-1-4. Absence on eligibility date

(a) **Eligibility date for disability.** If an employee is absent from work because of a furlough, holiday, vacation or non-scheduled working day and he was on the job or on paid leave other than for injury, illness, or unpaid leave, on a scheduled working day immediately preceding the eligibility date, the eligibility date for disability benefits will not be altered.

(b) **Release from physician for determination of eligibility.** If an employee is absent from work because of injury or illness on the date he would normally become eligible for disability coverage, he shall not become eligible until he obtains an unconditional release from his physician, and returns to the job for five [5] full-time consecutive work days, performing all of his normal duties.

(c) **Unpaid leave.** If an employee is absent from work because of other unpaid leave, he is not eligible for coverage until he returns to the job for five [5] consecutive work days.

260:55-1-5. Commencement of disability

(a) **Short-term disability.** Short-term disability will be considered to have commenced on the date the employee first receives treatments or advice from a physician followed by a continuous absence from work due to disability, in accordance with the criteria under the definitions of 260:55-1-2. Short-term disability ends after the first one hundred eighty [180] days of disability.

(b) **Long-term disability.** Long-term disability commences after one hundred eighty [180] days of disability and coincides with the end of the short-term period.

260:55-1-6. Multiple disability claims

In the event of a second eligible disability claim within the period of the first claim:

(1) the second claim must meet the definition of disability, and

(2) even though the second claim has no physical relationship to the first claim, the two will be combined so as to form one continuous disability period.

260:55-1-7. Recurrent disability

(a) **Recurrent disability.** A recurrent disability is a disability related to or due to the same cause of a prior disability for which the employee received a monthly benefit:

(1) A recurrent disability is treated as part of the prior disability if:

(A) the employee returns to his regular occupation full-time for less than six [6] months, and

(B) performs all the material duties of his occupation.

(2) If the employee returns to his regular occupation full-time for six [6] months or more, a recurrent disability will be treated as a separate disability.

(b) **Lump sum settlement.** The recurrent disability provisions do not apply in the event of a lump sum settlement payment.

260:55-1-8. Partial disability

(a) **Partial disability.** If a person is performing at least one, but not all, of the material duties of any occupation, and is earning less than eighty percent [80%] of pre-disability base compensation, that person is considered to be partially disabled. The partial disability must result from the same cause as the disability. Proof of partial disability must be received within thirty-one [31] days after the end of a period during which disability benefits were paid in order to be eligible for monthly partial disability benefits.

(b) **Payment of benefits for partial disability.** Partial disability benefits are payable, after total disability, for up to twenty-four [24] months, or until recovery, or until maximum benefit limits as set out at 260:55-1-11 are met as defined, or until employee's gross rate of compensation reaches eighty percent [80%] of pre-disability base gross rate of compensation, whichever occurs first. Partial disability benefits are also subject to offsets described at 260:55-1-12.

260:55-1-9. Preexisting conditions

(a) **Unavailability of benefits due to preexisting conditions.** No benefits are payable for any disability caused by a preexisting condition.

(b) **Non-applicability of preexisting conditions.** A condition will no longer be considered preexisting after the disabled person has been actively at work at his usual job for five [5] consecutive days following the expiration of:

(1) A one hundred eighty [180] day period following the EOD date during which the employee has not received medical care, diagnosis, consultation or treatment, or taken prescribed drugs or medicines for the preexisting condition, or

(2) A three hundred sixty [26] day period following the EOD date.

260:55-1-10. Proof of claim

(a) **Notice.**

(1) Written notice of claim for disability benefits must be given to the disability claims administrator within sixty [60] days after the date disability starts. For good cause shown, EGID's Administrator may waive the sixty [60] day requirement. If that is not possible, EGID must be notified as soon as it is reasonably possible to do so.

(2) No claim may be reopened when request is made more than one [1] year after benefits have ended for any reason.

(b) **Proof.**

(1) Proof of the claim, as specified by EGID, must be given to the third party administrator no later than one [1] year after the start of disability. Proof must cover the severity and extent of the disability and the reasons the employee is unable to perform the duties of his/her position.

(2) The employee must provide proof of continued disability and regular attendance of a physician within thirty [30] days following the request for proof. Regular care of a physician means appointments with the physician at

least once per month. Less frequent appointments may be approved by EGID.

260:55-1-11. Duration and amounts of benefits

(a) **Determination of monthly disability benefits.** To determine monthly disability benefits:

(1) Multiply the employee's base compensation by sixty percent [60%], subject to short-term and long-term benefit maximums as established by the Board.

(2) Deduct any benefit offsets.

(3) Monthly benefit will be (1) minus (2), subject to any minimum long-term disability benefit as established by EGID.

(b) **Prorating of benefit for part of a month.** Any benefit that is payable for part of a month will be prorated using the number of days in that month as the denominator and the number of days of disability during that partial month as the numerator.

(c) **Cooperation required.** Continued benefits shall be contingent upon cooperation and participation in the rehabilitation program herein.

(1) In order to remain eligible for long-term benefits, the insured must make application for Social Security benefits by the seventh [7th] month of disability and continue pursuing Social Security benefits until the appeals process is exhausted. Refusal to appeal denial of Social Security benefits through the entire appeals process is grounds for termination of benefits. Exceptions may be granted by EGID in certain cases where application for Social Security benefits is not practical due to the type of disability.

(2) If, after twenty-four [24] months of disability, the Social Security Administration has not deemed the insured eligible for Social Security disability benefits, the insured will no longer be eligible for benefits from this plan.

(3) Exceptions to (c), (1), and (2), above may be granted by EGID on a case-by-case basis.

(d) **Mental health and substance abuse.** Disability claims due to mental health disorders or substance abuse are limited to twenty-four [24] months per disability.

(1) Provided, however, if the employee is confined in a hospital, as defined in 260:50-10-2, of these rules, at the end of the twenty-four [24] month period, benefits will be paid for the length of that confinement. If the employee continues to be totally disabled upon discharge from the hospital, the monthly benefit will be payable for a period not to exceed ninety [90] days. If the insured employee is reconfined during this recovery period for at least fourteen [14] consecutive days, the monthly benefit will resume during that confinement and one additional recovery period not to exceed ninety [90] days.

(2) Provided, also, that each employee shall have a lifetime maximum of no greater than sixty [60] months of disability benefits for all mental or substance abuse disorders; however, other maximums apply, and in no event shall benefits exceed the maximums listed in 260:55-1-11 of this section.

(e) **Payment of benefits monthly.** Benefits are paid monthly subject to the maximums listed below. These maximums apply to all disabilities, but are subject to (b) and (d) of this section. These maximums are computed from the first [1st] day of disability.

(1) Less than one year of service: 6 month maximum coverage

(2) From one to five years of service:

(A) Under age 66 at disability 24 month maximum coverage

(B) at age 66 at disability 21 month maximum coverage

(C) at age 67 at disability 18 month maximum coverage

(D) at age 68 at disability 15 month maximum coverage

(E) at age 69 or over at disability 12 month maximum coverage

(3) More than five years of service:

(A) Under age 60 at disability coverage to age 65

(B) at age 60 at disability 60 month maximum coverage

(C) at age 61 at disability 48 month maximum coverage

(D) at age 62 at disability 42 month maximum coverage

(E) at age 63 at disability 36 month maximum coverage

(F) at age 64 at disability 30 month maximum coverage

(G) at age 65 at disability 24 month maximum coverage

(H) at age 66 at disability 21 month maximum coverage

(I) at age 67 at disability 18 month maximum coverage

(J) at age 68 at disability 15 month maximum coverage

(K) at age 69 or over at disability 12 month maximum coverage

260:55-1-12. Benefit offsets

(a) **Offset by benefits received from other sources.** The disability benefit due from this plan shall be offset by benefits received from other sources. These sources are:

(1) Any sick leave benefits for which the employee is eligible.

(2) Social Security benefits as follows:

(A) Any amount of primary disability benefits provided under the United States Social Security Act for which the employee is eligible because of this disability; and

(B) Any amount of primary and/or family retirement benefits provided under the United States Social Security Act which the employee receives.

(C) The following benefits under the Social Security Act are not to be considered offsets under this program:

(i) Social Security benefits effective prior to the established date of disability, unless awarded as a result of the same disability;

(ii) Social Security widow's/widower's benefits not connected to the claimant's disability; and

(iii) benefits awarded under the Supplemental Security Income Program.

(3) Any benefits received under the provisions of State of Oklahoma or county retirement systems, except those benefits which began prior to onset of disability.

(4) Benefits related to the disability provided by another group plan, including Veteran's Administration (VA) benefits. Such benefit becomes due as a result of the disability and not by a voluntary election to receive the benefit. This does not include:

(A) plans funded entirely by employee contribution;

(B) plans where payment of these benefits reduce the benefit the claimant would be due at a normal retirement age; or

(C) payments for conditions established one [1] year or more, prior to the established date of this disability claim. This does not include a profit-sharing plan, a 401K, a thrift plan, an Individual Retirement Account, stock ownership plan, tax sheltered annuity or any benefits from a non-qualified deferred compensation plan.

(5) Benefits related to this disability that are provided under any state's Worker's or Workman's Compensation Law, any occupational disease law, or any other similar act or law.

(6) Any salary, wages, holiday pay, commissions or similar earnings the employee receives from any gainful employment, including salary increases as well as shared or annual leave payments. Neither longevity pay nor one-time bonuses are considered offsets.

(7) Subrogation (loss of earnings for employee only).

(8) Fifty percent [50%] of any earnings while partially disabled or during rehabilitative employment prior to final release.

(9) Any overpayment of previous disability payments.

(10) Any unemployment compensation benefits.

(b) **Non-reduction of benefits due to increases in other benefits.** Once a disability benefit begins, monthly benefits will not be further reduced due to any statutory or cost of living increases payable from pension or pension disability programs, Social Security or Workers' Compensation.

(c) **Lump sum payments.** If any benefits from the sources mentioned in (a) of this section are paid in a lump sum, EGID will prorate the benefits on a monthly basis, either over the period for which the benefit is established or over the actuarially expected life time of the employee, if no time period is established.

(d) **Payment of any overpayment or underpayment.** Benefits will be estimated if they have not yet been awarded, have not been denied or have been denied and the denial is being appealed. Any overpayment or underpayment that results from estimating these benefits will be repaid by the responsible party after the actual benefit is determined.

260:55-1-13. Payment of benefits

(a) **Payment of benefits to employee only.** All benefits due to the employee from the disability plan are payable only to the employee. If the benefit is payable to an employee who is a minor or who is not competent, EGID may only pay the court-appointed guardian or conservator. In the event of the employee's death, payment of any benefits still outstanding shall be made to the designated beneficiary or to the employee's estate.

(b) **Payment of benefits to another party other than the employee.** If EGID pays benefits to a party other than the employee as specified in (a) of this section or as required by law, EGID shall be deemed to have discharged its full responsibility with respect to those benefits.

(c) **Rehabilitation services.** Documented expenses payable for rehabilitation services may be paid directly to the providers of such services or reimbursed to third party administrator; these payments shall not reduce the monthly disability benefits mentioned at 260:55-1-12.

(d) **Benefits are not assignable.** These benefits are not assignable.

260:55-1-14. Direct deposit and insurance premium deductions

(a) All disabled employees receiving disability benefit payments from EGID shall be required to receive monthly disability payments via electronic fund transfers to checking or savings account in a bank, credit union or savings and loan designated by the employee. The employee and receiving institution must complete the form prescribed for this purpose by EGID. In the event the electronic fund transfer creates an undue hardship on the employee, the employee may make application to EGID to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the employee. EGID may also waive this requirement when it is necessary in the best interest of EGID to do so.

(b) In addition to all other required deductions, premiums for insurance coverage provided to disabled employees and their dependents as authorized at Title 74 Oklahoma Statutes Section 1332(A) and 1332.1(D) shall be deducted from disability benefit payments made pursuant to this Chapter.

260:55-1-15. Lump sum settlement

EGID may authorize a lump sum settlement of a disability claim if mutually agreed upon by the employee and EGID's Administrator. Such agreement shall preclude the employee from receiving any future benefits for the disability for which the lump sum settlement is made.

260:55-1-16. Examination

EGID, at its own expense, with travel reimbursement as set out by statute, will have the right and opportunity to have

an employee whose injury or sickness is the basis of a disability claim examined by a physician or vocational expert of its choice. This right may be used as often as reasonably required.

260:55-1-17. Rehabilitation

(a) **Participation by any person in rehabilitation services.** Any person submitting a claim under the Disability Plan shall be required to cooperate fully with all aspects of the rehabilitation services provided herein as a condition of receiving disability benefits.

(b) **Disabled employee receiving long-term benefits.** A disabled employee who is receiving long-term disability benefits may be able to return to work on a limited basis. To encourage a return to productive employment, EGID will pay the employee his/her regular monthly long-term disability benefit, reduced by only fifty percent [50%] of the income from rehabilitation employment, subject to partial disability provisions as set out at 260:55-1-12(8). If the employee becomes totally disabled again, while receiving partial disability benefits, his/her regular long-term disability benefit will resume without a new eligibility period, except as limited by 260:55-1-7 and 260:55-1-8.

260:55-1-18. Suspension or termination of benefits

After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, disability benefits may be suspended or terminated for failure to:

(1) Fully cooperate with or implement the rehabilitation plan;

(2) Submit to examination by a physician selected by EGID;

(3) Supply recertification by a physician;

(4) Cooperate in the repayment of overpayments; or

(5) Otherwise comply with the requirements of this plan.

260:55-1-19. Termination of benefits

(a) **Termination of benefits.** Disability benefits will cease on the occurrence of the earliest of the following events:

(1) The date the disability ends;

(2) The date the employee dies;

(3) The end of the maximum benefit period;

(4) As provided at 260:55-1-17 and 260:55-1-18.

(b) **Participation in the Disability Plan ends when employee's current employment ceases.** An employee's participation will end when current employment ceases. Coverage may be continued in case of layoff or leave of absence as described in the section on eligibility date. EGID will operate the plan according to the provisions outlined so as not to discriminate unfairly among employees.

260:55-1-20. Termination of coverage

Employees cease to be insured under the Disability Plan on the earliest of the following dates:

(1) The date the Disability Plan terminates;

(2) The date employment terminates. Cessation of active employment will be deemed termination of employment, except:

(A) The insurance will be continued for a disabled employee during the period during which the employee remains disabled.

(B) EGID may continue the employee's insurance, subject to the following:

(i) Insurance may be continued for the time shown in the policy specifications for an employee on furlough or temporarily laid off; or

(ii) EGID shall act so as not to discriminate unfairly among employees in similar situations.

(3) Waiver of disability coverage pursuant to 74 O.S. §1308.3.

260:55-1-21. Termination of plan

Termination of the disability plan under any conditions will not prejudice any payable claim which occurs while this plan is in force.

260:55-1-22. Retention of other insurance

(a) **Authorization for deduction of premiums.** If eligible, the employee may elect to continue participation in the Oklahoma Employees Insurance Plan by authorizing deduction of premiums due. In the event the premium is more than the benefits being received by the employee, or in the event the benefits are suspended, EGID may accept remittance from the employee for the premium due. All premiums shall be at the rate and under such conditions as established by EGID.

(b) **Disabled employee not receiving disability benefits.** Dependent Health coverage will be continued for disabled employees during any period of time the employee is qualified as disabled but not receiving disability benefits. [74 O.S. §1332.1(D)]

(c) **Deduction of premiums.** All dependent health premiums due and owing shall be deducted by EGID from the first retroactive disability benefit payment and each payment thereafter. [74 O.S. §1332.1(E)]

260:55-1-23. Recovery of FICA contributions

EGID is hereby authorized to recover FICA contributions from the employer, when appropriate.

260:55-1-24. Insurance/Benefits Coordinator

Any entity participating in the Disability Plan shall appoint an Insurance/Benefits Coordinator to explain the benefits to the employee and aid the claimant in providing the necessary information for claims to be processed.

260:55-1-25. Exclusions

Benefits will not be provided for any disability that is caused by:

(1) war or any act of war, whether such war is declared or undeclared;

(2) intentionally self-inflicted injuries of any kind while sane or insane;
(3) injuries sustained by or during the commission or attempted commission of an assault or felony; or
(4) active participation in a riot.

260:55-1-26. Penal institution

No benefits are payable for that portion of any period of disability when the disabled person is confined in a penal or correctional institution for conviction of a criminal or other public offense.

260:55-1-27. Rules, cumulative

Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. This chapter shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.

260:55-1-28. Amending of rules

This chapter may be amended or repealed from time to time and new rules adopted by EGID pursuant to the Administrative Procedures Act.

[OAR Docket #14-757; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 60. FACILITIES MANAGEMENT

[OAR Docket #14-781]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
260:60-1-1. Purpose [NEW]
260:60-1-2. Definitions [NEW]
260:60-1-3. Waiver [NEW]
Subchapter 3. Use of Public Areas of Capitol and Plazas [NEW]
260:60-3-1. Purpose [NEW]
260:60-3-2. Capitol access, operating hours and access requirements [NEW]
260:60-3-3. Use of public areas [NEW]
260:60-3-4. Provisions for exhibits and art exhibits [NEW]
260:60-3-5. Private purpose; conditions for use [NEW]
260:60-3-6. Provisions for events, exhibits and art exhibits [NEW]
260:60-3-7. Governor's Art Gallery and Blue Room [NEW]
260:60-3-8. Vehicles on plaza [NEW]
260:60-3-9. Access to the Capitol Dome [NEW]
Subchapter 5. Use of State Capitol Park [NEW]
260:60-5-1. Purpose [NEW]
260:60-5-2. Use of State Capitol Park [NEW]
260:60-5-3. Park Use Information [NEW]
260:60-5-4. Banners on light poles along Lincoln Renaissance [NEW]
Subchapter 7. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [NEW]
Part 1. Use of Capitol Conference Center and the Concourse Theater [NEW]
260:60-7-1. Purpose [NEW]
260:60-7-2. Reservation of meeting rooms [NEW]
260:60-7-3. Use of meeting rooms [NEW]
Part 3. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings [NEW]
260:60-7-10. Purpose [NEW]
260:60-7-11. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements [NEW]
Part 5. General Operations of Public Buildings Managed by the Office of Management and Enterprise Services [NEW]
260:60-7-21. Purpose [NEW]
260:60-7-22. General use [NEW]
260:60-7-23. General operating procedures [NEW]
260:60-7-24. Use of public areas [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:60-1-1. Purpose

This Chapter provides information and establishes procedures for the Director of the Office of Management and Enterprise Services to administer the operations of all buildings or property owned, used or occupied by or on behalf of the State and controlled by the Office of Management and Enterprise Services, including the Capitol, Capitol plazas, and the State Capitol Park.

260:60-1-2. Definitions

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

"Art" means fine art of museum quality representing the highest quality of art objects available to include paintings, graphic arts, art photography and sculpture, aesthetically aligned with recognized values, created by the conscious use of skill and creative imagination.

"Art exhibit" means an exhibit composed primarily of art.

"Capitol" means the State Capitol Building.

"Capitol Complex" means the property and buildings of the State of Oklahoma bordered by 28th Street on the north, south bound Lincoln Boulevard on the west, 18th Street on the South, and north bound Lincoln Boulevard on the east, to the point of beginning on 28th Street.

"Capitol Conference Center" means Room 104 of the Capitol.

"Commercial activity" means selling or offering merchandise, food or services for the benefit of an individual or business entity organized for profit.

"Concourse Theater" means Room C50 located in the concourse between the Will Rogers Building and the Sequoyah Building.

"CPC" means the State Capitol Preservation Commission.

"Demonstration" means a gathering of persons which may include demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication or expression of views engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers.

"Director" means the Director of the Office of Management and Enterprise Services or his designee.

"Event" means an assembly or gathering of people for a single purpose.

"Exhibit" means a display whether free standing or affixed to structures.

"Office" or "OMES" means the Office of Management and Enterprise Services.

"Plaza" means the outdoor area adjacent to the Capitol under the authority of the Office of Management and Enterprise Services.

"Private purpose" means an event or exhibit subject to special admission requirements.

"Public area" means those portions of the property for general visitation or use under the control of the Office of Management and Enterprise Services.

"Public purpose" means an event or exhibit for general visitation or use.

"Reservation" means an accommodation the Office approves and a sponsor secures in advance for an event, art exhibit, demonstration, exhibit or meeting.

"Sponsor" means an individual that requests use of a public area on behalf of an individual, group or state agency.

"State agency" means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, or the Office of the Governor.

"State Capitol Park" or "park" means all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol Complex, including the Governor's Mansion and all properties within the public right-of-way along Lincoln Boulevard north from the north boundary line of Northeast 13th Street to the south boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plat filed in the office of the Secretary of state as File Number 155 in the State Property Records. [74 O.S., §1811.4]

260:60-1-3. Waiver

The Director may waive any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for waivers shall be in writing and must include justification for the waiver request.

(2) The Office shall respond in writing as to the approval, conditional approval, or denial of a waiver request.

SUBCHAPTER 3. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS

260:60-3-1. Purpose

The provisions of this Subchapter prescribe conditions and procedures for Capitol access and use of designated public areas of the Capitol or Plazas for exhibits, art exhibits and events to ensure the safety of persons visiting the Capitol, employees, the building and the building contents.

260:60-3-2. Capitol access, operating hours and access requirements

(a) Capitol operating hours are from 6:00 a.m. to 7:00 p.m., Monday through Friday, excluding state holidays and 9:00 a.m. to 4:00 p.m., Saturdays, Sundays and state holidays.

(b) During operating hours, the Capitol may be accessed by the public through the west entrance, the east entrance, the southeast entrance on the ground level, and the tunnel entrance on the southeast side of the Capitol.

(c) Capitol entrances are open from 6:00 a.m. to 7:00 p.m. or until one hour following adjournment of legislative session, Monday through Friday.

(d) All persons entering the Capitol shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.

(e) After 7:00 p.m. or one hour following adjournment of the legislative session, Monday through Friday, and on Saturdays, Sundays and state holidays, persons may enter the Capitol through the west entrance only.

(1) Persons entering the west entrance of the Capitol after 7:00 p.m., Monday through Friday, and on Saturdays, Sundays and state holidays shall check in with a Capitol Patrol Officer, produce a valid form of picture identification and state their intended destination inside the Capitol.

(2) Persons shall check out with a Capitol Patrol Officer at the west entrance when exiting the Capitol.

(f) All state agencies located in the Capitol shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Capitol Patrol security personnel.

(1) The list shall state the name, established location of employment in the Capitol and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the Capitol.

(2) The list shall be filed and maintained by Capitol Patrol security personnel.

(3) Information provided on the list shall be reviewed regularly and revisions filed with Capitol Patrol security personnel immediately.

(g) Persons in the Capitol and on the Capitol Complex shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(h) Public entrances, operating hours and access requirements for the Capitol are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.

260:60-3-3. Use of public areas

(a) **Reservation requests.** All events, exhibits and art exhibits to be in the public areas of the Capitol or plazas, whether for a public or private purpose, require prior written approval of the Office.

(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees (Reference 260:60-3-5) to the Office at least ten (10) working days but no more than six (6) months prior to the beginning date of the proposed event or exhibit. The application must be submitted during the Office's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall specify the desired date, time period, public use area, a description of the event or exhibit. The Office may request additional information as determined necessary to facilitate the reservation.

(3) The Office may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(4) If the Office denies a request for a reservation, the Office will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Office.

(b) **Prioritization of reservations.** Except as otherwise provided, the Office shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public areas or plazas.

(c) **Reservation limitations.** Reservations authorize events only in the public areas or plazas specified in the approved application. Event participants shall not block or inhibit passage through the Capitol public areas or plaza common areas, sidewalks, hallways, aisles or passageways.

260:60-3-4. Provisions for exhibits and art exhibits

(a) In addition to the approval requirements of 260:60-3-3, all art exhibits shall be approved by CPC prior to the date of the art exhibit.

(b) In addition to the approval requirements of 260:60-3-3, any exhibit which exceeds ten (10) working days shall be approved by CPC prior to the date of the exhibit.

(c) The Office provides information to a sponsor to seek CPC approval for exhibits and art exhibits upon request.

(d) Exhibits and art exhibits shall not block or inhibit passage through hallways, aisles or passageways.

260:60-3-5. Private purpose; conditions for use

(a) The Office shall determine whether an event, exhibit or art exhibit in the Capitol or a plaza for a private purpose pertains primarily to a private purpose. Private purpose events are subject to the conditions in this subsection.

(b) The event, exhibit or art exhibit is subject to being preempted by a public purpose event, even if the private event was scheduled earlier.

(c) Equipment may be available for use during an event, exhibit or art exhibit and shall be subject to the fee schedule below:

(1) Tabletop Lectern/Microphone - $12.00
(2) Large Sound System - $50.00
(3) Floor Model Lectern - $15.00
(4) Stage - $40.00
(5) Easel - $3.00
(6) Risers - $40.00

260:60-3-6. Provisions for events, exhibits and art exhibits

(a) The following provisions apply to all events, exhibits or art exhibits:

(1) Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Office grants prior approval.

(2) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(3) Use of cooking or heating elements of any kind is prohibited.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Office may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.

(A) Plaza. Use of handheld signs and signs on hand sticks are allowed.

(B) Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.

(6) No individual or group may restrict access to, from or within the Capitol or a plaza.

(7) No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.

(8) The Office prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(9) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited except as otherwise provided by law. Display of business cards or other means the Office considers promotional are prohibited.

(10) Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.

(11) The Office may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Office, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(12) A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(13) Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.

(16) All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.

(b) **Requirements at end of event, exhibit or art exhibit.** A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.

(c) **Unauthorized events or activities.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized events or activities.

260:60-3-7. Governor's Art Gallery and Blue Room

(a) A sponsor that desires to use the Blue Room and the Governor's Art Gallery shall contact the Office of the Governor. The Governor's Office may approve or disapprove an event, exhibit or art exhibit.

(b) A sponsor shall state the number of persons the sponsor anticipates to attend the event on the reservation application. The Governor's Office shall limit the number of participants in the Blue Room and Governor's Art Gallery to conform with the occupancy limits set by the State Fire Marshal.

(c) Upon approval of an event, exhibit or art exhibit by the Governor's Office, the sponsor shall pay a security deposit of Two Hundred Fifty Dollars ($250.00) to the Governor's Office prior to the event, exhibit or art exhibit. If, upon inspection following the event, inspectors find no damages the Governor's Office will return the security deposit to the sponsor. If inspectors find damages, the sponsor shall forfeit the security deposit or a portion of the security deposit. The sponsor is responsible and shall be billed for any damages that exceed the security deposit amount.

260:60-3-8. Vehicles on plaza

Parking or driving vehicles on a plaza is strictly prohibited unless for a specific state purpose. Prior written authorization must be issued by the Director for the purpose.

260:60-3-9. Access to the Capitol Dome

The Capitol Dome shall not be considered a designated public area of the Capitol. All access shall be strictly controlled by the Director.

SUBCHAPTER 5. USE OF STATE CAPITOL PARK

260:60-5-1. Purpose

The provisions of this Section prescribe conditions and procedures for the use of the public areas of the State Capitol Park for noncommercial demonstrations and events to ensure the safety of persons visiting the Park, employees, and preservation of the Park. For the purposes of this subchapter, the areas within the perimeter fence of the Governor's Mansion are not considered public areas.

260:60-5-2. Use of State Capitol Park

(a) **Reservation requests.** All demonstrations and events to be on the State Capitol Park, whether for a public or private purpose, require prior written approval of the Office.

(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees to the Office at least ten (10) working days prior to the beginning date of the proposed demonstration or event. The application must be submitted during the Office's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall specify the desired date, time period, public use area, a description of the demonstration or event. The Office may request additional information as determined necessary to facilitate the reservation.

(3) The Office may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(4) Reservations for use of the Park are also subject to the provisions of 260:60-3-6.

(5) If the Office denies a request for a reservation, the Office will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Office.

(b) **Prioritization of reservations.** Except as otherwise provided, the Office shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public use areas of the park.

(c) **Reservation limitations.** Reservations authorize demonstrations and events only in the public area and during the time period specified in the approved application.

260:60-5-3. Park use information

(a) **Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.

(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.

(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.

(3) Digging, which includes driving stakes into the ground, is prohibited.

(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.

(5) Contained fires may be authorized based upon intended use and climatological conditions.

(6) Discharging or setting off fireworks is prohibited. The Office may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.

(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.

(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other like devices is prohibited.

(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.

(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.

(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Office.

(12) Burial of human or animal remains is prohibited.

(13) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited, except as otherwise provided by law. Display of business cards or other means the Office considers promotional are prohibited.

(b) **Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.

(c) **Unauthorized demonstrations and events.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized demonstrations or activities.

260:60-5-4. Banners on light poles along Lincoln Renaissance

(a) **Purpose.** The purpose of the banner arms on the light poles along the Lincoln Renaissance area (Lincoln Boulevard from NE 28th to NE 38th Streets) is for the State of Oklahoma to communicate with its citizenry and promote state agencies, state programs, and state-sponsored events. The banner arms are reserved for the sole and exclusive use of the State Oklahoma, acting through the Office. The provisions of this Section prescribe procedures and conditions for the display of banners on such light poles.

(b) **Request to display banners.** No banners may be displayed without written authorization from the Director. Requests to display banners shall be:

(1) submitted to the Director in writing;

(2) be signed by the appointing authority of a state agency; and,

(3) specify what state agency, program or event the banners will promote.

(c) **Approval of request to display banner.** After the request is reviewed, the Director will notify the state agency in writing of the approval or denial of the request.

(d) **Prohibited displays of banners.** Banners promoting private organizations, individuals, or privately sponsored events may not be displayed from the light poles along the Lincoln Renaissance area at any time. Any banners displayed without the express written authorization of the Director will be taken down immediately at the owner's expense.

SUBCHAPTER 7. OPERATION OF BUILDINGS OWNED, USED OR OCCUPIED BY OR ON BEHALF OF THE STATE

PART 1. USE OF CAPITOL CONFERENCE CENTER AND THE CONCOURSE THEATER

260:60-7-1. Purpose

The provisions of this Part prescribe procedures and conditions for the use of the Capitol Conference Center and the Concourse Theater, designated by the Director as meeting rooms for public purposes.

260:60-7-2. Reservation of meeting rooms

(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Office.

(1) A state agency shall submit an application for a reservation to the Office.

(2) The application shall specify the desired date, time period and meeting room requested. The Office may request additional information determined necessary to facilitate the reservation.

(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.

(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.

(3) The Office may impose conditions and time limitations pursuant to the rules of this Part and state law.

(4) If the Office denies a request for a reservation, the Office will issue written notice to the requesting state agency indicating the reasons for denial.

(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Office shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations for a meeting room.

(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.

(d) **Unauthorized meetings.** The Office may notify security personnel upon detection of unauthorized meetings.

260:60-7-3. Use of meeting rooms

(a) **Conditions.** The following conditions shall apply to the use of all meeting rooms reserved pursuant to this Part:

(1) The number of attendees shall not exceed the maximum room occupancy.

(2) Possession and consumption of food in meeting rooms is prohibited.

(3) Possession and consumption of beverages in meeting rooms may be limited or prohibited.

(4) Affixing, by any means, materials to walls or appurtenances in a meeting room is prohibited except as provided by specific meeting room information.

(b) **Meeting supplies.** The reserving agency is responsible for providing all materials or supplies for use with equipment or devices in meeting rooms.

(c) **Requirements at end of meeting.** Immediately following the conclusion of the meeting, the reserving state agency shall:

(1) Remove all materials used in conjunction with or created by the meeting;

(2) Deposit all waste in an appropriate container; and,

(3) Return tables and chairs to the standard configuration.

(d) **Damages.** The Office shall bill the state agency reserving the meeting room for damage occurring to the room, furniture, fixtures or equipment during the reserved period of time.

PART 3. ACCESS TO THE J. HOWARD EDMONDSON AND ROBERT S. KERR OFFICE BUILDINGS

260:60-7-10. Purpose

The provisions of this Part prescribe procedures and conditions for access to the J. Howard Edmondson and Robert S. Kerr Office Buildings.

260:60-7-11. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements

(a) The Kerr and Edmondson Buildings operating hours are from 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.

(b) During operating hours, the Kerr and Edmondson Buildings may be accessed by the public through the North entrance of the Edmondson building only.

(c) All persons entering the buildings shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.

(d) All state agencies located in the buildings shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Department of Public Safety security personnel.

(1) The list shall state the name, established location of employment in the buildings and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the buildings.

(2) The list shall be filed and maintained by Department of Public Safety security personnel.

(3) Information provided on the list shall be reviewed regularly and revisions filed with Department of Public Safety security personnel immediately.

(e) Persons in the buildings and on the grounds immediately surrounding the buildings shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(f) Public entrances, operating hours and access requirements for the buildings are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.

PART 5. GENERAL OPERATIONS OF PUBLIC BUILDINGS MANAGED BY THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES

260:60-7-21. Purpose

The provisions of this Part provide minimum standards and criteria for the operation of public buildings managed or controlled by the Office of Management and Enterprise Services in order to provide a clean, safe and comfortable working environment for employees and the public of the State of Oklahoma. As used in this Part, the term "public buildings" does not apply to buildings and property covered by rules in Subchapter 3 and Subchapter 5 of this Chapter. A list of buildings managed by OMES is maintained and accessible on the Office of Management and Enterprise Services website.

260:60-7-22. General use

(a) Use shall be restricted to the conduct of state business and to other activities whose principal purpose is to improve the efficiency of a state agency in achieving its objectives or is to promote the health, safety, welfare, morale, education or training of state employees.

(b) Such activities may include, but are not limited to: the usual business of state government, agency staff meetings, governmental task force meetings, safety meetings, employee education classes, seminars and training sessions sponsored by state institutions for the benefit of the public, employee-of-the-month recognitions, ceremonies to recognize retiring state employees, holiday luncheons for state employees, Oklahoma State Employees Charitable Campaign meetings, employee wellness programs, and the like.

(c) The Office may impose conditions and time limitations pursuant to the rules of this Part and state law.

260:60-7-23. General operating procedures

(a) The chief administrative officer of each occupying agency shall be responsible for the building space assigned to the agency and his/her agency's compliance with rules of this Part.

(b) The Office of Management and Enterprise Services will provide building tenants with a written Tenant Manual to ensure public dissemination of building operation information and regulations.

(c) The following requirements shall be performed pursuant to applicable state and federal laws and regulations:

(1) **Parking.** Parking should only be allowed in paved parking areas with adherence to all applicable restrictions.

(2) **Weapons.** No person entering or while on-property shall carry or possess firearms or other dangerous or deadly weapons, unless authorized to do so by state or federal laws.

(3) **Intoxicating beverages, low-point beer and controlled substances.** No intoxicating beverages, low-point beer, or controlled, non-prescribed substances are allowed inside the building or on property grounds.

(4) **Disturbances.** No conduct shall be allowed which creates a loud or unusual noise or nuisance; or which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots or which otherwise impede or prohibits the official duties of building occupants or impedes the safe evacuation for the building occupants or access for emergency response personnel in an emergency.

(5) **Posting and/or distribution of printed materials.** No notices, bulletins, circulars or other type information may be placed on any common area wall or door (common area is described herein as hall, lobby, elevator, restroom, break room or conference room). This includes all adjoining doors and door frames.

(A) This paragraph does not apply to meeting agendas posted in accordance with the Oklahoma Open Meeting Act unless alternate posting methods for public viewing become available.

(B) A bulletin board may be installed at elevator lobby for agency, building or event notices. Contact your Facilities Manager for this service. These bulletin boards are for official use only. Personal solicitations or announcements of any kind are prohibited and will be removed by OMES.

260:60-7-24. Use of public areas

(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Office.

(1) A state agency shall submit an application for a reservation to the Office.

(2) The application shall specify the desired date, time period and meeting room requested. The Office may request additional information determined necessary to facilitate the reservation.

(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.

(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.

(3) The Office may impose conditions and time limitations pursuant to the rules of this Part and state law.

(4) If the Office denies a request for a reservation, the Office will issue written notice to the requesting state agency indicating the reasons for denial.

(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Office shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations for a meeting room.

(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.

(d) **Unauthorized meetings.** The Office may notify security personnel upon detection of unauthorized meetings.

(e) **Provisions for events, exhibits and art exhibits.** The provisions of section 260:60-3-6 shall apply to all events, exhibits, or art exhibits approved by the Office to be held in public areas of the property.

[OAR Docket #14-781; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 65. CONSTRUCTION AND PROPERTIES

[OAR Docket #14-782]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 65. Construction and Properties [NEW]
AUTHORITY:
61 O.S. §209; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
ASHRAE Standards #55, 62, 90.1; ASME Standards A17.1, A17.3; IES Standards; International Energy Conservation Code, latest edition; Americans with Disabilities Act and related standards, latest edition.
Incorporating rules:
260:65-5-4 and 260:65-5-5
Availability:
8 a.m. to 5 p.m., Monday through Friday at the Construction and Properties Department, Office of Management and Enterprise Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405) 521-2111.
ANALYSIS:
The purpose of this proposed rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. CONSTRUCTION CONTRACTING

260:65-1-1. Purpose

(a) The Construction and Properties Department, Office of Management and Enterprise Services is responsible for assisting and advising the using state agency, other departments and divisions of state government, in planning, programming, arranging and contracting for the services of professionals for the planning, design and construction of assigned projects and contracting for construction. The Department is also responsible for implementing the Public Competitive Bid Act, 61 O.S., Sections 101 through 138. These rules are provided to assist concerned parties in the bidding of projects for construction, renovation or maintenance of state facilities.

(b) The State of Oklahoma does not discriminate in its hiring practices and expects its contractors to abide by all Federal rules and regulations on non-discrimination. All bidders shall acknowledge in the bidding documents they are Equal Employment Opportunity employers.

(c) The State of Oklahoma adheres to a policy which provides a drug free workplace to all of its employees. All contractors working on a state facility shall comply with the policies of the state agency controlling that facility.

260:65-1-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Alternate bid" (or **"Alternate"**) means an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

"Base bid" means the sum stated in the bid for which the bidder offers to perform the work described in the bidding

documents as the base. Work may be added or deleted for sums stated in the alternate bids.

"Bid" means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Department for a construction project described in plans and/or specifications provided by the State.

"Claim" means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"Consultant" means an *individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Director" means the Director of the Office of Management and Enterprise Services.

"Office" or **"OMES"** means the Office of Management and Enterprise Services.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

260:65-1-3. Bid solicitations

The manner in which bids are solicited shall be determined by the estimated cost of the project. There are three categories, projects over the amount established by statute in 61 O.S., Section 102(6), projects under the statutory amount and minor maintenance or repair projects exempt from bidding pursuant to 61 O.S., Section 103.C.

(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section 102(6) are advertised in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of the said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Information is also provided to various bid assistance centers and to trade publications such as the Dodge Report and Southwest Construction News. The State does not control how the trade publications handle the publishing of the information. For state agencies subject to the Public Building Construction and Planning Act (61 O.S. Section 202-209), projects are advertised and awarded by the Department.

(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section 102(6) are not usually advertised. The state agency shall develop a written, clearly defined scope of work and detailed requirements for the project. For state agencies subject to the Public Building Construction and Planning Act (61 O.S. Section 202-209), the Construction and Properties Administrator shall assess the ability of a state agency to prepare a bid package and solicit for bids under the statutory amount. [61 O.S., Section 209(3)] The state agency may adopt written procedures developed by the Department or internal procedures approved by the Administrator. The written procedures for soliciting bids shall include:

(A) Direct mail or facsimile solicitations are made by the state agency to three or more contractors whose place of business is preferably located in the general vicinity of the proposed construction.

(B) The state agency shall use procedures, forms and contracts developed by the Department.

(3) **Minor Maintenance or Repair.** Small projects below the amount stipulated in 61 O.S., Section 103.C. may be awarded by the state agency to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.

(4) **Emergency Projects.** When an emergency situation is declared to exist by the chief administrative officer or governing body of a state agency, the Department may award a contract without competitive bids to correct the emergency condition.

260:65-1-4. Bid documents

(a) **Solicitation notice.** [61 O.S., Section 105] The solicitation notice shall contain:

(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.

(2) The location where a complete set of bidding documents may be obtained.

(3) The date and time for the MANDATORY site visit, if required. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.

(4) The location and time for the pre-bid conference if one is to be held. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.

(5) The date, time and place of the opening of bids.

(6) The name and address to whom the sealed bids must be submitted.

(7) If applicable, any pre qualification requirements.

(8) Other information deemed of benefit to the public or prospective bidders.

(b) **Bidding documents.** At least twenty days prior to the bid opening, a complete set of bidding documents shall be available for purchase, by check or money order, to prospective bidders at the location shown in the bid notice. The Department will require a reasonable deposit for each such set which shall be nonrefundable and so stated in the notice for bids.

(c) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the Department to all bidders of record.

260:65-1-5. Bid submittal

(a) **Advertised projects.** Bids must be prepared on forms provided by the Office and in accordance with the instructions provided in the bid package. Instructions on obtaining the bid packages are in the solicitation notices. Bids cannot be submitted by telephone or fax machine or telegram. Bids may be delivered in person, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents. [61 O.S., Section 109] The following information must be placed on the outside of each sealed bid envelope:

(1) Company name and address.
(2) Description of project.
(3) OMES number of project.
(4) Closing date and time.

(b) **Bid envelopes.** Each envelope shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The time is determined by the stamp-clock on the desk of the Department receptionist where all bids must be received and stamped. The State cannot be responsible for delay of receipt of bids due to factors beyond the control of state employees.

(c) **Direct mail, facsimile or telephone solicitations.** On projects under the statutory amount, written bids shall be received as indicated in the solicitation by telephone, facsimile or as indicated in the direct mailing according to Subsection 1-3. Before a construction contract shall be awarded by the Department, the state agency shall provide:

(1) A properly signed requisition form.
(2) Three or more original written bids, including any declined bids, signed by the bidders.
(3) Scope of work with detailed requirements.
(4) Acceptance letter to award the contract.

(d) **Equal opportunity employment requirements.** The State of Oklahoma is an Equal Opportunity Employer.

260:65-1-6. Modifications/withdrawal of bids

(a) **Withdrawal of bids.** Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented to the Administrator or his authorized representative. A bid to be withdrawn shall not be opened and shall be returned at the conclusion of the bid opening.

(b) **Bid modifications.** A sealed bid modification shall be submitted by registered mail or delivered in person. The modification must state the amount of change, either additive or deductive, from the previously submitted sealed bid and shall not reveal the actual, new, modified bid amount. Upon acceptance of a bid modification, the Administrator or his authorized representative shall open the original bid, then open the sealed modification, add or subtract to compute the new bid amount, and publicly announce the resultant legal bid. The same bid modification procedures shall be used to submit, compute and announce any other modified bid items such as days to complete the work or unit prices. Any submission of a bid modification by fax or otherwise not in a sealed condition shall be considered an exposed bid and shall disqualify the bidder.

260:65-1-7. Bid openings

(a) The public is invited to all bid openings which are held as specified in the solicitation notice. The bids are opened by the Administrator or his designee in the following manner and recorded by an assistant. Bids may be examined by the public after the bid opening on request to the Administrator. [61 O.S., Section 110]

(1) The bidder's name and city are announced.
(2) The bid is checked for completeness and correctness. Any of these deficiencies shall be grounds for disqualifying the bid:
  (A) Addenda must be acknowledged. This may be waived in those cases where the addenda has no direct effect on the proposal cost.
  (B) The bid must be signed.
  (C) The affidavits required by the bid documents must be present, signed and properly notarized. [61 O.S., Section 108]
  (D) If the total bid including alternates exceeds the amount specified in 61 O.S., Section 107, a certified check, cashier's check, bid bond or bid letter of credit for 5% of the base bid price and the price of all alternate bids must be present. [61 O.S., Section 107]
  (E) All equipment lists, selected materials, or other information when required by the specifications must be present.
  (F) The price is read aloud.

(b) Projects for which only a single bid is received shall not be opened until the state agency has been notified and permission has been received from the state agency to open the single bid.

260:65-1-8. Prequalification of bidders

(a) **Scope.** The Department may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify prior to submitting bids on a public construction contract to determine the responsibility of bidders.

(b) **Notice.** The solicitation notice for specific projects described in 260:65-1-4 (a), shall contain the requirements for prequalification, if any, and the availability of forms to be submitted to the Department.

(c) **Prequalification Form.** When indicated on the solicitation notice, prospective bidders, general contractors, subcontractors and material suppliers must submit a prequalification form, prescribed by the Administrator, to the Department which may include the following information:

(1) Company organization type;
(2) Type of work or classification of work;
(3) Organization information;
(4) Licensing and registration information;
(5) Experience on current projects;
(6) Experience on projects completed within last five years;
(7) Experience of key personnel;
(8) Specialized experience for specific building types, subsystems or materials;
(9) References from construction trades, bank and surety company;
(10) Current financial statement, which according to statute shall remain confidential;
(11) Any other business information that will enable the Department to evaluate the responsibility of prospective bidders.

(d) **Evaluation.** The Department shall evaluate the information contained in the prequalification form and designate the qualification status as:

(1) "Approved" for a firm that demonstrates verifiable experience and that has successfully completed contract work with the State; or,
(2) "Approved/Conditional" for a firm that demonstrates verifiable experience but does not have a record of contract work with the State; or
(3) "Unsatisfactory" for a firm that:
(A) Does not demonstrate verifiable experience;
(B) Does not demonstrate verifiable size and scope experience required for a specific project;
(C) Does not have a verifiable record of successfully completed contract work with the State;
(D) Has an unsatisfactory record of contract work for the State due to any of the following:
(i) Unsatisfactory performance evaluations on past projects;
(ii) Failure to complete a State construction contract;
(iii) Demonstrated history of noncompliance with plans and specifications;
(iv) Quality of past work does not meet minimum industry standards;
(v) Failure to complete work in the specified contract time;
(vi) Uncooperative and/or unprofessional work manner of the company owner(s) or key personnel;
(vii) History of assigning unsatisfactory personnel to projects;
(viii) Failure to coordinate and manage subcontracts; or
(ix) Failure to maintain and provide accurate documentation of project records.
(E) Financial information does not indicate financial ability to complete a State contract.
(4) "Incomplete Submittal" for submittals that:
(A) Are incomplete;
(B) Do not contain the information requested in the solicitation notice.

(e) **Required status prior to bid.** Bidders, general contractors, subcontractors and material suppliers shall have "Approved" or "Approved/Conditional" status prior to submitting a bid on a public construction contract when prequalification is required in the solicitation notice or if the Department requires prequalification on all public construction contracts.

(f) **Additional requirements.** The Department may request additional information from an existing prequalified company whenever a solicitation notice requires prequalification for specific experience for specific project types, subsystems or materials.

(g) **Due date.** If prequalification is required, prequalification forms shall be due by the date stated on the solicitation notice. The Administrator may elect to accept prequalification forms annually according to a written public procedure in order to eliminate duplicate submission for each individual project.

260:65-1-9. Prequalification of insurance carriers, bonding companies and surety companies

(a) Pursuant to 61 O.S., Section 204A.(11), the Department shall prequalify as good and sufficient insurance carriers, bonding companies and surety companies using the following criteria:

(1) The insurance carrier, bonding company or surety company must be licensed to do business in the State of Oklahoma pursuant to 61 O.S., Section 134.
(2) The insurance carrier, bonding company or surety company must have prior experience with insuring or bonding construction projects within the State of Oklahoma.
(3) The insurance carrier, bonding company or surety company cannot have been deemed in default by the State of Oklahoma in connection with prior construction insurance or bonds on State construction projects.
(4) The insurance carrier, bonding company or surety company shall not have a prior history of committing the following unfair claims settlement practices:
(A) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims or demands submitted in which liability has become reasonably clear.
(B) Compelling claimants or obligees, without just cause, to institute suits to recover amounts due under the insurance policy, insurance contract or bond by offering substantially less than the amounts ultimately recovered in suits brought by them or refusing to make an offer, when such claimants or obligees have made claims for amounts reasonably similar to the amounts ultimately recovered.
(C) Failing to fully disclose to claimants or obligees benefits, coverages, or other provisions of

any insurance policy, insurance contract or bond, when such benefits, coverages or other provisions are pertinent to a claim.

(D) Knowingly misrepresenting to claimants or obligees pertinent facts, policy or bond provisions relating to the coverages at issue.

(E) Failing to adopt and implement reasonable standards for prompt investigations of claims or demands on bonds arising under its insurance policy, insurance contract or bonds.

(F) Except where there is a time limit specified in the policy or bond, making statements, written or otherwise, which require a claimant or obligee to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's or bonding company's rights.

(G) Requesting a claimant or obligee to sign a release that extends beyond the subject matter that gave rise to the claim or demand payment.

(H) Failing to promptly pay claims that have no reasonably apparent defect or impropriety.

(I) Failing to notify the insured or obligee in writing within 30 calendar days of receipt of claim or demand that the claim is defective and/or lacks substantiating documentation, providing the insured or obligee reasons or basis for the determination.

(J) Issuing checks or drafts in partial settlement of a claim or demand with language which releases an insurer, surety company, or bonding company from its total liability.

(K) Colluding in any way with other parties to a construction claim or dispute in an effort to jointly steer a decision against the State, including but not limited to sharing legal counsel with the Contractor.

(5) An insurance carrier that has received a notice to cease and desist from the Oklahoma Insurance Department within the previous five years shall not be eligible.

(6) A bonding company shall demonstrate an "A" rating as determined by an insurance bond rating company acceptable to the Administrator.

(b) The Department may periodically, in its discretion, reevaluate an insurance carrier, bonding company or surety company utilizing the criteria established in this section.

(c) The Department may adjust or revoke the prequalification status of an insurance carrier, bonding company or surety company if a reevaluation determines the company fails to meet criteria established in this section.

260:65-1-10. Bid review and evaluation

(a) At the conclusion of the bid opening, the bid tabulation is forwarded to the state agency for review and evaluation, concurrently with the review and evaluation by the Department. The following items are reviewed:

(1) **Surety companies.** Surety companies used to issue bonds must be registered to do business in Oklahoma and prequalified as good and sufficient by the Department pursuant to 260:65-1-9. When a bid bond is required and the bond submitted is from a company not registered in Oklahoma or prequalified by the Department as good and sufficient, the bid shall be disqualified. [61 O.S., Section 134 and Section 204(A)(11)]

(2) **Verification of bid contents.**

(A) Extensions on unit price calculations shall be checked. In case of an error, the unit price shall govern.

(B) When there is a variance between the amount in words and the figures, the amount in words shall govern.

(C) Bid forms containing omissions, alteration of form, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.

(D) The Department may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Owner even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.

(E) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.

(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. [61 O.S., Section 118] Any of the following may be grounds for disqualifying the bidder.

(1) More than one bid for the same work from an individual, firm, partnership, joint venture or corporation under the same or different names.

(2) Evidence of collusion among bidders, subcontractors or material suppliers. [61 O.S., Section 115]

(3) Lack of responsibility as shown by past work for the State of Oklahoma judged from the standpoint of workmanship and progress.

(4) Uncompleted work under any contract with the State of Oklahoma or any party which might hinder or prevent the prompt completion of the contract, if awarded.

(5) For being in arrears on existing contracts with the State of Oklahoma or having defaulted on a previous contract or failure to comply with any other just and reasonable cause.

(6) Certificate by the Oklahoma Human Rights Commission that the bidder has engaged or is engaging in a discriminatory practice as defined in 25 O.S., Section 1505 or Section 1604.

(7) Any violation of 260:65-1 or other information indicating that the bidder is no longer responsible nor qualified to do business with the State.

(c) The review/evaluation shall be completed within the amount of time specified by 61 O.S., Section 111 after the bid opening.

(d) Decisions leading to the contract award may be appealed in writing within five working days of notice of the decision to the Director, Office of Management and Enterprise Services.

260:65-1-11. Contract award

(a) Bids are awarded to the lowest responsible bidder as determined by the review of the bids pursuant to 260:65-1-10. Approximately 15 to 20 days after the bid opening, the successful bidder shall be notified by the Department of his selection and shall be provided copies of the contract to execute. The contractor shall be given a specific period of time, not to exceed sixty days, in which to execute the contract and obtain the necessary bonds and insurance. [61 O.S., Section 113(A)]

(b) The notice to proceed, or WORK ORDER, shall not be issued until the contract has been executed by all parties. Work shall not commence until the WORK ORDER has been received by the contractor.

(c) Projects over the amount set in 61 O.S., Section 113(B) require three bonds. The bonds shall be prepared on the forms provided by the Department. All bonds required by Title 61 shall be provided by insurance carriers, bonding companies or surety companies that are prequalified by the Department as good and sufficient in accordance with criteria established in 260:65-1-9(a). [61 O.S., Section 204A(11)

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material and repair of and parts for equipment as are used and consumed in the performance of the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against defective workmanship and materials for a period of one year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against claims or liens from subcontractors or suppliers for services or materials used in the project.

(d) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed in (c) of this Section. Each letter of credit must be for the total value of the contract. All letters of credit must be executed on forms prescribed by the Administrator.

(e) **Insurance.**

(1) Public liability insurance of not less than $100/300,000, property damage insurance of not less than $50/100,000 and workers' compensation insurance during construction are required for all projects, regardless of project size.

(2) Proof of workers' compensation insurance shall be required for all projects exceeding the amount stated in 61 O.S., Section 113(B). The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(3) For projects less than the amount stated in 61 O.S., Section 113(B), a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance. The sworn affidavit shall be executed on a form prescribed by the Administrator.

(f) **Additional insurance.** Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

260:65-1-12. Bid protests

A bidder may protest a contract award by a state agency or the Construction and Properties Department to the State Construction Administrator. All remedies available to bidders through the sealed bid process pursuant to the Public Building Construction and Planning Act or the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(1) **Bidder notification.** A bidder shall submit written notice to the Administrator of a protest of an award of contract by a state agency or the Department within ten (10) business days of contract award. The protest notice shall state bidder facts and reasons for protest.

(2) **State Construction Administrator review and determination.** The Administrator shall review the bidder's protest and contract award documents. Written notice of the decision by the Administrator to sustain or deny the protest will be sent to the bidder within ten (10) business days of receipt of the protest.

(3) **Bidder appeal of State Construction Administrator denial.** The bidder may appeal a denial of protest by the State Construction Administrator to the Director of Central Services. The bidder shall file a written appeal within ten (10) business days of the date of the Administrator's notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the bidder's appeal to an administrative law judge the Department retains.

(A) If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.

(B) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the decision to sustain or deny final order sustaining or denying the contractor's appeal to the contractor parties.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the bidder in its initial protest to the State Construction Administrator.

(B) **Burden of proof.** The burden of proof shall be upon the bidder, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the bidder protesting the contract award and the Office of Management and Enterprise Services, the bidder awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(iv) Require briefing of any or all issues;

(v) Conduct hearings;

(vi) Rule on the admissibility of all evidence;

(vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the bidder's appeal or that the contract award be cancelled and rebid.

(6) **Contractor appeal of Director denial.** If the Director denies a bidder's appeal, the bidder may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

260:65-1-13. Pre-construction conference

Shortly after award of a contract, the design consultant or agency may schedule a pre-construction conference. This meeting shall include the design consultant, general contractor, agency representative, a representative from the Construction and Properties Department and other interested parties. The Department representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.

260:65-1-14. Construction conferences

(a) A construction conference may be called periodically by the design consultant or state agency which shall include essential information as follows:

(1) Project progress as it relates to schedule.

(2) Payment requests and their status.

(3) Change order requests and their status.

(4) Special problems and remedial action required.

(5) Results of previous remedial action.

(6) Other subjects as required.

(b) The meeting shall be chaired by the design consultant or state agency. Minutes of the meeting shall be kept, typed and distributed to all attendees within five (5) working days.

260:65-1-15. Payment requests

(a) **Partial payments.** Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, using a format similar to the one found in the Application for Partial Payment form, and submitting it to the design consultant and the Department for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the design consultant.

(2) The contractor should meet with the design consultant when the rough draft of the pay request is prepared. Then all can agree on percentages of work completed prior to typing the final form. The contractor should furnish the design consultant with five copies of the pay request and all supporting documents.

(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable. If the contractor deems it necessary, and it is recommended by both the design consultant and Office of Management and Enterprise Services representative, the contractor may store material off-site if there is a written agreement between the owner and the contractor. This agreement must provide the following:

(A) Proof of applicable insurance.

(B) A written guarantee of delivery to the job site.

(C) A written title to all materials covered by the request for payment, which shall pass to the owner.

(D) An on-site inspection of facilities by the design consultant to verify the authenticity of quantities of stored materials with the contractor responsible for reimbursing the design consultant for all incurred expenses resulting from each inspection.

(4) All pay requests are submitted to the Department.

(5) All partial payments are subject to retainage as specified in 61 O.S., Section 113.1.

(b) **Final pay request.** The Certificate of Contract Completion, Consent of Surety, Lien Release and the Contractor's Warranties must be submitted with the final request for pay to the state agency.

260:65-1-16. Change orders

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the design consultant shall issue a Proposal Request to the contractor. The Proposal Request shall be completed by the contractor and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. The design consultant shall transmit the completed Proposal Request through the using agency to the Construction and Properties Department of the Office of Management and Enterprise Services. The change in work scope described in the Proposal Request is not authorized until it has been incorporated into a Change Order and issued by the Construction and Properties Department of the Office of Management and Enterprise Services. [61 O.S., Section 121]

(b) When the proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order using the form prescribed by the Department. All information required on the form shall be included. The completed Change order form shall be routed to the Consultant and using Agency for signature, and then to the Department for approval and signature.

(c) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in subsection (a) of this Section is not required.

(d) Projects under the statutory amount and not advertised according to 260:65-1-3(1), that are awarded on a unit price or basis cannot exceed the statutory amount with cumulative change orders without advertising for bids on that part of the contract.

260:65-1-17. Time extensions

The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the design consultant within twenty days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.

260:65-1-18. Substantial completion inspection

(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use. [61 O.S., Section 124]

(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the design consultant who shall send out written notification inviting the using state agency, the Construction and Properties Department and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the design consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the Consultant and the Owner. Five copies of the form shall be provided to the Department for signature.

260:65-1-19. Final inspection

This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The design consultant shall send out formal notification inviting the using state agency, the Construction and Properties Department and other interested parties to attend. [61 O.S., Section 124]

260:65-1-20. Contract completion

A Certificate of Contract Completion shall be prepared by the design consultant using the form prescribed by the Department. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the design consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the design consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, receipts for keys given to the using agency, warranties, and all other requirements of the contract shall have been submitted to the design consultant with signed receipts from the using agency for the items received by them, before final payment is made.

260:65-1-21. Termination of unperformed contracts

Any contract under which no work has been performed or no formal claim or litigation has been pending within a period of twenty-four months shall be terminated by the agency. After termination, any amount owed to the contractor shall be determined and payment made. This shall release the agency from further liability to the contractor or surety company. If the contractor cannot be located, the payment shall be held in the care of the State Treasurer for the contractor for a period not to exceed thirty-six months at which time the payment shall be deposited in the General Revenue Fund. This shall release

the State from any further liability to the contractor or surety company. [61 O.S., Section 137]

260:65-1-22. Contractor appeals process

(a) If a contractor's claim has not been resolved after consideration by the consultant in accordance with the General Conditions for Construction Contracts, the claim shall be submitted in writing to the owner. The owner will render to the parties the owner's written decision relative to the claim, including any change in the contract sum or contract time or both within ten (10) calendar days.

(b) The contractor may appeal the owner's decision by submitting written notice of a protest to the Director of Central Services within ten (10) calendar days of receiving the owner's decision.

(c) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the appeal for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.

(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(d) The Director shall send written notice to the contractor of the final decision sustaining or denying the contractor's appeal.

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.

(2) The burden of proof shall be upon the contractor, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(4) In addition to the contractor and the Office of Management and Enterprise Services, the contractor awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.

(6) The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses; and

(H) Make proposed findings of fact and conclusions of law to the Director.

(7) The Administrative Law Judge may recommend that the Director deny the contactor's appeal or that the contract award be cancelled and rebid

(f) If the Director denies a contractor's appeal, the contractor may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

260:65-1-23. Consultant appeals process

(a) The owner and consultant shall endeavor to resolve claims, disputes and other matters in question between them by participating in a meeting to obtain a mutual agreement. If an agreement cannot be attained, the consultant may appeal by submitting written notice of a protest to the Director of Central Services within twenty-one (21) days of the settlement meeting immediately preceding the protest.

(b) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.

(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction.

(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.

(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(c) The Director shall send written notice to the consultant of the final order sustaining or denying the consultant's appeal.

(d) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.

(2) The burden of proof shall be upon the consultant, who must prove his case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be

licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(4) In addition to the contractor and the Office of Management and Enterprise Services, the consultant awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.

(6) The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses; and

(H) Make proposed findings of fact and conclusions of law to the Director.

(7) The Administrative Law Judge may recommend that the Director deny the consultant's appeal or that remedies be imposed.

(e) If the Director denies a consultant's appeal, the consultant may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.

260:65-1-24. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 3. SELECTION OF ARCHITECTS, ENGINEERS, AND OTHER DESIGN CONSULTANTS

260:65-3-1. Purpose

The purpose of these rules are to provide information to consultant firms desiring to do business with the State of Oklahoma. It is also to serve as a guide to agencies and political subdivisions of the State of Oklahoma in the selection of architects, engineers, and other design consultants for the purpose of providing design documents for the construction or renovation of state facilities. These procedures implement the provisions 61 O.S., Sections 60 through 65, titled "State Consultants".

260:65-3-2. Definitions

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services, State of Oklahoma.

"Fixed fee" means the type of fee to a consultant which is expressed as a firm, fixed amount, for the services specified in the scope of work. This fee is not determined by the amount of a construction contract.

"Interview committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available.

"Percentage fee" means a fee to be paid a consultant which is based upon a negotiated percentage of the resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Program" means the detailed description of the work scope of the design services. This program is written by the state agency, or may be developed by the consultant as part of his contract.

"Screening committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. This list shall contain no less than three nor more than five consultants for a single project. If the process is selecting for more than one consultant contract, there should be two consultants on the short list for every planned project.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

260:65-3-3. Registration of consultants

(a) All consultants desiring to perform services for the State of Oklahoma must register with the Department by requesting and completing a Consultant Registration Questionnaire (DCS/CAP-Form 254) prescribed by the Administrator and submitting it to the Department. [61 O.S., Section 62] The Consultant Registration Questionnaire can be found on the Department's website or may be obtained by calling or writing the Department.

(b) The Administrator shall review a Consultant Registration Questionnaire submitted to the Department, determine whether the consultant qualifies for registration and notify the consultant of its registration status within twenty (20) days.

(c) Registrations are valid for one year from the date of receipt by the Department.

(d) Consultants shall not be solicited for projects with the State until the date the Consultant Registration Questionnaire is received by the Department. A consultant may register with the Department any time prior to the deadline for project consideration.

260:65-3-4. Selection procedure

(a) **Define project.** The state agency shall develop a description of the project which shall include: [61 O.S., Section 62(C)]

(1) A narrative description of the work being planned.

(2) The estimated cost and time schedule of the project.

(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.

(4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) **Request list of consultants.** The state agency shall forward a request to the Department for a listing of consultants currently listed with the Department in the form of a letter which includes the description of the project developed in (a) of this Section. A draft of the solicitation letter described in (c) of this Section shall also be included with a request for a list of consultants. The Department shall review the request and solicitation letter and if approved, shall print the list and/or one set of mailing labels and return them to the state agency.

(c) **Announce project.** The state agency shall send the approved solicitation letter to each consultant on the list which includes the description developed in (a) of this Section and shall notify them of the last day their letters may be received to be considered. Any consultant not registered with the Department at the time the list is prepared, may register with the Department pursuant to this Section and submit a letter of interest to the state agency. The Consultant Registration Questionnaire (DCS/CAP-Form 254) must be received by the Department at least six (6) business days, excluding state holidays, prior to the solicitation deadline, to allow the Administrator time to evaluate and complete the review process. If the registration form requires revisions and resubmission, the Department is under no further obligation to process and approve a consultant's registration within the six-day time period. [61 O.S., Section 62(C)]

(d) **Request and review files.** The state agency shall send a list of consultants that indicated interest in being considered for the announced project(s) to the Department. The Department then assembles and transmits to the state agency a copy of the information on file for each consultant on the list. [61 O.S., Section 62(D)]

(e) **Screen the files to select the "short list".** The chief administrative officer or governing board of the state agency shall designate a screening committee of three or more persons to select the three to five best qualified consultants based upon the data in the files supplied by the Department and other information that may be supplied by the consultants. The screening committee should include licensed architects or engineers if they are available. If the selection is for more than one consultant contract, at least two consultants for each project should be included in the short list. The selection criteria is listed in 260:65-3-6. [61 O.S., Section 62(E)]

(f) **Scheduling and performing interviews.**

(1) The chief administrative officer or governing board of the state agency shall designate an interview committee. All members of the interview committee shall participate in all interviews of each consultant.

(2) An evaluation criteria list shall be developed to insure that all interviews are conducted identically. The interview committee should consider the criteria listed in 260:65-3-7.

(3) Each consultant should be notified by letter informing him that he has been selected for interview. The letter should contain:

(A) Date, time and place of interview. Interviews should be scheduled individually for each consultant.

(B) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.

(C) A copy of the interview criteria.

(D) Names of the interview committee members.

(E) The letter should contain any other information which shall help the committee to obtain information needed for them to properly evaluate the consultant.

(F) Oklahoma Statutes prohibit the requesting of any information on fees. Any consultant who discloses its fee, or any indication thereof, prior to subsection (j) of this Section, Negotiation of Contract, shall be removed from the request list or short list and receive no further consideration for the project. Consultants must be selected on the basis of qualifications and not on a bid basis.

(4) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(5) At the conclusion of all interviews, the committee shall then rate each consultant in a manner as to recommend to the state agency the relative ranking of each consultant. This document does not attempt to designate the exact procedure the committee shall use to make their selections. All criteria and procedures used by the committee shall be documented for the record.

(g) **Forwarding of recommendations.** The recommendations are forwarded to the state agency for the final selection.

(h) **Preparation of report to the Department.**

(1) The state agency shall prepare a chronological report detailing the steps in the procedure actually followed by the state agency in making its selection. This report shall include the criteria used in the screening process as well as the interviews and the ratings of all firms considered. A copy of the approved minutes of any board action affecting the selection process shall be included.

(2) The report is submitted to the Department for the independent review of the entire process. Upon approval of the report by the Department, the state agency shall be notified that fee negotiations with the first ranked firm may begin.

(i) **Negotiation of Contract.**

(1) The negotiation of fees is the first time a discussion of costs is permitted. There are no defined procedures for negotiating. The Department shall usually open negotiations by designating a negotiator and by defining the detailed scope of work and forwarding that scope to the consultant in a letter formally requesting the cost proposal. The letter should require a detailed breakdown of costs to enable the Department to understand the cost items and have a basis for negotiation. The consultant should also be provided a copy of the proposed contract format. Copies of the approved contract formats may be obtained from the Department.

(2) The consultant shall develop his fee proposal and return it to the Department. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed fifteen per cent (15%). The Administrator may establish a standard format for estimating and itemizing the costs submitted with a fee proposal.

(3) The Department shall then set up a meeting to negotiate and agree to the fee, or may authorize the state agency to begin fee discussions. The fee is expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. The choice is up to the Department. Attached as Appendix A is a table which may be used as an aid in evaluating a fee proposal. After a fee has been determined, the consultant is asked to modify the proposal to reflect the agreed upon scope of work and fee. This modified proposal shall become part of the contract. [61 O.S., Section 62(G)]

(4) The state agency then forwards an agency requisition to the Department.

(j) **Award of contract.**

(1) The contract is processed for award by the Department. After the contracts have been signed by all parties, copies shall be provided to the state agency and the consultant.

(2) Changes to the consultant's base contract may be approved by the Administrator as long as the scope of the change is generally included within the scope of work developed in (1) of this subsection for which the consultant selection process was conducted. Changes may be requested by the state agency in writing to the Department and must reference the correct contract, and include the scope of the change, the fee for the change and the source of the funding for the change.

260:65-3-5. Consultant contracts

(a) Contracts are written by the Department in standard formats as required by 61 O.S. The Department may be contacted for development of special requirements to be included in contracts. Non-standard contracts for specialized projects may be proposed by the state agency and approved by the Administrator for use on a specific project.

(b) Phases of services may involve all or any of the following depending on the size and type of project:

(1) **Program planning.** Program planning may include the following:

(A) Space plan.

(B) Written and/or graphic program document as specified.

(C) Circulation allowances.

(D) Cost estimate.

(E) Specific additional features as required in the agencies request for proposal.

(2) **Schematic Design.** Schematic design may include the following:

(A) The line drawing and graphic representation of the floor plan, perspective drawings and site orientation of the project.

(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.

(C) Cost estimate.

(3) **Design Development.** A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

(A) The site plan for parking, street and pedestrian access.

(B) Overall dimensions.

(C) Rooms and traffic circulation within the buildings.

(D) Types of materials.

(E) Building elevations.

(F) Building sections.

(G) Recommended structural systems.

(H) Recommended mechanical systems and equipment based upon life cycle studies.

(I) Cost estimate.

(4) **Construction Documents.** Construction documents may include those items necessary for a construction contractor to properly bid and construct the project. They include:

(A) Working drawings.

(B) Specifications.

(C) Project manuals.

(D) Any other item specifically required by the contract.

(E) Cost estimate.

(5) **Construction phase services.** The consultant may be required to perform specific construction phase services which include:

(A) Review and approval of shop drawings.

(B) Review and approval of pay requests.

(C) All standard contracts include a reference to construction monitoring which are periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant and sub-consultants to the construction site to determine that the contractor is following the intent of the construction contract documents. When more frequent monitoring is needed, the Department shall include this in the criteria package and negotiate this increased cost service.

(D) The primary responsibility for the administration of the construction contract lies with the consultant.

260:35-3-6. Screening criteria

(a) The screening process is the examination of each consultant that has indicated interest in the project proposed by the state agency. Files on each consultant are provided by the Department for this purpose. Prior to beginning the review, a specific list of criteria must be developed and should include, but not be limited to the following:

(1) Specialized experience related to the proposed project.

(2) Similar experience on comparable projects.

(3) Technical qualifications of the design team.

(b) State agencies shall use the Consultant Screening Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator.

(c) A screening evaluation sheet should be prepared listing each consultant considered with a rating for each criteria listed as in the Consultant Screening Evaluation Form. After all consultants are evaluated, the ratings are compared and the top three to five consultants are identified for interview. If multiple projects are being considered, two consultants for each project are selected for interview. [61 O.S., Section 62(E)]

(d) A copy of the evaluation sheets shall be included in the report to the Department.

260:65-3-7. Interview criteria

(a) The interview is the most important step in the selection process. Each consultant must be evaluated against a clearly established list of criteria which is provided to the consultant within seven days in advance of the interview. State agencies shall use the Consultant Interview Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator. Information should be sought during the interview which shall answer these questions:

(1) How will the consultant staff the proposed project?

(2) What is the consultant's proposed management plan?

(3) What is their previous experience for this project?

(4) Where are they located? How will they reduce travel costs if they are not close to the proposed project?

(5) What are their plans for project control?

(6) What is their proposed approach to the design of this project?

(7) What are examples of the similar projects they have completed?

(8) What are their experiences in value engineering, life cycle costs analyses, critical path method of scheduling, energy conservation, new energy resources, environmental assessments or other specialized experience, if required?

(9) Has a judgement been paid by the consultant or on their behalf for liability caused by professional errors and/or omissions in the past five years?

(10) Any other additional factors?

(b) Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 260:65-3-6.

(c) Copies of the completed evaluation sheets shall be included in the report to the Department.

260:65-3-8. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 5. MINIMUM CODES FOR STATE CONSTRUCTION

260:65-5-1. Purpose; application

To comply with the requirements of 61 O.S., Section 209, the following rules contained in 260:65-5 are promulgated by the Office of Management and Enterprise Services and shall apply to all facilities constructed for state use.

260:65-5-2. Definitions

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

"ADA" means the Americans with Disabilities Act

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"ASHRAE" means the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.

"Code" means the minimum building code or codes provided by this rule.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services, an agency of the State of Oklahoma.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of 61 O.S. This definition shall apply also to construction of real property that the state shall lease.

"IES" means the Illuminating Engineering Society.

"NFPA" means the National Fire Protection Association.

"OSFM" means the Oklahoma State Fire Marshal.

260:65-5-3. Construction requirements; reviews and permits

(a) Each facility shall be constructed or improved in such a manner as to provide reasonable safety from fire, smoke, panic

and related hazards and to ensure a high level of health, comfort and well-being for all occupants.

(b) Building construction and renovation will require formal code review and a building permit, unless otherwise determined by the Department. When required by the Department, construction plans and specifications shall be reviewed by the agency with applicable code jurisdiction according to policy prescribed by the Administrator.

(c) Plans and specifications for State construction projects shall be reviewed and approved by the OSFM, who shall issue a permit upon approval. When directed by the Department, said plans shall also be reviewed by the Risk Management Department of the Office of Management and Enterprise Services. No project shall be let for public bids until such prescribed reviews are concluded and a building permit is issued by OSFM. Fees for plan review and permits shall be paid from the agency project funds.

(d) When a State construction project requiring a permit from OSFM is located within a local code enforcement jurisdiction, the Department encourages obtaining an additional building permit from the local jurisdiction or arrangement of cooperative inspections. The Department, or it's agent, may invite a cooperative review between OSFM and the local jurisdiction and authorize payment for a local permit from the project funds.

260:65-5-4. Adopted codes

(a) **Codes.** State construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated.

(b) **Additional Building Codes.** The Department may require compliance with additional codes not currently adopted by OSFM, including but not limited to:

(1) International Energy Conservation Code, latest edition;

(2) Americans with Disabilities Act and related standards, latest edition.

260:65-5-5. Adopted standards

The following standards are adopted by reference:

(1) **ASHRAE Standards.**

(A) Standard #55. Thermal and Environmental Conditions for Human Occupancy.

(B) Standard #62. Ventilation for Acceptable Indoor Air Quality.

(C) Standard #90.1 Energy Efficient Design of New Buildings.

(2) **ASME Standards.**

(A) Standard A17.1. Safety Code for Elevators and Escalators

(B) Standard A17.3 Safety Code for Existing Elevators

(3) **IES Standards.** Illuminating Engineering Society Lighting Handbook Reference and Application Volumes.

260:65-5-6. Sources for codes and standards

(a) A copy of all codes adopted by reference in this subchapter are on file and available for public inspection at the following address: Construction and Properties Department, Office of Management and Enterprise Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405)-521-2111.

(b) Listed below are sources for the codes and standards referred to in this Subchapter:

(1) International Code Council: 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401; Telephone: 1.703.931.4533

(2) NFPA: National Fire Protection Association, Batterymarch Park, Quincy, MA 02169

(3) ASHRAE: ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329

(4) ASME: 22 Law Drive, Box 2300, Fairfield, NJ 07007-2300

(5) IES: Illuminating Engineering Society, 345 East 47th Street, New York City, NY 10017

(6) Oklahoma State Fire Marshal, 2401 N.W. 23rd Street, Oklahoma City, OK 73107; www.firemar.state.ok.us

SUBCHAPTER 7. PROCEDURES FOR AGENCIES TO PERFORM RESPONSIBILITIES EXERCISED BY THE CONSTRUCTION AND PROPERTIES DEPARTMENT

260:65-7-1. Purpose

The rules contained in this Subchapter are promulgated by the Office of Management and Enterprise Services to comply with the requirements of Section 209(3), Title 61, Oklahoma Statues and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.

260:65-7-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Director" means the Director of the Office of Management and Enterprise Services.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, O.S.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

260:65-7-3. Requirements of law; agency responsibility

(a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.

(b) Delegations of the statutory requirements stated in Title 61 of the Oklahoma Statutes which are permitted by the rules contained in this subchapter shall be set forth in the documents granting the exception or delegation. The requirements of law are not lessened and the agency to which the delegation of authority is granted shall be wholly responsible for the required compliance.

(c) No delegation of authority may be granted for Sections 1 through 51, sections 101 through 136, and sections 151 through 157 of Title 61 of the Oklahoma Statutes.

260:65-7-4. Requesting services of consultants, architects, engineers, and land surveyors

All agencies requesting the services of consultant architects or engineers or land surveyors are hereby delegated the following responsibilities of Section 62 as modified by Sections 208(A) and (B), Title 61:

(1) Provide all of the information required by Section 62(C), Title 61, Oklahoma Statutes.

(2) Prepare the letter of solicitation as required by Section 62(C).

(3) Receive the replies of interested consultants and submit a list of the interested parties to the Administrator.

(4) Conduct the selection as described in Section 62 (E) and (F).

(5) Submit a requisition to the Administrator from which the Department shall prepare and execute a contract.

260:65-7-5. Request for delegation of authority to agencies

(a) Agencies wanting to perform the responsibilities of Title 61 Oklahoma Statutes assigned to the Office of Management and Enterprise Services must make a request in writing to the Director, Office of Management and Enterprise Services. Such request must contain all of the following information:

(1) Specific reference to the section and paragraph of Title 61 to be delegated to the state agency.

(2) Complete justification for the request. Effect on FTE, appropriations and state Agency mission should be included.

(3) Complete listing of engineers and architects available to the state agency to perform the duties for which delegation of authority is requested.

(4) Any additional information which shall assist the Director to properly evaluate the request.

(b) A request in 260:65-7-5(a) may be for either a limited or indefinite period. The request should indicate what period is being requested.

260:65-7-6. Evaluation of requests

All requests made pursuant to 260:65-7-5 shall be evaluated according to the following criteria:

(1) There must be a significant advantage to the State for cost savings.

(2) The exception cannot require the use of non-FTE personnel. Only existing FTEs may be considered.

(3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for temporary delegation of authority may be granted.

260:65-7-7. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 9. FULL-TIME EMPLOYMENT BY AGENCIES FOR MINOR CONSTRUCTION PROJECTS

260:65-9-1. Purpose

The rules contained in 260:65-9 are promulgated by the Office of Management and Enterprise Services to comply with the requirements of Section 209(1), Title 61, Oklahoma Statutes and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.

260:65-9-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Architect" means a person legally qualified to practice the profession of Architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural,*

registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project. [61 O.S., §202]

"Director" means the Director of the Office of Management and Enterprise Services.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Engineer" means a person legally qualified to practice the profession of Engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, Oklahoma Statutes.

"Facility" means any building or improvement to real property constructed for State use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

"Minor Construction" means any construction which does not require the person performing the construction to have an occupational license.

"State Agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in O.S., Section 61.

260:65-9-3. General construction and licensing provisions; application of rules and law

(a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.

(b) Agencies to which authority is given to hire full-time employees for minor construction under this rule shall insure that all requirements of licensing, code compliance and construction administration shall conform to existing law and rules and regulations.

(c) Agencies which had full-time employees for the purpose of performing minor construction projects on the date of promulgation of this rule are exempted from requesting authority for those employees.

(d) Nothing in 260:65-9 shall replace the statutory procedures for obtaining FTE positions. The legislature in its appropriations bills control the authorized FTE positions.

260:65-9-4. Requests to hire employees for minor construction

Agencies wanting to hire employees to perform minor construction projects shall make a request in writing to the Director, Office of Management and Enterprise Services. Such request must contain all of the following information:

(1) A complete description of the types of projects for which the authority is requested must be shown.

(2) Complete justification for the request must be included. Number and description of positions that shall be filled must be included. All positions must be identified by a position code assigned by the Office of Personnel Management.

(3) A complete listing of engineers, architects, and consultants available to the agency to perform the duties of code compliance and observation of the project for which the authority is requested must be included.

(4) Any additional information which shall assist the Director to properly evaluate the request.

260:65-9-5. Evaluation of requests

All requests shall be evaluated according to the following criteria:

(1) There must be a significant advantage to the State for cost savings.

(2) The request, if granted, cannot require the use of non-FTE personnel. Existing FTEs only may be considered.

(3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for authority may be approved if the emergency can only be remedied by using temporary employees.

SUBCHAPTER 11. LIFE CYCLE COSTING FOR STATE FACILITIES

260:65-11-1. Purpose

The Oklahoma State Agencies are required by Oklahoma Statutes to perform Life Cycle Cost Analysis for alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in state facilities. The following guidelines are promulgated by the Construction and Properties Department of the Office of Management and Enterprise Services in compliance with the provisions of Sections 209 and 211 of Title 61 of the Oklahoma Statutes. Guidelines in this Subchapter are to be used in performing the required analysis.

260:65-11-2. Definitions

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

"A" means the amount of money after n years in future.

"a" means annually recurring costs.

"Annually recurring costs" means those costs which are incurred each year, usually in an equal amounts, throughout the study period.

"Base year" means the year in which the Life Cycle Cost analysis is conducted.

"Base year price" means the price of goods or services as of the beginning of the base year.

"Cash flow" means the stream of costs and benefits resulting from a project investment.

"Cost escalation rate" means the rate by which an annual expense is assumed to escalate per year.

"Discounting" means a technique for converting cash flows occuring over time to time-equivalent values, adjusting for the Time Value of Money.

"E" means energy costs.

"Economic life" means the period of time over which a facility or a piece of equipment is considered to have the lowest total cost.

"I" means investment costs.

"i" means the interest rate per year.

"Investment costs" means the initial costs of design, engineering, purchase and installation, all of which are assumed to occur as lump sum at the beginning of the base year for purposes of making the Life Cycle Cost analysis.

"j" means the cost escalation rate per year.

"LCC" means life cycle costing.

"Life cycle costing" means a method of economic evaluation that sums discounted dollar costs of initial investment, operations, maintenance, repair and replacement less salvage value of state facility or equipment over the study period.

"M" means maintenance and non-fuel operating costs.

"n" means the number of years in the study period.

"Nonfuel operation and maintenance costs" means labor and material costs required for routine upkeep and operation, exclusive of energy costs.

"P" means present worth.

"Present worth" means the time-equivalent value of past, present or future cash flows as of the beginning of the base year.

"Present worth factor" means a factor by which annually recurring amounts may be multiplied to find their equivalent Present Worth (see Appendix B of this Chapter).

"Present worth escalating factor" means a factor by which a non-uniform annual expense, such as energy or labor costs, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).

"PWEF" means the present worth escalating factor.

"PWF" means the present worth factor.

"R" means the replacement cost.

"Replacement costs" means the future costs to replace equipment usually at the end of their economic life.

"S" means the salvage value.

"Salvage values" means the estimate of future salvage values of items sold as used equipment or scrap usually at the end of their economic life.

"Single present worth" means a factor by which a single future amount, such as replacement cost or salvage value, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).

"SPW" means single present worth.

"State facilities" means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes. This rule shall apply also to property leased or being prepared for lease by the state.

"Study period" means the length of time period covered by the economic evaluation. Typically it is equal to the economic life of the evaluation subject.

"Time value of money" means the time-dependent value of money. The adjustment of cash flows to a common time basis is necessary to take into account the real earning potential of investment over time.

"TLCC" means total life cycle cost.

"Total life cycle cost" means the total discounted dollar cost of owning, operating and maintaining a state facility or equipment over the study period.

260:65-11-3. Evaluation steps

The recommended steps in the economic evaluation are:

(1) **Objective.** Every economic evaluation should have a statement clearly defining the specific objective to be accomplished by the evaluation. Examples of objectives are: To determine which design or equipment of what size is economically preferable.

(2) **Constraints.** There could be technical, physical, budgetary or code constraints. Any of these can reduce the number of candidate strategies for which an economic evaluation must be performed.

(3) **Data, estimates and assumptions.**

(A) **Data.** The types of data that are needed are: investments costs (**I**), energy costs (**E**), maintenance and nonfuel operating costs (**M**), replacement costs (**R**), salvage value (**S**), interest rate (**i**) and escalating rates (**j**)

(B) **Estimates.** The economic life of the project has to be estimated. Appendix C of this Chapter includes the suggested economic life for a number of equipment.

(C) **Assumptions.** To simplify the cash flow calculations, the investment costs are assumed to occur in a lump sum at the beginning of the base year. All other costs occur in lump sums at the end of the respective years in which they occur.

(4) **Evaluation.** The general equation for calculating the total life cycle cost is set forth in Appendix D.

(5) **Sensitivity analysis.** Sensitivity analysis technique is performed by repeating an evaluation using different input values. By testing the percentage change in the output corresponding to specified percentage changes in input values, the most critical parameters can be identified. The technique is also used to produce an upper and lower boundaries for the output based on maximum and minimum estimated values for the input parameters. In some cases, expressing the answer in terms of upper and lower boundaries gives a clearer picture than a single point estimate. Although performing sensitivity analysis is not required under the TLCC rule, it is a useful technique especially where there is uncertainty about the data and estimates.

(6) **Non-quantified factors.** In many projects, some parameters with significant consequences are not adequately captured in the numerical evaluation. These parameters should be presented in descriptive terms during the decision making process. For example, replacing a window with an insulted wall will save energy, however, the effect of a windowless room on the occupants should be taken into consideration.

260:65-11-4. Results

(a) The Construction and Properties Department of the Office of Management and Enterprise Services shall sponsor training workshops for Oklahoma State agencies purchasing personnel in the use and/or verification of the Life Cycle Cost Analysis. Until such a time as sufficient expertise is developed in state agencies, the results of the analysis, along with the input data should be submitted by the contractors, vendors or consultants to the Construction and Properties Department of the Office of Management and Enterprise Services for verification.

(b) The suggested ranges for applying the Life Cycle Cost Analysis to conduct the analysis without the escalation factors for projects having total costs of more than $7,500, but less than $40,000 (i.e., equations 3.2. and 3.4 in 260:65-11-3(4)). For projects costing more than $40,000, where more accurate estimates are needed, escalation factors are included in the analysis (i.e., equations 3.3 and 3.5 in 360:65-11-3)(4)).

SUBCHAPTER 15. ENERGY SERVICES CONTRACTS

260:65-15-1. Purpose

Pursuant to Section 210 of Title 61 of the Oklahoma Statutes, the following rules contained in OAC 260:65-15 are promulgated by the Office of Management and Enterprise Services and shall apply to energy services contracts for State Agencies. These rules are to aid state agencies in obtaining more efficient energy saving equipment and methods without significant capital expenditure by utilizing the services of an energy service company.

260:65-15-2. Definitions

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services, State of Oklahoma.

"Energy audit" means to review facilities and systems, to identify existing operating and utility costs, to specify areas of potential savings, and to quantify those savings.

"Energy service company" means the company responsible for the installation of energy conservation measures and the guarantee of energy savings.

"Energy service contract" means a contract signed by a state agency and an energy service company which conforms to the provisions of this chapter.

"ESC" means energy service company.

"Equipment portion" means the portion of the energy service contract which deals with the purchase of equipment and its installation.

"Guaranteed savings" means the amount of money per year guaranteed by the ESC that shall be saved by the state agency on present utility costs.

"Service portion" means the portion of the energy service contract which deals with guaranteed savings, period of guaranteed savings, training, and bonds.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.

260:65-15-3. Description of the program

Guaranteed savings program is a program whereby the agency selects and contracts with an energy service company to reduce its energy costs. The goal of this contract is energy cost savings through acquisition of energy efficient equipment, services and methods. The ESC guarantees the amount of savings from the program over a specified period of time. Since the contract is paid from the energy savings realized, the agency does not need to have the large amount of capital which would be otherwise necessary to purchase such services and equipment.

260:65-15-4. Request for energy services

(a) Any agency which believes that it could benefit from participation from an energy service contract should contact the Department. The Department shall meet with representatives of the Agency to determine if an energy service contract would be beneficial.

(b) Criteria used to determine possible benefit of an energy service contract may include but not be limited to the following:

(1) Urgency of equipment replacement (i.e., the time frame until the equipment fails and is no longer repairable).

(2) Repair vs. replacement utility (i.e., the amount necessary to carry-on necessary repairs as opposed to the cost of replacing of the equipment).

(3) Prioritization of available capital (i.e., of the available capital in an agency, the demands of that capital relative to the need of the equipment).

(4) Projected use and life expectancy of the equipment or its replacement.

(5) Results of an energy audit of the facility in question which indicates potential energy savings.

(c) When practical, new equipment should be purchased outright as opposed to an energy service contract.

260:65-15-5. Bid documents

(a) Bid documents shall be made available to all prospective ESC's. The Department may require a deposit for the documentation. [OAC 260:65-1-4(b)]

(b) Bid documents may include, but shall not be limited to the following:

(1) Information regarding applicable administrative rules, including the rules of this chapter. Refer to OAC 260:65-1-4 and 5.
(2) Scope of the work to be performed.
(3) Energy audit, if performed by a state agency or consultant.
(4) Requirements for an energy audit if performed by the ESC. [OAC 260:65-15-6(a)]
(5) Energy usage by the agency at the facility in question.
(A) All utility bills and records for a relevant period;
(B) Current demand charges;
(C) Other energy usage information.
(6) Minimum environmental requirements of the agency (e.g., ambient air temperature, lighting levels, etc.)
(7) Building and site plans needed to both assess equipment installation and energy efficiency.
(8) Proposed evaluation criteria developed by the agency in cooperation with the Department.
(9) Sample of all contract documents.
(10) Any other information deemed necessary by the Department so that ESC's may prepare an accurate submittal on the project.

260:65-15-6. Energy audit

(a) An energy audit shall be conducted for each project for which an energy service contract is sought. An energy audit is used to gain more in-depth knowledge of the agency's facility and its energy usage. The requirements for an energy audit are outlined in the bid documents.
(b) The energy audit may be conducted by one or more of the following as determined by the agency with approval of the Department:
(1) A state agency with the technical expertise to conduct the audit. This could include the Construction and Properties Department of the Office of Management and Enterprise Services.
(2) A contracted consultant selected consistent with Title 61 of the Oklahoma Statutes and the provisions of Subchapter 3 of this Chapter with the technical expertise to perform the energy audit.
(3) One or more ESC's consistent with the provisions of this section.
(c) If the energy audit is conducted by a state agency or a contracted consultant, the results of such audit shall be made available to all ESC's in the project bid documents. If the energy audit is conducted by one or more ESC's, the results of such audit must be included in any project submittal of the ESC.
(d) ESC's may schedule with the agency inspections of facilities and equipment in order to conduct an energy audit or to gain a greater understanding of the facility and its energy use.
(e) Any fees from a state agency or a contracted consultant incurred as a result of the energy audit must be paid outright by the agency.
(f) A contracted consultant may be selected to provide a complete set of bid documents, evaluate all bids submitted, provide construction administration, related performance contracting methods and perform energy savings reconciliation for the Department or agency. Any fees charged by the consultant must be paid outright by the agency.
(g) Department may perform any of the services described in 260:65-15-6(f), and may levy and collect a reasonable fee for the agency for said services.

260:65-15-7. Bid submittals

Reference OAC 260:65-1-5 for bid submittal information.

260:65-15-8. Bid review and evaluation

(a) When all of the bid submittals have been opened, they are forwarded for review and evaluation by the agency, the Department or consultant if applicable.
(b) A selection committee shall be formed composed of members of the agency and the Department to review and evaluate the bids submitted. After the review and evaluation of the bids by the review committee, the best submission shall be selected for the award of the energy service contract.
(c) Criteria used to select the ESC to perform the energy service contract may include but shall not be limited to the following:
(1) Cost
(2) Amount of guaranteed savings offered by the ESC
(3) Proposed list of equipment to be installed
(4) Length, flexibility, options and extent of the maintenance contract
(5) Experience and qualifications of the ESC in performance of similar types of projects as described in the bid documentation.
(6) Quality and depth of the energy audit if performed by the ESC
(7) Installation schedule of the equipment
(8) Quality and extent of the training program offered by the ESC
(9) Relative fiscal capacity and stability of the ESC
(10) Duration of the entire contract including both equipment and service portions.
(11) Methodology of savings calculations

260:65-15-9. Energy service contract

The energy service contract shall consist of, but not be limited to the following:
(1) The duration of the equipment portion of the contract shall be equal to or less than the term of the lease purchase agreement.
(2) Service portion of the contract:
(A) The ESC shall guarantee savings for at least each year of the lease-purchase agreement, but may guarantee savings beyond the completion of the lease purchase agreement.
(B) The ESC shall provide sufficient training to maintenance, custodial, and other such personnel as

have need to know regarding the proper use and maintenance for the efficient operation of equipment contained in the equipment portion of the contract.

(C) ESC shall be responsible for maintaining the equipment for the duration of the lease-purchase agreement but may provide maintenance for a greater duration as may be defined in the energy service contract if the State does not elect to otherwise contract for maintenance services. [61 O.S. Section 210(A)(5)]

(3) Required bonds:

(A) ESC shall provide a declining balance surety performance bond in an amount not less than 25% of the balance of agency's total financial obligation.

(B) ESC shall provide a performance bond in an amount determined by the agency to guarantee the restoration of the facility in the event of default. [61 O.S. Section 210(A)(3)]

(4) ESC shall purchase public liability insurance, property damage insurance, and workers' compensation insurance or as specified in the bid documents.

(5) All modifications to any contract or agreement which the State is requested to execute must be submitted to the Department's legal counsel for approval at least ten days prior to submitting to the Department for execution.

260:65-15-10. Payment of contract

(a) Lease-purchase agreements shall be competitively bid through the Purchasing Department of the Office of Management and Enterprise Services unless determined by the Executive and Legislative Bond Oversight Commissions to be more cost effective if financed through negotiated sales.

(1) If the sale is to be executed on a negotiated basis, such financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, §695.1 et seq.

(2) If the sale is to be competitively bid, such financing shall be processed through the Purchasing Department of the Office of Management and Enterprise Services. [74 O.S. Supplement 1993, Section 85.4(G.2)]

(b) The term of the lease purchasing financing shall be in conformance with and governed by 74 O.S. Section 85.4(I)(4).

260:65-15-11. Guaranteed savings

(a) All identified savings must be fully reimbursable.

(b) ESC shall reimburse the agency for any shortfall below the yearly guaranteed amount contained in the contract.

(c) Excess savings realized above the amount guaranteed by the ESC within a single year shall not be used to cover deficiencies in savings from other years.

(d) Should there be three consecutive months of short-fall on the amount guaranteed, the ESC shall investigate and report the cause to the agency.

(e) Guaranteed savings identified by the ESC shall include only energy savings that can be quantified and documented. Savings identified shall not include savings realized from changes in operational efficiency, cost avoidance, or adjustments in environmental levels below the minimum established by the agency.

260:65-15-12. Change orders

Reference OAC 260:65-1-14 for change orders

260:65-15-13. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS

260:65-17-1. Purpose

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide construction management services on state construction projects that utilize the construction management delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

260:65-17-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Construction Management" (CM) means the project delivery method based on an agreement whereby the state acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. Construction management includes:

(A) **"Construction Management/Agency"** (CMa) whereby the construction entity applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the state without taking on financial risks for the execution of the actual construction. CMa services could include a range of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.

(B) **"Construction Management/At-Risk"** (CMc) whereby the construction entity, after providing construction management/agency services listed in (a) of this section during the pre-construction

period, takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person, properly certified in accordance with 20-17-3, who acts as an agent of the state for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the state, design professional and other consultants that may be required for the project; and who utilizes skill and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions and provides advice concerning construction, safety and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the solicitation issued by the state agency.

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Director" means the Director of the Office of Management and Enterprise Services.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Guaranteed Maximum Price" (GMP) shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Notice to Proceed" shall be the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

260:65-17-3. Qualifications

(a) **General.** An individual or business entity that desires to provide or provides construction management services to the state must meet minimum qualifications established in this Section.

(b) **Construction management certification.** An individual or business entity that desires to provide construction management services to the state shall possess certification that demonstrates the individual's or business entity's capability to provide the services.

(c) **Certification sources.** An educational program that provides certification of an individual as capable to provide construction management services shall include industry recognized standards for knowledge of construction, construction management and project management. An individual certified by one of the following sources may qualify to provide construction management services to the state.

(1) **Certified Construction Manager.** An individual certified by the Construction Management Association of America as a certified construction manager.

(2) **Certified Cost Engineer/Certified Cost Consultant.** An individual certified by the Association for the Advancement of Cost Engineering, International as a Certified Cost Engineer or Certified Cost Consultant.

(3) **Certified Professional Estimator.** An individual certified by the American Society for Professional Estimators as a Certified Professional Estimator.

(4) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.

(5) **Certified Construction Contract Administrator.** An individual certified by the Construction Specifications Institute as a Certified Construction Contract Administrator.

(6) **Designated Design-Build Professional.** An individual certified by the Design-Build Institute of America as a Designated Design-Build Professional.

(d) **Other professional certification recognition.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Administrator shall determine whether the individual may provide construction management services to the state.

260:65-17-4. Registration

(a) **General.** An individual that possesses the qualifications established in 20-17-3 shall register with the Department to provide construction management services.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Department to request consideration for registration as a construction management firm. Registration application forms are available upon request to the Department.

(c) **Administrator review and notification.** The Administrator shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity; or,

(2) **Grant conditional registration.** The Administrator may consider other certification sources and grant to the applicant a one-year probationary approval of the registration application. Renewal for subsequent years shall not be approved unless the applicant submits proof of certification issued by one of the certification sources listed in 260:65-17-3(C).

(3) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator shall specify reasons for rejection in the notice; or,

(4) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered construction managers maintained by the Department. Registration shall be effective for one (1) calendar year from the date of registration approval and renewed annually on or before the registration anniversary date of each succeeding year.

260:65-17-5. Project designation consideration

(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the construction management delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for construction management. [61 O.S., §202.1]

(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:

(A) early completion of work, allowing for beneficial public occupancy;

(B) accommodating construction progress with phased funding;

(C) enabling the project to be placed under contract prior to losing expiring funding source; or,

(D) other demonstrated public benefit.

(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.

(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects involving sophisticated or complicated technical systems, renovation work or work that must be completed on a critical time frame, or otherwise when a critical mission of a public agency may be in jeopardy, shall be considered specialized and complex.

(4) Other consideration factors may include:

(A) **Time constraints.** The time period the state agency desires for project completion.

(B) **State agency capabilities.** The capabilities of the Department staff and whether the staff has the ability and experience to effectively manage a project that utilizes construction management.

(C) **State agency funding.** The state agency shall demonstrate whether the agency has adequate funding to pay for services of the construction management firm, design consultant and construction services.

(D) **Project components.** The project complexity is sufficient to benefit from advisory consulting services during design or if the construction execution could be enhanced by the services of a construction manager. Such services during design might include, but are not limited to: independent preparation of cost estimates, independent design review, evaluation of alternate construction bid strategies and constructability evaluations. Services during construction that a construction manager might perform include, but are not limited to: certain elements of construction administration desired by the state agency that are outside the normal scope of the design consultant and overall coordination of multiphase, complex projects where one or more contractors may be involved in executing the work.

(c) **State agency request.** A state agency shall submit a written request for consideration of formal designation of a state construction project for the construction management delivery method to the Director after careful review of the factors in (b) of this section. The request shall specify reasons the state agency believes the project merits consideration for construction management and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for construction management services for a project, the Director shall consider whether the project merits designation for construction management and whether the state agency has adequate funds for the project.

(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for construction management.

(f) **Administrator notification.** Upon completion of the consideration of the state agency request, pursuant to Subsection 6, the Administrator shall forward the Director's official response to the requesting state agency which states reasons for the determination and whether the project has been determined to reasonably merit official designation for construction management.

260:65-17-6. Project designation

(a) **General.** After consideration of factors in 260:65-17-5, the Director may designate the project delivery method as construction management.

(b) **Construction management type.** The Administrator shall determine the construction management type as:

(1) Construction Management/Agency (CMa) (See 260:65-17-2); or

(2) Construction Management/At-Risk (CMc) (See 260:65-17-2).

(c) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for construction management and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed project designation form to the Director.

(d) **Director actions.** The Director shall determine whether the information on the project designation form is complete and agree or disagree with the Administrator's designation.

(1) Director agrees. If the Director agrees with the Administrator's designation, the Director shall sign the

project designation form and return the form to the Administrator.

(2) Director disagrees. If the Director disagrees with the Administrator's designation, the Director shall return the unsigned form to the Administrator.

(e) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.

(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire construction services pursuant to provisions of this subchapter.

(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.

(f) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.

(g) **Designation form filing.** The final project designation form shall be filed and maintained in the Department project file.

260:65-17-7. Project requisition

(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as construction management, the state agency shall complete a requisition form which must state on the form that the project delivery method is construction management and indicate the construction management type.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.

(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.

260:65-17-8. Selection procedures for construction management services

Selection of construction management firms shall be in accordance with Subchapter 21 of this Chapter.

260:65-17-9. Fee negotiation and contracts

(a) In accordance with the qualifications-based ranking of firms to perform construction management services in 260:65-21, the Department shall request a fee proposal from the highest ranking firm.

(b) Upon receipt of the written fee proposal, the Department shall hold fee negotiations in a manner consistent with the selection criteria.

(1) The Department shall negotiate a contract with the highest qualified firm at compensation determined in writing to be fair and reasonable.

(2) In establishing the construction management fee, the Department shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services

(3) In the event the Department is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Department shall then undertake negotiations with the second most qualified firm, beginning with a formal request for a fee proposal from that business. Failing accord with the second most qualified business, the Department shall formally terminate negotiations with that firm. This process shall continue, with proposals received from and negotiations held with the next most highly qualified firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(4) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.

(5) For Construction Management/At-Risk (CMc), there are essentially two phases of the contract.

(A) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the construction manager up to the point at which the design is far enough along for the construction manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the construction manager are the construction manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(B) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. This is accomplished through issuance by the Department of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the design consultant and the construction manager will work in conjunction with the design consultant to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(i) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(ii) Non approval of the GMP allows the Department to terminate the services of the construction manager or to renegotiate, as required.

(iii) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the construction

manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with subchapter 1, titled "Bidding Procedures", of this Chapter.

(6) When individual work packages are bid as a lump sum, the CM's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the construction manager's contract becomes all lump sum.

(7) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the construction manager and the Department must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Department may allow an adjustment to the GMP in order to allow the construction manager to award all work packages.

(8) In administering the construction contract, the construction manager will adhere to Oklahoma public bidding laws in advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(9) Because the construction manager is "at risk" for the total contract amount, they are permitted to self-perform portions of the work, provided that they competitively bid the work as a lump sum (each work package) under the same terms and conditions as the other bidders. If the construction manager decides to bid a work package, they must declare this intent during the pre-bid meeting held by the Department.

(10) In the award of subcontracts, the construction manager will award to the lowest responsible bidder. To be considered a "responsible bidder" the offeror must meet the minimum pre-qualification requirements, if any, that may be defined in the contract bid documents. An offeror shall meet the minimum pre-qualification requirements and complete the qualifications form that will be included as part of the bid package.

(11) Procurement of project components costing less than the statutory amount established in 61 O.S., Section 103 may be accomplished by receipt of written bids pursuant to 61 O.S., Section 103. The Department may approve and direct the Construction Manager to prepare written bid solicitation for such items and furnish to at lease three known suppliers. The solicitation shall clearly state the requirements for products delivery and installation, if applicable, and shall require the written quotes to be returned to the Department or the Department's agent by a specified date and time.

(c) **Award of contract.** The construction management contract is written and processed for award by the Department. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(d) **Changes to base contract.** Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

(e) **Construction Management contracts.** Contracts are written by the Department in standard formats as required by 61 O.S. The Department may be contacted for development of special requirements to be included in the contracts.

260:65-17-10. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 19. DESIGN-BUILD PROCEDURES AND REQUIREMENTS

260:65-19-1. Purpose

This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide design-build services on state construction projects that utilize the design-build delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

260:65-19-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Delivery System" is the approach used to develop and construct a project where Design-Build or Design-Bid-Build are typical approaches.

"Design-Bid-Build"(DBB) is the delivery method used on public projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. The Department shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Design-Build" (DB) is the project delivery method in which the Department procures both design and construction services in the same contract from a single, legal entity referred to as the design-builder. The method uses Request for Qualifications (RFQ)/Request for Proposal (RFP) procedures rather than the DBB Invitation for Bids (IFB) procedures. The design-build entity is liable for all design and construction costs and must provide a firm fixed price in its proposal.

"Design-Build Contract" shall be a contract between the Department and a design-builder to furnish the labor, materials

and other services for both the design and construction for the same public project.

"Design-Builder" shall be the entity that proposes to design and construct any public project governed by the procedures of Title 61 and this Chapter.

"Director" means the Director of the Office of Management and Enterprise Services

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Evaluation Criteria" shall be the requirements for the first phase of the selection process and shall include, as appropriate, specialized experience, technical competence, capacity to perform, past performance and other appropriate factors. Prices shall be considered only in the second phase of the selection process.

"Proposal" shall be an offer to enter into a design-build contract, as further defined in this subchapter.

"Request for Proposals" (RFP) shall be the document the state agency sends to each of the design-build firms on the "short list". The RFP shall contain the "Request for Proposals" (RFP) elements as described in OAC 260:65-19-11.

"Request for Qualifications" (RFQ) shall be the document or publication whereby a state agency solicits for qualified design-build firms.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

260:65-19-3. Design-build qualifications

(a) **Qualifications.** An individual or business entity that desires to provide design-build services to the state shall possess the construction experience that demonstrates the individual's or business entity's capability to provide the service.

(b) **Contractor Prequalification.** The contractor of the design-build team shall be authorized to do business in the state and shall be prequalified with the Department.

(c) **Architect of Record.** The Architect-of Record of the design build team, for a specific project, shall be licensed and authorized to do business in the state.

260:65-19-4. Registration

(a) **General.** An individual that desires to provide design-build services to the state shall prequalify with the Department pursuant to Section 260:65-1-8.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Department to request consideration for registration as a design-build firm. Registration application forms are available upon request to the Department.

(c) **Administrator review and notification.** The Administrator shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity.

(2) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator may specify reasons for rejection in the notice.

(3) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered design-build firms maintained by the Department. Registration shall be effective for one (1) calendar year and renewed annually on or before January 31st of each succeeding year.

260:65-19-5. Project designation consideration

(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the design-build delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for use of the design-build delivery system.

(1) **Time constraints.** The time period the state agency desires for project completion.

(2) **Department capabilities.** The capabilities of the Department staff and whether the staff has the ability and experience to effectively manage a project that utilizes design-build.

(3) **State agency funding.** The state agency can demonstrate it has adequate funding to pay for services of the design-build firm, a design consultant and construction services.

(4) **Project components.** The features of the project merit nomination of the project for execution using the design-build delivery approach.

(A) Project features that are compatible with using the design-build delivery method include:

(i) Projects for which the definitive space program and functional building requirements can be clearly defined by the state agency prior to the selection of the design-build team, with low likelihood of these requirements changing during the design phase. Examples include, but not limited to: general purpose storage warehouses, multifamily housing or dormitory type projects.

(ii) Repetitive type projects. For example, site adaptation of a standard or prototypical design that has been previously constructed at another location.

(iii) Projects with certain unique factors that require special knowledge or experience to produce the least cost design.

(iv) Pre-engineered structures.

(v) Performance based projects.

(vi) Projects where the time to completion is a critical factor.

(B) Projects features that are incompatible with using the design-build delivery method include:

(i) Projects where the cost to prepare the Request For Proposal (RFP) and the cost to respond to the RFP by the design-build firms are not justified relative to the anticipated benefits.

(ii) Projects where the scope of work is hard to define. Examples include: complex renovation projects and highly technical projects where the evaluation of alternative design approaches is critical.

(iii) Projects which are design driven, such as museums, research laboratories, medical facilities, technology centers, courthouses and executive office buildings.

(iv) Projects where the state agency or the Department desires to be closely involved during the design process to exercise discretionary control over the completed project.

(c) **State agency request.** A state agency shall issue a written request for consideration of formal designation of a state construction project for the design-build delivery method to the Director after careful review of the factors in (b) of this Section. The request shall specify reasons the state agency believes the project merits consideration for design-build delivery system and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for design-build services for a project, the Director shall consider whether the project merits designation for a delivery-build system and whether the state agency has adequate funds for the project.

(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for a design-build delivery system.

(f) **Administrator notification.** Upon completion of the consideration of the state agency request, the Administrator shall advise the requesting person whether the project has been determined to reasonably merit official designation for a design-build delivery system. The Administrator shall provide a written response stating reasons for the determination.

260:65-19-6. Project designation

(a) **General.** After consideration of factors in 260:65-19-5, the Director may designate the project delivery method as design-build.

(b) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for design-build delivery and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed designation form to the Director.

(c) **Director actions.** The Director shall determine whether the information on the designation form is complete and agree or disagree with the Administrator's designation.

(1) **Director agrees.** If the Director agrees with the Administrator's designation, the Director shall sign the project designation form and return the form to the Administrator.

(2) **Director disagrees.** If the Director disagrees with the Administrator's designation, the Director shall return the unsigned designation form to the Administrator.

(d) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.

(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire construction services pursuant to provisions of this subchapter.

(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.

(e) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.

(f) **Designation form filing.** The final designation form shall be filed and maintained in the Department project file.

260:65-19-7. Project requisition

(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as design-build, the state agency shall complete a requisition form which must state that the project delivery method is design-build on the form.

(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.

(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.

260:65-19-8. Selection Procedure for design consultant for design-build

(a) The state agency shall select a design consultant pursuant to provisions of Subchapter 3 of this Chapter.

(b) The state agency shall develop, with the assistance of the design consultant, a comprehensive scope of work statement and design criteria package that defines the project. This package will be issued to competing design-build teams, enabling the design-builders to submit proposals that meet the state agency's needs. The scope of work/design criteria package should contain, but not be limited to, the following information:

(1) A conceptual design including, as a minimum, a space plan and programmatic summary of state agency's requirements.

(2) Topographic survey and existing utility systems survey information for the project site.

(3) Geotechnical report of soils conditions for the project site.

(4) Clear definition of type of building desired, quality of materials, finishes, etc.

(5) Disclosure of the construction price limit of the project so firms don't run the risk of preparing proposals that are not price competitive.

260:65-19-9. Selection Procedures for design-build

Selection of design-build firms shall be in accordance with Subchapter 21 of this Chapter.

260:65-19-10. Proposals and contracts

(a) Following the qualifications-based ranking of firms to perform design-build in accordance with 260:65-21, the state agency shall solicit competitive Request for Proposals (RFP) from the four (4) most highly qualified firms.

(b) The Request for Proposals (RFP) shall contain, at a minimum, the following elements:

(1) The procedures to be followed for submitting proposals and the procedures for making the selection decision, including a reference to the requirements of this Chapter and the regulations of the state agency.

(2) A copy of the proposed design-build contract.

(3) The evaluation factors and their relative weights.

(4) The statement of work/design criteria package.

(5) Provision for the design-builder to offer comments, enhancements or other appropriate value engineering recommendations pertaining to the concept drawings and technical specifications provided by the state agency in the RFP.

(6) A stipend is required to be paid to each design-build firm in the event that the state agency elects to have the proposing design-builders develop design drawings as part of the submission . The RFP must describe the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable.

(A) The stipend should be sufficient to cover the cost to develop drawings, specifications or other technical narratives in response to the RFP.

(B) The RFP should state that in return for the stipend, the State will retain ownership of the plans submitted by the competing design-build teams.

(C) Stipends may not be required if the RFP documentation is complete enough that the proposing design-builders do not have to perform additional design work in order to respond to the requirements of the RFP.

(7) A schedule for commencement and completion of the design-build contract.

(8) Budget limits for the design-build contract.

(9) Requirements for design-builders to have bonds and insurance.

(10) Any other information that the state agency in its discretion chooses to supply, including without limitation, surveys, drawings or models of existing structures, environmental studies, photographs, or references to public records.

260:65-19-11. Evaluation factors

(a) The state agency, in consultation with the design consultant, shall determine the scope and level of detail required for the evaluation factors and shall submit the factors to the Department for approval. The evaluation factors should be detailed enough to permit qualified design-builders to submit proposals in accordance with the solicitation, without having to perform additional design services to meet the requirements of the RFP.

(b) The design consultant who consults in the development of the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional who developed the evaluation factors.

(c) The design consultant who develops the evaluation factors shall be either a full time employee of the state agency or shall be engaged in compliance with Title 61 of Oklahoma Statutes, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to other consultants.

(d) Evaluation factors shall include:

(1) Past performance (cost, quality, schedule)

(2) Similar experience on comparable projects

(3) Technical qualifications of design-build team

(4) Proposed schedule

(5) Proposed costs

(6) Proposed technical approach including design submittals.

(7) Any other factors relevant to project.

260:65-19-12. Proposals

(a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the RFP.

(b) Upon expiration of the time established for making proposals as set forth in the RFP, all proposals received shall be submitted to and evaluated by the Selection Committee.

(c) Clarifications may be required to ensure conformance of proposals with the evaluation factors. Clarifications may require revised price and/or technical proposals. No proposal shall be considered until the Selection Committee issues certification that the proposal is consistent with evaluation factors.

(d) No proposal for a design-build contract may be accepted unless the Selection Committee determines that there was adequate competition for such contract.

(e) Proposals shall establish a cost of the design-build contract, which will not be exceeded if the proposal is accepted without change.

(f) Proposals may allow the design-builder to identify subcontractors to whom the design-builder proposes to delegate obligations under the design-build contract. Entities so identified will not be replaced without the approval of the state agency, or the award may be revoked.

(g) Each design-build team must include licensed architects and engineers independent from the state agency's design professional. The design-build team's licensed architects and engineers must be named in the proposal submitted to the state agency.
(h) The state agency shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of this Chapter. The state agency may thereafter solicit new proposals using the same or different evaluation factors, budget constraints, or qualifications.
(i) The state agency shall maintain the secrecy and confidentiality of all proposals and all information contained in the proposals, and shall not disclose the proposals or the information contained therein to the design-builder's competitors or the public. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.
(j) When a design-builder receives notification from a state agency that its proposal has not been accepted, the design-builder may, within seven (7) days, submit a written request for a written explanation of the selection process to the state agency.
(k) Proposals may be withdrawn for any reason at any time prior to acceptance.
(l) Written notice of the acceptance of a proposal shall be delivered to the design-builder that submitted the accepted proposal. The state agency shall deliver written notice to the unsuccessful design-builders that their proposals were not accepted at the same time the notice of acceptance is delivered.

260:65-19-13. Design-build contracts
(a) A design-build contract is written and processed for award by the Department. Upon receipt of the Notice to Proceed, the design-builder will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum, and proof of worker's compensation, all risk, property and general liability insurance. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.
(b) Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work evaluated during the selection process. All changes shall be in writing and signed by all parties to the contract.
(c) Contracts are written by the Department in standard formats as required by 61 O.S. The Department may be contacted for development of special requirements to be included in the contracts.

260:65-19-14. Waivers
The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 21. SELECTION OF CONSTRUCTION MANAGEMENT AND DESIGN-BUILD FIRMS

260:65-21-1. Purpose
The purpose of this subchapter is to provide procedures and information to construction management or design-build firms desiring to do business with the State of Oklahoma; and, to assist state agencies and political subdivisions of the state with the selection of construction management or design-build firms for the purpose of construction or renovation of state facilities. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."

260:65-21-2. Definitions
The following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:
"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]
"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.
"Fixed Fee" means a fee to be paid to a firm which is expressed as a firm, fixed amount for the services specified in the scope of work.
"Interview committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview construction management or design-build firms for the purpose of selecting such a firm for a planned project. The interview committee shall include a representative from the Construction and Properties Department. This group should include licensed architects or engineers, if available.
"Percentage fee" means a fee to be paid a firm which is based upon a negotiated percentage of the resultant construction contract.
"Program" means the detailed description of the work and the scope of the design services. This program is written by the state agency or a Design Consultant.
"Request for Qualifications (RFQ)" shall be the document or publication whereby a state agency solicits for qualified construction management or design-build firms. [Reference 20-21-4 (d)]
"Screening committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the qualifications of interested firms for the purpose of selecting a short list of firms to be interviewed. The screening committee shall include a representative of the Construction and Properties Department. The group should include licensed architects or engineers, if available.

"Selection criteria" means a list of the considerations and requirements used to evaluate each prospective construction management or design-build firm.

"Short list" means a list of construction management or design-build firms chosen during the screening process for a detailed interview. This list shall contain no less than three nor more than five firms for a single project. If the screening process is selecting for more than one construction management or design-build contract, there should be two firms on the short list for every planned project.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

260:65-21-3. Registration of construction management and design-build firms

(a) All construction management or design-build firms desiring to perform services for the State of Oklahoma must register with the Department by delivering a completed registration application form to the Department.

(b) A registration is valid for one (1) calendar year and must be renewed annually on or before the anniversary date of the previous year's registration.

(c) Construction management or design-build firms shall not be solicited for projects with the state until the date the company's registration application is received and approved by the Department.

(d) A construction management or design-build firm may register with the Department any time prior to the deadline for project consideration.

260:65-21-4. Selection procedure

(a) **Define project.** A state agency shall develop a description of the project which shall include:

(1) A narrative description of the work being planned.

(2) The estimated cost and time schedule of the project.

(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding.

(b) **Request list of construction management or design build firms.** A state agency shall submit a written request to the Department for a list of construction management or design-build firms currently registered with the Department. The request must include the description of the project developed pursuant to (a) of this Section. The Department shall deliver to the state agency a printed list and/or one set of mailing labels in response to the request.

(c) **Announce project.** The state agency shall send a Request for Qualifications (RFQ) to each consultant management or design-build firm on the list which must include the description developed in (a) of this Section and the deadline when letters must be received for consideration.

In special circumstances, the Director or Administrator may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management or design-build firms, whichever is applicable.

(d) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

(1) Identity of the state agency that will select the construction management or design-build firm.

(2) Procedures for submitting statements of qualification and procedures for making awards, including a reference to the requirements of this Chapter and the regulations of the Department.

(3) Evaluation factors to be considered by the selection committee.

(4) A statement of work including a summary description of the project.

(5) A schedule for planned commencement and completion of the contract.

(6) Budget limits for construction of the project for which services are being sought.

(7) Requirements for Construction Management/at-risk or Design-Build firms to have bonds and insurance.

(e) **Request and review files.** The state agency shall send a list of construction management or design-build firms that submitted Letters of Interest (LOI) for the announced project(s) to the Department. Upon receipt of the list, the Department will assemble and deliver a copy of any information on file for each firm on the list to the state agency.

(f) **Selection of the "short list".** The screening committee shall select no less than three and no more than five of the best qualified construction management or design-build firms based upon the data supplied by the Department and other information which may be submitted by the construction management or design-build firms.

260:65-21-5. Screen criteria

(a) The screening process is the examination of each construction management or design-build firm that has submitted a Letter of Interest (LOI) for the project proposed by the state agency. Files on each firm are provided by the Department for this purpose. A specific list of screening criteria shall include, but need not be limited to the following:

(1) Specialized experience related to the proposed project.

(2) Capacity of the firm to complete the project in the time available.

(3) Past performance in similar projects.

(b) Each firm considered shall be rated by the Screening Committee for each criteria established by (a) of this Section and additional criteria established by the state agency or Department, if any. Written ratings for each firm shall be documented on a screening evaluation form which lists all criteria developed for the selection process. After all firms are evaluated, the ratings are compared and the top three to five firms are identified for interview.

(c) A copy of all screening evaluation forms shall be included in the report to the Department as required by Subsection 8.

260:65-21-6. Scheduling and performing interviews

(a) All members of the interview committee shall participate in all interviews of each firm.

(b) An evaluation criteria list shall be developed to ensure that all interviews are conducted identically. The interview committee shall use the criteria listed in 260:65-21-7.

(c) Each firm shall be notified by letter of the selection for interview. The letter shall contain:

(1) Date, time and place of interview. Interviews should be scheduled individually for each firm.

(2) Period of time permitted for the interview. Indicate how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee.

(3) A copy of the interview criteria.

(4) The letter should contain any other information which would help the committee to obtain information needed for them to properly evaluate the firm.

(5) Oklahoma Statutes prohibit the requesting of any information on fees. Any firm who discloses its fee, or any indication thereof, shall be removed from the request list or short list and receive no further consideration for the project. Construction management or design-build firms must be selected on the basis of qualifications and not on a bid basis.

(d) Interviews must be conducted privately with each firm.

(e) At the conclusion of all interviews, the committee shall rate each firm in a manner so as to recommend to the state agency the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record. The recommendations are forwarded to the state agency for the final selection.

260:65-21-7. Interview criteria

(a) The interview is the most important step in the selection process. Each firm must be evaluated against a clearly established list of criteria which is provided to the firm at least seven days prior to the interview.

(b) The state agency shall use the interview evaluation form, prescribed by the Director, which includes, but is not limited to the following criteria:

(1) Specialized experience and technical competence of the firm regarding the type of services required.

(2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project.

(3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work and ability to meet schedules.

(4) Proximity to or familiarity with the area in which the project is located.

(5) The volume of work previously awarded by the state to the firm.

(6) Any other factors that are relevant to the project as determined by the Department.

(c) Questions concerning fees shall not be asked.

260:65-21-8. Report to Department

(a) **Contents.** The state agency shall prepare a chronological report detailing the specific steps used by the state agency during its selection process. This report shall include:

(1) the criteria used in the screening process;

(2) the interviews and the ratings of all firms considered;

(3) a copy of the approved minutes of any board action affecting the selection process, if applicable; and

(4) If an out-of-state firm is selected, the report must include the justification for the selection.

(b) **Delivery to Department.** The report must be submitted to the Department for an independent review of the complete selection process.

260:65-21-9. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 23. FEES FOR SERVICES

260:65-23-1. Purpose

The Construction and Properties Department may collect reasonable fees for the purpose of providing or contracting for architectural, engineering, and land surveying services to state agencies; from persons requesting plans and notification of solicitations issued by the Department; and, for contract management for a construction project. [Title 61, Section 208.1] The purpose of this subchapter is to establish a schedule of fees for services provided by the Department.

260:65-23-2. Fees for services

(a) General Provisions. Upon requesting specific services, a state agency shall submit a requisition or request form prescribed by the Administrator which states the service requested and verifies the corresponding fee from the schedule provided by the Department. When required by the fee schedule, the Agency shall attach a purchase order for the specified fee amount, listing the Department as the vendor. The Department will invoice the Agency for the specified fee upon completion of the service. The fee is for a service provided by the Department and is fulfilled by the specified action by the Department. The fee is not contingent on the performance of an outside vendor retained as a result of the service rendered by the Department.

(b) Fee schedule for non-mandatory services. The following fees shall be collected for non-mandatory services provided by the Department:

(1) DCS Roof Asset Management Program - Five (5%) of roofing contract price.

(2) DCS On-Call Consultants Program - Ten (10%) of Consultant's Fee

(3) DCS Testing Program - Ten (10%) of Testing Consultant's Fee

(4) DCS Land Surveying Program -Ten (10%) of Land Surveyor's Consultant Fee

(5) Other Specialized Consulting or Contracting services - Up to 10% of Consultant's fee and/or contract price

(6) Architectural or Engineering consultation services - Hourly rates of Department personnel and administrative expenses of the Department

(c) Fees for bid document services. The Department shall collect a fee for the actual cost of notification of solicitations and printing of bid documents plus 15% for Department administrative expenses from persons requesting plans and notification of solicitations issued by the Department.

(d) Contracting and contract management fees. The Department will charge reasonable fees for providing, contracting and managing consulting or construction contracts. [61 O.S., § 208.1]

(1) Fees will be based on project size, complexity and management effort required by the Department.

(2) The Department will determine the appropriate level of contract management services for each project.

(3) A fair and reasonable fee schedule will be established by the Department for routine standard services and for expanded contract management services. The fee schedule will be published on the Department website and, in no case, will such fees exceed:

(A) a lump-sum fee of $250.00 for small construction contracts not exceeding the statutory amount defined by 61 O.S., § 103 (B);

(B) 5% of the construction contract amount for large construction contracts defined by 61 O.S., § 103 (A);

(C) $500.00 for contracting for architectural, engineering and land surveying services.

260:65-23-3. Deposits of fees

All fees collected in accordance with the provisions of this section shall be deposited in the Construction & Properties Department's revolving fund created by Title 61, Section 208.2.

260:65-23-4. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 25. PRE-CONSTRUCTION PLANNING

260:65-25-1. Purpose

This subchapter defines the process for state agencies to follow when planning a construction project, and apply to both new construction and major renovation. [O.S.61 §209(12)]

260:65-25-2. Definitions

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Consultant" means either the architectural/engineering firm or other professional consultant under contract to the Department or a representative of the Construction and Properties Department used for the planning, design or construction monitoring of the construction project.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services.

"Department" means the Office of Management and Enterprise Services.

"Intent" means the point in time that a State Agency decides to pursue a project, either by incorporation into the agency's long range plan, by budget action or by action to obtain future funding.

"Pre-Design Services" means a formal planning process to establish function, scope and cost of a future project.

"Project or Improvement" means the collective act of design and construction of a new State building, facility or improvement, or the renovation of an existing State building, facility or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy by the State, where the construction and/or renovation cost is reasonably anticipated to exceed $158,000.00.

"State agency" means *an agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions*. [61 O.S., §202]

260:65-25-3. Project inception

When a state agency establishes intent to pursue a Project, the agency shall notify the Department in writing. The agency shall provide information specified by the Department, including but not limited to: project name, description, location, intended purpose, new construction or renovation, anticipated cost, desired completion date and description of funding sources. The notification may be used by the Department to maintain data on projected State construction pursuant to 61 O.S., §204(A)(1).

260:65-25-4. Determination of a need for pre-design services

Upon review of the notice of intent submitted by the agency, the Administrator will consult with the agency and determine the specific project planning requirements. The Administrator shall determine a need for pre-design services based on the following factors:

(1) Building type;

(2) Project complexity;

(3) Project schedule;

(4) Funding sources or funding constraints; and,

(5) Other factors unique to the project.

260:65-25-5. Pre-Design Services

When the Administrator determines pre-design services are required, the Administrator shall advise the agency of the anticipated cost of the service, and the procurement methods available to the agency. To initiate pre-design services, the agency shall submit a requisition to the Department and the Department shall procure the pre-design services on behalf of the agency.

260:65-25-6. Applicability

The requirements of sections 260:65-25-4 and 260:65-25-5 are not mandatory for state agencies employing licensed architects pursuant to 61 O.S., §207.2.

260:65-25-7. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 27. USE OF BEST VALUE COMPETITIVE PROPOSALS TO AWARD A CONTRACT

260:65-27-1. Purpose

The purpose of this Subchapter is to provide information and procedures to issue competitive solicitations and award contracts using Best Value methodology. The rules implement the provisions of 61 O.S. §103(E) of the Public Competitive Bidding Act of 1974, which authorizes use of Best Value competitive proposals as an alternative to strictly price or qualification-based competition. The rules ensure fair and consistent contracting processes that satisfy the needs of the state. All vendors and state agencies are responsible for knowing the requirements of this Subchapter. These rules are administered by the Construction and Properties Department of the Office of Management and Enterprise Services to provide direction and ensure compliance with the Oklahoma Public Competitive Bidding Act, and other state laws and rules applicable to state construction acquisitions. These rules have been promulgated in accordance with the Administrative Procedures Act and pursuant to the authority of 61 O.S. §103(E) and 61 O.S. §209.

260:65-27-2. Definitions

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

"Administrator" means the State Construction Administrator of the Construction and Properties Department of the Office of Management and Enterprise Services.

"Best Value" means *an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state."* [61 O.S. §103(E)]

"Department" means the Office of Management and Enterprise Services.

"Department" means the Construction and Properties Department of the Office of Management and Enterprise Services, State of Oklahoma.

"Past Performance Rating" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

"Project" means the scope of services for which the Department requests competitive proposals from interested construction services vendors by issuance of a Solicitation or Request for Proposal.

"Project Capability" means the ability of a vendor to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

"Risk Assessment" means identification of risks that the vendor does not control and the vendor's plan to minimize the risk.

"Selection Committee" means a group of state representatives, designated by the Administrator, assembled to evaluate and rank proposal submittals by vendors.

"Selection Monitor" means the Administrator or his/her appointed representative placed in the role of presiding over a Selection Committee.

"State agency" means an *agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.* [61 O.S., §202]

"Value-added" means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

"Vendor" means any service provider competing for a contract or performing work under a contract awarded by the Department. The term "Vendor" is interchangeable with Contractor, Construction Manager, Consultant, Design-Builder or other service provider. Vendor is used interchangeably with Bidder, Proposer and Offeror in context with the immediate topic herein.

260:65-27-3. Components of Best Value vendor selection and project delivery

(a) **Goal.** The goal of using the Best Value contract solicitation method is, for each service delivery, to identify the construction vendor that is an expert, is efficient, can pre-plan the work and deliver the service with minimal deviation in the owner's expectations (cost, schedule and quality) and thereby provide the owner the greatest value for the lowest price.

(b) **Principles.** The intent of the Best Value solicitation process is to promote:

(1) efficiency;
(2) transparency;
(3) accountability;
(4) measurements;
(5) alignment;
(6) expertise;
(7) dominant information;

(8) risk minimization;
(9) reduced need for decision making;
(10) reduced transactions; and,
(11) win-win-win outcome (owner, vendor, customer).

(c) **Phases.** The Best Value vendor selection and project delivery process consists of three (3) primary phases:
(1) **Phase 1.** Vendor selection
(2) **Phase 2.** Clarification period, which includes but may not be limited to:
(A) agreement on scope;
(B) description of services using performance measurements, if applicable; and,
(C) creation of contract requiring a Weekly Risk Report (WRR), Risk Management Plan (RMP), and all applicable legal terms and conditions.
(3) **Phase 3.** Management by Risk Minimization, which requires:
(A) the vendor to manage and control the project using a weekly risk report and risk management plan (WRR/RMP); and,
(B) the Department to perform project quality assurance by ensuring the vendor is using a quality control plan (WRR/RMP). The Department's quality assurance personnel are not limited to quality assurance and may inspect the project on a periodic basis.

260:65-27-5. Selection committee

(a) **Members.** Whenever a solicitation is issued requiring Best Value methodology to determine the successful bidder, the Administrator or Department designee will appoint members to a Selection Committee. The Committee will consist of three to five individuals with at least one representing the Department. The balance may consist of state agency representatives.

(b) **Selection Monitor.** One Committee member, which may be the Administrator or his/her appointed representative, is designated as the Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:
(1) schedule and preside over Committee meetings;
(2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;
(3) tabulation of the evaluation scores;
(4) review the Committee's rating results for dominant information and/or inconsistencies;
(5) discuss evaluations with Committee members to seek clarifications, if necessary;
(6) prioritize the final rating score in matrix;
(7) assist the Committee in determining the highest ranked firms for further consideration in interviews.
(8) assist the Committee in determining the apparent Best Value firm; and,
(9) assisting with the Clarification Period activities.

260:65-27-7. Vendor selection

The Best Value Selection Phase uses a series of filters to identify which bidder provides the most value (lowest cost and highest performance) to the State. On or before the date stated in the solicitation, vendors submit documentation requested in the solicitation or bid documents information that will be evaluated, rated and/or weighted, and include, but are not limited to:
(1) **Past performance information.** On forms specified by the Administrator, the vendor submits performance information collected from past customers about past projects/services the vendor has completed. The selection committee does not evaluate this information and does not see the past performance scores until the selection process enters the Prioritization filter.
(2) **Project capability.** Using forms or formats specified by the Administrator, the vendor submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, technical capability and documented performance measurements, vendor's ability to provide additional value to the State, and pricing as information required by the solicitation.
(3) **Interviews.** The Selection Monitor will schedule interviews with representatives of short-listed organization as designated by the Committee. The interview provides a forum for the vendor to discuss the project and answer questions concerning their ability to deliver the project/service to the State.
(4) **Prioritization.** After completion of (1) through (3) of this subsection by the Selection Committee, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each vendor.
(5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value vendor. The Selection Monitor evaluates all information to ensure that the prioritization is justifiable and there is no evidence warranting adjustment of the prioritization and ratings in any way. If the committee's ratings are not balanced, supporting past performance information is absent or pricing is not competitive or justified, the Selection Monitor may override the prioritization by providing written justification of the actions taken.

260:65-27-9. Clarification Period

(a) The identified apparent Best Value vendor is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. This period is the final 'filter' and the invited firm is still at risk (the project is the identified firm's to lose). The clarification period is not a contract negotiation activity. Once invited to the clarification period, the vendor is responsible for scheduling and management of the related activities. The objective is to:
(1) ensure the vendor understands the project scope; and,

(2) allow the vendor to clarify how they will deliver the project/service on time;
(3) identify the accountabilities of other parties; and
(4) explain how the vendor will mitigate and manage any risk the vendor does not control.

(b) The vendor is responsible for understanding the project requirements and expectations.

(c) To complete the Clarification Phase, the vendor conducts required meetings, indentifies specific requirements and provides relevant documents, including but not limited to, the following:
(1) Executive Summary;
(2) A critical milestone schedule that includes the clarification period, the award, project/service delivery and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;
(3) Identify (ask questions) all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how they will satisfy those concerns; make any additional investigations as warranted;
(4) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a complete understanding of the project and have no technical or non-technical questions or concerns;
(5) Identify activities where the vendor will experience situations where there may be a lack of information, where un-foreseen conditions may exist and activities where the vendor has no control over other participants or required activities in the delivery of the service.
(6) Identify and document in writing any value-added ideas the Department has accepted or rejected, along with corresponding adjustments to the contract terms;
(7) A project plan including any final clarification of their proposal and any omitted information and identification of value added provisions accepted by the owner;
(8) Validation that the proposal is accurate and complete prior to submitting their final project scope;
(9) Develop a weekly risk report template to communicate accountabilities and deviations, beginning with the clarification period;
(10) Develop a risk management plan, which includes any risks the vendor does not control and how the vendor will mitigate or minimize those risks should they occur;
(11) Identify a performance measurement plan to communicate to the Department how the vendor is performing during the project duration; and
(12) Provide assurances to satisfy any remaining project concerns that the Department may have, including but not limited to adverse publicity, noncompliance with local, State or Federal law, Safety and accident prevention or other risks within the control of the vendor that would cause unnecessary time-and-effort transactions by the Department.

(d) If the bidder determines their proposal contains errors or their proposal is inaccurate, the bidder may withdraw the project proposal without incurring a penalty. The bidder shall be prohibited from modifying their proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the Administrator.

(e) The vendor must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized and suitable for attachment to the Department's owner-vendor agreement.
(1) The final clarification meeting is not a question and answer session.
(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Department must be conducted prior to the clarification meeting.
(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Department determines progress being made by the invited bidder is unsatisfactory, the Department may terminate Clarification Phase activities with the invited bidder. The Department may then commence a new Clarification Phase with the next highest ranked bidder.

260:65-27-11. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality or project schedule caused by the vendor, the State, unforeseen conditions or other parties. The Phase consists of, but is not limited to:

(b) **Weekly Risk Report System (WRR).** The WRR is a project requirement and tool the vendor must use to manage and document all risks that occur throughout a project. The WRR is a standardized format prescribed by the Administrator, which may include:
(1) all key contact information;
(2) project milestone schedule;
(3) risk sheet;
(4) modification/deviation tracking;
(5) risk management plan (RMP);
(6) any risks the Department may require the vendor to document that could impact the customer or the Department's satisfaction.
(7) performance measurements

(c) The vendor shall submit a risk report for the project/service weekly throughout their contract, or as otherwise required by the Administrator.

260:65-27-13. State transparency and Best Value documentation

(a) For successful outcomes, the Best Value operating environment must be transparent to all stakeholders. The following key components are critical to the integrity of Best Value methodology:
(1) A solicitation must clearly state submittal requirements.

(2) A solicitation must clearly define the solicitation/acquisition schedule, which may include a Pre-Bid Education meeting to review Best Value concepts, process and submittal requirements

(3) Following a contract award, the Department will provide a debriefing meeting to bidders, upon request. Alternatively, if scheduled by the solicitation, the Department will provide a debriefing review for all participants.

(b) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:

(1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.

(2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.

(3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary. The Administrator shall review the information and may or may not designate a bidder's information or proprietary information as confidential and may or may not reject requests to disclose the information so designated.

(c) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection. The following shall be posted on the Department's website:

(1) Tabulation of bid evaluation scores, and

(2) Tabulation of bid pricing, and

(3) Identification of Awardee and awarded price.

260:65-27-15. Post project vendor performance rating

(a) Upon completion of a project, the Administrator, in consultation with the customer agency, will conduct a performance review of the vendor.

(b) The final vendor project performance review will replace previous performance evaluations for use in future contract award evaluations.

260:65-27-17. Other requirements for contracts awarded using Best Value methodology

Rules of this section apply to any contract awarded by the Department using Best Value methodology to select the successful vendor.

(1) When otherwise prohibited by state law, fee proposals shall not be requested by a solicitation or considered by the selection committee prior to commencement of the Clarification Period (ie. Consultant or Construction Manager solicitations).

(2) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(3) Solicitations for on-call, indefinite delivery and statewide specialty service contracts resulting in multiple contract awards may include the following provisions:

(A) Top ranked vendors may receive awards as set forth by the solicitation and determined by the selection committee.

(B) Multiple vendors may be invited to the clarification period to facilitate multiple awards. Multiple vendors must not be placed in competition with one another during this period.

(C) Ranking, price schedule and performance information for awardees will be published by the Department as information to potential end users.

(D) Authorized end users may utilize the available contracts according to procedures established by the Department for issuing proposal requests, making requisition and issuance of work orders.

(E) Following completion of a work order assignment, the vendor's performance will be documented and added to the published performance line for consideration by future customers.

(4) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the Administrator. Components of the plan must, as a minimum, include the following provisions:

(A) Bid Notices: Method of making uniform public notification to interested subcontractors and suppliers;

(B) Availability of Bid Documents for inspection or acquisition by interested bidders;

(C) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.

(D) Method of evaluation of bid documents to determine final recommended contract awards.

(E) Method of public publication of pricing, scoring and final award information.

260:65-27-19. Industry Advisory Committee

(a) **Committee.** In order to maintain a balanced approach among stakeholders, the Administrator may establish an advisory committee comprised of volunteers from organizational stakeholders of the state construction program.

(b) **Purpose.** The purpose of the Committee is to assist with procedures, review case studies, recommend implementation strategies, promote education and promote continual improvement. The Administrator may ask the committee to review complaints or concerns from stakeholders and recommend resolution thereof.

(c) **Membership.** Committee membership is comprised of delegates from organizations representing general construction contracting; specialty contracting, suppliers, consultants and customers.

(d) **Meetings.** The Administrator or designee is the Committee Chairperson and has responsibility for scheduling meetings.

260:65-27-21. Third party oversight

The Administrator may arrange for program oversight by an independent research organization or university. Services provided by the third party may include:

(1) auditing the selection and project delivery processes;

(2) preparing case study documentation;

(3) ensure correct application of Best Value principles and processes; and,

(4) provide educational support on theory, principles, application and updates to Best Value best practices.

260:65-27-23. State Best Value methodology training

(a) The Department will provide training opportunities for vendors, which may include:

(1) educational information at Best Value pre-bid meetings;

(2) additional educational opportunity(s) to vendors when solicitations are for services exceeding ten million dollars ($10,000,000.00);

(3) periodic or annual Best Value training for the customer and vendor community to review Best Value theory, application, selection process, case studies, and updates to the Department's adopted processes; and,

(4) additional training for vendor and customer groups, upon request and subject to availability.

(b) The Department will publish or otherwise make education materials available to parties interested in additional Best Value training.

260:65-27-27. Bid protests

A bidder may protest a contract awarded pursuant to this subchapter in accordance with OAC

260:65-27-29. Waivers

The Administrator may waive or modify any provision or requirement of this subchapter when such waiver is in the best interest of the State.

APPENDIX A. GUIDELINES FOR DETERMINING CONSULTANT FEES [NEW]

The following information is provided as a guide, only, and must be tempered with informed judgment during the negotiation process.

BASIC FEES EXPRESSED AS A PERCENTAGE OF THE PROGRAMMED COST OF CONSTRUCTION

CONSTRUCTION COST

0	to	50,000	Negotiated	-	-	-	-
50,000	to	100,000	$6,000	plus	9.0%	over	$50,000
100,000	to	200,000	$10,000	plus	8.0%	over	$100,000
200,000	to	300,000	$18,500	plus	7.5%	over	$200,000
300,000	to	400,000	$26,000	plus	7.0%	over	$300,000
400,000	to	500,000	$33,000	plus	6.5%	over	$400,000
500,000	to	600,000	$39,500	plus	6.0%	over	$500,000
600,000	to	700,000	$45,500	plus	5.9%	over	$600,000
700,000	to	800,000	$51,400	plus	5.8%	over	$700,000
800,000	to	900,000	$57,200	plus	5.7%	over	$800,000
900,000	to	1,000,000	$62,900	plus	5.6%	over	$900,000
1,000,000	and	over	$68,500	plus	5.5%	over	$1,000,000

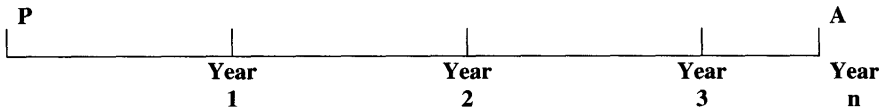
The following multipliers may be used to adjust for the nature and complexity of the work in the specific contract. They should be adjusted based upon the users knowledge of the specific project.

New work of average complexity	1.00
New work, below average complexity	0.95
New work, above average complexity	1.05
Renovation, average complexity, record drawings of existing facility available	1.20
Renovation, average complexity, record drawings of existing facility not available	1.25
Renovation, below average complexity, record drawings of existing facility available	1.20
Renovation, below average complexity, record drawings of existing facility not available	1.35
Renovation, above average complexity, record drawings of existing facility available	1.45
Renovation, above average complexity, record drawings of existing facility not available	1.55

These fees assume that the consultant is to provide all of the services required by the basic consultant contract written by the Department.

APPENDIX B. FORMULAS FOR DETERMINING SINGLE PRESENT WORTH, PRESENT WORTH FACTOR, AND PRESENT WORTH ESCALATING FACTOR [NEW]

I. Single Present Worth (SPW)



To convert a single future amount **A** to an equivalent present worth **P** use the single present worth (**SPW**).

$$P = A \times (SPW)$$

$$(SPW) = \frac{1}{(1+i)^n}$$

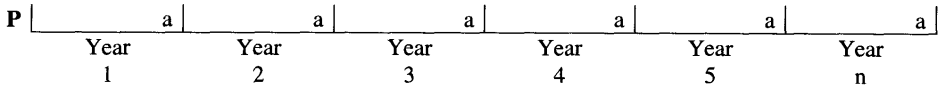
where

i is the interest rate per year.

n is the number of years.

$$P = \frac{A}{(1+i)^n} \qquad (A.1)$$

II. Present Worth Factor (**PWF**)



To convert an annual recurring amount (a) to an equivalent present worth P use the Present Worth Factor (**PWF**).

$$P = A \times (PWF)$$

$$(PWF) = \frac{(1+i)^n - 1}{i(1+i)^n}$$

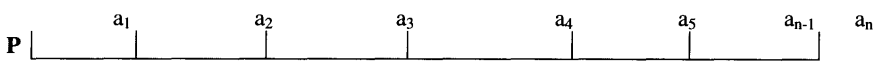
where

i is the interest rate per year.

n is the number of years.

$$P = a \left(\frac{(1+i)^n - 1}{i(1+i)^n} \right) \tag{A.2}$$

III. Present Worth Escalating Factor (PWEF)



To convert a non-uniform, escalating annual amounts ($a_1, a_2, \ldots a_n$) to an equivalent present worth **P** use the Present Worth Escalating Factor (**PWEF**).

$$\textbf{(PWEF)} = \left(\frac{1+j}{1-j} \right) \left(1 - \left(\frac{1+j}{1-i} \right)^n \right)$$

$$P = a_1 \times (\text{PWEF})$$

where

i is the interest rate per year.

j is the escalating factor per year.

n is the number of years.

$$\mathbf{P} = a_1 \left(\frac{1+j}{1-j} \right) \left(1 - \left(\frac{1+j}{1-i} \right)^n \right) \tag{A.3}$$

If **j** = 0, then (**PWEF**) becomes equal to (**PWF**) and equation (A.3) becomes similar to (A.2).
If **j** = 1 then (**PWEF**) = n and **P** - $\mathbf{a_1 \times n}$

APPENDIX C. SUGGESTED EQUIPMENT LIFE [NEW]

EQUIPMENT	LIFE	EQUIPMENT	LIFE
Air conditioners:	-	**Fans:**	-
• Window Unit	20	• Centrifugal	25
• Residential single or split level	14	• Axial	20
• Commercial through-the-wall	15	• Propeller	15
• Water-cooled package	15	**Coils:**	-
Heat pumps:	-	• DX, water, or steam	20
• Residential air-to-air	15	• Electric	15
• Commercial air-to-air	-	**Heat Exchangers:**	-
• Commercial water-to-air	15	• Shell-and-tube	24
Roof-top air conditioner:	-	• Reciprocating compressor	20
• Single-zone	15	**Package Chillers:**	-
• Multizone	15	• Reciprocating	20
Boilers, hot water:	-	• Centrifugal	25
• Steel, hot water tube	24	• Absorption	23
• Steel fire-tube	24	**Cooling Towers:**	-
• Cast iron	30	• Galvanized metal	20
• Electric	30	• Wood	20
• Burners	21	• Ceramic	34
Boiler, steam:	-	• Air-cooled condensers	20
• Steel water-tube	30	• Evaporative condensers	20
• Steel fire-tube	25	**Insulation:**	-
• Cast iron	30	• Molded	20
• Electric	30	• Blanket	24
• Burners	21	**Pumps:**	-
Furnaces:	-	• Base-mounted	20
• Gas or oil-fired	18	• Pipe-mounted	10
Unit heaters:		• Sump and well	10
• Gas or electric	13	• Condensate	15
• Hot water or steam	20	**Reciprocating engines**	20
Radiant heaters:	-	**Steam turbines**	30
• Electric	10	**Electric motors**	18
• Hot water or steam	25	**Motor starters**	17
Air terminals:	-	**Electric transformers**	30
• Diffusers, grilles and registers	27	**Controls:**	-
• Induction and fan-coil units	20	• Pneumatic	20
VAV and double-duct box	20	• Electric	16
Air washers	17	• Electronic	15
Duct work	30	**Valve actuators:**	-
Dampers	20	• Hydraulic	15

-	-	• Pneumatic	20
-	-	• Self-contained	10

APPENDIX D. EVALUATION OF TOTAL LIFE CYCLE COST [NEW]

The general equation for calculating the total life cycle cost is:

$$TLCC = I + E + M + R - S \qquad (3.1)$$

where:
TLCC is the total life cycle cost.

I is the investment costs, assumed to be in a lump sum at the beginning of the base year.

E is the total amount of energy costs during the study period, converted to an equivalent present work.

For constant energy costs, equation (A.2) in Appendix B of this Chapter is used to calculate the equivalent value of **E**.

$$E = \frac{(1+i)^n - 1}{i(1+i)^n} \qquad (3.2)$$

where:

e is the annual energy costs, assumed to be in a lump sum at the end of the year.

i is the interest rate per year.

n is the number of years in the study period.

If energy costs are escalating, then equation (A.3) in Appendix I of this Chapter should be used to calculate the equivalent value of **E.**

$$E = e_1$$

where:

e_1 is the energy cost during the first year, assumed to be in a lump sum at the end of the first year.

j is the energy escalating rate per year.

If **j** = 0 the equation (3.3) is the same as equation (3.2).
If **j** = **i** then $P = e_1 n$.

M is the maintenance and nonfuel operating costs, assumed to be in a lump sum at the beginning of the first year.

For constant labor costs, equation (A.2) in Appendix B of this Chapter is used to calculate the equivalent value of **M.**

$$M = m \frac{(1+i)^n - 1}{i(1+i)^n} \qquad (3.4)$$

where:
m is the annual maintenance and non-fuel operating costs, assumed to be in a lump sum at the end of the year.

If labor costs are escalating, then equation (A.3) in Appendix B of this Chapter should be used to calculate the equivalent value of **M.**

$$M = m_1$$

where:

m_1 is the maintenance and nonfuel operating costs during the first year, assumed to be in a lump sum at the end of the first year.

j is the labor escalating costs per year.

If $j = 0$ then equation (3.5) becomes similar to equation (3.4).
If $j = 1$ then $M = m_1 n$.

R is the replacement costs converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **R.**

$$R = \frac{R'}{(1+i)^n} \qquad (3.6)$$

where:

R' is the actual replacement costs at the end of the study period.
S is the salvage value converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **S.**

$$S = \frac{S'}{(1+i)^n} \qquad (3.7)$$

where:

S' is the actual salvage value at the end of the study period.

[OAR Docket #14-782; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 70. RISK MANAGEMENT PROGRAM

[OAR Docket #14-783]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
260:70-1-1. Purpose [NEW]
260:70-1-2. Definitions [NEW]
260:70-1-3. Source of authority [NEW]
260:70-1-4. Administration [NEW]
260:70-1-5. Responsibilities and duties [NEW]
Subchapter 3. Casualty or Liability Incident Management [NEW]
260:70-3-1. Establishment of programs [NEW]
260:70-3-2. Functions of Program [NEW]
Subchapter 5. Casualty or Liability Claims Management, Payment and Reports [NEW]
260:70-5-1. Claims management [NEW]
260:70-5-2. Limitations on payments in connection with other covered entities [NEW]
260:70-5-3. Reports and recommendations [NEW]
Subchapter 7. Establishment of Centralized State Risk and Insurance Management Program [NEW]
260:70-7-1. Source of authority [NEW]
260:70-7-2. Functions of Oklahoma Risk Management Program [NEW]
Subchapter 9. Driver and Vehicle Safety Standards for Motor Vehicle Operations [NEW]
260:70-9-1. Driver and vehicle standards for motor vehicle operations [NEW]
Subchapter 11. Coverage for State Owned Buildings, Contents and Other [NEW]
260:70-11-1. Deductible levels and premiums [NEW]
260:70-11-2. Basic coverage [NEW]
260:70-11-3. Claims payment [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013). Other changes are as follows:

• An amendment to the rule now numbered 260:70-5-1 (formerly 580:25-5-1) to clarify that failure to consent to an appropriate settlement offer limits the liability of Risk Management to the amount for which the claim could have been settled.

• A second amendment to 260:70-5-1 to clarify that Risk Management cannot pay self-insurance coverage if a commercial policy of insurance has been purchased outside of the Risk Management Program.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:70-1-1. Purpose

(a) In order to accomplish the objectives contemplated for the Risk Management Program under 74 O.S. Section 85.58a et seq., it will be necessary to establish an on-going relationship between each state agency covered by the act and the Risk Management Department of the Office of Management and Enterprise Services, as well as with any other covered entity.

(b) State agencies and other covered entities which do not presently maintain any Risk Management Program will be directed and instructed to establish a program. Existing programs must be standardized to the extent necessary for their consolidation and administration by the Risk Management Department. Reporting, investigation, adjustment, settlement and litigation of claims must be standardized. Effective means for monitoring and improving agency performance in these areas must be found. These requirements suggest the need for criteria, standards, guidelines, and reporting procedures to govern these activities. Chapter 70 of Title 260 will provide some of the resources.

260:70-1-2. Definitions

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

"Administrator" means the officer appointed by the Director of the Office of Management and Enterprise Services to serve as Risk Management Administrator.

"Agency Risk Management Coordinator" means the individual, officer or employee of any state agency or other covered entity appointed by the state agency or other covered entity as the designated point of contact for the Risk Management Administrator for all risk management purposes, and shall include any employee or agent of the Risk Management Coordinator and such assistants as may be necessary shall be employed or appointed by such state agency or other covered entity to supervise and manage the agency Risk Management Program.

"Agency Risk Management Program" means the system within any individual state agency or other covered entity for coordination of risk management within such state agency or other covered entity for coordination of risk management activities between the state agency or other covered entity and the

Risk Management Department, and for elimination, reduction, and minimizing of all insured or self-insured risks through a continuous effective loss-prevention and loss-control program, under the direction of the Risk Management Department.

"Authorized legal Counsel" means:

(A) The Attorney General of the State of Oklahoma;

(B) An attorney authorized to represent a state agency or other covered entity.

"Casualty incident" or **"liability incident"** means:

(A) Any liability occurrence or event:

(i) Taking place upon or within any real property owned or used by the State of Oklahoma; or,

(ii) Involving participation by any officer, employee or volunteer of any agency of the State of Oklahoma who may be acting within the scope of his or her employment; or,

(iii) Involving the temporary detention of a child in a juvenile detention facility which qualified as an other covered entity under the provision of 74 O.S. Section 85.34D; or

(iv) Involving any vehicle or other personal property owned by an agency or other covered entity and operated by an employee or volunteer of that agency or other covered entity; and,

(B) Any liability occurrence or event:

(i) Which results in personal injury or property damage; and,

(ii) Where there is probable cause to believe that such occurrence or event may give rise to a claim for damages against the state, an agency, an other covered entity or any of their employees.

"Claim" means the formal notice served upon proper legal authority by any claimant or the representative of any claimant, as provided by the Tort Claims Act, 51 O.S. Section 151 et seq., or any civil lawsuit brought against the state or its employees, or any administrative or arbitration proceeding brought against the state or its employees.

"Claimant" means the person or his authorized representative who files notice of a claim in accordance with 51 O.S. Section 151 et seq.

"Liability Insurance" means any type of commercial insurance, including self-insurance, administered or procured by the Risk Management Department including Directors and Officers Liability and any other liability insurance coverage for professional liability or errors and omissions coverage, including but not limited to, Law Enforcement Liability, Accountants Errors and Omissions, and Legal Liability.

"Loss Prevention and Loss Control" means any and all programs and systems designed to transfer, prevent, eliminate, mitigate, manage, and minimize the risk of loss due to any physical or financial cause, human or otherwise, and that may result in or give rise to a claim against the State, an agency, and any other covered entity, or any officers, directors, or employees of any group participating in the Risk Management Program.

"Other covered entity" means any organization or entity other than a state agency for which the Risk Management Administrator is authorized or required by law to obtain or provide insurance coverage.

"Payment of claim" means partial or full payment of a claim in compromise thereof by the appropriate lawful authority, and subject to any procedural requirements imposed by statute, resolution or written policy.

"Premiums" means the fees or payments levied and collected for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof.

"Property incident" means:

(A) Any occurrence or event involving any real or personal property owned by the state or in the possession of the state for safekeeping; and

(B) The result of which the property is damaged lost or destroyed by accident, misfortune or mishap.

"Reportable vehicle incident" means any occurrence or event involving a vehicle resulting in a liability incident including acts arising out of law enforcement practices. The term also includes any incident involving any vehicle or property used to conduct business within the scope of authority or employment of any employee, volunteer or official of the state, any agency or any other covered entity.

"Risk Management Department" means the organizational unit of the Office of Management and Enterprise Services which administers the Risk Management Program under the direction of the Risk Management Administrator.

"Risk Management Program" means the consolidated and centrally administered system for coordination of risk management activities between any state agency or other covered entity and the Risk Management Department for acquisition through the Risk Management Department of property and casualty insurance for the management of all property, casualty and liability incidents, and for eliminating, reducing and minimizing all risks through a continuous, effective loss-prevention and loss-control program, under the direction of the Risk Management Administrator.

"State" or "Agency" means any board, commission, committee, institution, department, instrumentality or entity designated to act on behalf of the State of Oklahoma.

"Vehicle" means:

(A) In case of other covered entities extended services by authority of 74 O.S. Section 85.58B, any vehicle, vessel or aircraft used for or in fire fighting by any such entity:

(B) In case of other covered entities extended services by authority of 74 O.S. Section 85.58E, any vehicle used for transportation of elderly or handicapped person by such entity:

(C) In the case of other covered entities extended services by authority of 74 O.S. Section 85.58F, any vehicle used to provide for the temporary detention of children in a juvenile detention facility by such entity;

(D) In the case of the state or any agency, any self-propelled vehicle or mobile equipment which is owned by the state, or operated by any state

employee who may be acting within the scope of state employment, whether or not the equipment is licensed for road use.

260:70-1-3. Source of authority

The Risk Management Department of the Office of Management and Enterprise Services receives its authority from 74 O.S. Section 85.58A et seq.

260:70-1-4. Administration

The Director of the Office of Management and Enterprise Services hires or contracts for the services of a Risk Management Administrator who administers the comprehensive professional risk management program and directs the activities and functions of the Risk Management Department.

260:70-1-5. Responsibilities and duties

The Administrator is responsible for the acquisition and administration of all insurance purchased by the state or administration of any self-insurance plans and programs adopted for use by the state. On a competitive bid basis, the Administrator has the authority to purchase insurance for the state for any type of coverage which may be necessary to protect the state from financial loss. The Administrator is also empowered to provide insurance acquisition services or self-insurance program administrative services for certain organizations and bodies outside of state government, at the sole expense of such organizations and bodies, as provided by law.

SUBCHAPTER 3. CASUALTY OR LIABILITY INCIDENT MANAGEMENT

260:70-3-1. Establishment of programs

There is hereby established the Oklahoma Risk Management Program. Under this program each agency or other covered entity shall appoint an agency risk management coordinator and maintain an agency risk management program.

260:70-3-2. Functions of Program

Each Agency Risk Management Program shall have assigned to it sufficient personnel to fulfill each of the following functions:

(1) **Incident scene management.**

(A) **General.** The Agency Risk Management Coordinator shall be responsible for assuring that proper steps are taken at the scene of any liability incident to ensure the safety and security of personnel and property, and to otherwise manage the scene in the best interest of the Oklahoma Risk Management Program. Employees of all agencies and other covered entities must be informed and encouraged to promptly report any potential liability incident in which they might be involved, or which they might witness, to proper supervisory and security personnel.

(B) **Reports by witnesses.** Any employee or officer of any agency or other covered entity who is involved in any potential liability incident, as a witness or otherwise, must immediately notify his or her immediate supervisor, as well as the security office or law enforcement officer with responsibility for the area where such incident occurs, if any. In case of any liability incident involving motor vehicles, the following procedure specified in paragraph (2) of this section, shall be followed.

(2) **Reporting vehicle liability incidents.**

(A) The operator of a vehicle involved in a reportable vehicle incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area where such incident occurs, unless incapacitated by injury to the extent that notification is impractical. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(B) The operator shall remain at the scene until completion of all acts required by law or the rules in 580:25-3 to be performed at the scene, unless injuries sustained require treatment or other extenuating circumstance exist preventing the operator from remaining at the scene.

(C) The operator shall fill out a required "In Case of Accident" form furnished in the glove compartment or other applicable designated place of all vehicles. This form shall be given to the Agency Risk Management Coordinator who will fill out a "Standard Liability Incident Report" from which, together with the "In Case of Accident" form, and "Scope of Employment" form shall be forwarded to the Risk Management Department as soon as the Risk Management Coordinator has completed an investigation of the liability incident.

(D) Any liability incident involving a fatality, personal injury or property damage must be reported immediately to the Risk Management Department. An answering service is available 24 hours a day, seven days a week.

(3) **Statements by parties involved.**

(A) Employees of any agency or other covered entity, whose conduct or performance of duty give rise to a "Liability Incident" shall be required to cooperate in good faith with the defense of any claim which may be presented in connection with the "Liability Incident". Any such employee's cooperation shall include, but not be limited to refraining from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Department, any

law enforcement authority investigating the "Liability Incident" at the scene, or by statute. No employee involved in a "Liability Incident" has the authority to agree to or promise to settle any claim

(B) Any employee who is a witness to a "Liability Incident", but who did not commit or perform any act or omission contributing to the occurrence giving rise to the "Liability Incident" shall refrain from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Department, or any law enforcement authority investigating the "Liability Incident" at the scene. Providing, however, that all such employees shall remain free to make any statement or comment concerning agency operations which are protected by 74 O.S. Section 840-2.5 and 840-2.6.

(4) **Investigation.** The Agency Risk Management Coordinator shall ensure that each liability incident involving the property or personnel of the agency or other covered entity is promptly investigated and that such investigation shall, at a minimum, involve ascertainment of the identities of all possible claimants and all known witnesses. A description of the occurrences giving rise to damages including the date time and location, shall be provided and an estimate of the possible amount of damages shall be made. Photographs of the accident scene or property damage should be taken as close to the date and time of the liability incident as possible. The identification of a party or a witness shall include full name, address, home and business phone numbers, date of birth, social security number and brief summary of what is known or reported by such witness.

(5) **Records keeping.** The Agency Risk Management Coordinator shall keep orderly records, organized so as to be readily retrievable by date, location of incident and names of parties potentially giving rise to liability, of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incident, nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Management Department.

(6) **Reporting procedures.** The Agency Risk Management Coordinator shall:

(A) **Give telephone notice to the Risk Management Department.** The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Department not later than the next working day following the occurrence of any such incident.

(B) **Fill out "Standard Liability Incident Report".** The Agency Risk Management Coordinator shall fill out and send to the Risk Management Department a "Standard Liability Incident Report" form furnished by the Administrator to all agencies and other covered entities by the Risk Management Division. This report should include but not be limited to the following information:

(i) The time, date, and location of accident.

(ii) The department involved, and where a vehicle is involved, vehicle number or tag number, year and make, operator's name and telephone number at home and work. Owner's name if leased or rented.

(iii) A description of other property or vehicle, if any, year and make, name and address of operator and owner and telephone numbers.

(iv) The names of injured persons and the name of hospital(s) where such persons may receive treatment.

(v) The damage to the vehicle, if any, and the vehicle's location.

(vi) The name of the investigating officer.

(vii) A brief description of the incident.

(viii) The names, addresses and telephone numbers of all witnesses.

(ix) Photographs of the incident scene.

(C) **Forward "In Case of Accident Form" and "Scope of Employment Form" to the Risk Management Department.** The Agency Risk Management Coordinator shall send to the Risk Management Department the "In Case of Accident" form filled out by the operator of any vehicle involved in a reportable vehicle incident. Be sure to place a new "In Case of Accident" form in the vehicle as soon as possible if the vehicle is to be subsequently used to conduct business after applicable repairs have been procured and the agency or other covered entity is satisfied the vehicle is safe to operate.

(D) **Send informational material to the Risk Management Department.** The Agency Risk Management Coordinator shall complete all preliminary investigations following a liability incident and send a completed "Standard Liability Incident Report", the "In Case of Accident" report, if any, and any other pertinent information that is the result of a thorough investigation to the Risk Management Department. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(7) **Training and notices.** Every Agency Risk Management Program shall make adequate provision for training and notification to all employees regarding their responsibilities under the Oklahoma Risk Management Program. Employees shall be trained or notified regarding necessary reporting requirements in the event they may witness or be participants in a liability incident. Posters and signs shall be posted in conspicuous places informing

employees, supervisors and other officers of their various responsibilities under the program.

(8) **Risk Management Manual.** Every agency or other covered entity shall formulate and adopt an "Agency Risk Management Procedure Manual" consistent with the minimum requirements of the rules and regulations contain in OAC 580:25-3. Such a manual shall fully describe the organization and procedures for the conduct of Risk Management activities within such agency, shall contain samples of all forms in current use, shall describe the proper reporting chain-of-command for routing necessary information to the Agency Risk Management Coordinator, shall identify all personnel having specified responsibilities for risk management activities and shall contain such other information as shall be required from time to time by the Risk Management Department or deemed pertinent by the Administrator. Agency Risk Management procedures shall be updated from time to time to maintain the currency of the information contained in the manual, and such modifications or revised editions shall be promptly filed with the Risk Management Department.

(9) **Coordination with the Risk Management Department.** One of the primary functions of the Agency Risk Management Coordinator will be to facilitate cooperation between the agency or other covered entity, the Risk Management Department, and legal counsel, when necessary, in cases where a liability incident actually gives rise to a claim for damages against the state or other covered entity. It will often be necessary for meetings, interviews, record reviews and other investigative activities to be arranged between Risk Management Department personnel and covered employees. The Agency Risk Management Coordinator will be the primary source of contact with an agency or other covered entity for purposes of arranging such matters.

(10) **Forms.** From time to time, the Risk Management Department may promulgate forms for use in the various Risk Management activities described above, including forms of notices, reports, manuals, etc. Unless a form has been prescribed by the Risk Management Department, it shall be the duty of the Agency Risk Management Coordinator to establish standard forms for use within the other covered entity to carry out Risk Management activities under 74 O.S. Section 85.58A et seq. and the rules contained in OAC 260:70-3. In any case where such a form has been prescribed by the Administrator for any purpose, it shall be adopted and made the exclusive form for such purpose by each Agency Risk Management Coordinator. Seminars may be conducted from time to time by the Risk Management Department to inform state or other covered entities employee(s), officer(s), Agency Risk Management Coordinator(s), Director(s), manager(s), supervisor(s), and other responsible personnel of systematic changes in standard forms of notices, reports, manuals, etc. Instructions, dates, identity of personnel expected to attend, etc., will be communicated by the Risk Management Department on an as-needed basis.

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS

260:70-5-1. Claims management

(a) **Settlement and payment of claims.**

(1) **General.** While the Risk Management Department will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Department has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.

(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:

(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.

(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.

(iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.

(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.

(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Office of Management and Enterprise Services shall be handled by the Attorney General of the

State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.

(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.

(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.

(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A under any State or Federal law.

(D) In the event an entity covered under any insurance or self-insurance program administered by the Risk Management Department does not consent to the first Settlement Opportunity found to be acceptable to Risk Management's legal counsel and Risk Management, Risk Management's liability for all loss on account of such claim shall not exceed the amount for which Risk Management could have settled such claim (the Settlement Opportunity Amount).

(E) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:

(2) **"Official State Business" and "Scope of Employment".** Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Department of the Office of Management and Enterprise Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.

(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:

(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.

(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.

(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.

(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:

(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.

(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.

(3) **Claims settled for amounts not exceeding $25,000.00** A claim settlement in which a payment not exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.

(4) **Claims settled for amounts exceeding $25,000.00** A claims settlement in which a payment exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.

(5) **Disposition of claims against the state.** In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.

(6) **Disposition of claims against a political subdivision and other covered entities.** In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).

(7) **Limitations.** In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Department has purchased a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or another covered entity. If a commercial policy of insurance has been purchased by any entity outside the Risk Management Program, whether or not approved by the Risk Administrator, no self-insurance coverage shall be paid from Risk Management funds.

260:70-5-2. Limitations on payments in connection with other covered entities

(a) Because other covered entities, as defined in Chapter 70 of Title 260 largely constitute political subdivisions or private entities, and further because the State of Oklahoma is constitutionally prohibited from assuming the debts of such bodies, it is necessary that the funds, reserves and other financial resources for payment of claims, settlements and judgments against other covered entities be drawn entirely from contributions and premiums paid by such other covered entities which shall be maintained in one or more segregated revolving funds and which shall not be commingled with funds of the State of Oklahoma.

(b) The Risk Management Department shall also be empowered to charge against the premiums and contributions paid into the above-described segregated revolving fund or funds the actual, reasonable administrative expense of all services provided to other covered entities under Chapter 70 of Title 260.

260:70-5-3. Reports and recommendations

(a) The Risk Management Department shall:

(1) Immediately notify the Attorney General of any claims against the state presented to the Risk Management Department.

(2) Transfer to the Attorney General or other authorized legal counsel all investigative material available.

(3) At the request of the Attorney General or other authorized legal counsel, submit a recommendation of the Risk Management Department as to whether any claim should be paid, compromised or denied, and forward with such recommendation all evidence or other informational material supporting the recommendation.

(b) The Attorney General shall:

(1) Periodically report to the Risk Management Department a summary of all monies collected in behalf of the state and designate the agency to whom the collected monies must be paid.

(2) Submit a report at least monthly to the Administrator of the status and expected disposition of all claims against the state which the Risk Management Department may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and claimant's attorney fees.

(c) The authorized legal counsel handling each claim shall submit a report at least monthly to the Administrator of the status and expected disposition of all claims which the Risk Management Department may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and attorney fees.

SUBCHAPTER 7. ESTABLISHMENT OF CENTRALIZED STATE RISK AND INSURANCE MANAGEMENT PROGRAM

260:70-7-1. Source of authority

Pursuant to 74 O.S. Section 85.58(A)(1), the Office of Management and Enterprise Services is directed to identify and evaluate tort liability risks for state agencies; and, pursuant to 74 O.S. Section 85.58(A)(1), identify and evaluate all risks for state agencies. In addition, the Office of Management and Enterprise Services is directed to eliminate, reduce or minimize all risks through a continuous, effective loss-prevention and loss-control program pertinent to all state agencies and other

covered entities authorized by law to utilize the services of the Risk Management Department.

260:70-7-2. Functions of Oklahoma Risk Management Program

(a) In order to protect the assets of the state or any other covered entity against liability loss, the Risk Management Department shall consolidate and administer:

(1) All plans to transfer liability risks, if it is economically advantageous to do so, by acquiring commercial liability insurance, by pass-off of liability or by other means.

(2) All plans and programs pertaining to Risk Management including liability self-insurance programs, except workers' compensation insurance and state employees group, health, dental and life insurance.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(b) In order to protect the assets of the state against property or casualty loss, the Risk Management Department shall consolidate and administer:

(1) All plans to transfer property or casualty risks, if it is economically advantageous to the state to do so, by acquiring property or casualty insurance, pass-off of responsibility through transfer of risk, or by other means.

(2) All plans and programs pertaining to Risk Management including property or casualty self-insurance programs.

(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.

(c) In order to take every practical measure to eliminate or prevent injury to employees, private persons, entities or others, the Risk Management Division shall consolidate and administer a continuous effective loss-prevention and loss-control program designed to:

(1) Protect the state's assets.

(2) Ensure a safe environment for state employees and for the public who come into contact with state employees or property.

(3) Minimize the possible interruption of vital public services.

(4) Safeguard that all exposures to financial loss are discovered and handled appropriately.

(5) Reduce the costs and consequences of accidents, including insurance premiums, through effective safety management.

(d) In order to ensure the continuity of services to the state or other covered entities:

(1) The Risk Management Department shall protect the assets of the state or any other covered entity against liability loss by:

(A) Insuring through either commercial liability insurance or other commercial insurance for the protection of the state and any other covered entity; and,

(B) Administering of a self-insured retention plan for providing insurance for the state and any other covered entity against liability.

(C) Insuring through a combination of self-insured retention and commercial insurance for the state and any other covered entity against liability.

(2) The Risk Management Department shall protect the assets of the state against property or casualty loss by:

(A) Insuring through either property insurance or other commercial insurance for the protection of the state against property or casualty loss.

(B) Administering of a self-insured retention plan for providing insurance for the state against property and casualty loss.

(C) Insuring through a combination of self-insured retention and commercial insurance for the state against property or casualty loss.

SUBCHAPTER 9. DRIVER AND VEHICLE SAFETY STANDARDS FOR MOTOR VEHICLE OPERATIONS

260:70-9-1. Driver and vehicle safety standards for motor vehicle operations

In order to help protect the general public, as well as the state and other covered entities' property and their employees, the rules contained in OAC 260:70-9 shall apply:

(1) **Primary requirements.** It being imperative that in order to assure the driving public that state vehicles will be operated properly and by trained individuals, State Risk Management reserves the right to insure for liability insurance only those state employees or volunteers it deems insurable. In order to facilitate this right, Risk Management may, from time to time, request Motor Vehicle Records (MVR's) from the Department of Public Safety. Any information found on the report that may be negative towards the driving record of the individual employee may be cause for Risk Management to inform the employing agency of said employee that the driver is uninsurable and that in the event of a loss involving said employee, Risk Management will refuse to pay for such loss(es) out of the Risk Management Comprehensive Risk Pool. Losses incurred under such conditions shall be borne by the employing agency. In addition to the above, the following are minimum requirements:

(A) To operate a vehicle of any type, an individual must have a valid driver's license. Risk Management may assist agencies in checking whether or not an employee has a valid Oklahoma drivers license.

(B) Driver will use the vehicle only for state or other covered entity business within the scope of the driver's employment/authority.

(C) Driver will wear his/her safety belt.

(D) Driver will observe all traffic laws.

(E) Driver will not allow an unauthorized person to drive the vehicle.

(F) Consumption of alcoholic beverages or narcotics prior to the operation of a vehicle is prohibited.

(2) **General requirements.**

(A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with an assistance of a guide. If a second person is in the vehicle, he/she should guide the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.

(B) Drivers will ensure that windows, headlights, taillights, and wipers are clean and operational at all times.

(C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.

(D) Do not "tail-gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.

(E) On hills, curves, intersections or in any area where your vision is obstructed, do not make a turnabout, i.e., u-turn.

(F) Vehicles and equipment shall not be parked or left adjacent to the roadway in such a manner as to constitute a traffic hazard to the driving public. Vehicles will not be parked where they will obstruct the sight of other drivers.

(3) **Specific requirements.**

(A) It shall be unlawful for any driver of any vehicle to operate said vehicle without a valid drivers license, pursuant to 47 O.S. 1981, Section 6-101 et seq. Drivers will carry a valid drivers license at all times, pursuant to 47 O.S. 1981, Section 6-112.

(B) Any volunteer or employee who operates a state or other covered entity vehicle regularly or occasionally is required to report suspension or revocation of his/her license to their agency. Failure of an employee or volunteer to report a change in license status may result in denial of insurance coverage by the Risk Management Department in the event of an accident, pursuant to 260:70-9-1(3)(A).

(C) All items or materials, which may move around during transport by truck or trailer, will be secured or tarped.

(D) No more than three (3) persons will ride in the front seat of a state or other covered entity vehicle. Where only two single seats exist, only one rider may ride in each seat.

(E) Drivers of state or other covered entity vehicles will drive in a courteous manner at all times.

(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. 1981, Section 11-106.

(G) Any Driver of a motor vehicle involved in an at fault accident or accidents while functioning as an agent of the State and in which the driver acted negligently (and caused personal injury and/or property damage) shall be required to attend and successfully complete a Motor Vehicle Improvement (MVI) course. Such course shall be approved by the State Risk Management Department and must be attended within six (6) months of the date of the accident. Failure to successfully complete an approved MVI course shall result in the driver of the state vehicle being declared uninsurable by the State Risk Management Administrator until such time that the driver successfully completes the required course. The Risk Management Administrator may waive this requirement and paragraph H upon proper application and for good cause.

(H) Any driver of a motor vehicle, while functioning as an agent of the State, that is involved in two at fault accidents in a twenty four (24) month period shall, in addition to paragraph G, be declared uninsurable by the Risk Management Administrator for a period of three (3) months following the second accident.

(I) Special equipment such as tractor-trailers, mowers, construction equipment, mobile cranes, fork lifts and emergency vehicles shall not be operated without adequate training provided by the Agency and authorization by the agency in charge.

(4) **Maintenance requirements.**

(A) Before operating a state or other covered entity vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates it. These items should include;

(i) Lights.
(ii) Directional signals.
(iii) Steering wheel.
(iv) Brakes
(v) Rear-view and side-view mirrors.
(vi) Horn.
(vii) Tires.
(viii) Safety belts
(ix) Windshield wipers.
(x) Defroster.

(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in 580:25-9-1(4)(A) should be checked for emergency use:

(i) Reflectors.
(ii) Fire extinguisher, type B-C.
(iii) First aid kit.

(C) No state or other covered entity vehicle will be operated without a current state safety inspection sticker.

(5) **Accident reporting.** Any state or other covered entity vehicle involved in an incident with a third party shall report the incident to his Agency Risk Manager or the Risk Management Department not later than the next working day following the occurrence of the incident. Risk Management, in order to adequately investigate and come to a timely determination as to whether or not a claim is valid, relies on the agency Risk Coordinator to assist them in the investigation. Risk Management may require additional

information other than the initial incident report and claim report. Information request(s) by Risk Management must be responded to within four (4) weeks of date of the request by the agency. If it is determined that an agency has not responded or is not acting in good faith to assist State Risk Management, Risk Management reserves the right to make a determination on the information received which could result in the approval of a claim when it might not otherwise be. In that case, Risk Management will pay the claim and invoice the full amount back to the responsible agency. The Risk Management Administrator reserves the right to waive this requirement for good cause.

(6) **Safety standards for other covered entities entitled to services from the Risk Management Program.** To meet eligibility criteria for approval and participation under the State Risk Management Program, drivers and vehicles shall meet or exceed the following requirements;

(A) Drivers of fire apparatus shall have a valid drivers license to drive the vehicle.

(B) There shall be documentation of the drivers license for any individual who drives or may be required to drive a vehicle.

(C) Drivers of fire apparatus must be thoroughly trained and the training documented.

(D) Each other covered entity shall have a written policy that sets forth speed limits for its vehicles on emergency runs.

(E) All emergency vehicles shall be provided with audible and visible warning devices. These devices shall be kept in proper working order and utilized without fail on emergency runs.

(F) Wheel chocks must be used for rear wheels while using any aerial ladder apparatus to help prevent the apparatus from slipping.

(G) There shall be a preventive maintenance program in place to ensure that all emergency vehicles are maintained in a safe condition. This list is not meant to be a complete listing, but only a guide. The following items are suggested safety areas that should be checked:

(i) Visible and audible signals

(ii) Lighting system.

(iii) Tires.

(iv) Steering

(v) Brake system air tanks.

(vi) Brake fluid.

(vii) Windshield wipers.

(viii) Rear view mirrors.

(H) Applications of risk management coverage, pursuant to Section 85.58A of Title 74, are subject to review by the Administrator. The review may include a physical inspection of the vehicles and related records.

(I) Other covered entities are subject to random safety and loss prevention inspections of equipment for as long as they choose to participate in the State Risk Management Program.

(J) Non-compliance with safety standards as required by the Administrator could result in a denial to participate in the program or cancellation of coverage.

SUBCHAPTER 11. COVERAGE FOR STATE OWNED BUILDINGS, CONTENTS AND OTHER

260:70-11-1. Deductible levels and premiums

(a) Deductible amounts payable by the agency or other covered entity for losses to buildings, contents, and other property will be set by the Administrator with the approval of the Director of the Office of Management and Enterprise Services. Deductible amounts or percentages may vary by types and use of property, and by actual or replacement value.

(b) An annual premium will be levied and collected from each state agency pursuant to 74 O.S. Section 85.58M, in order to cover the purchase of excess insurance against catastrophic losses and to cover future losses using verifiable loss histories. Each state agency shall pay in full the premiums billed to them by the Risk Management Department for property and casualty insurance coverage. An invoice is due and payable upon receipt. Delinquent accounts will be collected pursuant to 74 O.S. Section 85.58M.

(c) Annual premiums will be determined using a combination of identified markets available for acquisition of commercial excess insurance and verified loss history. The annual premiums will be reasonable and determined by the Risk Management Administrator with the approval of the Director of the Office of Management and Enterprise Services.

(d) Property losses will be determined by the Risk Management Department and/or a third party administrator under contract. These losses will be based on industry accepted investigations and resulting appraisals of estimated damages.

260:70-11-2. Basic coverage

(a) **Property covered.** Property losses covered will be specified in an annual statement of coverage issued by the Risk Management Administrator and subject to commercial policy terms and conditions.

(b) **Property excluded.** Property losses excluded from coverage will be specified in an annual statement of coverage issued by the Risk Management Administrator.

(c) **Perils covered.** Perils covered will be specified in an annual statement of coverage issued by the Risk Management Administrator and subject to commercial policy terms and conditions.

(d) **Perils not covered.** Perils not covered will be specified in an annual statement of coverage issued by the Risk Management Administrator and subject to commercial policy terms and conditions.

(e) **Amount payable for losses.**

(1) The amount payable for covered losses will be specified in an annual statement of coverage issued by the Risk Management Administrator and subject to commercial policy terms and conditions.

(2) The amount payable for any loss to property shall not exceed the lesser of the actual replacement cost or the reported value of the property.

(3) The amount payable for any loss shall be reduced by the amount of any delinquent premiums or fees for coverage under the Risk Management Program.

(f) **Conditions under which coverage is provided.**

(1) The building and/or contents must have been reported to Risk Management in writing prior to the date the loss occurs.

(2) For boiler explosion losses to be covered, boilers must have been reported to Risk Management and all inspections required by the Oklahoma Department of Labor must have been completed.

(3) The loss must be reported to Risk Management immediately upon learning of the occurrence of a loss. Failure to report a loss in a timely manner may negatively impact your recovery or result in denial of coverage.

(A) The Agency Risk Management Coordinator shall give telephone notice of any property loss incident to the Risk Management Department immediately upon learning of the occurrence of such incident.

(B) The Agency Risk Management Coordinator shall fill out and send to the Risk Management Department a "Standard Property Loss Report" form. This report shall be submitted within three working days from the date of first awareness of a loss and shall include but not limited to the following information:

(i) The time, date, and location of the loss

(ii) The department involved.

(iii) A description of the property damage.

(iv) A brief description of the incident.

(v) An estimate of the amount of loss

(C) The Agency Risk Management Coordinator shall complete all preliminary investigations following a property loss incident and send a completed "Standard Party Loss Report" and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. All investigative information and loss data shall be submitted within ten working days from the date of first awareness of a loss, unless an extension of date is approved by the Administrator.

(4) Losses occurring due to the negligence of the insured or insureds contractor may result in no coverage being provided under the Risk Management property insurance program. In such case, Risk Management reserves the right to make a determination as to liability, extent of loss and amount which Risk Management may reimburse insured for the loss. It is the responsibility of the insured to determine whether contractors are adequately insured prior to any remodel, renovation or new construction.

(5) Other conditions under which coverage is provided will be specified in an annual statement of coverage issued by the Risk Management Administrator and subject to commercial policy terms and conditions. Failure to comply with terms and conditions in 260:70-11-2(f) or in the annual statement of coverage may result in denial of coverage.

(g) **Questions and loss reporting.** If there are any questions or to report a loss, contact the Risk Management Division.

(h) **Time Limit to File a Claim.** A final claim along with the requested supporting documentation must be submitted to Risk Management within 2 years of the date of the incident or the claim will be considered invalid.

260:70-11-3. Claims payment

The amount payable for each loss shall be determined by the Administrator. Payment of claims shall be made as funds are available and upon the approval of the Administrator. Final payment shall not be made until a loss affidavit and a release of all claims has been properly executed and the covered entity has complied with all procedures for claim payment as set forth in the Annual Statement of coverage. On a loss where the property covered is to be replaced under the terms of the Annual Statement of Coverage, and a final settlement has been reached, the Administrator reserves the right to require that the covered entity be paid only that portion of the actual cash value until the property suffering the loss has been put back whole. At that time, all remaining settlement funds will be released.

(1) The Risk Management Department shall:

(A) Acquire a release of all claims and a loss affidavit by the chief administrative officer or other authorized official of the agency where a property loss has occurred; or.

(B) Acquire an attestation from the chief administrative officer of the agency where a property loss has occurred that the agency does not intend to replace the property loss and will accept actual cash value in lieu of replacement; and,

(C) Forward a request for a warrant for either replacement value or actual cash value to be issued reflecting all approval(s) necessary under the rules and regulations contained in 580:25-11.

(2) The Division of Central Accounting and Reporting of the Office of Management and Enterprise Services shall:

(A) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws; and,

(B) Issue a warrant, such warrant and subsequent endorsement serving as indicia for proof of payments of a property loss.

[OAR Docket #14-783; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 75. FLEET MANAGEMENT DEPARTMENT

[OAR Docket #14-784]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:75-1-1. General Provisions [NEW]
260:75-1-2. Vehicle inventory control [NEW]
260:75-1-3. Vehicle management control [NEW]
260:75-1-4. Use of state owned and leased vehicles [NEW]
260:75-1-5. Service, lease and rental rates [NEW]
260:75-1-6. Daily reservations and monthly assignments [NEW]
260:75-1-7. Gasoline and oil purchases [NEW]
260:75-1-8. Wrecker service, on-the-road breakdown and repairs [NEW]
260:75-1-9. Other credit and cash purchases [NEW]
260:75-1-10. Care and maintenance of vehicles [NEW]
AUTHORITY:
74 O.S. §78; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
580:35-1-1. General Provisions [AMENDED]
580:35-1-2. Vehicle inventory control [AMENDED]
580:35-1-3. Vehicle management control [AMENDED]
580:35-1-4. Use of state owned and leased vehicles [AMENDED]
580:35-1-5. Service and rental rates [AMENDED]
580:35-1-6. Daily reservations and monthly assignments [AMENDED]
580:35-1-7. Gasoline and oil purchases [AMENDED]
580:35-1-8. Wrecker service, on-the-road breakdown and repairs [AMENDED]
580:35-1-9. Other credit and cash purchases [AMENDED]
580:35-1-10. Care and maintenance of vehicles [AMENDED]
Gubernatorial approval:
July 10, 2013
Register publication:
30 Ok Reg 2115
Docket number:
13-1137
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:75-1-1. General Provisions

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

(1) **"Administrator"** means the chief executive officer of the Division of Capital Assets Management of the Office of Management and Enterprise Services.

(2) **"Chief administrative officer"** means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency.

(3) **"Class"** means compact car, medium size car, full size car, medium size station wagon, full size station wagon, police car, pickup, truck, SUV, van, bus, aircraft or motorcycle.

(4) **"Department"** means the Fleet Management Department within the Office of Management and Enterprise Services.

(5) **"Director"** means the Director of the Office of Management and Enterprise Services or his designee.

(6) **"Fleet Card"** means the card assigned to vehicles under the leasing or ownership authority of the Department for the purchase of fuel, ancillary accessories and services, and general service maintenance.

(7) **"Fleet Manager"** means the administrative head of the Fleet Management Department appointed by the Director.

(8) **"Office"** means the Office of Management and Enterprise Services.

(9) **"State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, and the Office of the Governor.

(10) **"VIN"** means vehicle identification number.

(11) **"Written"** or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(b) **Agency authorized signatures.** A chief administrative officer shall designate in writing to the Department, the name of any person authorized to sign on behalf of the agency for the purposes of this chapter.

(c) **Waivers.** The Director may waive any requirement of this chapter unless statutes mandate the requirement.

(1) All requests for waivers shall be in writing and must include justification for the waiver request.

(2) The Office shall respond in writing as to the approval, conditional approval, or denial of a waiver request within fifteen (15) working days of receipt of the request.

260:75-1-2. Vehicle inventory control

(a) **Fleet inventory.** The Department shall maintain a current and complete inventory of all state vehicles compiled from the following:

(1) Each state agency shall maintain a current and complete inventory of the motor vehicles it owns or leases which includes the following information for each vehicle:

(A) Current agency vehicle number.

(i) Agencies that do not have a vehicle numbering system shall develop one for the purposes of this Chapter.

(ii) A state agency shall not change an established vehicle number without prior written authorization of the Fleet Manager.

(B) Make, model, class and year of all vehicles;

(C) VIN;

(D) License tag number;

(i) State assigned tag;

(ii) Confidential tag assigned, if applicable;

(E) Vehicle location; If the operator is authorized to take the vehicle home [Reference 47 O.S., Section 156.1]:

(i) the unit number of the vehicle, and the city and county where the vehicle is located must be on file; and

(ii) the operator's legal name, residence street address and telephone number shall be made available to the Department upon request;

(F) Designation of "owned", "loaned" or "leased" and the legal name and address of the vendor; and,

(G) Type of fuel used in the vehicle

(i) Original factory fuel type;

(ii) Converted fuel type, if applicable.

(2) State agencies shall also include the following information on the inventory for each motor vehicle it owns:

(A) Purchase date;

(B) Odometer reading at time of purchase; and

(C) Original cost.

(3) Each state agency shall submit written notice of the acquisition or disposal of a motor vehicle to the Department no later than fifteen (15) days after said transaction takes place. Notice of the acquisition of a vehicle shall include the information required in (1) of this subsection.

(b) **Vehicle acquisition by a state agency.** All state agencies with authority to own motor vehicles shall submit to the Department a vehicle acquisition request for approval by the Director, or delegate, not less than thirty (30) days prior to the proposed purchase of any vehicle, whether or not exempt from the Oklahoma Central Purchasing Act.

(1) The request for approval shall include a copy of the purchase order or requisition and state the following:

(A) The intended use and justification for the vehicle;

(B) Whether the vehicle is a replacement, addition, etc.

(C) Whether the purpose of the vehicle has changed since the last replacement;

(D) Any options selected over the standard equipped vehicle with justification for the options.

(E) The supplier of the vehicle;

(F) The agency has sufficient funds to acquire and maintain the vehicle;

(G) The statutory authority of the agency to acquire a vehicle.

(2) **Director consideration.** Within fifteen (15) days of receipt of a state agency request, the Director, or delegate, will review the information and send notice to the agency of the approval or denial of the acquisition.

(3) **Fleet Manager consideration.** The Director, or delegate, may request the Fleet Manager to review and verify information provided in a state agency acquisition request.

(4) **Director notification.** The Director shall provide the state agency written notice of the approval or denial of the acquisition request in the following manner:

(A) Issue a notice of approval indicating the proposed purchase is appropriate; or,

(B) Issue a notice of denial of the proposed purchase; or

(C) Issue a notice of an alternative acquisition recommendation.

(c) **Vehicle disposal.** A vehicle owned by a state agency may be sold or disposed of in the manner authorized by OAC 580:65 and the Surplus Property Act, if:

(1) the vehicle has been in use for sixty thousand (60,000) miles; or

(2) at least twenty-four (24) months have elapsed since the day the purchase claim was approved for payment thereof; or

(3) the vehicle has damage of Two Thousand Five Hundred Dollars ($2,500.00) or more; or

(4) the Fleet Manager has provided written authorization to dispose of the vehicle.

(d) **Vehicle disposal procedure.** All agencies shall notify the Fleet Management Department not less than thirty (30) days prior to the proposed disposal of any state-owned vehicle. The notice shall be in writing and include the following:

(1) Agency vehicle number;

(2) Reason for selling, (age, mileage, or other);

(3) Estimated value of vehicle;

(4) Type of sale (public auction, sealed bid, etc.); and

(5) Proposed date of sale.

(e) **Notification of final disposition.** All agencies shall provide written notice to the Department of the final outcome of sale within fourteen (14) days after disposition, which shall include:

(1) Agency vehicle number;

(2) Selling price of vehicle;

(3) Any changes in the method of disposal;

(4) A list of any vehicle(s) not disposed of;

(5) A completed copy of the inventory report information required by (a)(1) of this section; and

(6) Any other information the Department may request to maintain accurate inventory of state vehicles.

260:75-1-3. Vehicle management control

(a) **Agency fleet management policies and procedures.** A state agency shall file or update a detailed written description of its current fleet management policies and procedures with the Department annually. State agencies which have made no changes to their fleet management policies and procedures during the year may file a statement of "no change."

(b) **Agency monthly inventory report.** A state agency shall submit a report of all vehicles it owns and/or leases monthly to the Department in the format required by the Department. The report shall be due on the 10th of each month and shall contain information for each vehicle owned and/or leased representing the month preceding the report, which includes:

(1) Agency name and number;

(2) Vehicle number;

(3) Hours or mileage as of a specific date and time;

(4) Fuel cost and number of gallons used;

(5) Type of maintenance performed on vehicle specified in the following manner:

(A) "P" - preventive maintenance - internal repair;

(B) "E" - preventive maintenance - outside repair;

(C) "B" - body work - internal repair;

(D) "W" - body work - outside repair;

(E) "M" - mechanical repair - internal repair; or

(F) "R" - mechanical repair - outside repair.

(6) Cost of any repairs listed pursuant to (5) of this subsection.

260:75-1-4. Use of state owned and leased vehicles

(a) **State vehicle driving conditions.** Every driver of a state owned vehicle shall comply with the following conditions:

(1) A state owned or leased vehicle shall not be used for personal transportation to stores, shopping centers, lakes, parks, golf courses, athletic events, etc.

(2) A state owned or leased vehicle shall not be used for hauling a trailer other than a trailer that is state owned or that is rented or leased for official business.

(3) All state statutes, traffic rules and regulations shall be observed.

(4) All city ordinances related to traffic, parking, etc. shall be observed.

(5) Safe and courteous driving habits shall be used at all times.

(6) Tobacco use in state owned or leased vehicles is prohibited.

(7) Driving under the influence in state owned or leased vehicles is prohibited.

(8) Except for communication radios, use of hand-held devices while driving in state owned or leased vehicles is prohibited.

(9) Agencies will be billed for any and all repairs to, loss of value, or additional maintenance of Fleet Management vehicles occurring as a result of driver abuse, negligence, fault or undesignated vehicle use.

(10) Agencies may choose to recover the expense from the employee for any and all repairs, loss of value, or additional maintenance of state owned or leased vehicles occurring as a result of driver abuse, negligence, fault or undesignated vehicle use.

(11) Carrying alcohol, illegal drugs or weapons in state owned or leased vehicles is prohibited unless it is related to the mission of an agency.

(12) Transporting animals in state owned or leased vehicles is prohibited unless it is related to the mission of an agency.

(b) **Prohibited drivers and passengers.** Persons other than state employees shall not be permitted to drive or ride in state owned or leased vehicles, unless authorized by the using agency and then only on official state business.

(c) **Traffic violations.** State-owned or leased vehicles shall not be driven in excess of the speed limit posted by states and municipalities. All traffic violation fines shall be the sole responsibility of the driver involved.

260:75-1-5. Service, lease and rental rates

(a) **Fleet operation funding.** The Department shall fund all operation, repair, insurance, and maintenance expenses for vehicles issued.

(b) **Service rates.** A lease or rental rate shall be set by the Department and charged to each agency to recover the costs listed in (a) of this section. A copy of these rates shall be furnished to all agencies upon request.

(c) **Notice of rate change.** If the Fleet Manager determines it is in the best interest of the State to change the lease or rental rate to ensure the recovery of expenses listed in (a) of this section, the Administrator will send written notice to the chief administrative officer of each agency or department of the new rate at least thirty (30) days prior to its effective date.

(d) **Payment due date.** Payment for Department services as authorized by 74 O.S., Section 78c. shall be paid no less than monthly to the Office.

(e) **Delinquent accounts.** State agencies that are delinquent thirty (30) days or more with payment to the Office shall be considered in arrears. Written notice of the delinquency and outstanding balance may be sent to the agency.

(1) Accounts delinquent for more than forty five (45) days shall be subject to suspension by the Fleet Manager. Suspension of an account bars the agency from use of Department services until payment is received and the account is no longer in arrears.

(2) The Administrator may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.

(f) **Other agency expenses.** An agency that leases or rents Department vehicles is responsible for and shall pay the Department for any expenses related to the replacement, reconditioning, repair, or loss of value at the time of sale, of a leased or rented vehicle due to an accident or incident when the agency is found to be at fault.

(1) Unless a third party is determined to be responsible for the damage, an agency shall be responsible for up to the

Department's deductible of $2,500.00 under the Physical Damage Insurance Policy through the state Risk Management Department. If the loss is not recoverable from the third party, the leasing or renting agency shall be responsible for the Department's deductible.

(2) An agency shall be considered "at fault" and responsible for full cost of replacement, recondition, repair, or the loss of value at the time of sale, of a leased or rented vehicle, if it is determined that certain conditions contributed to the replacement or repair which include, but are not limited to, the following:

(A) failure to comply with Department preventative maintenance standards established in 260:75-1-10;

(B) operation of a vehicle in unsafe conditions such as continuing to operate a vehicle after serious warnings were indicated, e.g. caution light has engaged, smoke coming from under the hood, blown tire, etc.;

(C) use of a vehicle inconsistent with the performance of work related activities.

260:75-1-6. Daily reservations and monthly assignments

(a) **Advance reservations.** All reservations require prior approval of the Department.

(1) An agency shall submit a written request for reservation to the Department prior to the beginning date of the reservation. An agency shall provide sufficient advance notice to ensure vehicle availability. The reservation must be submitted during the Department's business hours, Monday through Friday, excluding state holidays.

(2) The reservation shall specify the desired class of vehicle and desired date and time period for use of the vehicle. The Department may request additional information as determined necessary to facilitate the reservation.

(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.

(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis.

(c) **Fleet Management requisition.** A Fleet Management requisition form, signed by the chief administrative officer or designee shall be presented to the Department each time a vehicle is picked up for use by a state agency.

(d) **Cancellations of reservation.** Written notice of cancellation shall be submitted to the Department no less than one (1) working day prior to the reservation date. An agency shall be charged the minimum daily rate for the applicable vehicle class for failure to cancel a reservation prior to the scheduled pick up time.

(e) **Monthly assignments.** A written request for a vehicle to be assigned to an agency on a monthly basis shall be signed by the appointing authority of the agency or designee and include the following information:

(1) Legal name of employee assigned to the vehicle

(2) Address of employee

(3) Employee's work telephone number

(4) Official duty station of employee

(5) Type of work performed by employee

(6) Territory to be covered, and

(7) Approximate miles to be driven per month.

(A) The requesting agency will be advised of the approval or denial for each request.

(B) A new, signed request shall be submitted monthly to the Department between the 25th and the last working day of each month. The request shall include the name of the driver and current mileage of the vehicle.

260:75-1-7. Gasoline and oil purchases

(a) **Fleet card purchases.** Gasoline and oil for Department vehicles shall be purchased from authorized fueling locations with the state issued fleet card furnished with each vehicle.

(1) The current vendor of the state fleet card is determined by award of applicable contract.

(2) Access to a list of available fueling locations is provided by the Department.

(3) Agencies shall adhere to fleet card policies established by the Director.

(b) **Required fuel for Department vehicles.** Unless otherwise specified in this subsection, use only regular unleaded fuel in Department vehicles. Regular unleaded fuel may be blended to contain ethanol at levels approved by the federal Environmental Protection Agency (EPA). Department vehicles identified by marking or decal as:

(1) "Flex-fuel" may use blended fuel up to and including eighty-five percent ethanol;

(2) "CNG" may use compressed natural gas;

(3) "LPG" may use liquefied petroleum gas;

(4) "LNG" may use liquefied natural gas;

(5) "Biodiesel" may use fuel that contains a blend of diesel fuel and biological products at a level approved by the EPA.

(6) "Plug-in hybrid (PHEV)", "electric vehicle (EV)", "neighborhood electric vehicle (NEV)", or "low-speed vehicle (LSV)" may use electricity.

(7) "Dual-fuel" or "bi-fuel" may use a combination of the fuel types specified in this subsection.

260:75-1-8. Wrecker service, on-the-road breakdown and repairs

(a) **Department fleet policies.** Agencies utilizing Department vehicles shall adhere to maintenance/repair, fleet card, road assistance and accident policies established by the Director.

(b) **Agency fleet policies.** Agencies utilizing their own vehicles shall adhere to any agency fleet policies.

(c) **Department wrecker service.** An owning agency may contact the Department whenever towing or a service call is required in or near the Oklahoma City metro area and between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.

(d) **Private wrecker service.** In accordance with policies established by the Director, an agency utilizing Department vehicles may contact a private wrecker service whenever towing or a service call is required outside the Oklahoma City metro area, and/or after 4:30 p.m. on Monday through Friday, on weekends or holidays. Agencies utilizing their own vehicles may contact a private wrecker service in accordance with any agency fleet policies.

(e) **Driver negligence.** Agencies may be billed for any towing, impound and/or service call expenses incurred as a result of driver negligence or fault as stated in section 260:75-1-5 for agency leased and owned vehicles.

260:75-1-9. Other credit and cash purchases

(a) **Invoices.** All invoices or sales slips for expenses, for Department owned vehicles, approved by the Department shall be billed to the Department. An invoice must contain the following:

(1) Vendor's legal name, street and mailing address and telephone number;

(2) Date of purchase;

(3) Vehicle number;

(4) Quantity and cost of each item used, labor time and charge;

(5) Driver's signature; and

(6) No state sales tax shall be charged.

(b) **Cash purchases and payments.** The Department does not provide reimbursements for cash purchases. A state agency must make all authorized vehicle-related purchases in accordance with the Fleet Card procedures established by the Director.

(c) **Invoices to other agencies.** The Department is not responsible for payment of invoices charged to any other agency.

260:75-1-10. Care and maintenance of vehicles

(a) A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any Department owned vehicle in its use, according to the maintenance schedule established by the Director.

(b) A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any agency-owned vehicle in its possession, according to the maintenance scheduled established by an agency.

[OAR Docket #14-784; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 80. PLAN OF OPERATION FOR OKLAHOMA STATE AGENCY FOR SURPLUS PROPERTY

[OAR Docket #14-785]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Chapter 80. Plan of Operation for Oklahoma State Agency for Surplus Property [NEW]

AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 19, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).

CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:80-1-1. Purpose

(a) The Director of the Office of Management and Enterprise Services promulgates the rules of this chapter pursuant to the authority of 80 O.S., Section 34.2 and subject to the provisions of the Administrative Procedures Act, 75 O. S., Section 251, et. seq.

(b) Pursuant to provisions of Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549 (hereinafter referred to as 40 USC 549), Federal Management Regulation (FMR), Subchapter B - Personal Property, 41 CFR Part 02-37 and state law, the State Agency for Surplus Property shall operate pursuant to this State Plan of Operation.

(c) This State Plan of Operation establishes provisions for the Oklahoma State Agency for Surplus Property to acquire and distribute Federal surplus personal property to donees that meet the eligibility criteria specified by Federal law and regulation as determined by the state agency.

260:80-1-2. [RESERVED]

260:80-1-3. Definitions

As used in this chapter, the following terms, unless the context clearly indicates otherwise, shall mean:

"Aircraft" means a civilian or demilitarized aircraft.

"Direct allocation" means shipment of property directly to a donee from the "holding agency."

"Director" means the Director of the Office of Management and Enterprise Services or a person the Director designates.

"Donee" means a service educational activity; public agency that uses surplus personal property to carry out or promote one or more public purposes; an eligible nonprofit tax exempt educational or public health institution to include a provider of assistance to homeless or impoverished families or individuals; or a state or local government agency, or nonprofit organization or institution that receives funds appropriated for a program for older individuals. (Note: Public airports are only considered donees when they elect to receive surplus property through the state agency. This does not include transactions of property where a public airport elects to receive surplus property through the Federal Aviation Administration (FAA)).

"GSA" means the United States General Services Administration.

"Holding agency" means the executive agency having accountability for, and generally possession of the property involved.

"Item" means a single unit or measurable lot of property.

"Office" or "OMES" means the Office of Management and Enterprise Services.

"Original acquisition cost" or **"OAC"** means the original cost the GSA reports the Federal government paid to acquire an item.

"Property" means Federal surplus personal property.

"Revolving fund" means the fund created by 80 O.S., Section 34.6 that serves as the depository and working capital reserve fund for the agency.

"State Agency for Surplus Property" and **"Agency"** means the Oklahoma State Agency for Surplus Property operating as the Property Distribution program of the Office of Management and Enterprise Services.

"State Plan" means a plan of operation for the State Agency for Surplus Property.

"State Surplus Property Agent" and **"Agent"** means the administrator of the Property Distribution program of the Office of Management and Enterprise Services or a person the Agent assigns to perform agency tasks.

"Vessel" means a watercraft exceeding 50 feet in length.

260:80-1-4. [RESERVED]

260:80-1-5. Citations

(a) Statutory citations in this chapter refer to the most recent codification of state and federal statutes.

(b) Regulation citations in this chapter refer to the most recent codification of federal regulations.

260:80-1-6. [RESERVED]

260:80-1-7. Authority

The State Agency for Surplus Property operates under the authority and supervision of the Director of the Office of Management and Enterprise Services pursuant to the provisions of 80 O. S., Section 34.1 et. seq. (Appendix A), 40 USC 549 and 41 CFR 102-37.

260:80-1-8. [RESERVED]

260:80-1-9. Designation of State Agency

(a) As appointed by the Governor, the Director of OMES shall appoint a State Surplus Property Agent and employ persons the Agent supervises to ensure that the State Agency for Surplus Property (Agent) provides services that meet the requirements of 41 CFR 102-37 and the State Plan of Operation for property acquisition, transportation, inventory control, warehousing, eligibility, compliance and program related responsibilities.

(b) The Agent shall administer the Agency pursuant to the provisions of this State Plan which satisfies the requirements of 80 O. S., Section 34.1 et seq., 40, USC 549 and 41 CFR 102-37.

(c) Under the supervision of the Director, the Agent shall acquire, warehouse and distribute property to donees and ensure that donees comply with property use restrictions and requirements.

(d) The Agency occupies approximately seven and one half (7.5) acres of land owned by the State of Oklahoma at 3100 North Creston Drive, Oklahoma City, Oklahoma. The property includes an administrative office building, receiving and distribution warehouses, outdoor display and storage areas, mechanic shop, maintenance shop and paved and gravel parking areas.

260:80-1-10. [RESERVED]

260:80-1-11. Inventory control and accounting systems

(a) **Inventory Control System.**

(1) The agency shall use, maintain and support an automated inventory control system to document and track property receipt, warehouse location, transfer, sale, utilization and disposal.

(2) The Agent shall assign an inventory control identifier to property so that the inventory control system shall recognize the quantity received, property location, quantity distributed, service charges and other information the Agent requires.

(3) The Agent shall conduct an annual physical inventory of property on-hand. The Agent shall reconcile physical inventory findings to system produced records and report results to the GSA.

(4) The Agent may retain surplus property for use in operating the donation program in conjunction with an active cooperative agreement with GSA. However, the Agent will obtain GSA approval prior to using surplus property for agency use. Records of property approved for agency use will be maintained separately and apart from records of inventory of donation property.

(b) **Accounting System.**

(1) The Agent shall record and maintain financial records in an accounting system. The Director and the Agent shall adhere to methods the State Auditor and Inspector and state finance officials prescribe for the accounting system. System records shall indicate payments due and received for property to accurately indicate donee accounts status including balances due to the agency.

(2) The accounting system shall review accounts on a periodic basis so that the Agent may identify accounts that may become past due.

(3) The Director and the Agent shall ensure that the system provides financial information that the Director and Agent may use to evaluate agency financial performance.

260:80-1-12. [RESERVED]

260:80-1-13. Return of donated property

(a) If a donee fails to place donated property into use for the purpose for which it was donated within one year of donation, the Agent shall advise the donee of actions required to return, transfer or dispose of the item at the donee's expense.

(b) If a donee ceases to use donated property for the purpose for which it was donated within one year after the property was placed into use, the Agent shall advise the donee of actions required to return, transfer or dispose of the item at the donee's expense.

(c) If the Agent determines that property in the possession of a donee is usable and the donee has not met the requirements set forth in (a) and (b) of this Section, the property must be returned, transferred or disposed of in accordance with (d) of this Section.

(d) Return of usable property shall be accomplished in one of the following ways as directed by the Agent:

(1) **Returning Property to the Agent.** A donee shall notify the Agent whenever it wishes to return usable donated property to the warehouse. The Agent shall make every effort to locate another donee within the state to determine if the property can be retransferred. If the property cannot be retransferred to another donee within the state, the Agent will instruct the donee to return the property to the Agent's warehouse.

(2) **Direct transfer to another donee within the state.** In cases where donated property is retransferred from one donee within the state to another or returned to the Agent's warehouse for retransfer to another donee, the Agent shall process documentation showing the return to inventory. If the property, however, is being retransferred directly from one donee to another within the state, the Agent shall prepare and process a Distribution Document. The Agent shall indicate on the document that the property is, in fact, being transferred from one donee to another.

(3) **Transfer to another State Agency for Surplus Property or Federal agency.**

(A) **Transfers to other State Agencies for Surplus Property.** Whenever property is not needed by a donee within the state, the Agent, in accordance with 41 CFR 102-37.290 (a) (2) shall immediately offer it to a State Agency for Surplus Property in another state. When donated property is being transferred to another State Agency, the gaining agency will prepare and submit an SF-123 to the General Services Administration. GSA, upon request from the holding State Agency, shall assist in making it known to other State Agencies that unneeded property in one state is available for transfer and arranging and coordinating visits between State Agencies. Transfers between State Agencies are subject to the disapproval of GSA within 30 calendar days after notice to the GSA regional office.

(B) **Transfers to federal agencies.** Property not retransferred directly to another donee within the state or another State Agency will be reported to GSA for redisposal instructions which may include retransfer to a Federal agency. When a federal activity requests property from the Agent, the Federal (gaining) agency will prepare and submit an SF-122 to GSA.

(4) **GSA approval for disposal by sale.** Usable returned property that is not transferred to another donee within the state or another State or Federal agency may, with GSA approval, be disposed of by public sale. The Agent may act as GSA's agent in selling donated property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. The GSA regional office will inform the Agent of those property item(s) that can be sold and the Agent, in turn, shall prepare and submit a Standard Form 126 (Report of Personal Property for Sale) to GSA as directed. GSA will then determine and approve the actual point of sale and required sales method. If GSA authorizes disposal of the item by means of sale, the Agent shall provide return instructions to the donee and follow the guidelines set forth in 41 CFR 102-37.305 through 102-37.315.

(e) **Abandonment and destruction.** Unusable property items in the possession of a donee may only be abandoned or destroyed when the Agent makes a written finding that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The finding shall be written in accordance with 41 CFR 102-37.320 and submitted to GSA for approval. GSA will notify the Agent within 30 calendar days as to whether the Agent may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves the Agent's request for abandonment and destruction of the property. If GSA does not reply to the Agent's request within 30 calendar days of notification, the property may be

abandoned or destroyed. However, the Agent shall further consult GSA for guidance regarding prior public notice of proposed abandonment or destruction actions. The Agent shall also prepare and retain certification documentation as directed by GSA to account for the physical abandonment or destruction action. The certification document must be signed by the Agent and an employee of the Agent who witnessed the actual abandonment and destruction action of the item(s) referenced in the document itself.

(f) **Failure of donee to follow property return instructions.** If an item is usable and the donee fails to adhere to instructions the Agent provides for return, transfer or disposal of the item, the Agent shall attempt to retrieve the item with retrieval expenses to be borne by the donee. If the Agent is unable to retrieve the item, the Agent shall utilize the provisions of (g) of Section 580: 45-1-45 to notify GSA of donee noncompliance.

(g) **Donee credit and reimbursement.**

(1) **Donee reimbursement for unused property.** When a donee acquires property from the Agent and believes it to be unsuitable for the intended purpose, the Agent may authorize the donee to return the item to the Agent for a determination of the amount of the credit due to the donee. The return credit shall not exceed the original service charge for the item. The Agent shall utilize the table shown below to determine the return credit for an "unused" item if the item is in the same condition as at the time of acquisition:

(A) Returned within 30 days - Up to 100% Credit

(B) Exceeding 30 to 60 days - Up to 90% Credit

(C) Exceeding 60 to 90 days - Up to 75% Credit

(D) Exceeding 90 to 180 days - Up to 50% Credit

(E) Exceeding 180 days - As determined by the Agent

(2) **Donee reimbursement for used property.** When a donee no longer has a need or use for donated property and there has been no breach of the terms and conditions of the donation or special handling conditions or use limitations imposed by GSA, the donee may be reimbursed on a prorated basis for the following expenses:

(A) Service charge paid to the Agent;

(B) Transportation charges paid by the donee in initially acquiring the property; and

(C) Initial costs of repairs required to make the item usable. If the donee has incurred repair expenses for property it is returning to the Agent, it will inform the Agent. The donee will provide the Agent documentation to substantiate the amount claimed for the cost of initial repairs to make the returned item usable. The donee may be reimbursed for all or part of the initial cost of repairs required to make the item usable if:

(i) The property is transferred to a federal agency or sold for the benefit of the United States Government:

(ii) No breach of the terms and conditions of donation has occurred; and

(iii) GSA authorizes the reimbursement.

(D) **Reimbursement amount recommendations for used property.** The Agent shall recommend for GSA approval the amount of reimbursement that takes into consideration the benefit the donee has received from the use of returned property and making appropriate deductions for that use. Reimbursement is not authorized unless the used item was placed into use by the donee within 1 year of its receipt. However, in cases where used returned property is sold, reimbursement shall not exceed the proceeds of the sale of the item. When making a reimbursement recommendation to GSA for used property, the Agent will provide the following information:

(i) Indicate whether or not the item was placed into use by the donee within 1 year of receipt; and

(ii) Item restriction period; and

(iii) The number of months the property was actually used by the donee; and

(iv) The item's total service charge and initial transportation and repair costs (if applicable.)

(E) GSA will approve, revise or disapprove the recommended reimbursement amount to be allowed a donee based on an internal computational method that considers the item's individual period of restriction, number of months utilized and the total of the service charge, initial transportation costs and repair costs (if applicable.)

260:80-1-14. [RESERVED]

260:80-1-15. Agency financing and service charges

(a) The Agent shall assess, collect and expend service charges for surplus property transferred to eligible donation program donees as authorized by 80 O. S. Sections 34.2 through 34.6 and this State Plan.

(b) The Agent shall assess reasonable service charges in a fair and equitable manner based on services performed (or paid for) by the Agent in relation to the original acquisition cost (OAC) of the property. Service charges assessed by the Agent shall cover costs the Agent incurs to screen, retrieve, receive, package, crate, warehouse, ship and transport property. Funds accumulated from service charges may be used to maintain and improve the agency facilities and other purposes as specified in accordance with 41 CFR 102-37.280.

(c) For items the Agent makes available to donees, the Agent shall assess a service charge determined as a percentage of the OAC of an item.

(1) The Agent shall use the following table to assess service charges to items:

(A) OAC not exceeding $1000: 0% to 50% of OAC

(B) OAC exceeding $1000, but not exceeding $20,000: 0% to 40% of OAC

(C) OAC exceeding $20,000: 0% to 30% of OAC

(2) The Agent may authorize direct allocation of items to donees. If the Agent authorizes direct allocation, the service charge shall not exceed 10% of OAC. The Agent

may establish a minimum service charge of $10.00 for direct allocation for property, if the total OAC for all property does not exceed $100.00.

(3) The Agent shall provide property to eligible donees that provide assistance to homeless individuals at a nominal cost for care & handling.

(d) The Agent may adjust the service charge for property for which repairs were paid for by the Agent. The Agent shall prepare a work order detailing expenses the Agent incurs to repair the item and advise the amount of a work order prior to a donee acquiring the item.

(e) The Director shall deposit funds the Agent receives from service charges in the revolving fund in accordance with 80 O.S., Section 34.6. The State Treasurer shall manage the revolving fund for the benefit of donees and the agency.

(f) The Director and the Agent shall expend the funds for allowable costs of the agency, including staff salaries, agency facilities maintenance and improvement, equipment and administrative expenses, for the benefit of donees and performance of duties pursuant to 80 O. S. Section 34.1 et seq. and the State Plan.

(g) If the Director determines that excess funds exist in the revolving fund, the Director shall reduce service charges for property.

(h) If the State were to decide to liquidate the SASP, the method of disposing of any financial assets realized upon the sale or other disposal of the facilities will be provided as part of a liquidation plan to GSA in accordance with 41 CFR 102-37.365.

(i) Financial assets realized upon the sale or other disposal of the facilities, other than to liquidate the SASP will be utilized to acquire new facilities.

260:80-1-16. [RESERVED]

260:80-1-17. Property use restrictions and requirements

(a) The Agent shall inform donees that property the donee receives is subject to the use restrictions and requirements of 41 CFR 102-37, GSA and as specified by this Section. Donees shall acknowledge and agree to restrictions and requirements at the time of acceptance of property. The Agent may only grant releases from state imposed use restrictions, conditions or special handling instructions.

(b) A donee shall present an encumbrance (or certification) document to the Agent certifying adequate funds to pay service charges the donee incurs to acquire the property.

(c) A donee accepts property as is, with no expressed or implied warranty, except that a donee may return property to the agency pursuant to provisions of (g) of Section 260:80-1-13.

(d) The state and federal governments are not liable for and held harmless from actions incident to acquisition of the property, its use or final disposition.

(e) A donee shall use property to carry out or promote the public purpose of the donee entity.

(f) A donee shall not encumber property the donee acquires from the agency by lien or other method of encumbrance.

(g) A donee shall place donated property in-use within one year of donee receipt of the property.

(h) A donee shall return property to the Agent if the donee does not use the property within one year of receipt at the expense of the donee.

(i) A donee shall retain and use an item with an OAC not exceeding $5,000 for the purpose for which it was donated for one year after the donee places the property in-use.

(j) A donee shall retain passenger motor vehicles or items with an OAC of (or exceeding) $5,000 in its possession for 18 months after the donee places the property in-use.

(k) A donee that acquires an aircraft or vessel shall meet additional use requirements.

(1) A donee shall submit a Letter of Intent that states the uses for which the donee intends to use the aircraft or vessel. The Agent shall advise the donee of all information required to be included in a Letter of Intent in accordance with 41 CFR 102-37.230.

(2) A donee shall use an aircraft or vessel for a period of five years. The period of restriction for combat-configured aircraft is perpetuity.

(3) A donee shall apply to the Federal Aviation Administration (FAA) to register an aircraft for flight use within 30 calendar days of donee receipt of the aircraft.

(4) A donee shall apply to register or document a vessel pursuant to applicable federal, state and local laws within 30 calendar days of donee receipt of the vessel and record each document with the U. S. Coast Guard.

(5) A donee shall include with its request for registration or documentation a fully executed copy of the transfer document and a copy of the donee Letter of Intent.

(6) Upon receipt, a donee shall provide a copy of FAA registration or Coast Guard documentation to the Agent and GSA.

(7) A donee shall use an aircraft or vessel in accordance with the executed Conditional Transfer Document and as set forth in the donee Letter of Intent.

(8) A donee may request amendments to the donee Letter of Intent by submitting amendments in writing to the Agent and GSA.

(9) A donee shall use an aircraft or vessel for purposes the donee states in the donee Letter of Intent unless the Agent and GSA provide approval of amendments to the Letter of Intent.

(10) If required by FAA or the U.S. Coast Guard, a donee shall provide a copy of the amended version of the Letter of Intent (which must be approved by both the Agent and GSA) to the FAA or U.S. Coast Guard, as applicable.

(11) If a donee breaches the terms and conditions of an original or amended Conditional Transfer Document, title to the aircraft or vessel may revert to the federal government, GSA may require the donee to return the aircraft or vessel and may require the donee to pay for any unauthorized disposal, transaction or use in accordance with FMR 102-37.460 (d).

(12) A donee may submit a request to return an aircraft or vessel during a period of use restriction to the Agent.

The Agent shall notify GSA of the request. If GSA accepts the request, the Agent will then request that GSA provide written instructions for disposition. If GSA approves and provides instructions for disposal, the Agent shall provide notice and disposal instructions to the donee.

(13) A donee shall not modify for flight purposes military aircraft the donee receives for ground training or static display.

(14) A donee that receives an aircraft for non-flight use shall provide the Agent with aircraft historical records within 30 calendar days of donee receipt of the aircraft. The Agent shall forward the records to GSA.

(l) A donee shall agree upon execution of the Agent's Distribution Document that the donee holds conditional title to property during the period of use restrictions. Full title to the property will vest in the donee only after the donee meets all property use requirements.

(m) A donee shall not remove the property from the state for permanent use or sell, trade,lease, loan or otherwise dispose of property during periods of use restriction without written authorization from the Agent.

(n) The Agent shall evaluate a donee request for removal or property disposition as described in this Section and, if required, seek GSA approval of the action. The Agent shall notify the donee of approval or disapproval of the request.

(o) A donee shall report information pertaining to property to the Agent, as the Agent requires, during periods of use restriction.

(p) If a donee insures property and the donee experiences an insured loss of the property during a period of use restriction, the Agent or GSA is eligible to claim reimbursement from insurance proceeds for an amount equal to the unamortized portion of the fair market value for the insured item.

(q) A donee may request authorization to cannibalize property from the Agent .

(1) A cannibalization request for donated property which is in the custody of the donee and under a use restriction period must be made in writing and approved by the Agent prior to actual cannibalization action.

(2) The cannibalization request shall identify all components of an item the donee intends to utilize.

(3) The Agent shall determine the value of components of the item the donee intends to utilize.

(4) The Agent shall evaluate a donee request for cannibalization pursuant to conditions of the transfer document and approve or disapprove the request.

(5) The Agent may grant authority to the donee to cannibalize the property if he/she determines that such action will result in increased utilization of the property. However, the Agent must not authorize cannibalization if the item can be better used in its existing form or if GSA has not approved cannibalization for property with special handling conditions or use limitations imposed by GSA.

(6) If the Agent approves the request, the Agent shall advise the donee of the following use restrictions and requirements:

(A) Cannibalization by the donee must begin within 1 year of receiving the property and shall continue until the requirement for parts no longer exists (e.g., as parts are needed they are to be removed)

(B) Property authorized for cannibalization must remain under the use restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions stated on the transfer/distribution document. Components with a unit acquisition cost less than $5,000 may be released from state imposed restrictions only.

(C) When cannibalization actions are completed before the end of the period of restriction and residue remains, the Agent may authorize or require the donee to:

(i) Return unneeded residue to the Agent;

(ii) Retain the residue for use in other eligible programs; or

(iii) Report residue with an estimated fair market value over five hundred dollars to the Agent, for which the Agent may perform the following:

(I) Re-donate the residue.

(II) If unable to re-donate the residue, the Agent must report such residue to GSA for disposal instructions.

(III) The Agent may consider use restrictions satisfied if the fair market value of the remaining residue is less than five hundred dollars and release such residue to the donee, provided the proceeds of any disposal are returned to the account from which the service charges were paid to the Agent for the property and used by the donee in the eligible program.

(7) In cases where property is specifically requested for the purpose of cannibalization, the intended donee must provide written justification for the proposed action which shall accompany the SF 123 transfer document. The justification should provide detailed information concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will only approve donation of property for cannibalization when it is clear from the justification that disassembly of the item for component parts will provide greater potential benefit than use of the item in its existing form.

(8) All property donated specifically for cannibalization remains subject to the same terms, conditions, reservations, use restrictions and special handling conditions imposed by GSA reflected in (q)(6) of this Section.

(r) Vessels and aircraft shall remain subject to the terms and conditions stated on the respective Conditional Transfer Document (and based on the requirements of 41 CFR 102-37.450 and 102-37.460).

(s) The Agent shall advise the donee of the terms and conditions for the use, retention, return or disposal of property having an OAC of $5,000 or more and any passenger motor vehicle

or other donated item. The donee will therefore obtain permission from the Agent before attempting to dispose of donated property during the item's period of use restriction.

(1) When a donee requests disposal instructions, the Agent shall follow the provisions outlined in Section 260:80-1-13.

(2) Subsection (s) of this Section is not applicable to Service Educational Activities (SEAs) donees as only Department of Defense (DOD) property may be donated to SEAs. In these cases, the Agent shall observe any restrictions imposed on the property by the sponsoring military service.

(t) A donee may submit a request to the Agent for release from use restrictions for property.

(1) The Agent may approve a request for release from state requirements if the Agent determines by item review or inspection that the property retains no capacity for useful purpose.

(2) A donee may request release from the special handling conditions or use limitations imposed by GSA by submitting a request to the Agent. The Agent shall forward the request to GSA and provide additional information as required by GSA. The Agent will advise the donee of the GSA determination.

(3) Upon request from a donee, the Agent may, with GSA approval, grant an extension of the time period to place property in-use if the Agent determines that a delay results from factors beyond the predictable control of the donee.

(u) A donee may request that the Agent exchange an item that the donee used for a minimum of six months subject to item use restrictions and requirements for one like item having similar use potential if the exchange will result in increased utilization value to the donee.

(1) The use restrictions and special handling requirements for the item received by the donee shall commence upon donee receipt of the item.

(2) The Agent shall ensure that the OAC of the item the donee receives in exchange is of equal or greater value than the item the donee originally received.

260:80-1-18. [RESERVED]

260:80-1-19. Disposition of undistributed property

(a) The Agent shall adhere to provisions of this section to dispose or abandon/destroy property the Agent is unable to distribute to donees. If the Agent determines that items are not usable, the Agent shall provide a signed request to GSA to seek approval to abandon or destroy the items.

(1) The Agent shall list items and advise GSA of reasons the Agent believes the items warrant abandonment or destruction in accordance with 41 CFR102-37.320.

(2) The Agent shall provide a description of each item, the condition of the items and the OAC.

(3) The Agent shall advise the method the Agent prefers for abandonment or destruction of the item.

(4) The Agent shall state that the method of abandonment or destruction the Agent prefers shall not pose a detriment or health hazard to other persons, will not cause risk to public safety or infringe on the rights of other persons.

(5) Within 30 calendar days after the Agent issues the request, GSA will approve, disapprove, provide alternate disposition instructions or not respond to the Agent. If GSA does not respond to the agent within 30 calendar days, the agent may abandon or destroy the items.

(6) If the Agent reasonably believes that unusable items may have value as scrap, the agent shall implement a cooperative agreement or adhere to provisions of an executed cooperative agreement with GSA to act as Agent for GSA to affect sale of the scrap items.

(b) If at least nine months after receiving items, the Agent does not distribute the items and the Agent determines that undistributed items are usable, the agent shall adhere to provisions of this Subsection to dispose of the items.

(1) The Agent shall, with GSA approval, offer the items to State Agencies for Surplus Property located within the same GSA region as that of the Agent.

(2) If no State Agency for Surplus Property within the region indicates interest in the property, the Agent may, with GSA approval, offer the property to State Agencies for Surplus Property outside the region.

(3) If another State Agency for Surplus Property requests to acquire the property, subject to GSA approval, the agency and requesting agency shall adhere to provisions of 41 CFR 102-37.295 to facilitate transfer of the items.

(4) The Agent may recoup costs the Agent incurred for the transfer or sale of items from the requesting State Agency for Surplus Property pursuant to provisions of 41 CFR 102-37.315.

(5) The Agent, with GSA approval, will transfer to other Federal agencies or sell undistributed property to donees in accordance with Section 260:80-1-13.

(6) The Agent shall adhere to provisions of 41 CFR 102-37.290 through 41 CFR 102-37.310 for disposal of usable undistributed items that another State Agency for Surplus Property does not want. The Agent may recoup disposal expenses pursuant to 41 CFR 102-37.315.

260:80-1-20. [RESERVED]

260:80-1-21. Fair and equitable distribution

(a) The Agent currently operates a warehouse to serve eligible donees. The Agent shall ensure fair and equitable distribution of property to donees based on their relative needs and resources and abilities to use the property. The Agent will generally have a firm requirement or an anticipated demand for any donable property requested. Factors to be considered in the fair and equitable distribution of property are:

(1) Contemplated use and frequency of use of the property;

(2) Criticality or urgency of need;

(3) Ability to pay the required service and handling charge; and

(4) Availability of funds to repair or maintain the property.

(b) The Agent shall provide priority distribution to donees responding to disaster or emergency situations.

(c) The Agent shall solicit advice from donees on types of items donees prefer to acquire from the agency.

(d) The Agent shall offer donees opportunities to request specific items. This may be done by providing the donee with "search only" access to GSA's online computerized inventory of excess and surplus property. This may also be done by obtaining "want lists" for those items needed by donees.

(e) The Agent may request GSA assistance to acquire specific items for a donee.

(f) The Agent may authorize and assist with direct shipment of property to donees.

(g) The Agent may provide property to eligible donees in another state pursuant to provisions of 41 CFR 102-37.265 and 41 CFR 102-37.335.

(h) Eligible donees that wish to screen property at Federal holding agencies shall make a written request to the Agent. If approved, the Agent shall submit an Optional Form 92 (with the signature and an affixed passport style photograph of the screener applicant) to the GSA Regional Office. If approved, GSA will complete the Optional Form 92 and return it to the Agent. Screening approval for the Agent's personnel must also be requested from GSA with the Optional Form 92. The appropriate Agent personnel member or eligible donee will then be authorized to screen surplus property at Federal holding agencies. The Agent will maintain records of authorized screeners in accordance with 41 CFR 102-37.190.

(i) When the donee has completed screening at a Federal holding agency, the donee will submit the screening sheet to the Agent. After review and final approval by the Agent, the item(s) will be frozen on behalf of the donee in GSA's automated inventory system. In situations where property being physically screened does not appear in the GSA automated inventory, the Agent shall first consult with GSA prior to submitting a manual SF 123 transfer document to confirm availability status of the property desired. If GSA approves use and submission of a manual SF 123, the donee will be notified when the actual transfer has been approved. Once transfer action (whether initiated by automated or manual means) has been approved by GSA, the donee shall make arrangements to remove the property from the holding agency. A donee may also pick up property directly from the holding agency or may make arrangements to have the property shipped directly to its location. The property will be subject to the same terms and conditions as property that is acquired through the Agent's warehouse.

260:80-1-22. [RESERVED]

260:80-1-23. Eligibility

(a) Pursuant to provisions of 49 USC 549, 41 CFR.102-37.380 through 102-37.430 and provisions of this Section, the Agent shall accept and review applications from donee applicants and determine whether an applicant conforms to one of the categories of eligible donees and meets eligibility requirements to receive surplus property.

(b) The Agent shall utilize a standard application form for completion and submission by public and nonprofit donee applicants, for use by the Agent to determine whether the applicant meets eligibility requirements. The Agent may request GSA assistance to determine whether an applicant meets eligibility requirements.

(c) The application form shall request the following information:

(1) Legal name, address and, if necessary, directions to the physical location of the donee applicant;

(2) Function of the donee applicant as a public agency or an eligible non-profit agency;

(3) Explanation of the donee applicant program or mission and types of property needed;

(4) Donee applicant financial information including funding sources;

(5) Donee applicant certification of compliance with applicable federal nondiscrimination statutes, including Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5. Section 122, Title VI of the Civil Rights Act of 1964 (42 U. S. C. 2000d-2000d-4a), Section 504 of the Rehabilitation Act of 1973 (29 U. S. C. 794), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U. S. C. 6101-6107) and Title IX of the Education Amendment of 1972 (20 U.S.C. 1681-1688 (as amended) ;

(6) If applicable, donee applicant certification of recognition as a state public agency by adopted resolution of a governing body;

(7) Evidence of donee applicant approval, accreditation, or licensing or other standards of operation documentation as defined by 41 CFR.102-37.395;

(8) Certification that the donee applicant is not currently debarred, suspended, declared ineligible or otherwise excluded from any federal program including procurement programs; and

(9) Require that a nonprofit and tax-exempt applicant donee provide evidence that it is tax-exempt pursuant to Section 501 of the Internal Revenue Code;

(d) The Agent may request a donee applicant to submit additional documentation to substantiate or clarify information the applicant submits on the eligibility form.

(e) The Agent shall maintain donee eligibility records in donee specific files.

(f) In determining the eligibility of a donee applicant, the Agent will follow the guidelines of 41 CFR.102-37.380 though 102-37.430.

(g) The donee shall provide the Agent written authorization from the donee's governing body or Chief Executive Officer (CEO) designating at least one person to act for the donee in acquiring property. The Agent shall seek updated information from donees as required to ensure the Agent maintains current donee information. The Agent shall update eligibility records

as needed, but no less than every three years from the eligibility approval date.

(1) If a donee changes its CEO prior to expiration of the eligibility time period established by the Agent, the donee shall submit a new application to the Agent. The application must designate at least one person to act for the donee in acquiring property.

(2) The Agent shall establish an eligibility expiration date for nonprofit donees to correspond with the expiration of annual appropriations, licensing or certification.

(h) If a donee fails to submit documents to substantiate continued eligibility, the Agent shall terminate distribution of property to the donee and seek recovery of usable property subject to use restrictions and requirements at the expense of the donee. If the Agent is unable to retrieve the property, the Agent shall utilize provisions of (g) of Section 260:80-1-25 to notify GSA of donee noncompliance.

(i) If the Agent renders a negative eligibility determination, the donee applicant may appeal the decision.

(1) The applicant shall provide written notice to the Agent requesting appeal of the determination. The Agent, will, in turn, forward all related documentation to GSA. GSA's decision will be final.

(2) The Agent shall provide written notice to the applicant citing reasons for denial.

(3) The applicant may request GSA review of the Agent determination.

(4) If the applicant requests GSA review, the Agent shall abide by the final GSA determination.

(j) The Agent may grant conditional eligibility and provide property to a donee applicant pursuant to provisions of 41 CFR 102-37.420 through 102-37.430.

260:80-1-24. [RESERVED]

260:80-1-25. Compliance and utilization

(a) The Agent shall employ methods to ensure that donees adhere to property use restrictions and requirements pursuant to provisions of 41 CFR 102-37 and Section 580: 45-1-37.

(b) For items with an OAC of less than $5,000, at any time during property use restriction or requirement time periods, the Agent may conduct a utilization review to determine whether a donee complies with property use restrictions and requirements for an item.

(1) The Agent may issue notice or contact a donee and request the donee to provide information or conduct an on-site inspection to determine whether the donee is complying with property use restrictions and requirements.

(2) The Agent shall record the findings and advise the donee of the findings.

(3) If the Agent determines that a donee does not meet property use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.

(c) For items with an OAC of or exceeding $5,000 and passenger vehicles, the Agent shall provide an in-use form to a donee at the time the donee acquires the item.

(1) The in-use form shall state property use restrictions and requirements.

(2) A donee shall provide information for the data elements contained in the form and submit it to the Agent. The donee shall advise the Agent the date the donee placed the item in use, the location of the item and how it will be used.

(3) Following receipt of an in-use form, the Agent shall log information provided by the donee.

(4) At least once during the time period of property use restrictions and requirements, the Agent shall conduct a utilization review by contact with a donee or an on-site inspection and request the donee to provide information to determine whether the donee complies with the restrictions or special handling limitations imposed by GSA.

(5) The Agent shall record and advise the donee of the findings.

(6) If the Agent determines that a donee does not meet property use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.

(d) For aircraft and vessels, the Agent shall provide an in-use form to a donee at the time of property transfer or when the Agent issues an invoice to the donee.

(1) The in-use form shall state aircraft and vessel use restrictions and requirements.

(2) A donee shall provide information for the data elements contained in the form and submit it to the Agent. The donee shall advise the Agent the date the donee placed the aircraft or vessel in use, the location of the property and how it will be used.

(3) Following receipt of an in-use form, the Agent shall log information the donee provides.

(4) On an annual basis, the Agent shall solicit information from the donee or perform an on-site inspection to confirm that the donee uses the aircraft or vessel subject to use restrictions and requirements. Whether by request or on-site inspection, the Agent shall acquire photographs of the aircraft or vessel.

(5) At least once during the time period of aircraft or vessel use restrictions and requirements, the Agent shall conduct a utilization review by on-site inspection, photograph the aircraft or vessel and request the donee to provide information to determine whether the donee is complying with the restrictions and requirements.

(6) The Agent shall record the findings and retain the findings and photographs in a donee specific compliance file.

(7) If the Agent determines that a donee does not meet aircraft or vessel use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.

(e) If the Agent does not receive an in-use form for property received by the donee within 30 days after the property invoice date, the Agent shall issue an in-use reminder form to the donee.

(1) The in-use reminder form shall advise the donee of actions the Agent may take if the donee fails to submit the form to the agent.

(2) The in-use reminder form shall state property use restrictions and requirements.

(3) The in-use reminder form shall contain data elements the donee shall submit to the Agent. The donee shall advise the Agent the date the donee placed the item in use, the location of the item and how it will be used.

(4) If a donee does not submit an in-use reminder form to the Agent within 30 days of the form issue date, the Agent shall advise the donee of actions the Agent may take pursuant to (g) of this Section.

(f) If the Agent determines that a donee fails to pay service charges to the Agent within 90 days of property acquisition, the Agent shall advise the donee that failure of a donee to pay service charges within 180 days will cause the Agent to perform actions pursuant to (g) of this Section.

(g) If the Agent determines that a donee fails to adhere to property use restrictions and requirements, including nonpayment of service charges after 180 days of property acquisition, the Agent shall document actions the Agent took to attempt to bring the donee into compliance and report donee noncompliance to GSA. The Agent shall coordinate subsequent actions with GSA in accordance with provisions of 41 CFR 102-37.480 through 102-37.495.

(1) The Agent will promptly remit funds derived by the Agent from enforcement of compliance efforts to GSA for deposit into the Treasury of the United States. The Agent shall provide supporting documentation to indicate the source of the funds and essential background information.

(2) The Agent shall retain funds derived from compliance actions involving violations of state-imposed use restrictions.

(h) If the Agent finds evidence that an agency employee engaged in unethical, fraudulent or illegal acts, the Agent shall advise GSA and, if applicable, local law enforcement authorities with appropriate jurisdiction and coordinate subsequent actions with them as required.

260:80-1-26. [RESERVED]

260:80-1-27. Consultation with advisory groups-public and private

(a) Pursuant to provisions of 41 CFR 102-37. Appendix B, Section (k) and 80 O. S., Section 34.3, the Agent shall consult with donees and seek participation in public or private groups that include donees to determine relative needs and resources of donees, proposed utilization of property by donees and how distribution of property can be accomplished to fill existing needs of donees.

(b) The Agent shall offer speakers and presentations to participate in meetings of public or private groups that include donees or potential donees.

(1) The Agent shall encourage participation in agency programs by donees and potential donees.

(2) The Agent shall encourage donees to provide requests for types of property specific to an individual donee or group of donees for transmission to GSA.

(3) The Agent shall provide information on factors the Agent considers to determine donee eligibility.

(4) The Agent shall provide information on property use restriction and requirements.

(c) The Agent shall encourage potential donees to tour the agency or meet with agency staff to provide specific or in-depth agency information.

(d) The Agent shall maintain contact with donees through a periodic newsletter or other communication, whether distributed as printed or electronic media.

(e) The Agent shall consult with an advisory body which may consist of legislators and persons representing public and nonprofit donee types to advise and support the Agent's management and operation. If the Agent self-appoints the advisory body, the Agent shall determine the number and makeup of its members.

260:80-1-28. [RESERVED]

260:80-1-29. Audits

(a) Periodic internal audits of the Agency's operations and financial affairs shall be conducted in accordance with the schedule established by the Oklahoma State Auditor and Inspector.

(b) The Agent shall comply with the external audit requirements and donee audit submission requirements of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" for each year in which the Agent receives $500,000 or more in Federal surplus property or other Federal assistance.

(c) The Agent shall provide GSA with two copies of any audit report made pursuant to OMB Circular A-133 or two copies of those sections that pertain to the Federal donation program.

(d) The Agent shall provide GSA an outline of all external audit related corrective actions and scheduled completion dates for the actions required.

(e) The Agent shall provide for cooperation in GSA or Comptroller General conducted audits. GSA shall notify the Chief Executive Officer of the State of the reasons for a GSA audit.

(f) The Agent shall advise donees that if a donee receives property with a value of or exceeding $500,000 during a fiscal year, that the donee shall provide the Agent with a copy of an audit of the donee conducted in accordance with OMB Circular No. A-133. The Agent shall advise the donee that it is the donee's responsibility to identify and determine the amount of property received by the donee and to arrange for audits.

260:80-1-30. [RESERVED]

260:80-1-31. Cooperative agreements

41 CFR 102-37.325 through 102-37.340 and 40 USC 549 provide authorization for GSA, or federal agencies designated

by GSA to enter into cooperative agreements with the Agent to provide support to the Agent's operations and facilitate transfer or disposal of property. The Agent may enter into, renew or revise such agreements.

260:80-1-32. [RESERVED]

260:80-1-33. Liquidation

(a) Whereas the Legislature authorizes state participation in federal assistance programs to provide federal surplus property to donees in the state, it assigns the Director of the Office of Management and Enterprise Services to appoint the Surplus Property Agent and authorizes the Agent to effect property transfer to donees. Should the Legislature determine that the state should terminate participation, the Director and the Agent shall provide public notice of final distribution of property, liquidation of agency assets, distribution of liquidation proceeds, designation of a successor agency to perform continuing agency obligations and retention of agency records pursuant to a liquidation plan as required by 41 CFR 102-37.365 and 102-37.370.

(b) If the Legislature acts to terminate the agency, the Director and Agent shall issue notice to GSA within 10 days of the date of final legislative and gubernatorial action advising effective dates of the action, reasons and, if applicable, terms the action specifies for agency termination.

(c) Within 20 days of the date of final legislative and gubernatorial action, the Director and Agent shall submit a liquidation plan to GSA of proposed steps and a timetable to effect liquidation.

(1) The liquidation plan shall include methods of property distribution such as transfer to federal agencies, transfer to other State Agencies for Surplus Property and transfer to donees.

(2) The liquidation plan shall include methods and dates of public notice.

(3) The liquidation plan shall include legislative requirements or Director proposals for distribution of Agency financial and physical assets.

(4) The liquidation plan must include methods and dates for disposal of federal property and Agency physical assets through public auction.

(5) The Director and Agent shall specify a successor agency to ensure continuing Agency obligations on property donated prior to the closing of the Agency are fulfilled as a part of its liquidation plan.

(6) The liquidation plan shall include methods of record retention and location of records storage for two years following liquidation.

(7) The liquidation plan shall include methods to finalize disbursement of Agency funds for liquidation activities.

(8) The liquidation plan shall include a final Agency termination date.

(d) Within 30 days of submission of the liquidation plan to GSA, the Director shall commence the liquidation plan.

(e) The Director may include GSA recommendations in the liquidation plan.

(f) The Director shall include GSA requirements in the liquidation plan.

(g) The Director shall issue notice to GSA upon completion of Agency liquidation that includes summaries of property and asset distribution and disposal, and financial assets distribution and disbursement.

260:80-1-34. [RESERVED]

260:80-1-35. Forms

(a) The Agent shall utilize forms to enable property receipt and distribution, donee eligibility and other components of Agency operations. The Agent shall comply with OMES requirements for form review and approval.

(b) For forms that require GSA approval, following OMES approval, the Agent shall submit forms to GSA for review and possible approval.

(l) If GSA approves the form, the Agent shall record the beginning date of form use.

(2) If GSA disapproves the form, the Agent shall incorporate form amendments required by GSA. Following incorporation of GSA amendments and, if applicable, further Department or GSA review and approval, the Agent shall record the beginning date the form was placed into service.

260:80-1-36. [RESERVED]

260:80-1-37. Records

(a) The Agent shall retain Agency property acquisition records to comply with state and Federal records retention requirements. The Agent shall retain Agency records for a minimum of three years following completion of the period of use restrictions (POR) and requirements.

(b) The Agent shall retain records pertaining to items with use restrictions and requirements as shown in the table, below:

(1) Combat configured aircraft - Perpetual Period of Restriction (POR) - Perpetual Records Retention after POR;

(2) Firearms - Perpetual Period of Restriction (POR) - Perpetual Records Retention after POR;

(3) Non-combat aircraft - 5 Year Period of Restriction (POR) - 3 Year Records Retention after POR;

(4) Vessels - 5 Year Period of Restriction (POR) - 3 Year Records Retention after POR;

(5) Motor vehicles and items with OAC of or exceeding $5,000 - 18 months Period of Restriction (POR) - 3 Year Records Retention after POR;

(6) Items with OAC less than $5,000 - 1 Year Period of Restriction (POR) - 3 Year Records Retention after POR.

(c) The Agent shall retain records pertaining to noncompliance cases for a minimum of three years following the conclusion of the noncompliance case.

[OAR Docket #14-785; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 85. RECYCLING

[OAR Docket #14-786]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:85-1-1. Purpose [NEW]
260:85-1-2. Definitions [NEW]
260:85-1-3. Recyclable materials collection [NEW]
260:85-1-4. Recycled products procurement [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:85-1-1. Purpose

The rules in this Chapter are promulgated by the Director of the Office of Management and Enterprise Services to implement the Oklahoma State Recycling and Recycled Materials Procurement Act (74 O.S. § 85.50 et seq.).

260:85-1-2. Definitions

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

"Agency" means any department, board, commission, institution, authority, or agency of the State of Oklahoma.

"Asphalt materials containing ground tire rubber" means asphalt material mixed with recovered rubber from scrap automobile, truck, or bus tires. The term includes asphalt rubber and rubber modified asphalt.

"Director" means the Director of the Office of Management and Enterprise Services.

"Economically feasible" means that the cost of an action is reasonable in consideration of the beneficial result, as determined by the Director of the Office of Management and Enterprise Services.

"Life cycle cost" means a cost which is distinguished from a product's purchase price in that the additional considerations of waste disposal cost, durability, and reusability are incorporated into the concept of product cost.

"Office" or "OMES" means the Office of Management and Enterprise Services.

"Post-consumer material" means those products or recyclable materials generated or discarded by a business or a consumer that have served their intended end uses, and that have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling. Wastepaper generated in paper mill operations such as cutting, trimming, coating, or converting, along with mill broke and other in-plant residual wastes, although present in recycled paper products, shall not be included in the determination of the percentage of post-consumer material, but may be included in the determination of the percentage of total recycled materials content.

"Practicable" means capable of being used consistent with:

(A) performance in accordance with applicable specifications;
(B) availability at a reasonable price;
(C) availability within a reasonable period of time;
(D) maintenance of a satisfactory level of competition.

"Price preference" means the percentage over and above the price of non-recycled products and materials which may be allowed for the purchase of recycled products and materials.

"Products manufactured from virgin materials" means products which are composed entirely of materials which have not been previously used in manufacture.

"Products manufactured with recycled materials" means products that are manufactured with a minimum content of ten percent (10%) post-consumer materials.

"Recyclable materials" means materials or products which are capable of being recycled, including, but not limited to paper, glass, plastics, metals, automobile oil, and batteries.

"Recycled paper products" means all paper products manufactured from recoverable waste paper, with not less than ten percent (10%) of their total weight consisting of waste paper.

"Recycling" means a three step process:

(A) the identification and collection of usable materials from the solid waste stream;

(B) the processing of these materials into new products; and,

(C) the purchase and use of products containing reused materials.

"Recycling plan" means a scheme, method, schedule, and outline for action which is designed to fulfill the intent, requirements, and goals of the Oklahoma State Recycling and Recycled Materials Procurement Act.

"Recycling program" means a system of instructions, procedures, services, and tasks by which source reduction is accomplished, recyclable materials are salvaged, separated, and disposed of, and products manufactured with recycled materials are procured, in accordance with the intent of the Oklahoma State Recycling and Recycled Materials Procurement Act. A recycling program may include services provided by private, nonprofit, and/or cooperative contractors.

"Re-refined oils" means used oils from which the physical and chemical contaminants acquired through prior use have been removed through a refining process.

"Retreaded tire" means any tire that utilizes an existing casing for the purpose of vulcanizing new tread to such casing and which meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

"State public entity" means the State Legislature, any bureau, agency, board, commission, or authority of the state; the Office of the Governor, the judiciary, or any state university, school district or county of the state which is supported in whole or in part by state funds.

"The Act" means the Oklahoma State Recycling and Recycled Materials Procurement Act.

260:85-1-3. Recyclable materials collection

(a) Adoption of recycling plan. Each state public entity shall adopt a comprehensive recycling plan to meet or exceed the legislative intent, requirements, and goals of the Act. A sample recycling plan shall be made available by the Office of Management and Enterprise Services.

(b) Recycling plan operation. Each state public entity shall develop and operate its own recycling program, or join and participate in a joint recycling program, for the purpose of implementing its recycling plan. The results of implementation of the plan during the previous fiscal year shall be described in a report to the Director by December 31 of each year. The report shall be in a format determined by the Office of Management and Enterprise Services.

(c) Assistance in plan development. The Office of Management and Enterprise Services shall provide assistance and coordination to state public entities in the development and implementation of recycling plans, and in the operation of recycling programs to achieve recycling objectives.

(d) Determination of quantity and market value of recycled materials. The Office may determine whether the quantity and market value of recyclable materials, separately or in combination, in any solid waste generated by any state public entity is sufficient to make recycling economically feasible.

(e) Joint recycling operations. The Office may operate one or more recycling programs, where it is feasible to do so, and may require state public entities to participate. The Office may determine whether any state public entity must participate in a joint recycling program with other state public entities, or may operate a partially or completely separate recycling program of its own.

(f) Designation of agency recycling coordinator. Each state agency shall designate at least one employee as a recycling coordinator for that agency.

(1) The Office may require the designation of additional coordinators if necessary for the efficient operation of the recycling effort.

(2) State agencies with more than one office, shop, or working venue shall designate a recycling coordinator for each location or venue at which more than fifty employees usually work.

(3) The Office may, at its discretion, require an agency to appoint a recycling coordinator for locations which produce large amounts of recyclable materials.

(4) The identity and contact information for each recycling coordinator shall be submitted to the Director and shall be updated or revised as changes occur.

(5) Recycling coordinators shall serve as contact persons with the Office for implementation of the Act and the rules in 260:85-1-3.

(g) Representatives of entities other than state agencies. Each state public entity other than a state agency shall designate at least one employee to represent that entity in coordination with the Department for implementation of the Act and the rules in 260:85-1-3. The identity and contact information for each representative shall be submitted to the Director and shall be updated or revised as changes occur.

(h) Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 260:85-1-3 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.

260:85-1-4. Recycled products procurement

(a) Purchase of recycled products. Each state public entity shall procure products which are manufactured with recycled materials, and products which are recyclable and/or durable, to meet or exceed the legislative intent, requirements, and goals of the Act.

(b) Reporting of purchases of recycled products. Each state public entity shall submit a report to the Director by December 31 of each year. This report shall describe the results of its procurement of recycled paper products and other products manufactured with recycled materials over the past fiscal year. The report shall be in a format determined by the Office.

(c) Assistance in procurement objectives. The Office shall provide assistance to state public entities in the achievement of procurement objectives in their recycling programs.

(d) Procurement specifications for recycled materials. Each state public entity shall use procurement specifications to require, to the greatest extent practicable, that a product and its packaging or container contain recycled materials and that the product and its packaging or container be recyclable.

(1) Product and packaging specifications shall require the use of post-consumer materials to the greatest extent practicable without jeopardizing the intended end use of the product.

(2) In writing specifications and selecting products for procurement, life cycle costs shall be part of the evaluation criteria when the costs of waste disposal or the durability and reusability of a product may be significant.

(3) A state public entity may determine that, for technical reasons, and for a particular end use, a product containing recycled materials will not meet reasonable performance standards, and may therefore declare the purchase of a product manufactured with recycled materials to be unpracticable. Such a determination shall be documented and based solely upon technical performance information related to a specific item, and not to a grade or type of product. This documentation may be requested for review by the Office.

(4) Each state public entity shall reduce the generation of solid waste at its source, whenever practicable, by minimizing the purchase of single-use, disposable products and requiring the purchase of durable products which can be reused.

(5) Each state public entity shall, whenever practicable, purchase only office paper, photocopier paper, printer paper, and printed paper products which are not coated with plastic, clay, or other material used to create a glossy finish.

(6) Each state public entity shall take reasonable steps to minimize the procurement of colored paper products. If color is necessary for a particular use, full consideration shall be given to the use of white paper printed with colored, soy- based ink.

(e) Declaration of vendors of percentage of recycled materials in products. State public entities shall require vendors to declare the minimum, if not exact, percentage of recycled materials content in the products offered, including both the post-consumer and total recycled materials content, regardless of whether the product meets the percentage of recycled materials specified for that product.

(f) Certification by vendor of recycled content claim. The vendor of any product for which a recycled content claim is made must both possess and rely upon a reasonable basis for the claim and must be able, upon request by the Office, to certify and demonstrate this claim. Any fraud or deception in the representation of recycled materials content may result in cancellation of the contract and the removal or suspension of the vendor from the bidders list pursuant to OAC 260:115-3-21.

(g) Preferences for recycled materials. If several products manufactured with recycled materials are being considered for purchase, and if all cost and quality considerations are comparable, preference shall be given to the product with the highest content of post- consumer material. If this measure fails to identify the more preferable product, the award shall go to the product with the highest content of total recycled materials.

(h) Preferences by public entities. Each state public entity responsible for the maintenance of public lands in this state shall, to the greatest extent practicable and consistent with sound environmental practices, give preference to the use of compost materials in land maintenance activities which are to be paid for by public funds.

(i) Provisions for Oklahoma Department of Transportation and Oklahoma Turnpike Authority. The Department of Transportation and the Oklahoma Turnpike Authority shall review and modify all bid and paving material specifications:

(1) To provide that the specifications encourage the maximum purchase, when practicable, of recyclable asphalt pavement and paving materials utilizing recycled materials, including but not limited to:

(A) crushed concrete sub base;

(B) fly ash;

(C) glass and glassy aggregates; and

(D) asphalt material containing ground tire rubber.

(2) Life cycle cost analysis shall be used in determining practicability.

(j) Provisions for public entities using motor vehicles. Each state public entity which owns or maintains motor vehicles is encouraged, to the greatest extent practicable to:

(1) Equip such vehicles with retreaded tires.

(A) Efforts should first be made to procure retreading services for the entity's own waste tire casings.

(B) If the services in 260:85-1-4(j)(1)(A) are not practicable, retreaded tires should be procured for use as replacements.

(C) Emergency vehicles defined in 47 O.S. 1991 § 1-103 (Highway Safety Code) are exempt from this recommendation.

(2) Procure re-refined oils for all practicable uses, including, but not limited to, such uses as:

(A) engine lubricating oils;

(B) gear oils; and,

(C) hydraulic fluids.

(k) Price preference on bids. When accepting bids for purchases of supplies, equipment and materials, the Central Purchasing Division of the Office of Management and Enterprise Services and each state public entity shall extend price preferences to products manufactured with recycled materials whenever the Director determines that such products are unable to be price competitive with products of comparable grade and quality manufactured from virgin materials.

(1) Those products manufactured with at least the minimum content level of recycled materials as established by the Federal Environmental Protection Agency (EPA) shall receive a price preference not to exceed a five percent differential.

(2) A copy of the EPA specified content requirements and a list of products meeting the requirements will be maintained as a public record by the Office.

(3) A product which contains recycled materials but falls short of the EPA minimum requirements may receive

a price preference if no other product is bid or offered which meets the EPA requirements.

(4) Price preferences allowed pursuant to this section shall not be combined with other price preferences or differentials.

(5) In response to product market conditions, the Director may temporarily increase, reduce, or eliminate any recycled product price preference.

(l) Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 260:85-1-4 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.

[OAR Docket #14-786; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 90. ALTERNATIVE FUELS PROGRAM

[OAR Docket #14-787]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 90. Alternative Fuels Program [NEW]
AUTHORITY:
74 O.S. §130.18; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
National Fire Protection Association Pamphlets No. 52 and No. 58
Incorporating rules:
260:90-7-3
Availability:
By appointment only; 8:00 a.m. to 5:00 p.m., Monday through Friday at the Fleet Management Division of the Office of Management and Enterprise Services, 317 NE 31stt Street, Suite A, Oklahoma City, OK 73105; (405) 521-2206.

ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:90-1-21. Purpose

The purpose of this chapter is to fulfill the mandate of Title 74 Section 130.18 by establishing rules in accordance with the Alternative Fuels Technician Certification Act.

260:90-1-22. [RESERVED]

260:90-1-23. Definitions

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

"Administrator" means the Program Administrator and Recording Secretary of the Committee.

"Agency" means the Division of Capital Assets Management of the Office of Management and Enterprise Services.

"Alternative fuels" means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.

"Alternative fuels compression technician" means any person who installs, services, modifies, repairs or renovates fill stations.

"Alternative fuels equipment technician" means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels and includes OEM vehicles either dedicated to operate on an alternative fuel or manufactured bi-fueled, i.e., capable of operating on gasoline or an alternative fuel.

"Alternative Fuels Technician Certification Act" means O.S. Title 74, Section 130.11 through 130.24.

"Board" means the Alternative Fuels Technician Hearing Board.

"Capable of operating on an alternative fuel" means any motor vehicle converted or designed to operate on an alternative fuel.

"Charge station" means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Power Research Institute, and the Society of Automotive Engineers.

"CNG" means compressed natural gas.

"Committee" means the Committee of Alternative Fuels Technician Examiners.

"Electric vehicle technician" means any person who installs, modifies, repairs, performs maintenance on, motors, controllers, on-board power sources, or the drive systems of vehicles powered by electricity. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles.

"Engine" means the propulsion system of a motor vehicle. Nothing in this definition is meant to cover any stationary engine.

"Fill station" means the property which is directly related to the delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas otherwise known as propane, into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where the fuel is delivered. Compressed Natural Gas and Liquefied Petroleum Gas are subject to the NFPA code 52 and 58 respectively.

"Glider" means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.

"LNG" means liquefied natural gas.

"LPG" means liquefied petroleum gas otherwise known as propane.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.

"NFPA" means the National Fire Protection Association.

"OEM" means original equipment manufacturers.

"Person" means individuals, corporations, partnerships, cooperatives, associations and governmental subdivisions.

"Work" means any procedure involved in the physical installation or servicing of all components used in the conversion of motor vehicles to operate on alternative fuels and the servicing of original equipment manufacturers vehicles that operate on alternative fuels, including:

(A) LPG and CNG components;
- (i) tubing;
- (ii) fittings;
- (iii) valves;
- (iv) gauges;
- (v) brackets;
- (vi) fuel lines;
- (vii) cylinders;
- (viii) tanks; and
- (ix) electronic or electrical devices.

(B) Electric vehicle components;
- (i) traction battery packs or modules;
- (ii) motor controllers;
- (iii) subsystem controllers;
- (iv) inverters;
- (v) drive motors;
- (vi) auxiliary components powered by high voltage; and
- (vii) any high voltage circuits.

"Written" or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

260:90-1-24. [RESERVED]

260:90-1-25. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners

(a) The Committee shall assist and advise the agency on all matters relating to the formulation of rules and standards in accordance with the Alternative Fuels Technician Certification Act.

(b) The Committee shall administer the examination to applicants for certification as alternative fuels technicians provided that such examination is in accordance with the provisions of the Alternative Fuels Technician Certification Act.

260:90-1-26. [RESERVED]

260:90-1-27. Duties and responsibilities of the Alternative Fuels Technician Hearing Board

(a) The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels technician or certified alternative fuels installation company, partnership or corporation.

(b) The Board is authorized to suspend or revoke any certificate; in addition, the board is authorized to impose civil penalties pursuant to the Administrative Procedures Act.

260:90-1-28. [RESERVED]

260:90-1-29. Alternative Fuels Technician Certification Revolving Fund

(a) Funds derived from the "Alternative Fuels Technician Certification Act" shall be deposited with the State Treasurer and credited to the "Alternative Fuels Technician Certification Revolving Fund".

(b) The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Agency.

(c) Expenditures from this fund shall be made pursuant to the purposes of the Alternative Fuels Technician Certification Act and shall include, but not be limited to:

(1) Payment of administrative costs and other operational costs supporting program existence; and,

(2) Payment of the costs of programs designed to promote public awareness of the alternative fuels industry; and,

(3) Expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of such documents to those persons engaged in the alternative fuels industry or the public.

SUBCHAPTER 5. TESTING, CERTIFICATION AND RECERTIFICATION

260:90-5-1. Applications for examination, certification or renewal of certification

(a) All applications for examination, certification or renewal of certification shall be made in writing to the agency on forms provided, if necessary, by the agency.

(b) All applications shall be accompanied by the appropriate fee as set forth in section 260:90-5-6.

260:90-5-2. Contents of application

The application shall be verified, and shall contain the following information, together with any additional information that the agency may require:

(1) Name of the applicant;

(2) Mailing Address;

(3) Address of all locations that the applicant proposes to engage in the installation or modifications of vehicles using an alternative fuel; and

(4) The type of service, set forth specifically, which the applicant intends to perform and the type of permit that the applicant seeks to secure, such as LPG, CNG, LNG, EV or other alternative fuel.

260:90-5-3. [RESERVED]

260:90-5-4. Certificate required by agency

The mere filing of an application for a certificate does not of itself authorize the engaging in any of the installations or modifications of any equipment listed in the definition of "Work" in 260:90-1-23.

260:90-5-5. [RESERVED]

260:90-5-6. Fees

(a) The fee schedule for the Alternative Fuels Technician Certification Act is as follows:

(1) Alternative fuels technician examination - $50

(2) Alternative fuels technician certificate - $50

(3) Company, partnership or corporation - $100

(4) Training program certification (one-time) - $500

(5) Alternative fuels installation certification per location - $1,000

(6) Certificate renewal (if made within 30 days after expiration):

(A) Alternative fuels technician certificate - $50

(B) Company, partnership or corporation - $100

(C) Alternative fuels installation certification - $1,000 per location

(7) Penalty for late certification renewal - $10

(8) Prorated fee for new technician certification after March first of each year - $25; after June 1 of each year - $12.50

(b) Form of payment from non-governmental entities and general public.

(1) Payment may be only in the form of:

(A) Certified funds,

(B) Business check,

(C) Personal check,

(D) Money order, or

(E) Cashier's check.

(2) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.

(3) Unguaranteed checks and 2-party checks shall not be accepted.

(4) Payment refunds. All payments received are non-refundable.

260:90-5-7. [RESERVED]

260:90-5-8. Processing and handling of applications and examinations

(a) Upon receipt of an application for a certificate, required documentation, and appropriate fees, the Administrator shall schedule the applicant for an examination.

(b) Examinations shall be administered in the following manner:

(1) Questions for an examination shall be selected from appropriate sources deemed applicable by the committee.

(2) The format of examination questions shall be varied and include multiple choice and true/false.

(3) Prior to being put into the reservoir, the questions shall be reviewed by the committee.

(4) For each examination, a total of 75 questions shall be drawn from the reservoir.

(5) Applicants testing during a scheduled examination session will not be given identical versions of the examination.

(6) The examination shall be administered in a manner that the identity of the applicant shall be unknown during the grading process.

(7) Examinations for certification as alternative fuels technician shall be uniform and practical in nature as determined by the committee for alternative fuels technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certification.

(8) An oral examination may be administered by prior arrangement.

(9) The committee shall conduct examinations twice a year and at such times as it deems necessary.

(10) A score of eighty percent (80%) correct shall be a passing grade for all examinations.
(11) Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of ninety (90) days.
(12) All applicants can petition the committee if they feel the committee's grade was incorrect. An applicant may petition the committee if the applicant disagrees with his or her examination grade issued by the committee. The applicant must notify the administrator of the petition prior to the next scheduled committee meeting in order for the petition to be placed on the meeting agenda.
(13) All decisions of the committee are final.
(14) Applicants that pass the examination and are notified by the committee of such must make arrangements for certification within one hundred and eighty (180) days of such notification.
(15) After the one hundred and eighty (180) days, and such applicant has not been certified (i.e., paid the fee and provided proof of insurance), the applicant must retest prior to their certification.
(16) The agency shall enforce the provisions of this section.

260:90-5-9. [RESERVED]

260:90-5-10. Certificate qualification and transfer or loan of certificate

(a) The Agency issues a certificate as:
(1) An alternative fuels equipment technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.
(2) An alternative fuels compression technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.
(b) The agency shall have the authority to determine the validity of a certificate issued by another governmental entity.
(c) The agency shall assess the required certification fee and ascertain that an applicant has also complied with the provisions of the Alternative Fuels Technician Certification Act.
(d) In the case of a company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels, a separate certificate shall be issued by the agency to that individual company, partnership or corporation. The certificate is for the purpose of recognizing that the company, partnership or corporation is an authorized alternative fuels conversion business and employs state-certified alternative fuels technicians.
(e) Any violation by a certified alternative fuels equipment or compression technician shall be deemed a violation by the certified company, partnership or corporation employing such certified technician.
(f) The agency shall issue an alternative fuels equipment installation certification to any public entity or private company, partnership or corporation that operates commercial, private or public fleets of vehicles and employs ten (10) or more auto service technicians per location. The certification shall be based on the ability of the applicant to provide their own alternative fuels technician training program, which shall be certified by the committee. This certification applies only to the conversion or service of vehicles owned or operated by such public entity or private company, partnership or corporation.
(g) All alternative fuels technician equipment or compression certificates shall be non-transferable.
(h) It shall be unlawful for any person certified pursuant to the provisions of the Alternative Fuels Technician Certification Act to loan or allow the use of such certificate by any other person.

260:90-5-11. [RESERVED]

260:90-5-12. Change of address of holder of certificate or registration

Any holder of a certificate or registration issued in accordance with the provisions of the Alternative Fuels Technician Certification Act shall notify the agency of any change in such holders address no later than thirty (30) days of such change.

260:90-5-13. Insurance requirements

A certificate shall not be issued to any applicant unless and until the agency has received proof of insurance as required by this section.
(1) Alternative fuels technicians and conversion companies, partnerships or corporations engaged in the installation of alternative fuel equipment are required to have on file with the agency proof of certificate holders liability insurance coverage, with limits of not less than fifty thousand dollars ($50,000.00) general liability, that is in full force and effect covering the plant, garage, equipment and motor vehicles used in such business.
(2) Insurance under this section shall be kept and remain in force during the lifetime of the certification issued hereunder. An insurance certificate or certificates showing that the required insurance coverage is in force must be filed with the agency.
(3) Such insurance coverage will not be canceled or terminated unless written notice of such cancellation or termination is given to the agency thirty (30) days prior to cancellation date.
(4) Nothing in this section shall be deemed or construed to require product liability insurance coverage.

(5) If in the event insurance is canceled and the agency is not notified within the thirty (30) day period or not provided with proof of insurance renewal, the agency will notify the board of such action and request that the certificate be revoked or suspended.

260:90-5-14. Guidelines for certificate renewal

(a) All certificates issued under the agency shall expire on September 1st of each year.
(b) A late fee of Ten Dollars ($10.00) will be charged after September 1st.
(c) After September 30th, re-testing will be required to retain certification status.
(d) At the time of recertification, proof of insurance coverage will be required.
(e) Applicants failing to provide proof of insurance at said time of renewal will be subject to the late penalty, outlined in 260:90-5-6, if insurance verification is made after the September 1st date.
(f) All Alternative Fuel Technicians are required to re-test every three (3) years to receive a renewal of certification.
(g) All applications for examination for the renewal of certification shall be made in writing to the agency on forms provided by the agency.
(h) All applications shall be accompanied by the appropriate fee as set forth in section 260:90-5-6.

SUBCHAPTER 7. STANDARDS FOR ALTERNATIVE FUELS TECHNICIANS - CONVERSION AND COMPRESSION

260:90-7-1. Work of alternative fuels technician by non-certified person

(a) From and after July 1, 1991, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an alternative fuels technician until such person is certified as an alternative fuels technician by the agency.
(b) Nothing in this Chapter shall prevent a non-certified person from converting the engine of a farm tractor, as defined in Sections 1-118 of Title 47 of the Oklahoma Statutes, to an engine fueled by alternative fuels, as long as such farm tractor is not operated on the roads and highways of this state.
(c) Activities directly related to normal, vehicle maintenance and service are exempt from the definition of work. It is not the intent of this section to prevent any individual, corporation, company from servicing, repairing or maintaining general systems not directly related to the alternative fuel delivery system. Such non-alternative motor fuels related activities include:
(1) For LPG and CNG vehicles;
(A) Tune-ups;
(B) Filter replacement;
(C) Oil changes;
(D) Electrical/electronic component replacement; and,
(E) Belts and hoses.
(2) For Electric vehicles;
(A) Replace auxiliary battery;
(B) Replace hoses or coolant, not affecting high voltage circuits or components;
(C) Replace brake and suspension components not linked to any high voltage circuits or components
(d) Non-certified individuals participating in a agency authorized training program, under the guidance of a state certified instructor, are exempt from the certification requirement during the training period.

260:90-7-2. [RESERVED]

260:90-7-3. Standards for equipment installation and inspection

(a) The standards for the equipment installation and inspection of liquefied petroleum gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 58.
(b) The standards for the equipment and compression installation and inspection of compressed natural gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 52.

260:90-7-4. Decals and conversion reporting procedure

(a) After an alternative fuel conversion or modification of equipment is completed for any motor vehicle, the technician shall affix a blue CNG diamond, black propane diamond or green EV diamond, whichever is applicable, according to NFPA pamphlet No. 52.
(b) No certified technician shall install, service, repair or modify any motor vehicle, capable of operating on an alternative fuel that does not have the required decals.
(c) Converted alternative fueled vehicles and OEM alternative fueled vehicles shall have placed on the vehicle, decals & labels required by NFPA and the following:
(1) The date of installation;
(2) The name of the installing technician; and,
(3) State of Oklahoma Certification number of the alternative fuels equipment technician.
(4) The expiration date of time sensitive parts and components used in the conversion.
(5) Converted vehicle information: year, make, model, and vehicle identification number (VIN).
(6) New gross vehicle weight (GVW)
(d) The following reporting procedure must be performed after each vehicle conversion:
(1) On forms, provided by the Administrator, each vehicle converted shall be reported to the Administrator by the alternative fuels technician. Information deemed necessary by the agency shall be included on the form. These forms must be sent to the Administrator no later than ten (10) days after the completion of the conversion. Photocopying of these forms is permissible.

(2) The penalty for failure to comply shall be determined by the Board.

SUBCHAPTER 9. VIOLATIONS

260:90-9-1. Alternative Fuels Technician Hearing Board; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate

(a) A person or persons designated by the Agency Director or designee and the Committee shall act as the Alternative Fuels Technician Hearing Board and shall comply with the provisions of the Administrative Procedures Act.

(b) The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels equipment or compression technician.

(c) The Board shall suspend or revoke any certificate or registration obtained by false or fraudulent representation.

(d) The Board shall also suspend or revoke any certificate or registration for any of the following reasons:

(1) Making a material misstatement in the application for a certificate or registration, or the renewal of a certificate or registration;

(2) Loaning or illegally using a certificate;

(3) Demonstrating incompetence to act as an alternative fuels equipment or compression technician;

(4) Violating any provisions of the Alternative Fuels Technician Certification Act, or any rule or order prescribed by the agency; or

(5) Willfully failing to perform normal business obligations without justifiable cause.

(e) The Board shall convene at the request of the committee and/or the agency director and shall have as its counsel the general counsel of the agency.

(f) The Board shall authorize the general counsel to investigate the matter or matters being considered by the Board.

(g) The General Counsel of the Agency may elect to delegate the investigation to a person or persons of his choice.

(h) Investigations are to be secret until presented to the Board for recommendations.

(i) Upon the review of the facts of the investigation, the Board may determine whether or not to hear a case.

(j) The Board and its activities shall comply with the Administrative Procedures Act.

(k) Any person whose Alternative Fuels Equipment or Compression Technician Certificate has been revoked by the Board may apply for a new certificate one (1) year from the date of such revocation.

260:90-9-2. [RESERVED]

260:90-9-3. Violations; criminal penalties

(a) Any person convicted of violating any provision of the Alternative Fuels Technician Certification Act shall be guilty of a misdemeanor.

(b) The continued violation of any provision of the Alternative Fuels Technician Certification Act during each day shall be deemed to be a separate offense.

(c) Upon conviction thereof the person shall be punished by imprisonment in the county jail not to exceed one (1) year, or by a fine of not more than one thousand dollars ($1,000.00) or by both such fine and imprisonment for each offense.

(d) If the Board makes a determination of a violation, it may request the appropriate district attorney to prosecute such violation and seek an injunction against such practice.

260:90-9-4. Violations to public safety

(a) Pursuant to the authority of 47 O.S. §12-101 A. 1., 47 O.S. §13-101, it shall be unlawful for any person to operate on any highway:

(1) A vehicle that has not been converted according to, or does not meet the standards stated in section 260:90-7-3;

(2) An OEM alternative fueled vehicle that fail the manufacturer's standards.

(b) An alternative fuels technician shall notify the Administrator within three (3) business days of any instance where the driver and, or owner of a vehicle that was found unsafe refused to correct safety issues with a vehicle.

260:90-9-5. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine

(a) Any person who has been determined by the Board to have violated any provision of the Alternative Fuels Technician Certificate Act or any rule or order issued pursuant to the provisions of the Alternative Fuels Technician Certification Act may be liable for a civil penalty of not more than one hundred dollars ($100.00) for each day that said violation occurs.

(b) The maximum civil penalty shall not exceed one thousand dollars ($10,000) for any related series of violations.

(c) The amount of the penalty shall be assessed by the Board pursuant to the provisions of 269:90-9-1, after notice and hearing.

(d) In determining the amount of the penalty, the Board shall include but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person or persons found to have committed the violation, the degree of culpability and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act.

(e) All monies collected from such civil penalties shall be deposited with the State Treasurer of Oklahoma and placed in the Alternative Fuels Technician Certification Revolving Fund.

(f) Any certificate holder may elect to surrender his certificate in lieu of said fine but shall be forever barred from obtaining a reissuance of said certificate.

[OAR Docket #14-787; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 95. LEASING AND SPACE STANDARDS

[OAR Docket #14-788]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:95-1-1. Purpose [NEW]
260:95-1-2. Definitions [NEW]
260:95-1-3. General provisions for securing space [NEW]
260:95-1-4. Space allocation standards [NEW]
260:95-1-5. Requests for space [NEW]
260:95-1-6. Leasing of non-state owned property [NEW]
260:95-1-7. Lease documents for non-state owned space [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:95-1-1. Purpose

The principal objectives of the state's space management program are:

(1) To provide adequate space to satisfy appropriate functional and locational requirements for state programs;
(2) To obtain the best balance of quality and cost;
(3) To obtain maximum utilization of state owned buildings;
(4) To provide uniform space allocation standards;
(5) To provide an avenue for state office space planning;
(6) To maintain a single communications point and information source between the State and the private real estate market; and
(7) To ensure as much uniformity as practical in lease terms and space planning.

260:95-1-2. Definitions

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

"Administrator" means the Administrator of the Division of Capital Assets Management.

"Agency" means any state agency, board, commission or public trust having the State of Oklahoma as a beneficiary.

"Boat Storage" means a boat slip or dry dock storage.

"Director" or "Director of Real Estate and Leasing Services" means the person designated by the Director of the Office of Management and Enterprise Services to formulate, enter into, or administer contracts for real property or make written determinations and findings with respect to them and to carry out the duties of the Office relating to real property transactions and the inventory of real property.

"Division" means the Division of Capital Assets Management of the Office of Management and Enterprise Services.

"Full time employee (FTE)" means permanent state employees.

"Hangar" means a structure used for housing aircraft.

"Laboratory" means a part of a building, or other place, equipped to conduct scientific experiments, tests, investigations et cetera.

"Maintenance" means the repair or preventative up-keep of equipment, machinery, property, and building features or fixtures.

"Motor Pool" means a facility used to keep, maintain and services vehicles owned by the Division and state agencies.

"Net usable square feet" means the space in non-state owned facilities for which the State shall pay a square foot rate.

(A) If the space is on a single tenancy floor or building, computing the inside gross area of the space by measuring from the normal inside finish of the permanent exterior walls, or from the face of the convector (pipes or other wall-hung fixtures) if the convector occupies at least 50% of the length of the walls.
(B) If the space is on a multiple tenancy floor, measure from the exterior building walls as above (#A) and to the room side finish of the fixed corridor and shaft walls and/or the center of tenant-separating partitions.
(C) In all measurements, make no deductions for the columns and projections enclosing the structural elements of the building; and deduct from the gross area the following, including enclosing walls:
(i) Toilets and lounges;
(ii) Stairwells and bearing partitions;
(iii) Elevator and escalator shafts;
(iv) Building equipment and service areas;

(v) Entrance and all elevator lobbies;
(vi) Stacks and shafts; and
(vii) Fixed or common use corridors

(D) Common-Area space accessible to and/or utilized by entities other than the State is not included as net usable square feet.

(E) If restrooms are available in a common area of a multiple tenant building, those restrooms within the state's leased space which are for the state's exclusive use, shall be included as net usable square feet.

(F) When the only accessible restroom facilities in a building are within the state's leased space, one set of restrooms and their enclosing walls shall be deducted from the net usable square feet.

"Office" means structures or space for the regular transaction of business used primarily as work areas for personnel, conference areas, reception areas, hearing rooms, drafting areas, etc. Minor storage areas, such as storage of miscellaneous supplies or stationary and file cabinet space within a private office or adjacent to clerical personnel are also included in "office" space.

"Personnel" means the peak number of persons to be located in the space, including permanent employees of the agency, temporaries, contractual employees and budgeted vacancies.

"Print Shop" means a structure or space were the primary function is publication or printing.

"Real Estate and Leasing forms" means forms and documents the Director of Real Estate and Leasing Services approves for real property transactions and for providing information to the Office of Management and Enterprise Services.

"Real Property" means land, and generally whatever is erected growing upon or affixed to land; also rights issuing out of, annexed to, and exercising in or about land.

"Real Property Inventory" means a comprehensive list of property submitted by the state agencies, boards, commissions, and public trusts listing all real property owned, the value of the property and any underutilized property.

"Rental Rate Ceiling" means the net usable square foot rate established by the Office of Management and Enterprise Services as the maximum rental consideration to be made for non-state owned facilities. The ceiling is not the standard rate; it is the maximum rate an agency may pay for leased space without authorization from the Director of Real Estate and Leasing Services allowing the agency to exceed the rental rate ceiling.

(A) On full service leases, which include all utilities except telephones, 5 day per week janitorial services and supplies, and general parking, the rental rate shall not exceed the ceiling rate.

(B) On net leases, which exclude utilities and/or 5 day per week janitorial services or general parking, the rate shall not exceed the ceiling rate when rent related expenses are added to the base rate (i.e. utilities except telephones, 5 day per week janitorial, parking, etc.).

(C) If a lease rate does not include all or part of the utility expenses, documentation of the most recent 12 month period in which the space was occupied may be utilized to estimate what the total rent related expenses will be to the agency. The historical utility expenses or estimated utility expenses shall be considered in rental negotiations and by the Office of Management and Enterprise Services in evaluation/authorization of the lease.

(D) On those full service or net leases wherein the janitorial services will be provided less than five days per week (either at the Lessor or state's expense), the Office of Management and Enterprise Services will provide the agency with the acceptable rental rate.

"State-owned properties" means all property lawfully appropriated by the state to its own use; all property dedicated to the state and all property which there is no other owner.

"State owned space" means space in structures on state-owned properties.

"State space standards" means the standard guidelines for the determination of an agency's space needs in all real property leased, purchased or lease-purchased by the State.

"Storage" means a structure or area used primarily for storing items such as furniture, fixtures, equipment and inactive files. Desk space for staff located within larger storage areas is also included in "storage" space.

"Tower" means a structure used for supporting some type of antenna or communication devise. A tower may be self-supporting or guyed and may be an independent structure or part of a larger structure.

260:95-1-3. General provisions for securing space

(a) It is the policy of the Office of Management and Enterprise Services to house agencies of state government in state-owned property whenever feasible. However, when requirements for space cannot be satisfied in state facilities, the Office of Management and Enterprise Services will authorize the agency to secure space in non-state owned facilities.

(b) The State Space Standards will be utilized by the Office of Management and Enterprise Services to facilitate space planning, to establish office space needs, and for authorization of the amount and type of space may procure through lease, purchase or construction.

(c) Agencies shall submit a Space Request to the Office of Management and Enterprise Services when requesting new or additional space through leasing, purchasing or lease-purchasing real property.

(d) All leases for space, regardless of size, type, or dollar value, must be authorized by the Office of Management and Enterprise Services.

(e) The Director of the Office of Management and Enterprise Services may, at his/her discretion, waive the requirements as set forth in 580:60-1 when it is shown to be in the best interest of the State of Oklahoma.

260:95-1-4. Space allocation standards

(a) **Purpose.** The purpose of the space allocation standards is to present a uniform and consistent method of evaluation of the amount of space required to support a specific program or

agency in all real property to be leased, purchased or lease-purchased by the State.

(b) **General provisions.**

(1) Agencies shall indicate their space needs through the use of the forms and documents prescribed by the Director of Real Estate and Leasing Services.

(2) Agencies are required to implement the space standards for acquiring space through lease or purchase and for internal organization of space.

(3) Whenever possible, the Office of Management and Enterprise Services will satisfy new space requests through the assignment of vacant space available in state-owned facilities.

(4) Funding allocated to an agency by the Legislature for an increase in the amount of space or the rental rate does not waive the requirements of the Office of Management and Enterprise Services unless a specific statutory exemption exists. Procurement of space or rate increases must still be authorized by the Office of Management and Enterprise Services in accordance with the real estate and leasing procedures and space standards.

(5) Unless otherwise noted, all square footage listed and the term "square feet" means "net usable square feet" as defined in 580:60-1-2. As such, it represents the amount of space that is usable for personnel, the placement of furniture and internal circulation areas.

(6) The quality and the type of space assigned or approved by the Office of Management and Enterprise Services may vary depending on various factors. Such factors include, but are not limited to: functional considerations, the magnitude of contiguous space required, and configurations of available space for assignment, including economic consideration when the available space requires remodeling to conform to the State Space Standards.

(7) The final decision concerning the allowable amount of square footage for a given space request shall be made by the Office of Management and Enterprise Services.

(8) The state space standards are the standard guidelines for the determination of an agency's space needs. They are intended to balance full and intensive use of the allocated space with productivity and program needs.

(c) **Personnel space standards.**

(1) The state space standards shall ordinarily not exceed the product of 150 square feet times the number of full-time, funded employees. This standard is not an entitlement per individual employee. It is a standard allocation to the agency as a whole. Individual space allocations within the total should be made on a basis of job function, not on position classification.

(A) The allocation of space for employees who are in the office less than 60 percent of the time is be seventy (70) square feet per position.

(B) Space needs for an individual employee may only be considered for the primary office location of said employee.

(C) Space for employees who work out of their homes or other offices shall not be included.

(D) The allocation of space for personnel who report to the facility on a weekly basis, or less, shall be determined through the Special Space Requirements, rather than on the standard 150 or 70 square foot allowance.

(E) The state space standard allocations include work stations, circulation between work stations, and work station-related support space, such as reception and office equipment areas, unless specified in 260:95-1-4(d).

(2) Space is primarily allocated according to the number of funded authorized positions in the agency or program.

(A) Project and limited term positions are not normally included; exceptions may be made for projects of over two years or limited term positions that recur regularly.

(B) Future expansion needs shall not be considered until positions have been authorized and funded unless there is a documented history of frequent expansion in the agency's programs and number of employees required to support the programs or a legislative change in agency function that will increase agency staff needs.

(3) The allocation of space for personnel in warehouses, print shops, motor pools, large data centers, etc., where the employees support the functions and/or equipment, not vice versa, shall be determined through the Special Space Requirements, rather than on the standard 150 or 70 square foot allowance. Administrative personnel of such functions shall, however, be included in the standard FTE space allocation.

(d) **Special space standards.** This Subsection represents the special space standards which will be the standard guidelines for determining an agency's special space requirements. With appropriate written documentation and justification in an agency's Space Request, additional square footage will be allowable if the space meets the specified criteria. All figures used to compute the justification of Special Space shall be based on the average number of occupants utilizing the particular space at any given time.

(1) **Reception/client areas.** Most office locations require some type of reception area; however, the allowable space may vary based on the program being administered.

(A) Space allocation will be determined on the basis of the following criteria:

(i) Average number of visitors utilizing the space per day; at any given time;

(ii) Type of visitors; (i.e., accompanied by families, etc.); and

(iii) Special requirements (i.e., tables, etc.)

(B) Allowable space is ten (10) square feet times the average number of visitors per day at any given time. Documentation of the number of actual visitors may be required. Space requirements for a receptionist are included in the Personnel Section of the Space Request form.

(2) **Conference rooms.** A separate conference room shall be established only when it will be in use at least twenty hours per week. Documentation of the history of conference room usage may be required.

(A) Space allocation will be determined on the basis of the following criteria:

(i) Average number of persons in attendance;

(ii) Frequency of meetings (average hours per week);

(iii) Availability of private office space;

(iv) Special requirements (i.e., blackboard, projector and screen, etc.); and

(v) Availability of existing meeting facilities at little or no cost to building tenants.

(B) Allowable space for conference rooms which meet the above criteria is twenty (20) square feet per person, based on the overall average number of attendees as documented by the agency, not the average of one or two specific meetings.

(C) These standards may be adjusted with appropriate documentation when special equipment is regularly used in a given meeting or conference setting. In addition, the methods for calculating the actual room size may vary according to use and the number of participants and/or spectators.

(3) **Classroom and training rooms.** Classrooms/Training Rooms shall be combined with the conference room usage unless justification exists for separate areas. If separate classrooms and training rooms are justified, they should be established only when they are in use at least 20 hours per week. Occasional space for five or six people will not qualify as special space. The agency shall provide documentation of the actual history of usage of classes or training sessions.

(A) Space allocation will be determined on the following criteria:

(i) Average number of persons in attendance as documented by agency records;

(ii) Frequency of classes/training (average hours per week);

(iii) Special requirements; and

(iv) Availability of existing meeting facilities at little or no cost within the building and/or the space occupied by the agency.

(B) Allowable space is twenty (20) square feet per person based on the overall average number of attendees, not the average of one or two specific sessions.

(4) **Intake/interview room.** This type of space will be established only when it will be in use at least twenty-five hours per week and will be considered on a case-by-case basis by the Office of Management and Enterprise Services.

(A) This space will be determined on the following criteria:

(i) Frequency of use (average hours per week); and

(ii) Availability of private office space or other meeting space.

(B) Allowable space shall not exceed one hundred (100) square feet per individual room, with the total number of qualifying rooms dependent on the documented need for such space.

(5) **Libraries.**

(A) The allowable square footage for book cases is based on the following formula:

(i) Determine the total number of book cases within the space (i.e. open areas; private offices; libraries, etc.).

(ii) If the total number of book cases is greater than the total number of FTE's occupying the space, the difference is the number of book cases which is allowable as special space. Contract, temporaries, or volunteers are not included in the number for this allowance.

(B) Allowable space is six (6) square feet each for the number of book cases which exceed the total number of FTE's occupying the space.

(6) **File cabinets.**

(A) The allowable square footage for file cabinets is based on the following formula:

(i) Determine the total number of file cabinets within the space (i.e., open areas; private offices; file rooms; 2, 3, 4, and 5 drawer, lateral and vertical cabinets).

(ii) If the total number of file cabinets is greater than the total number of FTE's occupying the space, the difference will be considered as the number of file cabinets which will be allowable as special space. Contract, temporaries, or volunteers are not included in the number for this allowance.

(B) Allowable space is nine (9) square feet each for the number of file cabinets which exceeds the total number of FTE's occupying the space.

(C) Space for mobile filing systems should be justified separately on the Space Request form and shall include exact system dimensions.

(7) **Storage, copiers, mail.** The agency will be allocated additional space for storage, copiers and mail based on the number of FTE's.

(A) Space allocation will be based on the following formula:

(i) Less than fifty FTE's. Allowable space is ten (10) square feet per FTE;

(ii) Fifty or more FTE's. Allowable space is 5% of the space allowed for the total number of FTE's.

(iii) Contract, temporaries, or volunteers are not included when computing this allowance.

(B) Unusual space needs for any of these three areas in excess of the allowable space shall be justified separately on the Space Request.

(8) **Large copiers, reproduction and printing areas.** These areas may, with appropriate documentation, be considered as special space if they are in a physically delineated area with staff dedicated to operating the equipment. The allowable space is the actual measurement of

the equipment plus circulation or the manufacturer's recommended allowance. The square footage will not include space for personnel. Personnel should be included in the Personnel Section of the Space Request form.

(9) **Equipment dominated area.** This area shall be considered as special space if people support the equipment, not vice versa. Occasional word processing areas, computer terminals, and scanners used or assigned to employees as a routine part of their work will not qualify as special space. The allowable space will be the actual measurement of the equipment plus circulation or the manufacturer's recommended allowance. The square footage will not include space requirements for personnel. Personnel should be included in the Personnel Section of the Space Request form.

(10) **Employee break room.** Employee break rooms will be considered on a case-by-case-basis as special space.

(A) Space allocation is based on the following criteria:

(i) Availability of a common break room within the building or complex;

(ii) Availability of a conference, classroom, or other multi-purpose room; and

(iii) Total number of employees.

(B) Allowable space is ten (10) square feet per average occupancy.

(11) **Multi-purpose room.** This type of space will be considered for multiple-use purposes for agencies who are unable to justify other specific "Special Space," such as a conference room, break room, central storage, etc., and where there is a justified need for such a room. Allowable space will be determined by using a combination of the other special space allowances. The allocation of this type of space will be considered by the Office of Management and Enterprise Services on a case-by-case basis.

(12) **Other.** Any specialized space required by an agency that has not been defined herein as "Special Space" may be included in the Special Space section of the Space Request form. Justification must be included in order for the space to be considered. Examples include, but are not limited to: training kitchens, restrooms for medical/correctional purposes, laboratories (photography, medical, etc.), examination rooms, vaults, observation rooms, direct patient care requirements, etc.

(e) **Space planning.**

(1) Space allocation planning shall, to the fullest extent possible, employ the open space concept. In most cases the elimination of internal fixed walls makes maximum use of space, is more flexible in accommodating change, facilitates better control of lighting, heating, air conditioning, and ventilating, and reduces construction and maintenance costs.

(2) Private office space will be provided only when there is a demonstrated functional need; however, no additional square footage will be allowed for the purpose of providing for private office space.

(3) No private office within the total amount of space allowable to the agency shall exceed 300 square feet in size.

(4) The actual design of the space to be occupied shall include those Special Space areas which were authorized by the Office of Management and Enterprise Services. Further, these areas shall be as consistent as possible with the amount of space authorized on the Space Request for such use. The Office of Management and Enterprise Services may alter the final square footage allocation if the agency fails to utilize space in accordance with the agency's space justification as designated on the authorized Space Request form.

(5) The Office of Management and Enterprise Services may aid agencies in preparation of the initial space layout. When an agency requires space design assistance, a request for such assistance should be made to the Director of Real Estate and Leasing Services. An agency may utilize the services of a space planner or architect provided at the building owner's expense; however, the Office of Management and Enterprise Services will have final review and approval of the plan. An agency should not contract for space planning services without specific authorization from the Office of Management and Enterprise Services.

(f) **Space for short-term use.** Agencies having a need for facilities for short-term use, such as conferences and testing, shall utilize available state-owned or leased facilities whenever possible. Agencies shall make inquiries regarding availability of such space to the Director of Real Estate and Leasing Services. If it is determined that no suitable state controlled facilities are available, an agency may arrange for the use of privately owned facilities for a period not to exceed 10 days, provided that the agency has the authority to contract for such Office of Management and Enterprise Services.

(g) **Measurement of space.** Unless otherwise noted, all square footages indicated in the Space Request form, the Space Standards and leases of non-state owned facilities shall mean "net usable square feet."

260:95-1-5. Requests for space

(a) **Purpose.** The purpose of the Space Request form is to provide a means whereby an agency supplies the Office of Management and Enterprise Services with information and documentation necessary for determining the agency's space requirements.

(b) **General provisions.**

(1) Requests for space shall be submitted to the Director of Real Estate and Leasing Services on the Space Request form. The request shall be utilized by all agencies where there is a need for one of the following:

(A) New space;

(B) Increased space at current location; and

(C) When an agency has been at its present location over four (4) years and every fourth year thereafter as determined necessary by the Office of Management and Enterprise Services.

(2) The Space Request is required when space will be procured by lease, purchase transfer, or other means, regardless of whether the space being procured is in a state owned or non-state owned facility.

(3) The Space Request should be submitted to the Director of Real Estate and Leasing Services no less than ninety (90) days prior to the anticipated need for the space.

(4) Information contained in the Space Request must be certified in the manner perscribed by the agency director or a designated representative with authority for real estate and leasing transactions.

(5) Requests which do not contain the required information will be returned to the agency without action.

(6) The Office of Management and Enterprise Services will evaluate an agency's request for space and authorize what action shall be taken on the request.

(7) A Space Request which has been authorized by the Office of Management and Enterprise Services will be valid for a maximum period of six months, unless an extension is granted by the Office of Management and Enterprise Services. A new Space Request may be required if a contract has not been executed prior to the expiration of the Space Request.

(8) If an agency's request exceeds the guidelines, written justification addressing each item that exceeds the space allocation standards must be provided by the agency.

(9) When a request for expansion of existing space is received, the Director of Real Estate and Leasing Services may review the currently assigned area prior to authorizing additional space. An effort shall first be made to absorb the expansion through a more efficient rearrangement of the existing space.

(10) If the agency is requesting additional space at its current location for new employees or programs, the Space Request shall reflect the total number of FTE's and any special space which the agency may justify based on the Space Standard allowances, not the actual square footage of the special space areas currently occupied by the agency.

(11) Four (4) Year Space Review.

(A) If the Office of Management and Enterprise Services determines that a Four Year Space Review is necessary, the required Space Request will be evaluated before an agency is authorized to renew its current lease; however, relocation and/or alterations to the space will be required only if it is determined to be in the best interest to the State.

(B) The information on the Space Request should reflect only what the agency may justify based on the Personnel and Special Space Standard allowances, not the actual amount of space currently occupied by the agency.

(C) The "Estimated Space Allocation" and the "Total Space Requested" on the Space Request do not need to reflect the same square footage. In most cases, the amount of space currently occupied by the agency will be more or less than the amount of space that may be justified in accordance with the Space Standards.

(c) **Analysis of space request.** Seven key elements will normally be considered in determining the amount of space necessary to support the agency or program. These areas are: a general justification of the need and amount of space, type of program, special requirements, type and quality of space, location, and availability of state owned space.

(1) **Justification.** The intent of the information required is to indicate how the requested space will be used. Sufficient information must be provided to permit the Office of Management and Enterprise Services to fully understand the purpose of the program to be housed in the space. At a minimum, agencies' justification for the need for the requested space shall include staffing and special space needs.

(2) **Amount of space.** Through the information provided by the agency on the Space Request and use of standards outlined in 260:95-1-4, the Office of Management and Enterprise Services will make a preliminary determination of the amount of space required.

(3) **Type of program.** The type of program to be housed in the space will be a consideration in the agency's request. Factors to be considered include the estimated life of a program and fluctuations in the scope of the program (i.e., work activities, number of clients).

(4) **Special requirements.** A number of special requirements may be of particular importance to the function of a program. Examples of special requirements include parking, security, after hours use, laboratories, private restrooms, floor loadings and structural conditions.

(5) **Type of Space.** Office and storage are the two primary types of space leased by agencies. Agencies shall request the type of space based on the following criteria:

(A) Office space should be requested when the primary purpose of the space is to provide work areas for professional and clerical personnel. Normally such areas require a minimal amount of storage area for forms, files, etc. (This "storage" space shall be accommodated within the office area unless the storage exceeds 10% of the area or 1,000 square feet, whichever is less.)

(B) Storage or warehouse space shall be requested when the primary purpose of space is to store or warehouse equipment, furniture, forms, etc.

(C) Non-typical types of space include, but are not limited to hangars, correctional housing, group homes, towers, boat storage, print shops, motor pools, warehouses and parking lots.

(6) **Quality of space.** The quality of space to be acquired depends on several factors and is not always within the control of the State. The predominant factors affecting the quality of space include:

(A) The State shall solicit modern, air conditioned, general purpose office space. The intent is to obtain moderately priced, average quality space. The selection of quality should be consistent with the intended

use of the space. However, space shall comply with all applicable federal, state and local laws, codes, ordinances, rules, and regulations pertaining to health, safety, fire, and public welfare.

(B) The geographic boundaries wherein the space is to be located may create limitations in the space available.

(C) Where a wide range of quality space is available, the rental rates offered are normally the prevailing factor having an effect on quality. When selecting a site, the selection should provide the best practicable balance of quality and price to achieve the best value available within the state's rental structure.

(7) **Location.** The geographic location selected for a desired space is normally dictated by the operational requirements of the program. In many cases, the location of the space will have no bearing on the operational effectiveness of the program. Some common criteria to be considered when selecting a location include the following:

(A) Operational necessity shall be the prime concern when geographic location limits are determined. Space shall be located within the geographic limits of the area to be served and as close as possible to the population center of the citizens to be served.

(B) Generally, the location should be well served by public transportation and main road networks.

(C) Proximity to related agencies or agencies with which frequent contact is expected may be a consideration. In some cases, such contact may make co-location highly desirable.

(D) High rent areas shall be avoided in favor of moderately priced areas whenever possible.

(8) **Availability of state owned space.** After a complete review of the agency's request for space, the Office of Management and Enterprise Services will assist the agency in determining if state owned space is available that will satisfy the agency's space needs. If suitable state owned space is available, the agency will be required to utilize the state owned space.

(d) **Authorization of request.** The Office of Management and Enterprise Services will review the agency's request for space and ancillary information and will approve or deny the request or return it for additional information.

(e) **Appeal procedure.** If an agency does not concur with the amount of square footage authorized, the agency shall first attempt to resolve the difference informally with the Director of Real Estate and Leasing Services. Both parties shall make every attempt possible to reach an agreement which meets with the needs of the agency while remaining in compliance with the State Space Standards. If an agreement cannot be reached, the agency may submit a written request for an appeal to the Administrator of the Division of Capital Assets Management at the Office of Management and Enterprise Services explaining the situation in as much detail as possible. A copy of all pertinent documentation shall be attached to the letter.

260:95-1-6. Leasing of non-state owned property

(a) **Purpose.** The purpose of the rules for the leasing of non-state owned property is to provide state agencies with policies and procedures concerning acquisition methods for leasing such space.

(b) **General provisions.**

(1) All leases for space, regardless of size and dollar value, shall be submitted to the Office of Management and Enterprise Services for authorization.

(2) The Office of Management and Enterprise Services has the responsibility to act as the leasing agent for all state agencies.

(A) Agencies shall at no time, directly or indirectly contact potential Lessors for the purpose of making oral or written representation, commitments, or agreements before a Space Request is authorized by the Office of Management and Enterprise Services

(B) Inquiries made by potential Lessors or their agents should be referred to the Director of Real Estate and Leasing Services unless the inquiry relates to an active Space Request.

(C) It is the policy of the Office of Management and Enterprise Services to deal directly with an owner, building manager or primary listing broker of a property.

(D) An agency shall not, at any time, contract with a broker to secure space on their behalf.

(3) Any state agency in need of new or additional space shall submit a request from the agency director to the Director of Real Estate and Leasing Services on the Space Request form.

(4) No agency shall enter into lease negotiations for new space with any building owner or representative without an approved Space Request in which specific delegation of authority is given from the Office of Management and Enterprise Services.

(5) Standards for the utilization and allocation of space to state agencies have been adopted by the Office of Management and Enterprise Services and are a part of 260:95-1-4. These standards shall be used as a basis for all planning, leasing of space, or allocation of space.

(6) The State uses net usable square feet as the standard method of measurement.

(7) State agencies shall adhere to any ceilings on rental rates as established by the Office of Management and Enterprise Services.

(8) No lease agreement shall contain an open rate including Consumer Price Index, or rental escalation clauses unless authorized by the Office of Management and Enterprise Services.

(9) State agencies may not pay rental deposits on non-state owned space.

(10) The State shall not be obligated to pay rent for any period prior to the time that the space is occupied by the State.

(11) Increases in rental rates must be authorized by Office of Management and Enterprise Services.

(12) The Director of Real Estate and Leasing Services will serve as a contact between the State and the Lessor as needed and upon request by the agency.

(13) Whenever possible, the State shall lease space requiring as little renovation as possible to accommodate the requesting agency and meet required building codes and specifications. When renovation is necessary, the cost of such renovation shall be borne by the Lessor.

(14) All acquisitions of non-state owned space being leased which exceed 2,500 square feet shall be obtained through means of public advertisement unless an exception is authorized by the Office of Management and Enterprise Services . Exceptions include space requirements declared an emergency by the Office of Management and Enterprise Services and leases of non-state owned space for nominal consideration.

(15) Space not owned by the state or another public entity may not be occupied or accepted by a state agency for nominal or no consideration without the express written authorization of the Governor.

(16) A lease shall be entered into with the party who has legal ownership of the property. A broker or property manager cannot be listed as the "Lessor" unless they have legal authority to receive rental payments on behalf of the owner. In such cases, written documentation of the delegation of authority shall be provided by the legal owner to be attached to the lease.

(17) An agency may not lease space in which a current state employee has a right of ownership, or other financial interest in the property without express written authorization from the Governor.

(18) An agency may not lease space from a current member of the Oklahoma State Legislature or former member of the Oklahoma State Legislature who has been out of office less than two years.

(19) The Real Estate and Leasing Services forms shall be utilized in all leasing transactions in non-state owned buildings. No provisions to the Real Estate and Leasing Services forms may be changed or non-standard terms or conditions added without prior authorization by the Office of Management and Enterprise Services.

(20) The lease period shall not exceed one twelve month period; however, it does not have to end the last day of the fiscal period if that date would be less than one year.

(21) The standard Lease Agreement and Renewal Agreement shall allow the agency (Lessee) the right to terminate the lease with thirty days written notification to the Lessor.

(22) Requests for deviations from the standard lease term may be considered by the Office of Management and Enterprise Services when the agency may show programmatic necessity or financial advantage to be in the best interest of the State that would justify a longer or shorter lease term. The agency shall provide written justification to the Office of Management and Enterprise Services for any variance from the terms of the standard lease.

(23) All non-state owned space occupied by the State shall meet all applicable federal, state and local laws, codes, ordinances, rules, and regulations pertaining to health, safety, fire, and public welfare. All construction or renovation to space a state agency leases shall comply with applicable professional architectural and engineering laws.

(24) The State Fire Marshal's office or local fire marshal's office shall inspect the facility to be leased prior to initial occupancy or renovation to existing space, and/or approve building plans for new construction, for compliance with the Life Safety Code, Fire Prevention Code, and National Fire Protection Association Standards. A written report, or floor plan, signed by the State Fire Marshal shall be obtained.

(25) Prior to occupancy of non-state owned space, the proposed space shall be inspected by the State Department of Labor for the presence of friable asbestos containing materials, and written documentation of the inspection shall be obtained. In the event that friable asbestos containing materials are found to be present, the agency shall not be authorized to occupy said space unless the Office of Management and Enterprise Services approves a written exception request from the director or chief executive officer of the occupying agency.

(26) The Lessor shall adhere to the requirements of the Oklahoma Occupational and Safety Standards Act of 1970.

(27) The Lessor shall maintain general liability insurance to be no less than $1,000,000.00 per occurrence at all times during the lease or any renewal periods unless an exception is authorized by the Office of Management and Enterprise Services due to size of the structure or other limiting factors.

(28) It is a Lessor's responsibility to ensure that the facility leased by the State complies with the American's with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this act in so far as the requirements of the Act affects the agency.

(c) **Delegation of authority.** The Office of Management and Enterprise Services' involvement in obtaining space will vary on a case-by-case basis. At the time of the approval of a request for space, the Director of Real Estate and Leasing Services will determine what tasks the agency will assume.

(1) The Office of Management and Enterprise Services will review proposals obtained by an agency and review, assist, and make recommendations during the negotiation of lease terms and conditions.

(2) The Office of Management and Enterprise Services will specify any delegation of authority to acquire space in writing on the Space Request which is returned to the agency.

(3) If the agency is not delegated specific authority, the Office of Management and Enterprise Services will provide the leasing service.

(4) When the agency is delegated the authority to acquire non-state owned space, the acquisition shall be consistent with existing rules and regulations.

(d) **Leasing of non-state owned space.** The acquisition of non-state owned leased space is divided into two categories.

(1) Leases under 2,500 square feet.

(A) With delegated authority by the Office of Management and Enterprise Services, the agency shall locate potential space from building owners, real estate agencies, or through public advertisement. Where possible, at least three separate sources shall be contacted.

(B) The agency may be required to solicit for space through public advertisement at the discretion of the Office of Management and Enterprise Services. In such cases, if a lease has not been authorized by the Office of Management and Enterprise Services within six months from the initial date of advertisement, the agency may be required to re-advertise for the space at the discretion of the Office of Management and Enterprise Services.

(C) The agency shall deal directly with the owner, building manager, or primary listing broker of a property. At no time shall an agency utilize the services of a secondary broker for the acquisition of non-state owned space without specific authorization from the Office of Management and Enterprise Services.

(D) The agency shall provide the selected prospective Lessor with a copy of the standard lease terms.

(E) Agencies shall negotiate lease terms consistent with the policies of the Office of Management and Enterprise Services and rental rates equivalent to or below market rates in the locality wherein the space is located. The agency shall also adhere to any rent "ceilings" established by the Office of Management and Enterprise Services. Agencies will be notified by the Office of Management and Enterprise Services as changes in rental rate ceilings occur.

(F) Upon selection of a space, the agency shall submit the following information to the Administrator of State Leasing:

(i) A draft copy of the proposed lease which includes:

(I) Location of proposed space.

(II) Lessor's name.

(III) Total net usable square footage of space.

(IV) Rate per square foot.

(V) Services to be provided by the Lessor. (i.e. utilities, # of days/week janitorial services, etc.)

(VI) Renewal options.

(ii) A copy of the proposed floor plan on an 1/8" = 1' or dimensionalized scale.

(G) A list of all properties considered, their locations, condition, rental rates and reasons for eliminating them in final consideration, shall be provided to the Office of Management and Enterprise Services.

(H) If more square footage is proposed than has been authorized by the Office of Management and Enterprise Services, an explanation of the difference is required from the agency.

(I) Upon review and approval of an agency's selection and draft lease by the Office of Management and Enterprise Services, the agency shall proceed with the preparation of the leasing documents.

(J) At no time shall an agency direct or authorize a potential Lessor to begin remodeling or construction before a lease has been signed by the Office of Management and Enterprise Services.

(K) An agency shall not take possession of new or additional space until a contract has been executed by the Office of Management and Enterprise Services.

(L) Agencies who elect to advertise, or are required by the Office of Management and Enterprise Services to advertise for space, shall follow the procedures outlined in 260:95-1-6 (e) and (f).

(2) Leases of 2,500 square feet or more.

(A) An agency shall not enter into a lease for 2,500 square feet or more of space in a non-state owned building except upon advertisement for and receipt of competitive proposals.

(B) Exceptions that are applicable when considering leases of 2,500 square feet or more include:

(i) The standard renewal of leases unless otherwise determined necessary by the Office of Management and Enterprise Services.

(ii) Any lease having a term of less than ninety days, or otherwise authorized by the Director of Real Estate and Leasing Services.

(iii) Any lease with another government or quasi-government entity for nominal or no consideration.

(iv) A modification of a lease of non-state owned space to increase the footage if the modification is based upon the same terms and conditions of the approved lease, provided the total square footage of the increase is less than one half the total of the original square footage.

(v) If the space is deemed to be a single source (tower sites, boat docks, hangars, etc.).

(vi) Space needs arising due to an emergency situation or other circumstances that preclude advertising for space may be exempt from these rules upon written statement of circumstances by the agency to the Director of Real Estate and Leasing Services.

(C) The agency shall follow the procedures set forth in 260:95-1-6 (e), and (f), regarding the advertisement for and selection of non-state owned space.

(D) If a lease has not been submitted to and approved by the Office of Management and Enterprise Services within six months from the initial date of advertisement, the agency may be required to re-advertise for the space at the discretion of the Office of Management and Enterprise Services.

(E) Written notification describing the agency's general space requirements shall be given to entities subscribing to the notification service on the Office of Management and Enterprise Services website in appropriate local real estate companies in the applicable geographic area.

(F) Upon selection of space, the agency shall submit the following to the Director of Real Estate and Leasing Services:

(i) A draft copy of the proposed lease which includes:

(I) Location of proposed space.

(II) Lessor's name.

(III) Total net usable square footage of space.

(IV) Rate per square foot.

(V) Services to be provided by Lessor. (i.e. utilities, # of days/week janitorial services, etc.)

(VI) Renewal options.

(ii) A copy of the proposed floor plan on an 1/8" = 1' or dimensionalized scale.

(G) A list of all properties considered, their locations, condition, rental rates, and reasons for eliminating them in final consideration shall be provided to the Office of Management and Enterprise Services.

(H) If more square footage is proposed than has been authorized by the Office of Management and Enterprise Services, an explanation of the difference is required.

(I) Upon review and approval of an agency's selection and draft lease by the Office of Management and Enterprise Services, the agency shall proceed with the final preparation of the leasing documents.

(J) At no time shall an agency direct or authorize a potential Lessor to begin remodeling or construction before a lease has been signed by the Office of Management and Enterprise Services.

(K) An agency shall not take possession of new or additional space until a lease or addendum has been executed.

(e) **Solicitation for advertisement.** When it is determined that an advertisement is required or the Director of Real Estate and Leasing Services finds that it would be in the best interest of the State to advertise the space requirement, the agency will be advised to prepare and cause the advertisement to be published. The cost of the advertisement shall be borne by the agency soliciting the space.

(1) The suggested format for advertising may be obtained from the Director of Real Estate and Leasing Services. Agencies may modify advertisements consistent with actual requirements but shall include, as a minimum, the following:

(A) Amount of space required.

(B) City in which space shall be located.

(C) The agency name.

(D) The name, address, and telephone number of the agency contact where proposals will be sent.

(E) Due date of proposals.

(2) Normally the advertisement shall be placed in no more than two newspapers in the community where the space is needed. The ad shall run for a minimum of two issues, with a week between notices if possible.

(3) The due date for proposals shall be no less than five days after the last publication. However, the agency may, at its discretion, permit a longer period for response.

(4) Advertisements concerning space shall be placed in the appropriate section of a newspaper publication.

(5) The Director of Real Estate and Leasing Service may authorize electronic advertisement on the Office of Management and Enterprise Services website in lieu of advertising in local newspapers.

(f) **Proposals.**

(1) Parties interested in leasing space to the State shall include the following information in their initial proposal:

(A) Location of space.

(B) Approximate number of square feet of net usable space available for lease.

(C) Prospective Lessor's name, address and telephone number.

(2) Initial proposals shall be accepted from the day the space is first advertised until 5:00 p.m. on the specified due date. Upon receipt, proposals should be stamped with the date received.

(A) Initial proposals received after the time and date set for receipt of offers shall be considered late. However they may be considered with mutual agreement between the agency and the Director of Real Estate and Leasing Services if it is determined to be in the best interest of the agency.

(B) A modification of a proposal which makes its terms more favorable to the State shall be considered at any time it is received.

(3) When less than three responsible offers are received, the agency may, without re-advertisement, extend the date and solicit additional offers by any method approved by the Director of Real Estate and Leasing Services to ensure adequate competition.

(4) In each request for proposal, the State shall reserve the right to amend the specifications at any time prior to award of a lease.

(5) The State reserves the right to reject any and all offers, to request additional information, to waive all formalities in proposals, and to negotiate with any offeror.

(6) There shall be no public opening or review of proposals in response to the advertisement for proposals.

(7) The State shall not be responsible for any costs incurred in the preparation and submission of proposals in response to solicitation for space by a state agency.

(8) After the proposals have been reviewed, the agency shall inspect the properties to determine suitability of each space to the specific needs of the agency. The agency may eliminate from further consideration those properties which do not meet the basic requirements, such as location or square footage, without inspecting the properties.

(9) The agency shall provide each viable prospective Lessor with a copy of the standard lease terms.

(10) As a result of the on-site inspection, with the assistance from the Director of Real Estate and Leasing Services or other agency staff, the agency will prepare a preliminary floor plan on that property initially determined to best meet the needs of the agency. This information shall be submitted to the respondent in order to obtain a final annual lease price and lease term.

(11) A final proposal may, at the agency's discretion, be required from the selected vendor on the Standard Proposal Form as developed and approved by the Office of Management and Enterprise Services.

(12) All proposals shall be kept confidential and shall be released only to state employees having a need for the information until a contract has been executed.

(g) **Specifications.**

(1) Specifications shall be followed by the agency leasing a non-state owned facility in general terms with exceptions to be determined at the discretion of the agency. They shall afford each viable prospective Lessor interested in submitting a serious proposal with knowledge of the agency's space requirements. In specific instances it may, on occasion, be necessary to issue additional specifications due to some unique requirements of a particular agency.

(2) Cost of all construction or renovation to meet the requirements of the specifications or remodeling as determined necessary by the agency shall be borne by the Lessor.

(h) **Evaluation of proposals.**

(1) It is recommended that the agency, in conjunction with preparing specifications, develop evaluation criteria. The criteria items most significant to the agency's needs should bear the highest consideration. Rental, the cost of relocation, if any, consolidation of activities, if desirable, and any other factors deemed necessary should be weighed.

(2) The evaluation and selection of the best and most economical proposal shall be made by the agency and submitted to the Office of Management and Enterprise Services for final authorization.

(3) Criteria to be used in the evaluation of space will include, but not be limited to, the following:

(A) The comparison of the square footage required to satisfy the agency's needs with the square footage available in a given facility. Square footage required shall be determined according to 260:95-1-4.

(B) An analysis of the quality and condition of building facilities such as elevators, toilets, parking, public traffic areas, and location relative to associated agencies.

(C) The cost of occupying the space for the term of the lease should include the following factors:

(i) Square footage cost of the proposed space.

(ii) Estimated cost of utilities, if not included in the proposed rate.

(iii) Cost of custodial services, if not included in the proposed rate.

(iv) Cost of parking, if not included in the proposed rate.

(D) Time factors affecting need for the space.

(E) Capability to accommodate future needs of the agency for space and services.

(F) The building's compliance and/or the owner's willingness to assure that the building complies with the requirements of the Americans with Disabilities Act.

(G) Availability of adequate public and client access through public transportation and parking.

(H) Space efficiency and effectiveness for the agency's purpose.

(4) Documentation to support the selection shall be provided to the Office of Management and Enterprise Services. Such documentation shall include the following:

(A) A copy of the advertisement.

(B) A synopsis of the agency's findings for each proposal or site considered.

(5) The agency shall notify, in writing, each party who submitted a proposal regarding a decision on the space. The agency is not obligated to provide the party with a specific reason for rejection of a proposed site.

(6) In the event either no proposal or no acceptable proposal is received after advertising, the agency may negotiate in the open market for leasing of the needed space after obtaining authorization from the Office of Management and Enterprise Services.

(7) The agency may reject all sites; however, specific reasons for rejecting proposals shall be provided in writing to the Office of Management and Enterprise Services. The Director of Real Estate and Leasing Services will then determine whether the space requirement should be re-advertised or whether other acquisition methods are required. Reasons for rejection of proposals include, but are not limited to:

(A) Rents exceed available funds and it would not be appropriate to adjust the amount of space to come within available funds.

(B) There is reason to believe that the proposals may not have been independently arrived at, may have been collusive, or may have been submitted in bad faith.

(C) All otherwise acceptable proposals are at unreasonable rents.

(D) No proposal met or could meet the specified requirements of the agency.

(i) **Negotiations of non-state owned space.**

(1) Negotiations may be conducted with the offeror of each acceptable site as follows:

(A) Each responsible offeror of a viable facility may be individually contacted and apprised of the weak and strong points of his offer and any changes or revisions to the specifications.

(B) A written best and final offer may be solicited from each viable party with a specific due date.

(2) The agency shall negotiate lease terms consistent with the policies of the Office of Management and Enterprise Services to include any rent "ceiling" established by the Office of Management and Enterprise Services.

(3) When negotiations have produced final offers for one or more sites with equitable rental rates, the agency will proceed with the remaining requirements to conclude the transaction.

(j) **Preparation of lease agreement of non-state owned space.** Once space has been selected and exact terms and conditions of a lease have been approved by the Office of Management and Enterprise Services , the agency shall prepare for signature the Lease Agreement and obtain all requested documentation in accordance with 580:60-1-7.

(k) **Lease renewal of non-state owned space.** The agency shall begin to evaluate its space needs no less than three months prior to the expiration of a lease term.

(1) The condition of space which has been occupied by an agency shall be evaluated and required improvements discussed with a Lessor prior to initiating a Renewal Lease Agreement.

(A) Any requests made by the agency to the Lessor for alterations related to general maintenance, upkeep, or repair, as designated in the original Lease Agreement, may be included as an "Attachment to the Lease Agreement" to specify the action required, dates of completion, and signature of both the Lessor and the agency.

(B) General maintenance and repairs shall not justify a rental increase.

(C) A change in the vendor, square footage, or rental rate shall not be made in a renewal lease agreement.

(2) If the agency intends to exercise a renewal option at the same terms and conditions set forth in the existing lease, the lease shall be renewed without pre-authorization from the Director of Real Estate and Leasing Services.

(A) The agency shall submit the Standard Renewal Lease Agreement,or renew via the purchase order when appropriate, and any other required renewal documents to the Director of Real Estate and Leasing Services for signature.

(B) If any of the required documents are incomplete, the renewal will be returned to the agency for corrective action prior to final execution.

(3) When an agency has been at its present location over four years, and every fourth year thereafter, it may be required to justify continued need of the space by submitting a Space Request to the Director of Real Estate and Leasing Services. The agency shall be notified if such action is necessary.

(A) The Request shall be completed in accordance with the procedures outlined in 580:60-1-5.

(B) The Director of Real Estate and Leasing Services will review the agency's staffing, specialized requirements and program functions and shall notify the agency of the action or amount of space to be authorized in accordance with its current needs. Relocation will be considered only if it is determined to be in the best interest of the State.

(4) The agency shall advise the Director of Real Estate and Leasing Services immediately if a Lessor requests a rental increase or is seeking termination of the contract at the end of the current lease term. The Director of Real Estate and Leasing Services will provide assistance to the agency in negotiating a new lease, or will determine if it is necessary for the agency to seek new space.

260:95-1-7. Lease documents for non-state owned space

(a) **Purpose.** The purpose of the development of standard state leasing documents is to ensure uniformity and legality of leasing transactions in all non-state owned space.

(b) **General provisions.**

(1) The use of the forms, as developed by the Office of Management and Enterprise Services, is required by all agencies regardless of the size or dollar amount of the lease, unless otherwise authorized by the Office of Management and Enterprise Services.

(2) No provisions to the State Leasing forms may be changed or non-standard terms or conditions added without prior authorization by the Office of Management and Enterprise Services.

(3) The name of the state agency leasing the space shall be indicated as the responsible party (Lessee) on a lease. Neither an individual employee nor a division of an agency shall be indicated as the party leasing the space.

(4) A lease shall be entered into with the party who has legal ownership of the property. A broker or property manager cannot be listed as the "Lessor" unless they have legal authority to represent the owner on the contract and have legal authority to receive rental payments on behalf of the owner. In such cases, written documentation of the delegation of authority shall be provided by the legal owner to be attached to the lease.

(5) The agency director shall sign all lease related forms unless otherwise authorized by the Office of Management and Enterprise Services.

(6) The agency shall prepare four original lease documents to be signed by the Lessor and the agency director. After the appropriate signatures are obtained from the building owner and the agency, all original contracts shall be submitted to the Office of Management and Enterprise Services for final authorization.

(7) A lease is not fully executed until signed by the Lessor, the agency (Lessee), and the Office of Management and Enterprise Services.

(8) Any reduction in the amount of space/rental rate, or the Office of Management and Enterprise Services ' authorized increase in the amount of space or the rental rate shall be made a part of the lease through a new lease agreement or an Addendum to the Lease.

(9) If the effective date of a change of the terms and conditions of the lease coincides with a renewal period, a new Lease Agreement may be required.

(10) If an agency wishes to terminate a lease, it shall provide a written notice to Lessor and copy the Director of Real Estate and Leasing Services no less than thirty days prior to the anticipated cancellation date of the lease. If the cancellation of a lease coincides with the termination date of a lease, the agency shall provide notification to the Lessor and the Director of Real Estate and Leasing Services of such action.

(11) The State uses net usable square feet as the standard method of measurement.

(12) The agency shall not exceed the fair rental prevailing in a community for comparable space nor the State's rental rate ceiling as set by the Office of Management and Enterprise Services.

(13) No lease agreement shall contain an open rate, including Consumer Price Index, or rental escalation clauses unless authorized by the Office of Management and Enterprise Services.

(14) State agencies may not pay rental deposits.

(15) The State shall not be obligated to pay for any rent for any period prior to the time that the Space is occupied by the State.

(16) The lease period shall not exceed one twelve month period; however, it does not have to end the last day of the fiscal period if that date would be less than one year.

(17) The standard Lease Agreement and Renewal Agreement shall allow the agency (Lessee) the right to terminate the lease with thirty days written notification to the Lessor.

(18) Requests for deviations from the standard lease term may be considered by the Office of Management and Enterprise Services when the agency may show programmatic necessity or financial advantage to be in the best interest of the State that would justify a longer or shorter lease term. The agency shall provide written justification to the Office of Management and Enterprise Services for any variance from the terms of the standard lease.

(19) An agency may not lease space in which a state employee has a right of ownership or other financial interest in the property without express written authorization from the Governor.

(20) An agency may not lease space from a current member of the Oklahoma State Legislature or a former member of the Oklahoma State Legislature who has been out of office less than two years.

(21) A lease may be amended during its term with authorization by the Administrator of State Leasing so long as it is in the best interest of the State.

(22) Any changes to the original Lease Agreement shall be pre-authorized by the Administrator of State Leasing before the agency initiates action to alter the lease.

(23) If an increase in rental rate is a direct result of renovations required by the agency after initial occupancy of the space, a specified time limit in which the renovations shall be completed shall be included in the appropriate lease document.

(24) If the costs for utility services (gas, electricity, or water/sewer) are not to be included in the rental rate, these services shall be separately metered for the space to be occupied by the State.

(25) It shall be the responsibility of the building owner to notify the State of any transfer of ownership of the leased premises.

(26) A Certificate of Non-Collusion shall be signed by all parties contracting for services with the State.

(27) Leased space shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations pertaining to health, safety, fire, and public welfare. All construction or renovation to space a state agency leases shall comply with applicable professional architectural and engineering laws.

(28) The State Fire Marshal's office or local fire marshal's office shall inspect the facility to be leased prior to initial occupancy or renovation to existing space, and/or approve building plans for new construction, for compliance with the Life Safety Code, Fire Prevention Code, and National Fire Protection Association Standards. A written report, or floor plan, signed by the State Fire Marshal shall be obtained.

(29) Prior to occupancy of non-state owned space, the proposed space shall be inspected by the State Department of Labor for the presence of friable asbestos containing materials, and written documentation of the inspection shall be obtained. In the event that friable asbestos containing materials are found to be present, the agency shall not be authorized to occupy said space unless a written exception request from the agency director or chief executive officer is authorized by the Office of Management and Enterprise Services.

(30) The Lessor shall adhere to the requirements of the Oklahoma Occupational and Safety Standards Act of 1970.

(31) The Lessor shall maintain general liability insurance to be no less than $1,000,000.00 per occurrence at all times during the lease or any renewal periods unless otherwise exempt by the Office of Management and Enterprise Services.

(32) It is a Lessor's responsibility to ensure that the facility leased by the State complies with the American's with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this act in so far as the requirements of the Act affects the agency.

(c) **Forms.** Forms developed by the Office of Management and Enterprise Services shall be utilized in all leasing transactions in non-state owned buildings. Agencies shall adhere to the provisions of the forms and applicable instructions unless an exception is granted by the Office of Management and Enterprise Services.

[OAR Docket #14-788; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 100. OKLAHOMA STATE GOVERNMENT ASSET REDUCTION AND COST SAVINGS PROGRAM

[OAR Docket #14-789]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:100-1-1. Purpose [NEW]
260:100-1-2. Definitions [NEW]
260:100-1-3. Requirements of law; agency responsibility [NEW]
AUTHORITY:
62 O.S. §908; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:100-1-1. Purpose

The purpose of this Chapter is to provide information and procedures for state agencies, boards, commissions and public trusts to ensure compliance with the State Government Asset Reduction and Cost Savings Program. These rules are established pursuant to the Oklahoma State Government Asset Reduction and Cost Savings Program contained in Title 62, Section 908 of the Oklahoma Statutes to enable the Office of Management and Enterprise Services to obtain the necessary data to develop a comprehensive report detailing state owned properties and to indentify the five percent (5%) most underutilized properties.

260:100-1-2. Definitions

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

"Administrator" means the Administrator of the Office of Management and Enterprise Services.

"Agency" means any state agency, board, commission or public trust having the State of Oklahoma as a beneficiary.

"Appraisal" means the practice of developing and reporting an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

"Data.ok.gov website" means Oklahoma's official website that allows users to download state files for analysis.

"Forms" means documents the Administrator of the Department of Central Services prescribes and requires state agencies, boards, commissions, public trusts to use to provide information to DCS.

"Real Property" means land, and generally whatever is erected growing upon or affixed to land; also rights issuing out of, annexed to, an exercising in or about land.

"Real Property Inventory" means a comprehensive list of property submitted by the state agencies, boards, commissions, and public trusts listing all real property owned, the value of the property and any underutilized property.

"State-owned properties" means all property lawfully appropriated by the state to its own use; all property dedicated to the state and all property which there is no other owner.

"Underutilized property" means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. Underutilized property may include: Undeveloped land; office buildings; warehouses; commercial and industrial facilities; military holdings; and residences.

260:100-1-3. Requirements of law; agency responsibility

(a) **General.** In accordance with section 908(D) of Title 62 of the Oklahoma Statutes, each state agency, board, commission and public trust having the State of Oklahoma as a beneficiary shall submit all information requested concerning the state-owned properties the recipient of the request controls, uses, or for which the recipient accounts, to the Office of Management and Enterprise Services within 60 days of the date the request is electronically sent. Each state agency that receives a request for data from the Office of Management and Enterprise Services pursuant to the Asset Reduction and Cost Savings Program is required to fully respond to the request.

(b) **Information Format.** The information contained in the response shall be in electronic form in the format designated by the Office of Management and Enterprise Services within the request. Forms or instructions will be developed by for use by the agencies to facilitative requirements of this chapter. The

Real Estate Department of the Office of Management and Enterprise Services shall publish the forms on the agency website and provide forms upon request.

(c) **Extension.** Additional time to respond may be granted by the Administrator or a designee, only upon a written request made ten (10) days before the expiration of the date the response is originally due. The request for extension shall include the reasons any extension is necessary and shall list the information that is not available without an extension. Such requests may or may not be granted by the Administrator.

(d) **Non-Responsive.** In the event that any agency receives a request and fails to timely respond with the information required, the recipient will be listed as nonresponsive in the report provided to the Legislature and will be published on the "data.ok.gov" website.

[OAR Docket #14-789; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 105. STATE SURPLUS PROPERTY

[OAR Docket #14-790]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 105. State Surplus Property [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:105-1-1. Purpose

This chapter provides general information and provisions pertaining to the transfer, disposal and acquisition of state surplus property for use by state agencies, authorized entities, individuals and business entities pursuant to the Oklahoma Surplus Property Act. [74 O.S., Sections 62.1 et seq.] The Director of the Office of Management and Enterprise Services promulgated these rules pursuant to 74 O.S., Section 62.3. to ensure that state-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented.

260:105-1-2. Definitions

In addition to terms the Oklahoma Surplus Property Act provides, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

"Administrator" means the person in the Office of Management and Enterprise Services designated by the Director of the Office to oversee the State Surplus Property Program.

"Authorized entity" means a political subdivision, school, a multipurpose senior citizen center, as such term is defined in the federal Older Americans Act of 1965, group or organization eligible to acquire surplus property from a surplus property program. [74 O.S., §62.2]

"Authorized signature" means the signature of a state employee duly authorized by the chief administrative officer of a state agency to sign forms on behalf of such agency for submission to the Office or a surplus property agent.

"Business entity" means an individual, partnership, business trust, cooperative, association, corporation or any other firm, group or concern which functions as a separate entity for business purposes.

"Cannibalize" means to take salvageable parts from (as a disabled machine) for use in building or repairing another machine; or to make use of (a part taken from one thing) in building or repairing something else.

"Director" means the chief executive of the Office of Management and Enterprise Services.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Form" means a document prescribed by the Director to be used by state agencies to provide information to the Office or a surplus property agent.

"Inventory" means an itemized list of tangible assets owned by state boards, commissions, institutes and agencies pursuant to provisions of 74 O.S., §110.1.

"Office" or **"OMES"** means the Office of Management and Enterprise Services.

"Proceeds" means funds the surplus property agent derives from sale of surplus property.

"Program" means the Surplus Property Program established and administered by the Director of the Office of Management and Enterprise Services in accordance with 74 O.S., Section 62.1 et seq.

"Public auction" means either a tangible event at a public location or an electronic event which is advertised and made available to the public via the Internet.

"Salvage or scrap" means property which, because of its worn, damaged, deteriorated, incomplete condition or specialized nature has no reasonable prospect of sale or use as designed, but has some value in excess of its basic material content.

"Surplus property agent " or **"agent"** means a person designated by the Director to perform duties necessary to administer a surplus property program.

"Trade-in" means equipment which is exchanged on replacement equipment.

"Vehicle" or **"equipment"** means automobiles, station wagons, vans, pickups, trucks, buses, other modes of transportation and heavy equipment.

"VIN" means the unique vehicle identification number of a vehicle or equipment.

260:105-1-3. Exemption

(a) State agency inability to perform Program requirements. If a state agency reasonably believes that it is unable to perform a requirement of the Program, the state agency may submit a written request for an exemption to the Administrator. The request must be signed by the chief administrative officer of the agency and state the reason for the exemption request.

(b) **Approval of exemption and notification.** The Administrator will review the request and determine whether to approve, conditionally approve or deny an exemption. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.

(c) **Exemption expiration.** Approval of an exemption shall expire upon the completion of the transaction designated in the exemption request.

(d) **Grand River Dam Authority (GRDA).** Sale of surplus power generation equipment and by-products by the GRDA shall be exempt from this Chapter. GRDA shall submit a detailed report of the sale of any surplus property disposed of pursuant to this Subsection to the Office no more than thirty days after the sale.

260:105-1-4. Prohibitions

(a) **Donations of state property.** Donations of state property to private individuals, for-profit organizations or state employees is prohibited.

(b) **Sales to state employees.** The sale of state property to state employees is prohibited unless items are sold at announced public sales or auctions.

SUBCHAPTER 3. DECLARATION AND APPROVAL OF SURPLUS PROPERTY

260:105-3-1. Declaring state property surplus

(a) **Declaration and approval.** A state agency shall determine when its personal property is surplus property in accordance with 74 O.S., Section 62.2.

(b) **Storage and preservation of surplus property by agency.** A state agency is responsible for the preservation of its surplus property prior to the official approval of its disposal required by the rules of this chapter.

(1) A state agency must make reasonable efforts to protect its surplus property from the elements, theft or any other means of destruction or deterioration.

(2) A state agency must make reasonable efforts to store surplus property no longer than six (6) months to minimize its depreciation.

(3) If a surplus property agent has reasonable cause to believe that the resale value of surplus property has been decreased because of negligent storage or handling by a state agency, costs incurred by the Office for the disposal of such property may be charged to the state agency.

(c) **Request for approval to sell or transfer surplus property.** State owned property shall not be destroyed, sold, transferred, traded in, traded, discarded, donated or otherwise disposed of without prior written approval of the Administrator. This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(d) **Surplus Property Transfer Form.** To request official approval to dispose of surplus property, a state agency must submit a form, prescribed by the Office, to the Administrator for approval. A surplus property transfer form must be signed by the chief administrative officer of the agency or an authorized agent and shall state:

(1) The legal name of the state agency;

(2) The principal address of the state agency;

(3) The name of the division or department within the agency, if applicable, where property is located.

(4) The name, telephone number, fax number and e-mail address of a contact person authorized to show and/or provide additional information concerning the surplus property to an agent;

(5) The name, telephone number, fax number and e-mail address of the person preparing the form;

(6) The complete address or location of the surplus property;

(7) A desired method of disposal of the surplus property as authorized in 260:105-5-1;

(8) The reason the property has been declared as surplus property, which may be stated as:

(A) No longer needed to perform the duties of the agency; or,

(B) Broken, cost to repair not economical; or,

(C) Obsolete. Not compatible with newer equipment; or

(D) Other, which shall be followed with a specific explanation.

(9) The inventory control number, if any, assigned to the surplus property item;
(10) A description of the surplus property item, including serial, model or other identification numbers, whenever available;
(11) A general statement as to the condition of the surplus property item (i.e. excellent, good, fair, poor, damaged, scrap, missing parts, etc.);
(12) Any known defects or enhancements;
(13) An estimate, current value, suggested selling price or minimum acceptable price;
(14) Any other information or recommendations to assist the approval and efficient disposal of the property.
(A) The name, address and telephone number of a suggested vendor, if any.
(B) Specify whether a recommended buyer is considered to be a related party as described in 260:105-7-1.
(15) A statement that the contents of the form have been reviewed by the chief administrative officer or authorized agent of the agency and that the facts contained therein are true and correct.

(e) **Approval by the Office.** The Administrator shall review the request and determine whether to approve, conditionally approve or deny the disposal of surplus property. Written notification of such determination, which shall set forth conditions for approval or reasons for denial of the request, will be sent to the state agency.

(f) **Exception.** A surplus property transfer form is not required when equipment is transferred between departments within the same agency, even though a purchase price may be charged.

260:105-3-2. Declaration of surplus vehicles and equipment

(a) **Additional information.** Whenever a state agency desires to dispose of vehicles or equipment, the following information shall be included on the surplus property transfer form required by 260:105-3-1(d):
(1) Make, model and model year;
(2) Body style, load rating, seats or passenger capacity, number of cylinders, number of drive wheels (i.e. 2 x 4 or 4 x 4)
(3) Vehicle options (i.e. power steering, power brakes, air conditioning, AM/FM radio etc.)
(4) Mileage or operation hours;
(5) Color;
(6) VIN;
(7) General condition (i.e. runs, driveable, etc.);
(8) Type and location of any identifying markings on the vehicle or equipment;
(9) Any special equipment the state agency desires the surplus property agent to remove prior to vehicle or equipment disposal. Failure to request the approval and removal of special equipment at least 24 hours in advance of the disposal of the vehicle or equipment by an agent may result in the loss of the special equipment.

(b) **Required Documents.**
(1) **Disposal documents.** If laws governing a state agency require written authorization for the state agency to dispose of a vehicle, the state agency shall provide the surplus property agent a copy of required documents.
(2) **Title.** At the time of vehicle transfer to the surplus property agent, the state agency shall provide title to the vehicle to the agent with authorized signatures for legal transfer of the vehicle.

(c) **Vehicle or equipment repairs.**
(1) **Notice to state agency.** If a surplus property agent reasonably believes that the cost of minor repairs to a vehicle or equipment will enhance its potential sale value in an amount that exceeds the cost of the minor repairs, the agent shall send written notice to the state agency and request approval to authorize the repairs.
(2) **State agency approval.** Within five (5) business days after receipt of the repair notice in (1) of this subsection, the state agency shall send written notice of approval or disapproval of the repairs to the agent.

(d) **Repair documents.** Upon receipt of the written approval by a state agency, the surplus property agent shall acquire parts for and repair the vehicle or equipment. The agent shall retain receipts for the parts and document the labor time to install the parts. All repair documents shall be filed and maintained in the state agency vehicle and equipment disposal records of the Office.

260:105-3-3. Cancellation or amendment of a surplus property transfer request

(a) A state agency may notify the Office of its decision to:
(1) Withdraw a request for approval of the disposal of surplus property;
(2) Cancel a request for disposal of surplus property after its approval by the Administrator;
(3) Add or delete one or more items from a list of property submitted to or approved by the Administrator.

(b) A cancellation or amendment request must be in writing and shall include an explanation of the request.

(c) The Administrator shall send written notice to the state agency of the approval or disapproval of a cancellation or amendment request.

(d) The Office may assess charges for any transportation, handling and processing expenses incurred in the return of surplus property.

260:105-3-4. Transport and delivery of surplus property

(a) **Transport method.** Upon receipt of approval of the disposal of surplus property from the Office, a state agency shall advise the surplus property agent the transport method the state agency desires to utilize to transport the property, vehicle or equipment to the location the agent specifies.
(1) A state agency shall be responsible for delivering surplus property to State Surplus, whenever possible. A state agency shall notify a surplus property agent at least 24 hours prior to the date it proposes to deliver surplus property to the State Surplus location.

(2) Whenever a state agency is unable to transport surplus property, the agency shall contact a surplus property agent to schedule pick up and transport by State Surplus.

(A) A state agency shall provide State Surplus a notice of no less than thirty (30) business days prior to the date the agency desires surplus property to be picked up.

(B) The notice period required in (A) of this paragraph may be decreased if it is determined that an emergency or other conditions exist which warrant earlier removal of surplus property upon approval by a surplus property agent.

(b) **Handling and loading surplus property for transport.** A state agency shall assist, whenever possible, with loading and handling of surplus property for transport by a surplus property agent.

(1) The contact person identified on the surplus property transfer form [See 260:105-3-1(d)], or a designee, shall be present during the handling and loading of surplus property by an agent.

(2) A surplus property agent will verify surplus property for loading and transporting against the surplus property list approved in accordance with 260:105-3-1(d).

(A) Any property not specified on the approved list shall not be loaded or transported by a surplus property agent.

(B) Any property specified on the approved list which is missing at the time an agent is loading for transport to State Surplus shall be noted as missing on the copy of the approved list. Such note shall be initialed at that time by both the agent and the state agency contact.

SUBCHAPTER 5. SALE OR DISPOSAL OF SURPLUS PROPERTY

260:105-5-1. Methods of disposal of surplus property

(a) The method of disposal of surplus property must be approved by the Administrator in accordance with 260:105-3-1(d) prior to disposal of state property by a state agency.

(b) Methods of disposal of surplus property are:

(1) **Transfer to a state agency or authorized entity.** Property is transferred to another state agency or authorized entity with or without charge as mutually agreed by both parties.

(2) **Sealed bid.** Property is sold by sealed bid in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter by the state agency.

(3) **Public auction.**

(A) **State Agency.** Property is sold at a public auction coordinated by the state agency, if authorized by statute.

(B) **Surplus Property Program.** Property is sold at a public auction coordinated by a surplus property agent in accordance with the rules of this Chapter.

(4) **Scrap metal.** Property is sold as scrap metal.

(5) **Trade-in.** Property is exchanged as trade-in for replacement equipment by a state agency.

(6) **Transfer to Office for disposal by a surplus property agent.** Agent disposes of surplus property, with the exception of vehicles and equipment, by any method listed in this subsection with no remuneration to the state agency.

(7) **Disposal by other means.** Property is disposed of by other specified means which are deemed to be in the best interest of the state at the request of the state agency.

(c) An agency which is approved to dispose of state property shall be responsible for the removal of such property from the agency's official inventory records and submitting notification to the Risk Management Division of the Office, whenever applicable.

260:105-5-2. Disposal by other than a surplus property agent

(a) **Transfer to another state agency or authorized entity.** A state agency may determine that the direct transfer of state property to another state agency or authorized entity, with or without remuneration, is in the best interest of the state and request approval of such transfer from the Administrator.

(1) Official approval must be received prior to the transfer of state property. A request to transfer state property shall be made according to 260:105-3-1(d).

(2) The transferring agency is responsible for obtaining a signed receipt for all property transferred pursuant to this section, in addition to maintaining a record of all property transferred. Records shall include, but are not limited to:

(A) Itemized list of property transferred;

(B) Reason for transfer;

(C) To whom property is transferred;

(D) Inventory number of property transferred;

(E) Acquisition cost, if known; and

(F) Estimated value at time of transfer.

(3) Whenever a state property transfer between two state agencies requires remuneration for the state property, all receipts and remittances required to effect such transactions shall be processed through the special cash fund created by 74 O.S., Section 62.5.A.

(b) **Sealed bid or public auction.** A state agency may elect to sell surplus property by sealed bid or public auction without using the services of a surplus property agent and request approval of such sale from the Administrator.

(1) Official approval must be received prior to the sale of surplus property by a state agency. A request to sell state property shall be made according to 260:105-3-1(d). Sealed bids shall be conducted in accordance with the Oklahoma Central Purchasing Act.

(2) A public auction may be conducted utilizing the services of such state agency employees or by contracting with a professional auction service in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter.

(3) A state agency is responsible for maintaining a record of all property it sells or disposes of pursuant to this subsection which shall include, but not be limited to:

(A) Name of the selling agency;

(B) Date of the sale;

(C) Method of sale;
(D) Selling price of property; and,
(E) Name and address of buyer.

(c) **Trade in.** A state agency may determine it is in the best interest of the state to trade in property it owns to receive credit towards the purchase of new property and request approval of such trade in from the Administrator.

(1) Official approval must be received prior to trading in state property. A request to trade in state property for credit against the purchase of new state property shall be made according to 260:105-3-1(d).

(2) In addition to the information required by 260:105-3-1(d), the following information must be submitted to the Administrator for approval:

(A) Description of the item to be purchased;
(B) Cost of the new item;
(C) Value to be allowed for the state property; and,
(D) Name and address of vendor offering the replacement property.

(3) The Administrator will review the request and determine whether to approve, conditionally approve or deny the trade in of the state property. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.

(d) **Scrap.** A state agency may determine that property it owns is worn out, damaged, disassembled or in poor condition in such a manner that renders it of no value and request approval to abandon, destroy or sell the property as scrap from the Administrator.

(1) Official approval must be received prior to the abandonment, destruction or selling of state property for scrap. A request to abandon, destroy or sell state property for scrap shall be made according to 260:105-3-1(d).

(2) In addition to the information required in the surplus property form [See 260:105-3-1(d)], a detailed statement of the condition and quantity of such state property which would be useful to the approval process must be submitted to the Administrator for consideration.

(3) The Office will send written notification to the agency that:

(A) A determination was made that some reasonable value can be obtained from the sale of the property as scrap which must be coordinated by a state surplus property agent; or

(B) A determination that there is no value either for salvage or for spare parts; whereas, authorization may be given to abandon or destroy the property in a manner designated or coordinated by a state surplus property agent.

(e) **Prohibitions.** A state agency shall not arrange sales to individuals or non-state agencies.

260:105-5-3. Disposal of state property by a surplus property agent

(a) **Method of disposal.** A surplus property agent shall determine the method of disposal for all surplus property transferred to State Surplus for disposal.

(b) **Public Auction.** A surplus property agent shall conduct periodic public auctions to dispose of surplus property that has been held on-site for longer than thirty (30) days.

(1) A public auction shall be open to individuals and business entities.

(2) The time, date and location of a public auction shall be advertised in a local newspaper and published on the Office website.

(c) **Disposal for salvage.** An agent may reasonably believe that surplus property has salvage value only and shall document the reasons for such a determination. Surplus property declared to have salvage value only may be disposed of by public auction, direct sale, or solicitation of bids pursuant to the Oklahoma Central Purchasing Act.

(d) **Direct sales.** An agent may sell surplus property directly to state agencies, counties, cities, non-profit organizations, rural fire departments, rural water districts and multipurpose senior citizen centers located in Oklahoma at market prices.

260:105-5-4. Processing special class surplus property

(a) **Special classes of surplus property.** An agent may determine any surplus data processing copier, printer, telecommunications, other such technology equipment or portable buildings to be a special class of property based upon its value, operation, or structure.

(b) **Approval of special classes.** Special classes are declared surplus property and approved by the Administrator according to 260:105-5-1.

(c) **On-site demonstrations to potential buyers.** Whenever a state agency declares items named in (a) of this section as surplus property and requests its transfer to the Office, an agent may determine that the property be retained on-site and in operation, if applicable, to permit demonstration to potential buyers. The determination will be based on the following:

(1) Disconnection and transportation of the property may drastically decrease its value;

(2) On-site demonstration of the property is for the overall best interest of the state;

(d) **Coordination of sale.** An agent shall coordinate the sale of property named in this section with the agency and employ the most efficient, timely and cost effective method to process the property. Sales to the public shall be delayed for thirty (30) days to provide priority purchase to state agencies. [see 260:105-7-2.]

260:105-5-5. Disposal of hazardous waste

(a) **Acceptance of hazardous material.** The Office shall not receive, store, handle or process any equipment, fluids, chemicals, residue or other property which have been identified as hazardous to the health or safety of the general public.

(b) **Notification of Department of Environmental Quality.** An agency discovering or suspecting the presence of hazardous material shall immediately contact the Department of Environmental Quality for direction and information related to its disposal.

SUBCHAPTER 7. ACQUISITION OF SURPLUS PROPERTY

260:105-7-1. Sales to related parties

(a) A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(b) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

(1) Has purchasing authority.

(2) Has maintenance authority.

(3) Has disposition or signature authority.

(4) Has authority regarding the disposal price.

(5) Has access to restricted information.

(6) Is perceived to be a related party using other criteria which may prohibit independence.

(c) Owning state agencies must list any recommended purchasers on the transfer of surplus property form [See 260:105-3-1(d)] and specify whether they are considered to be a related party.

(d) When a prospective purchaser is identified or determined to be a related party, the Administrator will employ one of the following procedures:

(1) The Administrator may require written justification and authorization from the Department or Division director. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

(2) The Administrator may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

(3) The Administrator may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the rules of this chapter.

260:105-7-2. Transfer or sale to a state agency or authorized entity

(a) **Priority purchase of surplus property.** An agent shall make all approved surplus property available to state agencies and authorized entities for review and priority purchase for a minimum of thirty (30) days prior to their transfer or sale.

(b) **Acquisition cutoff date.** The agent will schedule a reasonable cutoff date for final acquisition of surplus property by state agencies no less than five (5) days prior to the next regularly scheduled public auction date.

(c) **Transfer cutoff date.** All transfers to State Surplus after the cutoff date is scheduled will be approved by an Agent on a case by case basis based upon storage capacity prior to the auction.

(d) **Purchase price.** A state agency or authorized entity that desires to acquire surplus property, a vehicle or equipment from the Office may negotiate the purchase price for the property with a surplus property agent.

260:105-7-3. Public auction

(a) **Public sales.** Sales to the public shall be made only by means of a public auction or sealed bids.

(b) **Payment deadline.** Final payment for surplus property by the public shall be made no later than 2:00 p.m. on the date of the auction.

(c) **Pick up deadline.** Surplus property shall be picked up after payment no later than 3:00 p.m. on the Tuesday immediately following the date of the auction.

(d) **Cancellation of transaction.** If payment is not made or property is not picked up by the cutoff time scheduled by the agent, the sale transaction shall be canceled.

260:105-7-4. Return of property after purchase

All surplus property, vehicles and equipment are sold "as is" and are nonreturnable.

260:105-7-5. Payment provisions

(a) **General requirements for purchases.** Payment made by the public shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 45 days following the purchase and removal of the property. The following provisions apply to all sale transactions prior to the release of property by an agent:

(1) **State agency, political subdivision, school district.** A state agency, political subdivision or school district shall:

(A) Provide a purchase order for the mutually agreed purchase price at the time of purchase; and,

(B) Submit a billing invoice which contains the name and address of the purchasing agency or authorized entity and the name of the representative making the purchase on behalf of the agency or authorized entity with the payment; or,

(C) Make payment with a state approved purchase card.

(2) **Private business.** A private business shall provide a business tax identification number and a tax-exempt certificate, if applicable, at the time of payment. Otherwise, local sales tax shall be charged.

(3) **General public.** Sales tax shall be collected for all purchases made by the general public unless a tax-exempt certificate is presented at the time of payment.

(4) **Non-governmental entities.** Non-governmental entities that are not-for-profit organizations shall provide a copy of the letter issued by the Internal Revenue Service granting its tax exempt status at the time of its first purchase.

(b) Form of payment from non-governmental entities and general public. Payment may be in the form of certified funds, business check, money order, cashier's check or credit card approved for use by the Office.

(1) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.

(2) A check must be guaranteed by a letter of credit issued by the financial institution and may not be accepted for amounts exceeding $2,500.00.

(3) Unguaranteed checks and 2-party checks shall not be accepted.

(c) **Payment refunds.** All payments received for the purchase of surplus property are nonrefundable.

(d) **Cash.** Cash for exact purchase amounts may be accepted at a public auction.

260:105-7-6. Conditions of service

(a) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Office shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency.

(1) Accounts delinquent for more than 120 days shall be subject to suspension by the Director. Suspension of an account bars the agency from the purchase of additional surplus property until payment is received and the account is no longer in arrears.

(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.

(b) **Insufficient checks.** If a check from the general public is returned by a financial institution for "insufficient funds", "account closed" or other reason, the Office shall send written notice to the debtor stating that the debtor has fifteen (15) days to pay the amount owed with cash, a money order or cashier's check, including any and all additional fees associated with the collection process, such as returned check fees.

(1) Any customer who presents the Office with an insufficient check will be notified in writing of the requirement to make payment by cash, money order or cashier's check for any future surplus property purchases made for twelve (12) months following the date of such notice.

(2) The Administrator may waive the payment requirement in paragraph (1) of this subsection.

260:105-7-7. State agency reimbursement

(a) **Payment schedule.** Whenever the Office sells vehicles or equipment for a state agency, reimbursement of sales receipts shall be issued to the state agency in the month following the month of sale of the property.

(1) Sales receipts shall be accompanied by a report which includes:

(A) a description of the item(s) sold;

(B) the sale price and the portion of the sale price paid back to the agency.

(2) If the sale price of item(s) is lower than cost incurred by State Surplus to sell the item(s), no sales report shall be provided to the state agency.

(b) **Surplus Property Program fee determination and funds remittance.** A reasonable administrative fee shall be charged and retained by the Office from sales receipts for the transfer, sale or salvage of vehicles and equipment.

(1) The Office shall retain an administrative fee of ten percent (10%) of the sale price of a vehicle or equipment.

(2) The administrative fee shall be deducted from the sale receipts of a vehicle or equipment prior to remittance of sales receipts to a state agency.

(3) All administrative fees collected pursuant to this subsection shall be deposited into a revolving fund as specified by statute.

SUBCHAPTER 9. SURPLUS PROPERTY RECORDS

260:105-9-1. Surplus property record keeping by a state agency

The chief administrative officer of each state agency shall maintain a current list of all surplus property. (74 O.S., Section 62.6.) The list shall include the following:

(1) Detailed description of surplus property;

(2) Street address and city or town where surplus property is maintained;

(3) Original purchase price, if known. If purchase price is unknown, estimate of current market value;

(4) If surplus property is disposed of, the method of disposal approved by the Administrator, which shall include:

(A) If sold, date of sale, selling price, name and address of buyer; or,

(B) If transferred, name and address of state agency or authorized entity to which transferred; or,

(C) If otherwise disposed of, a description of the manner of disposal.

(5) Any other information that will document or account for status and location of surplus property.

260:105-9-2. Surplus property record keeping by a surplus property agent

The surplus property agent shall keep and maintain the following surplus property records:

(1) **Vehicle and equipment information.** A record for each vehicle or piece of equipment received from a state agency for disposal, which contains:

(A) a description of the vehicle or equipment;

(B) the transport method;

(C) all documents required by this subchapter related to the vehicle or equipment;

(D) records for expenses incurred by the agent for:

(i) transport of the vehicle or equipment;

(ii) removal of markings from a vehicle or equipment;

(iii) removal of special equipment from a vehicle or equipment;

(iv) additional parts for a vehicle or equipment; and

(v) labor expenses to install parts on a vehicle or equipment.

(2) **Surplus property information.** A record for each surplus property item sold by the agent, which contains the following:

(A) a general description of the surplus property item;

(B) a copy of the signed receipt issued to the buyer.

[OAR Docket #14-790; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 110. STATE INVENTORY

[OAR Docket #14-791]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
260:110-1-1. Purpose [NEW]
260:110-1-2. Definitions [NEW]
260:110-1-3. Threshold determination [NEW]
260:110-1-4. Agency inventory control officer [NEW]
Subchapter 3. Tangible Assets Reporting [NEW]
260:110-3-1. Inventory report [NEW]
260:110-3-2. Additional asset reporting identification elements [NEW]
260:110-3-3. Missing, stolen and destroyed tangible assets [NEW]
260:110-3-4. Agency inventory submission to the Office [NEW]
260:110-3-5. Office review of agency inventory report submissions [NEW]
260:110-3-6. Director action in the event of agency noncompliance [NEW]
Subchapter 5. Tangible Assets Management [NEW]
260:110-5-1. Tangible asset identification [NEW]
260:110-5-2. Insurance [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:110-1-1. Purpose

This Chapter establishes procedures and standards and provides information for the administration of inventories of tangible assets owned by state boards, commissions, institutions, agencies and the institutions comprising The Oklahoma State System of Higher Education and the University Hospitals Authority as authorized pursuant to the provisions of 74 O.S., Section 110.1 and the Administrative Procedures Act.

260:110-1-2. Definitions

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

"Agency" means a state board, commission, institution, agency, or an institution comprising the Oklahoma State System of Higher Education and the University Hospitals Authority.

"Agency inventory control officer" means a person an agency appointing authority designates to provide tangible asset information to the Office.

"Chief administrative officer" means the individual responsible for directing the administration of a state agency. The term does not mean other individuals that make policy for a state agency.

"Computer application" or **"application"** means a system that allows electronic data entry, storage and transfer from one computer or system to another.

"Director" means the Director of the Office of Management and Enterprise Services or his designee.

"Form" means a document the Director prescribes and requires agencies to use to provide inventory information to the Office.

"Historical significance" means a tangible asset that has enhanced value due to its relation to past events or circumstances.

"Inventory" means a detailed list of tangible assets.

"Inventory tag" or **"tag"** means a form of unique identification an agency applies to a tangible asset.

"Office" or **"OMES"** means the Office of Management and Enterprise Services.

"State inventory control officer" means a person the Director designates to receive agency tangible asset information.

"Surplus property" means a tangible asset an agency intends to dispose of pursuant to applicable provisions of law.

"Tangible assets" mean machinery, implements, tools, furniture, livestock, vehicles and other apparatus that an agency may use repeatedly without material impairment of its physical condition and have a calculable period of service and

a value exceeding the reporting threshold the Director of the Office of Management and Enterprise Services establishes for the entity. [74 O.S., Section 110.1(D)]

"Threshold" means the dollar amount specified by the Director as the value of tangible assets required to be reported by an agency.

260:110-1-3. Threshold determination

(a) **General threshold.** Unless the Director specifies otherwise (Reference (b) of this Section), the threshold for tangible asset inventory reports is $500.00.

(b) **Specified threshold.** The Director may specify an individual threshold for an agency which shall be greater than $100.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.

(c) **Threshold considerations.** Whenever the Director specifies an individual threshold for an agency, the capabilities of the agency to provide an inventory of tangible assets to the Office shall be considered:

(1) If an agency demonstrates reliable tangible asset reporting capabilities, the Director may specify a threshold greater than $500.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.

(2) If an agency demonstrates unreliable tangible asset reporting capabilities or does not meet reporting requirements, the Director may specify a threshold not to exceed $500.00.

(d) **Unreliable reporting.** Whenever it is determined that an agency with an established threshold exceeding $500.00 has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the threshold of the agency.

(e) **Review of specified threshold.** No less than six (6) months after the reduction of its threshold, an agency may submit a written request for review of the agency's inventory reporting capabilities to the Director.

(1) If the review determines the agency has demonstrated the capability to provide reliable inventory reports, the Director may increase the agency threshold to an amount not to exceed the amount authorized by 74 O. S., Section 110.1.

(2) If the review determines the agency has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the agency threshold to an amount exceeding $100.00.

(f) **Notice of reporting threshold.** The Director shall provide an agency with written notice of the tangible asset reporting threshold specified pursuant to this section which states the amount and determination for the change.

260:110-1-4. Agency inventory control officer

(a) **Inventory control officer.** Each agency subject to this chapter shall appoint at least one (1) agency inventory control officer.

(1) The name, address and telephone number of the individual designated pursuant to this subsection shall be submitted in writing to the Office by January 15.

(2) Written notification of any changes to information relating to the agency inventory control officer must be submitted to the Office within thirty (30) days of the change.

(b) **Internal inventory procedures.** To ensure accuracy of state inventory records, an agency shall develop internal procedures for reporting and maintaining information related to the acquisition, reallocation, relocation and disposition of tangible assets to an agency inventory control officer.

SUBCHAPTER 3. TANGIBLE ASSETS REPORTING

260:110-3-1. Inventory report

(a) **Report due date.** All agencies must submit an annual report of current inventory of tangible assets owned by the agency as of June 30 of the preceding fiscal year to the Office by August 15. The report shall include all tangible assets based upon the threshold stated in 260:110-1-3(a).

(1) An agency may submit a written request, signed by the chief administrative officer, for extension of the August 15 submission deadline.

(2) The request shall state a reason for the extension and be submitted no later than August 1.

(3) Within ten (10) calendar days of receipt, the Office shall review the request and provide the agency with written notification of its approval or disapproval.

(b) **Report formats.** The Director shall specify tangible asset identification data elements an agency inventory report shall contain and the forms and computer applications the Director shall accept for the agency to report the inventory information. The Director may specify data elements applicable to a tangible asset type.

(c) **Inventory report contents.** The inventory report shall by signed by the agency inventory control officer and shall include for each tangible asset:

(1) the agency number;

(2) the asset tag number;

(3) the model and serial number, if any;

(4) the manufacturer;

(5) the description;

(6) product name;

(7) physical location;

(8) acquisition date and cost;

(9) any other information which may be requested by the Office to ensure the integrity of state inventory records.

(d) **Supporting documents.** An agency shall maintain supporting documents to identify tangible assets. Document types include acquisition, digital photographs or images and other documents that may provide pertinent tangible assets identification information.

(e) **Report forms.** An agency shall submit inventory reports on forms prescribed by the Director. The Office will provide forms upon request.

(f) **Electronic report submission.** The Director may accept electronic inventory submission. The state inventory control officer shall advise an agency of computer applications the Office may accept.

260:110-3-2. Additional asset reporting identification elements

Whenever a tangible asset named in this section is reported by an agency, the asset shall be specifically identified by type in the inventory report required by 260:110-3-1(a):

(1) tangible assets with historical significance;

(2) livestock assets by breed, gender and approximate value;

(3) assets on loan to another agency; a copy of the written instrument documenting the loan shall be submitted with the annual inventory report;

(4) assets that have been traded in by the agency;

(5) assets the agency is unable to affix an inventory tag to;

(6) assets that have been disposed of in accordance with the state surplus property program;

(7) assets that reach the end of its useful life.

260:110-3-3. Missing, stolen and destroyed tangible assets

(a) **Asset loss reports.** An agency shall report a loss to the state inventory control officer within thirty (30) days of discovery that a tangible asset is missing, stolen or destroyed by vandalism.

(b) **Asset loss documentation.** A report of missing, stolen or destroyed tangible assets shall be accompanied by:

(1) A copy of the notice reporting the loss submitted to the insuring entity; and,

(2) A copy of a report from a law enforcement agency made by the agency to report the loss, theft or vandalism.

(c) **Director notification of loss.** The state inventory control officer shall compile a list and report all missing tangible assets to the Director.

260:110-3-4. Agency inventory submission to the Office

(a) **Electronic report submission.** An agency inventory control officer shall request prior approval of submission of inventory data via a computer application from the state inventory control officer and specify the computer application.

(b) **Acceptance of electronic inventory reports.** Upon receipt of a request pursuant to (a) of this section, the state inventory control officer shall provide written authorization to an agency to indicate the Office will accept an inventory report via the computer application identified in such request or advise the agency of alternate computer applications the Office is able to accommodate.

(c) **Rejection of electronic inventory reports.** Electronic versions of inventory reports submitted without the written authorization provided by this section will be rejected by the state inventory control officer.

260:110-3-5. Office review of agency inventory report submissions

(a) **Inventory report review.** Upon receipt of an agency inventory report the state inventory control officer shall review an inventory submission and identify tangible assets that contain incorrect or irreconcilable data elements.

(b) **Report errors and additional information.** The state inventory control officer shall send written request for information to the agency appointing authority of all tangible assets with errors or irreconcilable data elements.

(c) **Agency response.** An agency shall review the state inventory control officer findings and, within thirty (30) days:

(1) shall provide written evidence of error reconciliation to the state inventory control officer; or,

(2) if unable to reconcile an error, shall provide written notice of such facts to the state inventory control officer.

(d) **Director notification of insufficient report or response.** The state inventory control officer shall submit written notice to the Director if an agency is unable to provide evidence in response to a reconciliation request or fails to respond to a reconciliation request. The notice shall include previous tangible asset data elements, a description of irreconcilable elements, the agency written notice and the agency response, if available.

260:110-3-6. Director action in the event of agency noncompliance

Upon receipt of written notice that an agency is missing tangible assets, irreconcilable data elements or has failed to respond to a request by the state inventory control officer, the Director shall determine a course of action.

(1) The Director declares the asset reporting of the agency unreliable and sends written notice of a reduction in the reporting threshold to the agency appointing authority with an explanation of the declaration; or,

(2) The Director shall provide a written report of the known facts regarding missing tangible assets, irreconcilable data elements or the agency's failure to respond to a law enforcement agency with jurisdiction for the agency.

SUBCHAPTER 5. TANGIBLE ASSETS MANAGEMENT

260:110-5-1. Tangible asset identification

(a) **Inventory tags.** An agency shall affix a unique identifier as an inventory tag to all tangible assets.

(b) **Inventory tag location.** The inventory tag shall be affixed in a location to ensure accessibility by an inventory control officer.

(1) An agency shall affix inventory tags in a similar fashion and location on tangible assets similar in nature and use.

(2) An agency shall place inventory tags for tangible assets that do not have an affixed tag in a central location readily accessible to inventory control officers.

(3) If an agency affixes an inventory tag in an inconspicuous location on a tangible asset, the agency shall indicate the location on an inventory list.

(c) **Inventory tag material.** Inventory tags shall be a durable material designed to withstand physical elements the tag may endure.

260:110-5-2. Insurance

The Director shall ensure that the agency inventory reports are accessible by the Risk Management Division of the Office. An agency that acquires insurance from the Risk Management Division of the Office for tangible assets and consumable supplies may use inventory data to identify assets and supplies as reportable losses.

[OAR Docket #14-791; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 115. PROCUREMENT

[OAR Docket #14-792]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 115. Procurement [NEW]
AUTHORITY:
74 O.S. §85.5; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 580 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

260:115-1-1. Purpose

The purpose of this Chapter is to provide information and procedures for suppliers that desire to sell products and services to state agencies, and for state agencies subject to the Central Purchasing Act, to establish fair and consistent purchasing processes that satisfy the needs of the state. All suppliers and state agencies are responsible for knowing the requirements of this Chapter. These rules are administered by the Office of Management and Enterprise Services to provide direction and ensure compliance with the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., and other state laws and rules, which may be applicable to state agency acquisitions. These rules have been promulgated by the Director of the Office of Management and Enterprise Services in accordance with the Administrative Procedures Act and pursuant to the authority of 74 O.S. §85.5, 74 O.S. §85.45s and 62 O.S. §34.28.

260:115-1-2. Definitions

In addition to terms defined in 74 O.S., §85.2, the following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"Addendum" means a written modification to a contract.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

"All or none solicitation" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

"Alteration" means a modification a bidder makes to a solicitation response prior to the response due date.

"Alternate bid" or **"alternative bid"** means a bid or proposal, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Amendment" means a written change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.

"Authorized signature" means a manual, electronic or digital signature or other identifier uniquely linked to a person

authorized to sign documents the supplier submits to the State Purchasing Director.

"Bid bond","performance bond" or **"surety"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Bidder" means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. [74 O.S. §85.2] When used in this Chapter, bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.

"Business days" means Monday through Friday and is exclusive of weekends and Oklahoma state holidays.

"Central Purchasing Division" means the Central Purchasing Division of the Office of Management and Enterprise Services.

"Certified Procurement Officer" or **"CPO"** means a state agency procurement official certified as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Chief Information Officer" means the chief administrative officer of the Information Services Division of the Office of Management and Enterprise Services.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date/time" means the date and Central Standard time a solicitation specifies responses are due.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Competitive solicitation" means a process for acquiring goods or services wherein bidders submit bids to the Central Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirements of applicable statutes and rules are met.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Office of Management and Enterprise Services awards or administers and may also result in cancellation of existing contracts with the State of Oklahoma.

"Director" or **"OMES Director"** means the Director of the Office of Management and Enterprise Services or his designee.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to place human life or safety in imminent danger or threaten significant property interests with imminent destruction; or, is a condition certified by the Governor as a serious environmental situation. [Reference 74 O.S. §85.7]

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Forms" means documents the OMES Director prescribes and requires suppliers and state agencies to use to provide information to OMES.

"Indefinite quantity contract" means a contract the State Purchasing Director, CIO, or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.

"Information Services Division" means the Information Services Division of the Office of Management and Enterprise Services.

"Information technology" or **"IT"** means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text. [62 O.S. §34.29]

"Invitation to bid" or **"ITB"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers to request submission of bids by suppliers for acquisitions.

"Material deficiency" or **"material deviation"** means a supplier's failure to provide information necessary to evaluate a solicitation.

"Minor deficiency" or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

"Non-collusion certification" means a certification submitted by a supplier with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. §85.22.

"Non-responsive" means a bid or proposal that has been determined not to conform to essential requirements of a solicitation.

"Oklahoma Central Purchasing Act" means 74 O.S. §§85.1 et seq.

"Oklahoma Correctional Industries" or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

"Oklahoma Information Technology Accessibility Standards" or **"IT Accessibility Standards"** means the accessibility standards adopted by the Office of Management and Enterprise Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998

(P.L. 105-220, August 7, 1998) to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

"Office of Management and Enterprise Services" or **"Office"** or **"OMES"** means the Oklahoma Office of Management and Enterprise Services.

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Ratification of an unauthorized commitment" means the act of approving an unauthorized commitment made by a state agency and the written agreement documenting the approval.

"Reciprocity" means a preference, which the State Purchasing Director or state agency shall apply against the price submitted for an acquisition by an out-of-state bidder whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. §85.33.

"Remedy" means to cure, alter, correct or change.

"Request for information" or **"RFI"** means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.

"Request for proposal" or **"RFP"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" or **"RFQ"** means a simplified written or oral solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of a quote for acquisitions.

"Requisition number" means an identifier the state agency or OMES assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but may not be limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

"Responsive" means a bid or proposal that has been determined to conform to the essential requirements of a solicitation.

"Reverse Auctioning" means a procurement method wherein pre-qualified bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' price positions are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Central Purchasing Division of the Office of Management and Enterprise Services appointed by the OMES Director; and, includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. [74O.S. §85.2] Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf. In regards to the procurement of information technology or telecommunications, the term means the Chief Information Officer of the Office of Management and Enterprise Services.

"State Use Committee" means the statutory Committee that certifies severely disabled individuals and sheltered workshops as qualified organizations to contract with the state to provide products and services, which are designated in the State Use Committee procurement schedule for state agency acquisitions pursuant to 74 O.S. §§ 3001 et seq.

"Statement of Work" means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.

"Supplier" or **"vendor"** means an individual or business entity that sells or desires to sell acquisitions to state agencies [74 O.S. §85.2].

"Supplier complaint" or **"performance evaluation"** means information a state agency or the OMES Procurement provides to the State Purchasing Director, in a manner the OMES Director prescribes, that documents the quality of service or products provided by a supplier.

"Supplier registration" means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.

"Supplier List" means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive notification of solicitations for commodities specified in their registration application.

"Suspension" means an action by the State Purchasing Director to suspend a supplier's authority to be included on the Supplier List, be eligible to submit bids to state agencies and

be awarded a contract by a state agency subject to the Central Purchasing Act.

260:115-1-3. [RESERVED]

260:115-1-4. State Purchasing Director authority

(a) **General.** The OMES Director, the Oklahoma Central Purchasing Act and other laws prescribe the duties, responsibilities and authority of the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Authority.** Pursuant to the provisions of Section 85.4 of this title [Title 74], the State
Purchasing director, under the supervision of the Director of the Office of Management and Enterprise Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. [74 O.S. §85.5]

(c) **Official directives.** The State Purchasing Director shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, the Procurement rules and any other matter relating to state agency acquisitions and procurement.

260:115-1-5. Chief Information Officer Authority

(a) **General.** The Chief Information Officer is appointed by the Governor and has authority over the Information Services Division of the Office of Management and Enterprise Services.

(b) **Authority.** The Chief Information Officer, or any employee or agent of the Chief Information Officer acting within the scope of delegated authority, shall have the same power and authority regarding the procurement of all information technology and telecommunications products and services ... for all state agencies as the State Purchasing Director has for all acquisitions used or consumed by state agencies as established in The Oklahoma Central Purchasing Act.

(c) **Official directives.** The Chief Information Officer shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures for the acquisition of information technology and telecommunications goods and services.

260:115-1-6. Waivers

(a) **Waiver request.** A state agency may request a waiver from requirements of the rules of this chapter from the Director of the Office of Management and Enterprise Services, if:

(1) the state agency reasonably believes that it would be unable to perform a necessary function due to the inability to make an acquisition pursuant to rules of this Chapter; or,

(2) a court order directs the state agency to make an acquisition from a specified vendor or provider.

(b) **Approval of waiver request.** After the request is reviewed, the OMES Director shall notify the state agency of the approval, conditional approval or denial of the waiver request.

260:115-1-7. [RESERVED]

260:115-1-8. Contract management fee, levy or rebate

Pursuant to 74 O.S. §85.33A, the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to OMES. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Office. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S. §85.33A. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

SUBCHAPTER 3. SUPPLIER PROVISIONS

260:115-3-1. Purpose

(a) This Subchapter provides information, requirements and procedures for suppliers who desire to sell products or services to Oklahoma state agencies. It is the policy of the State to purchase goods and services from suppliers through a competitive selection process that is fair, open and objective in order to achieve optimum value, quality and serve the best interest of the taxpayers in accordance with Oklahoma laws and OMES rules.

(b) Each subchapter of this Chapter contains information and requirements related to state agency procurement. It is beneficial and the responsibility of a supplier to become familiar with all rules of this Chapter to ensure compliance with the Central Purchasing Act and other laws governing state agency procurement.

260:115-3-2. [RESERVED]

260:115-3-3. Supplier registration

(a) **Purpose.** Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Supplier registration is required for any supplier selected for award or renewal of a contract pursuant to the Central Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(1) Suppliers may be required to prequalify for the purpose of responding to online solicitations.

(2) Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.

(b) **Registration.** A supplier may apply for registration online and pay a registration fee, established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers shall be notified by the Central Purchasing Division or by state agencies pursuant to applicable laws and rules, of

solicitations for each commodity class for which a supplier registers. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.

(c) **Registration fee.** A registered supplier may renew a registration and pay an annual registration fee prior to the expiration date of the supplier's current registration in order to remain on the Supplier List. The Office of Management and Enterprise Services shall not refund supplier registration fees.

(d) **Voluntary removal from Supplier List.** A supplier may submit a written request to the Central Purchasing Division to request to be removed from the Supplier List for a commodity.

260:115-3-4. [RESERVED]

260:115-3-5. Procurement ethics - prohibited conduct

(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

(b) **Supplier gratuities.** A supplier or any prospective supplier shall not give or donate anything of value to the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of the immediate family of the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]

(c) **State Purchasing Director action upon supplier violation.**

(1) The State Purchasing Director shall suspend or debar a supplier determined to be in violation of provisions of this section.

(2) The State Purchasing Director shall reject bids submitted by any supplier determined to be in violation of provisions of this section.

(3) The State Purchasing Director may terminate a contract with any supplier determined to be in violation of provisions of this section, if the termination shall be in the best interest of the State.

260:115-3-6. [RESERVED]

260:15-3-7. Bid preparation

(a) **Form requirements.** The bidder shall complete and submit all required forms as specified by the solicitation.

(1) Information the bidder submits shall be legibly hand written, typewritten, printed or electronically conveyed.

(2) Should the bidder alter the form or bid information, the bidder shall initial each alteration.

(3) Any form requiring a bidder's signature submitted to the OMES shall have an authorized signature.

(4) If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner specified by the laws of the bidder's state.

(b) **Firm bid for sixty (60) days.** A bidder's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.

(c) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. Unless otherwise provided by law, a state agency shall not pay travel expenses not specified by the successful solicitation response.

(d) **Tax exemptions.** State agency acquisitions are exempt from sales taxes and federal excise taxes. Purchases made by suppliers on behalf of a state agency are not exempt from sales or federal taxes.

(e) **Payment terms.** Suppliers are paid by state agencies pursuant to 62 O.S. §34.71. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

(f) **Used or new products.** A bidder shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(g) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(h) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(i) **All or none bid.**

(1) **Award to more than one bidder.** If the solicitation specifies that the State Purchasing Director may award a contract to more than one bidder, a bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) **Award by item.** If the solicitation indicates that the State Purchasing Director may award the bid to more than one bidder by item, a bidder may indicate that the terms and conditions of the bid are all or none.

(j) **Bidder delivery.** If the solicitation does not specify a delivery date for goods and/or services, the bidder shall specify the delivery date in the bid.

(k) **Sample submission.** A solicitation may specify submission of samples of the required items or products when essential to the assessment of product quality during bid evaluation. When required, samples must be received no later than the date and time specified by the solicitation.

(1) **Sample identification.** The bidder shall clearly identify the sample the bidder submits by placing the bidder's name, bidder's address, requisition number and

closing date/time on both the sample container and on the sample shipping container.

(2) **Sample costs.** The bidder shall pay costs for the sample and submission to the State.

(3) **Sample requirements.** A bidder shall submit a sample that represents the quality of the whole.

(4) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used. All samples submitted may be subject to consumption or destruction as a result of tests by the agency.

(5) **Sample tests costs.** If the sample a bidder submits fails to meet the specification or standards the solicitation requires, the bidder may be required to pay testing costs the acquiring state agency incurs.

(6) **Return of sample to bidder.** If return of samples is stipulated in a bidder's solicitation response, samples not destroyed by testing may be returned at the bidder's expense.

(7) **Successful bidder samples.** The State Purchasing Director may retain samples submitted by the successful bidder to ensure the products or items delivered meet specifications in the solicitation

(l) **Proof of insurance.** The successful bidder shall provide proof of all insurance required by the solicitation prior to contract award. A supplier who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

(m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the bidder shall provide the information in the bid.

260:115-3-8. [RESERVED]

260:115-3-9. Bid documents open for public inspection

(a) Documents a bidder submits in a response to a solicitation are public records and shall be available for review, upon request, only after a supplier is selected and the contract is awarded. An electronic quote, bid or proposal submitted through an online solicitation process is subject to the same public disclosure laws.

(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:

(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;

(2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and

(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.

(c) The State Purchasing Director shall review the information and may or may not designate a bidder's financial information or proprietary information as confidential and may or may not reject all requests to disclose the information so designated. [Reference 74 O.S. § 85.10]

260:115-3-10. [RESERVED]

260:115-3-11. Bid submission

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, solicitation number and closing date shall be prominently displayed on each item submitted as specified in the solicitation.

(c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement.

(d) **Bid receipt.** Upon receipt, the acquiring state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(e) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the State Purchasing Director has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

260:115-3-12. [RESERVED]

260:115-3-13. Bid withdrawal

(a) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid prior to the closing date shall submit to the State Purchasing Director a written withdrawal request created on the bidder's company letterhead and signed by the bidder's authorized representative. The withdrawal request must identify the requested method of return of the proposal, the person authorized to receive the returned bid, the bidder's name, solicitation number and closing date.

(1) If the bid is to be returned via U.S. Postal Service or other small package carrier, the bidder must provide a method for return shipping charges.

(2) If the bid will be withdrawn in person, the person must provide personal identification to validate they are the person identified in the withdrawal request. After confirmation of identity, the person accepting the withdrawn bid shall sign a receipt for the bid.

(b) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove a significant error by the bidder exists in the bid.

260:115-3-14. [RESERVED]

260:115-3-15. Change to a submitted bid

A bidder who desires to change a bid submitted to a state agency shall withdraw the submitted bid and submit another bid before the closing date.

260:115-3-16. [RESERVED]

260:115-3-17. Contract award

(a) **Time of award.** The contract award shall be made upon completion of bid evaluation and associated administrative tasks necessary to complete the acquisition. State agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, until the State Purchasing Director has issued the award of contract.

(b) **Reasons for bid rejection.** The State Purchasing Director may reject a bid when the bid is determined to be non-responsive or the bid is from a supplier who is not responsible, for reasons included, but not limited to, those listed in Section 16-7-32.

(c) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) business days of the contract award.

(d) **Public inspection.** The evaluation documentation shall be open for public inspection, upon request, following contract award.

260:115-3-18. [RESERVED]

260:115-3-19. Supplier's Protest

(a) A supplier may protest a contract award by a state agency or OMES to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or OMES within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons for protest.

(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.

(A) The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.

(B) The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.

(3) **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the OMES Director.

(A) Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to 75 O.S. §§309 et seq.

(B) The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.

(4) **Director actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.

(A) If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.

(B) If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.

(C) The OMES Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(D) The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [Reference 75 O.S. §§250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.

(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma

law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the supplier protesting the contract award, OMES, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions;

(iv) Require briefing of any or all issues;

(v) Conduct hearings;

(vi) Rule on the admissibility of all evidence;

(vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the OMES Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S. §§ 309 et seq.

(b) An agency making an acquisition pursuant to 74 O.S. §85.5(T) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.

260:115-3-20. [RESERVED]

260:115-3-21. Supplier suspension from Supplier List

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier in accordance with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority. The suspension shall be for a period of time not to exceed one (1) year for any of the following reasons:

(1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation;

(2) a supplier fails to perform pursuant to the contract;

(3) a supplier provides acquisitions that fail to meet the requirements of the contract;

(4) a supplier fails to deliver an acquisition pursuant to the contract;

(5) a supplier fails to timely replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects;

(6) a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form;

(7) a supplier fails to keep a bid firm for the period specified in the solicitation after the solicitation closing date;

(8) a supplier fails to resolve a dispute with a state agency;

(9) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a supplier engaged in discriminatory practices;

(10) a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation;

(11) a supplier colludes with other suppliers to restrain competitive bidding;

(12) a supplier provides a state employee with a kickback;

(13) the State Purchasing Director determines, in his or her sole discretion, that a supplier is no longer responsible or qualified to do business with the State of Oklahoma;

(14) a supplier violates any provision of the Oklahoma Central Purchasing Act;

(15) any other reason the State Purchasing Director determines appropriate.

(b) **Suspension notice.** The State Purchasing Director shall send written notice of suspension to a supplier within five (5) business days of the State Purchasing Director's determination. The notice shall include the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the order.

(c) **Supplier's suspension appeal.** A supplier may appeal a suspension in writing to the State Purchasing Director within five (5) business days of receipt of the suspension notice.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal in writing to the supplier.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the Supplier List.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the OMES Director pursuant to 75 O.S. §§ 309 et seq. and the provisions of 260:115-3- 19.

(e) **Suspension.** The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.

(f) **Supplier request for reinstatement.** A suspended supplier may request reinstatement from the State Purchasing Director prior to the end of the supplier's suspension period. The State Purchasing Director may consider reinstating the supplier upon submission by the supplier of documents that indicate a change of conditions.

(g) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts,

the State Purchasing Director shall send written notice of reinstatement to the supplier.

260:115-3-22. [RESERVED]

260:115-3-23. Supplier debarment

(a) **Cause for debarment.** The State Purchasing Director may debar a supplier and revoke the supplier's authority to be included on the Supplier List, to be eligible to submit bids to state agencies, to be awarded a contract by a state agency subject to the Central Purchasing Act and cancel any existing contracts with the State of Oklahoma. For the purposes of this section, "State Purchasing Director" does not include employees of state agencies to whom the State Purchasing Director has delegated authority. The debarment shall be for a period of no more than three (3) years. Debarment shall be for any of the following reasons:

(1) conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption;

(2) conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Office of Management and Enterprise Services, an immediate family member of an official of the Office of Management and Enterprise Services, or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority;

(3) conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974; or,

(4) debarment by federal government entities.

(b) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(1) **Disassociation.** The efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(2) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(3) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(4) **Time period.** The period of time during which the acts leading to conviction of the individual or business entity occur.

(5) **Failure to respond to inquiries.** Failure of the individual or business entity to respond to inquiries by the State Purchasing Director regarding factors that may lead to debarment.

(6) **Other factors.** Any other factors regarding the individual or business entity the State Purchasing Director determines appropriate.

(c) **State Purchasing Director options.** Upon review and consideration of factors relevant to the proposed debarment of an individual or business entity, the State Purchasing Director shall take one of the following actions:

(1) **Decline to debar.** Decline to debar an individual or business entity;

(2) **Suspension.** Suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate;

(3) **Debarment.** Debar an individual, a business entity, or both for a period that shall begin three (3) business days from the date of the final order of debarment and expire no later than the end of the period specified in the order.

(d) **Debarment notice.** If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.

(e) **Reinstatement after debarment.** A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information the individual or business entity provides to determine if the individual or business entity merits reinstatement. The State Purchasing Director shall provide written notice of the reinstatement approval or denial.

(f) **Supplier appeal of State Purchasing Director's action.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the OMES Director within ten (10) business days of the date of the final order of debarment or the denial of reinstatement notice pursuant to 75 O.S. §§309 et seq and the provisions of 260:115-3-19.

SUBCHAPTER 5. STATE AGENCY PROVISIONS

260:115-5-1. Purpose

The purpose of this subchapter is to provide state agencies and certified procurement officers with information and procedures to achieve consistent and effective procurement practices resulting in quality, cost-saving acquisitions that serve the best interests of the state. In addition to the rules of this Chapter, state agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, statutes relating to the State Use Committee, and all other state laws and rules, as applicable or as required for state agency acquisitions.

260:115-5-2. [RESERVED]

260:115-5-3. Certified Procurement Officers (CPO)

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S. §85.5. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A CPO shall provide assistance and oversight to a state agency to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, the Central Purchasing rules, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, the Central Purchasing rules, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** To maintain certification, a CPO shall attend continuing education as required by the CPO Procurement Training Program established by the State Purchasing Director. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall establish a policy relating to how often courses may be repeated to qualify for continuing education credit.

(1) A CPO shall submit documentation verifying continuing education course attendance to the State Purchasing Director as required by the CPO Procurement Training Program. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.

(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.

(3) Failure by a CPO to complete required continuing education within the allowed time period will result in suspension of the CPO's purchasing authority.

(4) A suspended CPO must repeat the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination in order to be reinstated and restore purchasing authority.

(5) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill required continuing education credits. The State Purchasing Director may approve the request for a reinstatement period not to exceed three (3) months to provide time to fulfill education credits.

(g) **Change in status.** A CPO shall immediately notify the State Purchasing Director when they:

(1) are no longer performing as a CPO;

(2) transfer to another state agency; or,

(3) terminate their employment with the state.

260:115-5-4. [RESERVED]

260:115-5-5. Procurement ethics - prohibited conduct

(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.

(b) **One year limitation for certain contracts.** Unless otherwise provided by law, a state agency is prohibited from entering into a sole source contract, a professional service contract or a contract for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. [Reference 74 O.S. §85.42(A)] An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. [Reference 74 O.S. §85.42(D)].

(c) **Supplier gratuities.** The State Purchasing Director and any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of their immediate family, under the Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any acquisition covered by the Oklahoma Central Purchasing Act. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]

260:115-5-6. [RESERVED]

260:115-5-7. State agency purchasing procedures

(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . .which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations". A state agency must state the method whereby a supplier may protest a contract award by the agency pursuant to 260:115-3-19 in its internal purchasing procedures, and include provisions for procurement policies under statutorily applicable emergency events. Internal purchasing procedures are not effective until approved in accordance with this section.

(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the Central Purchasing rules.

(d) **OMES Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the OMES Director shall notify the state agency if the procedures

comply or indicate revisions necessary to bring the procedures into compliance.

(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the OMES Director notifies the state agency the procedures comply.

(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.

(g) **State agency Purchase Card (P/Card) procedures.** A state agency shall amend its internal purchasing procedures to include the agency's Purchase Card (P/Card) procedures within six (6) months of completing the P/Card Program implementation process through OMES. The P/Card procedures shall include provisions for procurement policies under statutorily applicable emergency events. The P/Card procedures must specify the process established by the agency to ensure a P/Card held by a terminated or separated employee or an employee who no longer has a job function requiring a P/Card, is promptly surrendered to the State Agency P/Card Administrator.

260:115-5-8. [RESERVED]

260:115-5-9. Retention of state agency acquisition records

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts as follows:

(1) **Acquisitions independently processed by agency.** Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later; and,

(2) **Acquisition documents submitted to Central Purchasing Division for processing.** Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

(b) **Records retention location.** A state agency shall retain procurement records and documents in a reasonably accessible location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the OMES Audit staff for audit purposes.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

260:115-5-10. [RESERVED]

260:115-5-11. State agency acquisitions

(a) A state agency shall submit a requisition to the State Purchasing Director for each of its acquisitions, whenever:

(1) the agency does not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 260:16-5-3 and 260:16-5-7 and an acquisition exceeds Five Thousand Dollars ($5,000.00);

(2) the agency's acquisition authority has been reduced by the OMES Director and the acquisition exceeds the dollar amount of the reduced acquisition authority; or,

(3) an acquisition exceeds the state agency's acquisition authority.

(b) OMES may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon written request by the agency or in the event the State Purchasing Director determines the needs of the agency are such to require qualified procurement personnel. [Reference 74 O.S. §85.3] The state agency shall reimburse administrative costs to OMES for the services of employees necessary to provide procurement services pursuant to this subsection.

260:115-5-12. [RESERVED]

260:115-5-13. Authorized signatures for state agency procurement

(a) State agencies shall provide the State Purchasing Director with a current Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and surplus property transactions that may be submitted to the State Purchasing Director. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

(b) State agencies shall also maintain a list of individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and purchase orders for acquisitions within the agency's approved acquisition authority. The list shall include the name, title, and signature of each individual, the effective date of their signature authorization and ending date of the authorization, when applicable. The agency shall maintain a file of the signature authority lists in the location of the agency's centralized procurement records, and shall be available to the State Purchasing Director, upon request.

260:115-5-14. [RESERVED]

260:115-5-15. Agency savings reporting

On October 1, 2010 and October 1 of each year thereafter, the chief administrative officer of each state agency shall submit an electronic report to the State Purchasing Director listing savings realized by the agency in the previous fiscal year through the application of best spend practices. The State Purchasing Director will define the report content required to collect savings data from state agencies, which will include but may not be limited to:

(1) total spend by commodity; and

(2) participation in mandatory statewide contracts.

260:115-5-16. [RESERVED]

260:115-5-17. Ratification of an unauthorized commitment

If a state agency makes an unauthorized commitment on behalf of the state to a supplier, the state may, if in the best interest of the state, ratify the commitment.

(1) **State agency actions.** The chief administrative officer of the state agency shall approve or disapprove a ratification request.

(A) **Chief administrative officer approves request.** If the chief administrative officer approves the request, the state agency shall perform steps as follows:

(i) The state agency shall negotiate a proposal for a ratification agreement with the supplier.

(ii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.

(iii) The chief administrative officer shall sign the proposed ratification agreement. (iv)The chief administrative officer shall provide a copy of the ratification agreement and, upon request, the supporting documents to the State Purchasing Director.

(B) **Chief administrative officer disapproves request.** If the chief administrative officer disapproves the request, the state agency shall retain documents from the supplier and the state agency.

(2) **State Purchasing Director actions.** The State Purchasing Director shall retain a copy of the ratification agreement.

260:115-5-18. [RESERVED]

260:115-5-19. Audits of state agencies

The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, promulgated rules of the Office of Management and Enterprise Services, provisions of 74 O.S. §3001 through §3010, other laws of the State of Oklahoma, and the state agency's approved internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the OMES Director.

(1) **Audit notification.** OMES shall notify the state agency of all scheduled audits.

(2) **State agency responsibilities.**

(A) The state agency shall provide work space for the audit team.

(B) The state agency shall provide records for acquisitions for the audit period.

(C) The state agency shall make the state agency's CPO available to assist the audit team.

(3) **Audit following reduction of state agency acquisition authority.** If the OMES Director reduces the acquisition authority of a state agency, the Audit Team shall periodically audit the state agency's acquisitions in order to review the agency's efforts to correct audit findings of noncompliance.

260:115-5-20. [RESERVED]

260:115-5-21. Procedures for state agency privatization contracts

A state agency desiring to contract to privatize a function, program, service, unit or division valued at One Hundred Thousand Dollars ($100,000.00) or more shall be subject to the Oklahoma Privatization of State Functions Act [Reference 74 O.S. §§588.1 et seq] and the privatization contract procedures established by the State Purchasing Director.

SUBCHAPTER 7. PROCUREMENT

PART 1. GENERAL PROCUREMENT

260:115-7-1. Purpose

The purpose of this subchapter is to provide information and requirements for state agencies subject to the Central Purchasing Act, in order to establish fair and consistent procurement practices. All state agencies are responsible for knowing the requirements of this subchapter. Suppliers are encouraged to become knowledgeable in state procurement practices to expedite transacting business with the state.

260:115-7-2. [RESERVED]

260:115-7-3. Methods state agencies use to make acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition

purchase price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

(2) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Non-mandatory statewide contracts.** State agencies are encouraged to use non- mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

(3) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:

(A) If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to OMES for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.

(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the OMES Director shall resolve the issue.

(4) **Standard contracts.** State agencies may make acquisitions within their approved acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures. The most common types of acquisitions include:

(A) **Contract for definite quantity.** If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.

(B) **Contract for indefinite quantities.** If an agency is unable to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.

(C) **Contract for scheduled acquisitions.** When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(5) **Sole source and sole brand acquisitions.**

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make a sole source or sole brand acquisition within the agency's acquisition authority. [Reference: 74 O.S. §85.45j]

(B) The chief administrative officer of any state agency not utilizing the State's financial and information system for acquisitions shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars ($5,000.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.

(C) If the sole source or sole brand acquisition amount exceeds the agency's acquisition authority,

the agency shall submit the requisition to the State Purchasing Director.

(6) **Emergency acquisition.** State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition in accordance with 74 O.S. §85.7.

(7) **Acquisitions from other governmental agencies.** A state agency may contract with any other department of state government or institution pursuant to 74 O.S. §581 or §1001 through §1008. A state agency may contract with any "public agency" pursuant to 74 O.S.§1001 through §1008, which includes a political subdivision of this state or another state, and any agency of this state or of the United States. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(8) **Acquisition pursuant to waiver.** If the OMES Director approves a state agency's request for a waiver pursuant to 260:16-1-12, a state agency with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7 may make the acquisition for which the waiver was approved, within their approved purchasing authority limit.

260:115-7-4. [RESERVED]

260:115-7-5. Split purchases

State agencies shall not make split purchases for the purposes of evading their approved dollar threshold for competitive bids. Split purchasing for the purpose of evading competitive bidding requirements is a felony. [Reference 74 O.S. §85.7(A)(2)(a)]

PART 3. REQUIREMENTS FOR ACQUISITIONS

260:115-7-11. Acquisitions not exceeding $5,000.00

State agencies shall make open market acquisitions not exceeding $5,000.00 provided the acquisition process is fair and reasonable.

260:115-7-12. [RESERVED]

260:115-7-13. Acquisitions over $5,000.00 and not exceeding $25,000.00

(a) **Basic Requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions over $5,000.00 and not exceeding $25,000.00 pursuant to this section.

(b) **Acquisition Preparation.** The state agency shall prepare and document the state agency's specifications and all information required from the supplier for an acquisition. An agency shall choose an appropriate solicitation methodology, i.e. formal or informal competitive solicitation, based on the complexity of an acquisition.

(c) **Supplier selection.**

(1) The state agency shall solicit from a minimum of three (3) registered suppliers for acquisitions over $5,000.00 and not exceeding $10,000.00 and ten (10) registered suppliers for acquisitions over $10,000.00 and not exceeding $25,000.00, from the Supplier List in the appropriate commodity classification. Selection of suppliers shall be rotated whenever more than ten (10) suppliers are registered.

(2) State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce.

(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. Documentation of prices, delivery dates and the evaluation shall be placed in the acquisition file.

(4) All awards shall be based on lowest and best or best value criteria.

(5) Certifications, verifications and other required documents.

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non- collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the

agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(i) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashiers check.

(ii) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

(iii) **Bond or surety return.** When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

260:115-7-14. [RESERVED]

260:115-7-15. Acquisitions over $25,000.00 and not exceeding $50,000.00

(a) **Basic requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding $25,000.00 but not exceeding $50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.

(b) **Acquisition preparation.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include evaluation criteria for the acquisition.

(c) **Supplier selection.**

(1) The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.

(2) State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

(4) All awards shall be based on lowest and best or best value criteria.

(5) Certifications, verifications and other required documents.

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(i) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.

(ii) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(E) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204.

260:115-7-16. [RESERVED]

260:115-7-17. Acquisitions over $50,000.00 and not exceeding $100,000.00

State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7, shall send a written request to the State Purchasing Director to request acquisition authority exceeding $50,000.00 but not exceeding $100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall:

(1) make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including Section 260:115-7-15;

(2) award all contracts based on lowest and best or best value criteria; and,

(3) solicit all suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency using solicitation forms prescribed by the OMES Director.

260:115-7-18. [RESERVED]

260:115-7-19. Emergency acquisitions

State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 260:115-5-3 and 260:115-5-7, may make an emergency acquisition authorized by 74 O.S. §85.7. For an emergency acquisition, the State Purchasing Director shall:

(1) select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce;

(2) Obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

(iv) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

(I) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency

shall be paid by certified check or cashiers check.

(II) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit.

(III) **Bond or surety return.** When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

(v) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204.

260:115-7-20. [RESERVED]

260:115-7-21. Acquisition pursuant to a waiver

If the OMES Director approves a state agency's request for a waiver [Reference 260:115-1-12], a state agency with a CPO and approved internal purchasing procedures as required by 260:115-5- 3 and 260:115-5-7, may make the acquisition for which the waiver was approved, within their approved purchasing authority limit. When an acquisition is made pursuant to a waiver, the State Purchasing Director:

(1) may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce;

(2) shall obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:

(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:

(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

260:115-7-22. [RESERVED]

260:115-7-23. State agency acquisitions processed by the Central Purchasing Division

A state agency submitting requisitions to the Central Purchasing Division pursuant to 260:115- 5-11 shall comply with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(1) **Forms.** State agencies shall use forms for requisitions provided or approved by the State Purchasing Director.

(2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract, which includes applicable statutory language required by the Oklahoma Central Purchasing Act, signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

(3) **Evaluation Criteria.** An agency shall include written criteria necessary to evaluate a supplier's response to a solicitation such as technical scope, cost, experience, references etc.

(4) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.

(5) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.

(6) **Competitive bid evaluation.** The State Purchasing Director shall evaluate bids and may request assistance of the state agency.

(7) **Competitive bid award.** The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

(8) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

260:115-7-24. [RESERVED]

260:115-7-25. Acquisition limitation exception

(a) A state agency making an acquisition pursuant to 74 O.S. §85.5(T) must have an internal CPO and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7, in addition to the subject matter experts, legal and procurement staff required by law.

(b) Prior to making an acquisition pursuant to this section, a state agency shall submit in writing to the OMES Director, a statement of the agency's intent to make an acquisition pursuant to 74
O.S. §85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the OMES Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.

(c) Agencies making an acquisition pursuant to this section shall comply with 74 O.S. §85.7, the rules of this Chapter and any other applicable state laws and rules.

(d) An agency shall submit a report in electronic format to the State Purchasing Director on a quarterly basis, which lists all contracts issued pursuant to this section. The report shall be submitted by the 5th business day of each new quarter.

PART 5. COMPETITIVE SEALED SOLICITATIONS

260:115-7-30. Competitive sealed solicitations

(a) **General.** The State Purchasing Director shall utilize a competitive sealed solicitation as required by state law and rules of this Chapter or when it is determined by the acquiring agency to be in the best interest of the state. Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal or request for quotation.

(b) **Solicitation contents.** The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodities for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director will also notify suppliers recommended by a state agency for a solicitation.

(d) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify each supplier sent the original solicitation of the amendment.

(1) A supplier shall acknowledge receipt of an amendment in the supplier's bid or quotation for submission by the closing date and time specified in the solicitation.

(2) If a supplier has already submitted a bid, the supplier shall submit an acknowledgment of receipt of the amendment by the closing date and time specified in the solicitation.

(e) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and the acquiring agency related to a solicitation shall:

(1) be limited to the acquiring agency's designated procurement personnel;

(2) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the solicitation; and,

(3) be documented in writing and filed in the acquisition file.

(f) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

(1) lowest and best; or,

(2) best value.

(g) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(h) **Terms and conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition. Except as otherwise provided by Section 3206.3 of Title 70 of the Oklahoma Statutes and Section 1365 of this title, any patented property or copyrighted material developed by contracts subject to the Central Purchasing Act, shall be the property of the State of Oklahoma under the sole management of the Office of Management and Enterprise Services. [74 O.S. §34.3(B)]

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contract shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(i) **Non-Collusion certification.** The State Purchasing Director shall include a non-collusion certification statement in a solicitation. The non-collusion certification shall be included with any bid or proposal submitted to the agency issuing the solicitation.

(j) **Pre-bid conference.** The State Purchasing Director may state in a solicitation that a supplier pre-bid conference will be held and shall state whether supplier attendance is mandatory or non-mandatory.

(k) **Shipping.** Bidders shall include all costs associated with delivery of the acquisition F.O.B. destination to the receiving state agency in the solicitation response, unless otherwise specified in the solicitation.

(l) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the OMES Director may authorize OMES to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(m) **Bid receipt.** Upon receipt, a state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(n) **Firm bid for sixty (60) days.** A supplier's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.

(o) **Sample submission.** A solicitation may specify submission of samples to the State Purchasing Director for evaluation purposes. Any samples requested must be provided free of charge.

(1) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.

(2) **Return of bidder samples.** Samples which are not destroyed by testing will be returned at the supplier's expense if return of the samples is stipulated in the supplier's solicitation response.

(3) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(4) **Samples become property of state.** A sample shall become the property of the State of Oklahoma unless a bidder requests its return and will be disposed of in the same manner as surplus or salvage property.

260:115-7-31. [RESERVED]

260:115-7-32. Bid evaluation

(a) **Evaluation criteria and documentation.** The State Purchasing Director shall develop evaluation criteria to be included in a solicitation, which will be considered during the evaluation of bids.

(b) **Evaluation scoring tool.** Any evaluation scoring tool utilized shall be consistent with the evaluation criteria contained in the solicitation.

(c) **Documentation.** Evaluation of the bids shall be documented and filed in the acquisition file.

(1) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid. [Reference 74 O.S. §85.2]

(2) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation methodology is best value, the State Purchasing Director shall develop and apply criteria consistent with 74 O.S. §85.2.

(d) **Prohibited disclosure.** Agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, including board meetings, until the State Purchasing Director has issued the award of contract.

(e) **Public inspection.** The evaluation documentation shall be open for public inspection following contract award.

(f) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(g) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(h) **Reasons for bid rejection.** The State Purchasing Director shall document in the acquisition file if a bid is non-responsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (h)(2) of this section, the State Purchasing Director may reject a bid that is non-responsive, or a bid from a bidder who is not responsible, for reasons including, but not limited to reasons listed in this section:

(1) **Non-responsive bid.**

(A) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation may be considered non-responsive.

(B) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered non-responsive.

(C) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered non-responsive.

(D) **Form entries improper.** If information provided in the solicitation documents is not legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered non-responsive.

(E) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered non-responsive.

(F) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to

state laws and the rules of this chapter, the bid may be considered non-responsive.

(G) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding supplier's state of residence, the bid may be considered non-responsive.

(H) **Bid does not contain bid bond or other surety.** If a bidder fails to include a bid bond or other surety specified as a requirement by a solicitation, the bid may be considered non-responsive.

(I) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered non-responsive.

(J) **Items not suitable for intended use.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered non-responsive.

(K) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid may be considered non-responsive.

(L) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the State Purchasing Director issues to a solicitation, the bid may be considered non-responsive.

(M) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered non-responsive.

(N) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid may be considered non-responsive.

(O) **Signatures on solicitation documents.** If an authorized signature is omitted from any solicitation document that requires an authorized signature, the bid may be considered non-responsive.

(2) **Bidder not responsible.**

(A) **Failure to provide required information.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(B) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(C) **Past performance.** If the State Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.

(i) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities.

(1) The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.

(2) When the State Purchasing Director issues a solicitation on behalf of a state agency, the State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.

(j) **Other factors in determination of award.**

(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:

(A) failure to have an authorized signature;

(B) failure to obtain a notary signature, stamp or seal;

(C) failure to sign or initial amendments to bid.

(k) **Evaluation criteria.** The State Purchasing Director shall establish evaluation criteria for solicitation responses. A state agency shall maintain written documentation of bid evaluations in the acquisition file.

260:115-7-33. [RESERVED]

260:115-7-34. Contract negotiation

(a) **Negotiation.** The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar threshold and shall follow the rules for negotiation in this section.

(b) **Negotiation team.**

(1) A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.

(2) The State Purchasing Director or designee shall serve as the lead negotiator for a team when negotiations are being conducted for solicitations issued by Central Purchasing.

(c) **Negotiation process.**

(1) The lead negotiator shall notify suppliers of the date and time for negotiations.

(2) The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.

(3) The lead negotiator shall determine the location and manner of negotiation.

(4) The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation.

(5) The lead negotiator may require suppliers to submit a best and final offer.
(6) The lead negotiator shall prepare a summary that shall document the following:
(A) an overview setting forth the solicitation number, names and titles of participants, description of the solicitation, date and location of the negotiation, and purpose of the negotiation; and
(B) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.
(C) A summary created under these rules shall become a part of the contract file retained.

260:115-7-35. [RESERVED]

260:115-7-36. Contract award
(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The contract award shall be made upon completion of the following:
(1) bid evaluation;
(2) documentation of evaluation on each bid;
(3) determination of the lowest and best or best value bidder;
(4) verification of Oklahoma and Federal debarment status;
(5) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204, whenever the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater;
(6) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to 68 O.S. §1364 if such entity is required to do so;
(7) coordination of award with the requisitioning state agency, if applicable; and
(8) completion of any administrative tasks.
(b) **Award by item.** If a solicitation does not specify an all or none bid, the State Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.
(c) **No contract award.** A contract may not be awarded when:
(1) The State Purchasing Director determines no bid meets the requirements of the solicitation.
(2) The State Purchasing Director determines that all bids exceed fair market value for the acquisition.
(3) The State Purchasing Director determines the bid price exceeds available state agency funds.
(4) The State Purchasing Director determines the state agency no longer requires the acquisition in the form or manner the solicitation specifies.
(5) The State Purchasing Director determines not awarding the contract to be in the best interest of the state.
(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.
(e) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

PART 7. ADDITIONAL PROCUREMENT INFORMATION

260:115-7-40. Fixed and uniform rate contract
(a) "Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions . . . " of 74 O.S. §85.7 and procedures required by the Office of Management and Enterprise Services. [Reference 74 O.S. §85.7] The OMES Director must approve a services contract, prior to award, as qualifying for a fixed and uniform rate.
(b) Fixed and uniform rate contracts shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions. [Reference 74 O.S. §85.7]

260:115-7-41. [RESERVED]

260:115-7-42. Recycled materials
State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

260:115-7-43. [RESERVED]

260:115-7-44. Trade-ins
State agencies may trade in items when they make an acquisition of a like item. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. Written documentation of the fair market value analysis shall be filed in the acquisition file by the state agency. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

260:115-7-45. [RESERVED]

260:115-7-46. State travel
The State Travel Office is within the Central Purchasing Division and awards contracts for travel and travel services. State agencies shall make travel arrangements through contract travel agencies for commercial air travel for state employees

in the course of official duties or for persons traveling at state expense.

(1) **State agency travel coordinator.** The State Purchasing Director encourages state agencies to appoint one or more travel coordinators. The coordinators shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel coordinator, the state agency shall notify the Travel Office and provide the coordinator's name, mailing address, telephone number, and facsimile number.

(2) **State travel zones.** The Travel Office shall divide the state into geographic zones. The zone served by the travel agency shall be indicated in the statewide contract.

(3) **Airline ticket purchases.** State agencies shall purchase airline tickets from contract travel agencies within the zone of the state agency location.

(4) **Airline ticket purchases exceptions.** The state agency shall determine when an exception to airline ticket purchase shall apply. The state agency shall retain documents the state agency uses in exception determination as required by internal purchasing procedures established pursuant to 260:115-5-7.

(A) If the state agency can acquire air travel at less cost than the contract travel agency, the state agency may use this exception.

(B) If air travel originates outside the state and it is impractical for the state agency, the state agency may use this exception.

(C) If air travel is due to an emergency and time does not permit use of the contract travel agency, the state agency may use this exception.

(D) If air travel is part of a package arrangement by an organization that schedules a meeting or conference, the state agency may use this exception.

(5) **State agency credit card for airline travel.** A state agency that acquires a state travel credit card to book and pay for official airline travel shall complete mandatory training as required by the Office of Management and Enterprise Services and comply with all State Purchase Card procedures issued by OMES.

260:115-7-47. [RESERVED]

260:115-7-48. Electronic commerce and online bidding

(a) When a state agency determines electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the state agency may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in 74 O.S. §85.45r and the Oklahoma Central Purchasing Act and/or the Public Building Construction and Planning Act shall be subject to the policies and procedures of the Online Bidding Standards authorized by the OMES Director and established by the State Purchasing Director.

PART 9. INFORMATION TECHNOLOGY ACQUISITIONS

260:115-7-52. General requirements

Unless otherwise provided by law, state agencies shall acquire information technology products and services in accordance with the Oklahoma Central Purchasing Act [74 O.S. §§85.1 et seq.], the Oklahoma State Finance Act [62 O.S. §§34 et seq.] the rules of this chapter, and requirements established by the Information Services Division of the Office of Management and Enterprise Services.

260:115-7-53. [RESERVED]

260:115-7-54. Accessible information technology (IT) acquisitions

(a) **Procurement.**

(1) To ensure accessibility of information technology for individuals with disabilities pursuant to 62 O.S. §34.28, procurement of information technology shall be subject to the Oklahoma Information Technology Accessibility Standards prescribed by the Office of Management and Enterprise Services and maintained by the Information Services Division. These standards apply to all information technology purchased after the effective date of these rules, providing the solicitation process was not initiated prior to the effective date.

(2) When developing, procuring, maintaining or using information technology, or when administering contracts or grants that include the procurement, development upgrading, or replacement of information technology each state agency shall ensure, unless an undue burden would be imposed on the agency, that the information technology allows employees, program participants, and members of the general public access to use of information and data that is comparable to the access by individuals without disabilities. [62 O.S. §34.28(B)] When used in this section, "state agency" includes all agencies defined in 62 O.S. §34.29.

(3) Unless an exception applies, an agency must procure a product or service that best meets the business needs of the agency and the applicable IT Accessibility Standards.

(A) Accessibility determination must be conducted as part of the acquisition evaluation.

(B) Accessibility must be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it must be accomplished through review of vendor provided information submitted in the form of a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the IT Accessibility Standards.

(C) The relative accessibility weighing may be adjusted for due cause based on the specific procurement.

(D) When acquiring a product, an agency shall acquire products that comply with applicable IT Accessibility Standards when such products are available in the commercial marketplace or when such products are developed in response to an agency solicitation. Agencies cannot claim a product, as a whole is not commercially available by stating no product in the marketplace meets all of the IT Accessibility Standards. Instead, an agency must identify commercial, off-the-shelf products that best meet the general, technical and functional requirements as defined by the agency. Once those products have been identified, the agency should purchase the product that is the most accessibility compliant.

(b) **Contract clauses.**

(1) All solicitations and contracts for information technology shall include the accessibility clause adopted by the Information Services Division pursuant to 62 O.S. §34.28.

(2) The IT Accessibility Standards shall be published on the OMES website.

(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, describing the extent to which the product or service complies with applicable IT Accessibility standards required by such contracts or solicitations prior to the expenditure of state funds. An agency may also utilize a VPAT published on a supplier's primary website. A VPAT obtained from a supplier website shall be good for a one-year period.

(c) **Exceptions.** Exceptions to compliance with IT Accessibility Standards include:

(1) information technology operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics and personnel management applications);

(2) information technology acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;

(3) information technology located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;

(4) information technology requiring a fundamental alteration in the nature of a product or its components to achieve accessibility;

(5) Except as required to comply with the IT Accessibility Standards, state departments and agencies are not required to install specific accessibility-related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;

(6) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than where the information technology is provided to the public;

(7) information technology that would impose an undue burden on the agency.

(d) **Documentation of exceptions.** Whenever an agency determines that an acquisition exceeding $5,000.00 meets the criteria of a general exception or undue burden, the agency shall document the explanation of why, and to what extent, compliance with applicable IT Accessibility Standards meets an exception or creates an undue burden on the agency. Agencies are encouraged but not required to maintain documentation for commercial off-the-shelf acquisitions of $5,000.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.

(1) The explanation shall be documented on a form prescribed by the Information Services Division and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for accessibility compliance has been delegated.

(2) The documentation shall be retained in the acquisition file to support the procurement.

(e) **Alternative means of access.** When compliance with IT Accessibility Standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

SUBCHAPTER 9. CONTRACT MANAGEMENT

260:115-9-1. Supplier contract performance

(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) **Inspection.** Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(c) **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items. The state agency shall

document, at a minimum, the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(f) **Contract changes.** If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 260:115-9-3.

(g) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization unless otherwise specified in the solicitation.

(h) **Performance evaluation.**

(1) State agencies shall develop a process to consistently assess and document the quality of products and/or services acquired from a supplier.

(2) State agencies shall retain written documentation of evaluation of the performance of services provided pursuant to a professional services contract with the acquisition file. If the evaluation indicates deficiencies with the supplier's work, the state agency shall submit a Professional Service Evaluation to the State Purchasing Director. [Reference 74 O.S. §85.41]

260:115-9-2. [RESERVED]

260:115-9-3. Change orders

(a) **Contract increases.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation. For the purposes of (b) and (c) of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

(b) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(c) **Acquisitions by the Central Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency.

260:115-9-4. [RESERVED]

260:115-9-5. Supplier invoice submission

(a) **Supplier invoice submission.** Following transfer of title of an acquisition to a state agency, the supplier shall submit invoices to the state agency.

(b) **Advance payment for acquisitions.** The state agency shall not pay for acquisitions a supplier has yet to deliver, unless otherwise authorized by law.

(c) **Payment and state agency acceptance.** State agency payment to a supplier for an acquisition may not constitute final acceptance of the acquisition by the state agency. If subsequent state agency inspection affirms that the acquisition does not meet or exceed the specifications of the contract, or that the acquisition has latent defects, the state agency shall notify the supplier. The supplier shall retrieve and replace the acquisition at the supplier'sexpense, or the state agency shall request a refund from the supplier if the supplier is unable to replace the acquisition.

260:115-9-6. [RESERVED]

260:115-9-7. State agency and supplier disputes

(a) **Quality assurance inspections by state agencies.** A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. It is critical that problems with delivery or the quality of the acquisition delivered be promptly communicated to the agency's primary procurement official and the State Purchasing Director.

(b) **Resolution of dispute between a state agency and supplier.** Whenever a supplier provides a state agency with defective products or fails to perform in accordance with contract requirements, a state agency shall notify the supplier in writing of the deficiency and include information necessary for the supplier to resolve the problem. If the state agency and supplier are unable to resolve the dispute, the state agency shall submit a written request for dispute resolution to the State Purchasing Director.

(c) **State agency submission of supplier complaint form.** A state agency shall request the State Purchasing Director seek dispute resolution by submitting a Vendor Performance Quality Report, whenever a supplier:

(1) fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;

(2) does not refund payment for an acquisition that does not meet or exceed contract specifications; or,

(3) fails to resolve any other problem that conflicts with the contract specifications in a timely manner.

(d) **State Purchasing Director dispute resolution action.**

(1) **State Purchasing Director resolves dispute.** If the State Purchasing Director resolves the dispute, the

supplier and state agency shall be notified of the dispute resolution terms and conditions.

(A) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(B) State agency fails to meet conditions. If the state agency fails to meet conditions of the dispute resolution, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 260:115-5-19.

(2) **State Purchasing Director fails to resolve the dispute.** If the State Purchasing Director fails to resolve the dispute between the state agency and the supplier, the State Purchasing Director shall take an action in this subparagraph.

(A) **Supplier fails to meet terms and conditions.** If the State Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(B) **State agency fails to meet contract terms and conditions.** If the State Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 260:115-5-19.

260:115-9-8. [RESERVED]

260:115-9-9. Contract termination

(a) **Reasons for contract termination.** The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency if:

(1) a supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies;

(2) a supplier fails to deliver an acquisition pursuant to the contract;

(3) a supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;

(4) a supplier misrepresents the supplier's ability to provide an acquisition;

(5) a supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform;

(6) a supplier commits an unlawful act or an act that impairs the supplier's ability to perform;

(7) a supplier commits an act that could result in the supplier's suspension or debarment from the Supplier List;

(8) the State Purchasing Director determines that an administrative error occurred prior to contract performance; or,

(9) if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements.

(b) **Supplier responsible for damages.** If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

SUBCHAPTER 11. PURCHASE CARDS AND OTHER ELECTRONIC PAYMENT MECHANISMS

260:115-11-1. State Purchase Card Program

(a) **Use of State Purchase Cards.** Use of State Purchase Cards (P/Cards) authorized by the State Purchasing Director [Reference 74 O.S., §85.5] shall be subject to the policies and procedures of the State Purchase Card Program established by the State Purchasing Director to ensure compliance with the statewide contract for this service.

(b) **Condition of participation.** A condition of participation in the State Purchase Card Program shall be compliance with the terms of the State Purchase Card Procedures established by the State Purchasing Director. Failure to comply with all conditions of participation may result in a state entity's removal from the purchase card program by the State Purchasing Director.

260:115-11-2. RESERVED

260:115-11-3. State Purchase Card Employee Agreement

State entity P/Card Program participants must sign the State of Oklahoma Purchase Card Employee Agreement form prior to assuming their duties and being issued State Purchase Cards.

260:115-11-4. RESERVED

260:115-11-5. Training

(a) **State entity P/Card Program participants.** State entity P/Card participants must successfully complete the training prescribed by the State Purchasing Director prior to assuming their duties and prior to being issued P/Cards.

(b) **State entity responsibility.** It is the responsibility of the State Entity P/Card Administrator to ensure employees maintain the continuing program training in accordance with OMES requirements.

260:115-11-6. RESERVED

260:115-11-7. Security

(a) Use of any State Purchase Card authorized by the State Purchasing Director is limited to the person whose name is embossed on the card. The card shall not be loaned to another person.

(b) The cardholder shall ensure the State Purchase Card is kept in a secure manner and the State Purchase Card account number on the card is not posted or left in a conspicuous place.

(c) The state entity is responsible for maintaining adequate security of State Purchase Card account numbers and related information.

260:115-11-8. RESERVED

260:115-11-9. Recordkeeping

A receipt shall be obtained for all purchases regardless of the order method. The receipt shall give an itemized and detailed description of the purchase and must include at a minimum:

(1) name and location of supplier;
(2) date of purchase;
(3) description of product purchased;
(4) unit price and quantity purchased; and,
(5) transaction total.

[OAR Docket #14-792; filed 7-18-14]

TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
CHAPTER 120. STATE USE COMMITTEE OPERATIONAL PROCEDURES

[OAR Docket #14-746]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
260:120-1-1. Purpose [NEW]
260:120-1-2. Definitions [NEW]
260:120-1-3. Qualifications [NEW]
260:120-1-4. Determination of fair market price [NEW]
260:120-1-5. Procurement schedule [NEW]
260:120-1-6. [RESERVED]
260:120-1-7. [RESERVED]
260:120-1-8. Grievances [NEW]
260:120-1-9. List of jobs [NEW]
260:120-1-10 Meetings [NEW]
260:120-1-11. Reports [NEW]
260:120-1-12. Contract levy [NEW]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to re-adopt the above-referenced rules which are being revoked from Title 304 in a separate rulemaking action. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

260:120-1-1. Purpose

This subchapter contains the procedures and rules for the operations of the State Use Committee.

260:120-1-2. Definitions

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

"Committee" means the Oklahoma State Use Committee.

"Contracting officer" means the person employed by the Department of Central Services as a contracting officer in the Purchasing Division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.

"FEI" means Federal Employer Identification.

"Individual" means a severely disabled person that is self-employed and has been certified by the Committee to supply products and services, seventy-five percent (75%) of which, is actually manufactured, produced, processed, assembled, performed or offered by the severely disabled person.

"IRS" means the Internal Revenue Service.

"Severely disabled person" means an individual who has a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person. [75 O.S., Section 3003(4)]

"Substantial handicap to employment" means a residual, limiting physical or mental condition resulting from an injury, disease, or congenital defect which so limits the person's

mobility, communication, self-care, self-direction, work tolerance, or work skills that the person is unable to engage in normal competitive employment over an extended period of time.

"The Act" means the provisions of 74 O.S., Section 3001 et seq. which relate to the purchase of products and services from qualified organizations.

"Qualified nonprofit agency for the severely handicapped" means a nonprofit agency which is certified as a sheltered workshop by the wage and hour division of the U.S. Department of Labor and employing severely disabled persons who constitute at least seventy-five percent (75%) of the personnel engaged in direct production of products or services offered by the agency for procurement by this state. [75 O.S., Section 3003(3)]

"Qualified organization" means a blind person, qualified nonprofit agency for the severely handicapped or severely disabled person contracting to supply goods or services. [75 O.S., Section 3003(5)]

260:120-1-3. Qualifications

(a) **Qualification by Committee.** To ensure compliance with the Act, the Committee shall qualify individuals and nonprofit agencies prior to contract award.

(b) **Individual qualification.** An individual shall apply for qualification to the Committee and submit the following documents:

(1) To indicate the individual meets the statutory definition of a severely disabled person, the individual shall provide:

(A) a copy of the application and supporting documentation the individual submitted to the Social Security Administration for determination of disability and a copy of the final disability determination from the Administration;

(B) a narrative report, prepared and signed by a person licensed in the state of Oklahoma as a physician describing physical disabilities, or a psychiatrist or psychologist describing mental disabilities. The report shall fully describe the nature of the disability constituting a substantial handicap to employment with supporting medical records; and

(C) any additional information the Committee may require related to work history, vocational assessments and work related documents.

(2) an affidavit that the individual will perform 75% of the work to produce the products or services the individual offers for procurement by the state; and

(3) a statement which describes the nature and extent as expressed in a percentage of work a subcontractor, other person or entity may perform to produce the products or services.

(c) **Agency qualification.** A nonprofit agency that has been approved by the Wage and Hour Division of the U.S. Department of Labor as a sheltered workshop shall apply for qualification to the Committee and submit the following documents that indicate the nonprofit agency meets the requirements of a qualified organization:

(1) a tax-exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity meets the requirements for nonprofit status as defined by the IRS; and,

(2) a statement describing the nature and extent as expressed in a percentage of the work a subcontractor, other person or entity may perform to produce the products or services the nonprofit agency provides per a contract the Committee awards.

(3) a copy of certification as a sheltered workshop issued by the U. S. Department of Labor.

(4) a current copy of the nonprofit agency's certificate of insurance for worker's compensation insurance.

(d) **Continuation of qualification.** On January 31st of each year succeeding initial qualification by the Committee, the qualified organizations shall provide evidence to the Committee of continued ability to qualify as follows:

(1) A qualified nonprofit agency for the severely handicapped shall submit:

(A) a current copy of its certification as a sheltered workshop from the U.S. Department of Labor; and

(B) a report for products and services on the Committee's procurement schedule indicating the qualified nonprofit agency for the severely handicapped's total labor hours in direct production by disabled workers and total agency labor hours in direct production by non-disabled workers during the previous calendar year.

(C) a current copy of the qualified nonprofit agency for the severely handicapped's certificate of insurance for worker's compensation insurance.

(2) An individual shall submit:

(A) a work history for the previous calendar year that indicates the number of hours the individual worked and the number of hours a subcontractor or other individuals worked in direct production of the products and services on the Committee's procurement schedule; and

(B) a current physician, psychiatrist or psychologist statement indicating the current status of the condition which constitutes a substantial handicap to employment, which shall include changes in the condition since the previous date of qualification by the Committee.

(e) **Failure to meet qualifications.** Whenever an a qualified organization fails to meet qualifications, the Committee may:

(1) Remove the qualified organization's products and services from the procurement schedule; or,

(2) Revoke the qualification of the qualified organization.

(f) **Notice of failure to meet qualifications.** The Committee shall direct the contracting officer to send written notice to the qualified organization at least thirty days prior to the effective date of the action taken pursuant to subsection (e) of this section.

260:120-1-4. Determination of fair market price

The contracting officer shall recommend a fair market price for products and services in accordance with the State Use Committee's approved Fair Market Price Policy and in the manner described in this section.

(1) The contracting officer shall prepare a current market analysis to determine the fair price for the products or services requisitioned or used by state agencies utilizing internal as well as external sources and established pertinent criteria. When appropriate, the criteria may include, but not be limited to:

(A) A survey of comparable private contracts for like products and services;

(B) Research of other governmental entities within and outside the State of Oklahoma;

(C) Comparison, when appropriate, of wholesale and retail pricing of like commodities.

(2) Based on the data described in OAC 304:10-1-4 (1), the contracting officer or designee shall recommend a fair market price with supporting documentation to the Committee for consideration.

(3) The Committee shall, by majority vote, approve, modify, amend or disapprove the recommended fair market price.

(4) Whenever the Committee establishes a price, the price shall become the fair market price.

(5) If the product or service is one for which the pricing does not vary by state agency or location, the fair market price as approved, modified, or amended, shall remain in effect until the Committee establishes a new fair market price.

(6) If the product or service is one for which the price does vary depending on the state agency, location, or specifications, the Committee shall approve, each contract for the product or service.

(7) If the product or service is one for which fair market has not been established, either because the fair market for the type of product or service has been determined to vary depending on the state agency, location or specifications, the Contracting Officer, with the approval of the State Purchasing Director, is authorized to award a contract in accordance with the State Use Fair Market Price Policy to a qualified individual or organizations, thereby establishing fair market price, which establishment shall be subject to ratification by the Committee at the next regular Committee meeting.

(8) In the event of an emergency, with approval of the State Purchasing Director, the contracting officer may award a contract to an individual or agency for a maximum period of three (3) months without prior Committee approval, but subject to Committee approval at the next regular Committee meeting. If the Committee approves the contract, the contract shall terminate at the end of the contract period.

260:120-1-5. Procurement schedule

(a) **Compilation of procurement schedule.** The contracting officer shall maintain and publish a current list of all products and services offered by qualified organizations.

(b) **Approval of procurement schedule.** The Committee shall approve items on the list or delete items from the list, consistent with the provisions of the Act, and shall designate the final list of approved items as the Procurement Schedule by majority vote. If additional products or services are offered by individuals or agencies, the Committee may add products and services to the Procurement Schedule by majority vote.

260:120-1-6. [RESERVED]

260:120-1-7. [RESERVED]

260:120-1-8. Grievances

(a) **Filing a protest or grievance.** Any party who is aggrieved may file a written protest or grievance with the Chairperson of the Committee within fifteen (15) days of the aggrieved action.

(b) **Investigation of protest or grievance.** The Chairperson may assign a protest or grievance to a subcommittee to investigate and make recommendations to the Committee for resolving the grievance.

(c) **Protest process.** All protests shall be handled in accordance with the provisions of the Administrative Procedures Act. [75 O.S., Section 250 et seq.]

(d) **Committee response to protest or grievance.** The Committee shall respond in writing to the protesting or grieving party within ninety (90) days of receipt of the protest or grievance.

260:120-1-9. List of jobs

The Committee shall publish a catalog listing the jobs that workshops can do for the State of Oklahoma, annually. The list of jobs shall be the Procurement Schedule.

260:120-1-10. Meetings

(a) **Number of regular meetings.** The Committee shall conduct a minimum of six meetings per year, in compliance with the Open Meeting Act. The schedule for regular meetings will be adopted at the last regular meeting of each calendar year.

(b) **Special meetings.** Special meetings shall be called by the Committee Chairperson.

(c) **Quorum.** A majority of all current members of the Committee shall constitute a quorum.

(d) **Request for notices of meeting.** Upon written request, the Committee Vice-Chairperson shall notify any person, state agency, qualified organization or contractor, at least ten days prior to meeting dates, and shall make available the minutes of all meetings.

260:120-1-11. Reports

(a) **Failure to provide reports or documentation.** Reports or documentation requested from a qualified organization by the Committee through the contracting officer, shall be completed within thirty (30) days of the date requested. The Committee may cancel contracts of otherwise qualified organizations who fail to provide reports, documentation or information required by utilization terms of a contract.

(b) **Sales to political subdivisions other than the state.** A qualified organization shall provide a quarterly report of purchases made by a political subdivision, excluding state agencies, from a contract the Committee awards. The report shall include:

(1) the name and address of each political subdivision;

(2) total amount of sales made to each political subdivision.

(c) **Notice of contract cancellation.** The Committee shall direct the Contracting Officer to send written notice to a qualified organization at least thirty days prior to the cancellation date of a contract pursuant to subsection (a) of this section.

260:120-1-12. Contract levy

(a) **Contract levy.** Pursuant to 74 O.S., Section 3004.1, a one percent (1%) fee assessment shall be levied against qualified organizations for every contract awarded under the act for products and services of the severely disabled.

(b) **Monthly reports and contract levy payments.** Qualified organizations shall submit a monthly report by the 15th of each month to the State Use Contracting Officer. The report shall contain the total amount of payments received from state agencies and the one percent (1%) fee assessment based on the total amount of payments stated in the report.

(c) **Failure to submit monthly reports and payments.** Any fee assessment payment that is past due more than sixty (60) days shall be considered delinquent. A written notice of delinquency shall be sent by the State Use Contracting Officer to each qualified organization considered delinquent. The notice shall state the amount due and requirements for compliance.

(d) **Revocation of a qualified organization.** Failure to provide monthly reports and payments will be reported to the State Use Committee and the State Purchasing Director and may result in the revocation of the "qualified organization" procurement schedule and/or termination of their contracts.

[OAR Docket #14-746; filed 7-18-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-481]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
265:1-1-2 [AMENDED]
265:1-1-3 [AMENDED]
265:1-1-5 [AMENDED]
265:1-1-6 [AMENDED]
265:1-1-7 [AMENDED]
265:1-1-8 [AMENDED]
265:1-1-10 [AMENDED]
265:1-1-11 [AMENDED]

AUTHORITY:
74 O.S. §§ 324.1 and 324.7; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A

COMMENT PERIOD:
February 15, 2013 through March 18, 2013

PUBLIC HEARING:
March 18, 2013

ADOPTION:
April 5, 2013

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 10, 2013

APPROVED BY GOVERNOR:
May 15, 2013

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Amends one membership of the State Fire Marshal Commission position and amends the Administrative Rules language in accordance with current state statutes. [74 O.S. §§ 324.1, 324.2, 324.4, 327.7, 327.8 and 324.14; State Fire Marshal Commission]

CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

265:1-2-2. State Fire Marhsall commission, membership, tenure

There is hereby ~~created~~re-created the State Fire Marshal Commission, which shall consist of seven (7) members appointed by the ~~governor~~Governor. The ~~governor~~Governor shall appoint initially one member who shall serve for a term of five (5) years; one member from a statewide association of career and volunteer firefighters who shall serve for a term of four (4) years; one member from a statewide association of municipalities who shall serve for a term of three (3) years; one member from a statewide association of Fire Chiefs, both career and volunteer, who shall serve for a term of two (2) years; one member, who shall be a ~~safety engineer~~Fire Investigator who shall serve for a term of one (1) year; one member ~~from~~representing a statewide association of electrical workers who shall serve ~~for~~ a term of one (1) year; and one member

~~from~~representing a statewide ~~association~~organization of exclusively professional firefighters who shall serve for a term of two (2) years. The members of ~~said~~the~~commission~~Commission shall thereafter be appointed for a term of five (5) years and ~~said~~the appointments shall be subject to ~~senate~~Senate confirmation, provided the associations named shall be represented by at least one member. [74 O.S., Section 324.1]

265:1-1-3. Commission chairman, meetings

The ~~commission~~Commission shall select a chairman and is hereby authorized to adopt rules for conducting its proceedings. Any four members shall constitute a quorum. The commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by any four members. Complete minutes of each meeting shall be kept and filed in the office of the State Fire Marshal and shall be available for public inspection during reasonable office hours. The ~~commission~~Commission shall report annually to the ~~governor~~Governor and to the ~~State Legislative Council~~Speaker of the House of Representatives and the President Pro Tempore of the Senate of the affairs of the ~~commission~~ Commission and the office of the State Fire Marshal. [74 O.S., Section 324.2]

265:1-1-4. Commission compensation

Each member of the commission, while engaged in the performance of his or her duties, shall receive mileage and per diem as provided by Chapter 17, Title 74, O.S., Laws 1965, c. 257, Section 3. Amended Laws 1972, c. ~~23~~123, Section 1, emergency effective February 21, 1972. Revoked by Section 81, House Bill #1164, State Travel Reimbursement Act.

265:1-1-5. Fire marshal

The State Fire Marshal ~~commission~~Commission shall appoint a full-time ~~statefiremarshal~~ State Fire Marshal. ~~He~~The State Fire Marshal shall administer and enforce the provisions of law pertaining to ~~his~~the~~office~~Office of the State Fire Marshal ~~under the supervision of the commission and in accordance with its policies~~to include, but not be limited to, fire and arson investigations, code enforcement, and public education under the supervision of the State Fire Marshal Commission and in accordance with Commission policies.(Other than the provisions outlined by statute, the commission may also require additional qualifications of the ~~fire marshal~~Fire Marshall.) [74 O.S., Section 324.4]

265:1-1-6. ~~Arson division, fire protection and prevention~~Assistant State Fire Marshal

~~*An assistant fire marshal shall be appointed to direct operations, subject to the supervision and control of the State Fire Marshal at all times. The commission shall have the authority to appoint such other employees as shall be necessary in discharging the duties of their office.*~~*The Commission shall appoint a full-time Assistant State Fire Marshal upon recommendations from the State Fire Marshal.* (Other than the provisions outlined by statute, the Commission may also require additional qualifications of the Assistant State Fire Marshal. [74 O.S., Section ~~324.5~~324.4]

265:1-1-7. Rules, regulations and specifications

~~*The State Fire Marshal Commission is authorized and empowered, and it shall be their duty to prescribe, adopt and promulgate such reasonable rules, regulations, or specifications consistent with nationally recognized codes, standards or practices on matters relating to the safeguarding of life and property from the hazards of fire and explosion arising from storage, handling, transportation and use of flammable and combustible materials, excluding liquefied petroleum gases as defined by 52 O.S. 1961, Sections 420.1 through 420.13, and from conditions hazardous to life or property in the use or occupancy of buildings or premises, as are deemed just and reasonable and in accordance with nationally recognized standards, and to revoke, amend or supersede the same. Standards published by the National Fire Protection Association shall be deemed as meeting the intent of this act. All such rules, regulations and specifications or any revisions or amendments there to shall not become effective until filed in accordance with the provisions of Sections 1 through 25, Chapter 371, O.S. 1963, Pages 704 - 713 [74 O.S., Sections 301 through 325].*~~*Except as otherwise specified by subsection B of this section, the State Fire Marshal Commission shall have the power and duty to prescribe, adopt, and promulgate, in the manner set forth in this act, such reasonable rules, regulations, or specifications on matters relating to the safeguarding of life and property from the hazards of fire and explosion arising from storage, handling, and use of flammable and combustible materials, and from conditions hazardous to life or property in the use or occupancy of buildings or premises, as are deemed just and reasonable and in accordance with the codes as last adopted by the Oklahoma Uniform Building Code Commission, and not inconsistent with this act, and to revoke, amend, or supersede the same. Exceptions to these standards shall be granted to detention and correction facilities in existence on November 1, 1985, when noncompliance would not result in life-threatening condition to inmates incarcerated in such facilities. All such rules, regulations, and specifications or any revisions or amendments thereto shall not become effective until promulgated in accordance with the provisions of the Administrative Procedures Act.* [74 O.S., Section 324.7]

265:1-1-8. Uniform force and effect

~~*The rules and regulations promulgated by said commission shall have uniform force and effect throughout the state and no municipality or subdivision shall enact or enforce any ordinances, rules or regulations of lesser standards than the statewide rules and regulations promulgated by this commission; provided, nothing shall prevent or take away from any city, town, or county, the authority to enact and enforce rules and regulations containing higher standards and requirements than those provided by statute. And provided, further, that nothing shall in any way impair the power of any municipality, county or subdivision to regulate the use of land by zoning, building codes or restricted fire district regulations.*~~*The rules*

promulgated pursuant to Section 324.1 et seq. of this title shall have the uniform force and effect throughout the state and no municipality or subdivision shall enact or enforce any ordinances, rules for construction of or major alterations to buildings with standards less stringent than the building code, as last adopted by the Oklahoma Uniform Building Code Commission. Provided, nothing in this act shall prevent or take away from any city, town or county, the authority to enact and enforce rules containing higher standards and requirements than those provided therein nor prevent or take away from any city, town or county the authority to amend such adopted codes to make changes necessary to accommodate local conditions. And provided further, that nothing in this act shall in any way impair the power of any municipality, county or subdivision to regulate the use of land by zoning, building codes or restricted fire district regulations. [74 O.S., Section 324.8]

265:1-1-10. Legal advisor

The Attorney General shall be the legal advisor for the ~~office~~Office of the State Fire Marshal and the Fire Marshal Commission and shall appear for and represent the State Fire Marshal, the Fire Marshal Commission, and any of his deputies or agents in any and all litigation that may arise in the discharge of their respective duties. [74 O.S., Section 324.14]

265:1-1-11. Fees.

(a) In accordance with the Oklahoma Open Records Act [~~1991~~ Oklahoma Statutes Title 51 Section 24A.1-24A.20] and Oklahoma Statute Title 74 Section 324 the Oklahoma State Fire Marshal Agency shall charge the following fees for reproduction of records.

(1) Copying fee - $.25 per page

(2) Certified copying fee - $1.00 per page

(b) In accordance with the Oklahoma Open Records Act [~~1991~~ Oklahoma Statutes Title 51 Section 24A.1-24A.20] and Oklahoma Statutes Title 74 Section 324.21 the Oklahoma State Fire Marshal Agency shall charge the following fees for reproduction of records when the request is solely for commercial purpose, or clearly would cause excessive disruption of the State Fire Marshal Agency essential functions. The State Fire Marshal Agency may charge a reasonable fee to recover the direct cost of document search [~~1991~~ Oklahoma Statutes Title 51 Section 24A.5(3)]. Payment with cash, check or money order shall be for exact amount. Office hours are 8:00 a.m. through 4:30 p.m. Monday through Friday. Upon the submission of the request accompanied by the appropriate fee, the Agency will forward within ten (10) working days, via First Class Mail, the requested information.

(1) Non-Certified "Origin and Cause" Fire Investigations Report - $1.00 per page.

(2) Certified "Origin and Cause" Fire Investigations Report - $2.00 per page.

(3) Evidence photographs - $20.00 per roll.

(4) Video tape reproduction - $25.00 per tape.

(5) Roster of all fire departments - hard copy $20.00 per copy.

(6) Roster of all fire departments - disk copy $20.00 per disk.

(7) Roster of all fire departments for SARA reporting, disk only $20.00 per disk.

(8) Computer search or excessive disruption of office functions (3 hour minimum) per employee - $25.00 per hour ($75.00).

(c) In accordance with ~~1991~~ Oklahoma Statutes Title 28 Section 91 the Oklahoma State Fire Marshal Agency shall charge the following fees for expert witness fees.

(1) Expert Witness Fee - $150.00 per 4 hours (1/2 day minimum)

(2) Deposition Fee - $150.00 per 4 hours (1/2 day minimum)

(3) Court Testimony Fee - $150.00 per 4 hours (1/2 day minimum)

[OAR Docket #14-481; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #14-482]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provision
265:3-1-2 [AMENDED]
265:3-1-4 [AMENDED]
Subchapter 3. Procedures
265:3-3-7 [AMENDED]
265:3-3-10 [AMENDED]
Subchapter 5. Hearings
265:3-5-3 [AMENDED]
265:3-5-4 [AMENDED]
265:3-5-6 [AMENDED]
AUTHORITY:
74 O.S. §§ 317 and 324.7; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 15, 2013 through March 18, 2013
PUBLIC HEARING:
March 18, 2013
ADOPTION:
April 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 10, 2013
APPROVED BY GOVERNOR:
May 15, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

Amends Administrative Rules language in accordance with current state statutes. [74 O.S. §§ 317 and 324.7; State Fire Marshal Commission]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

265:3-1-2. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the act. (Title 74 O.S. 1981 § 317 ~~[emphasis added]~~)

265:3-1-4. "Act" defined

"Act", as that term is used in this chapter, shall refer to the provisions set forth in Title 74 O.S. ~~Supp. 1988 et seq.:~~

~~74 O.S. 1910-11, 311-312 repealed by laws 1957, p. 623, section 4.~~

~~74 O.S. 1945, 312.1 obsolete~~

~~74 O.S. 1910-11, 313 repealed by laws 1957, p. 623, section 4.~~

~~74 O.S. Supp. 1988 314.~~

~~74 O.S. Supp. 1988 315.~~

~~74 O.S. Supp. 1988 316.~~

~~74 O.S. 1981 317.~~

~~74 O.S. Supp. 1988 318.~~

~~74 O.S. 1910-11, 319 repealed by laws 1957, p. 623, section 4.~~

~~74 O.S. Supp. 1988 320.~~

~~74 O.S. 1901-11, 321, 322. Repealed by laws 1957, p. 623, section 4.~~

~~74 O.S. Supp. 1910-11, 323. Repealed by laws 1941, p. 334, section 4.~~

~~74 O.S. Supp. 1988 324.1~~

~~74 O.S. Supp. 1988 324.2.~~

~~74 O.S. Supp. 1988 324.4.~~

~~74 O.S. Supp. 1988 324.5.~~

~~74 O.S. 1965 324.6. Repealed by laws 1980, c.159, section 40, effective April 2, 1980.~~

~~74 O.S. Supp. 1988 324.7.~~

~~74 O.S. Supp. 1988 324.8.~~

~~74 O.S. Supp. 1988 324.9.~~

~~74 O.S. Supp. 1988 324.10.~~

~~74 O.S. Supp. 1988 324.11.~~, Sections 311-326.11.

~~74 O.S. Supp. 1988 324.11A.~~

~~74 O.S. Supp. 1988 324.12.~~

~~74 O.S. Supp. 1988 324.13.~~

~~74 O.S. Supp. 1988 324.14.~~

~~74 O.S. Supp. 1988 324.15.~~

~~74 O.S. Supp. 1988 324.16, 324.17. Repealed by laws 1980, c.68, 1, effective April 10,1980.~~

~~74 O.S. Supp. 1988 324.18.~~

~~74 O.S. Supp. 1988 324.19~~

~~74 O.S. Supp. 1988 324.20.~~

~~74 O.S. Supp. 1988 324.21.~~

SUBCHAPTER 3. PROCEDURES

265:3-3-7. Final order

The State Fire Marshal shall execute the final order of the district court in 265:3-3-6, and if the order is adverse to the appellant, the State Fire Marshal is empowered to cause such building or premises to be repaired, torn down, demolished, materials removed and all dangerous conditions remedied, as the case may be, at the expense of such appellant. If the appellant fails, refuses or neglects to comply with the order, or pay the expense incurred by the State Fire Marshal in executing the same within thirty (30) days thereafter, the expense shall be certified by the State Fire Marshal to the county assessor of the county in which the property is situated and the county assessor shall enter the expense on the tax list on county as a special charge against the real estate on which the building is or was situated, and the same shall be collected as other taxes and, when collected, shall be paid to the county treasurer and credited to the general fund of the county in which the property is located. Any person being the owner, occupant, lessee or agent of buildings or premises, who willfully fails, neglects, or refuses to comply with any order of any officer named in 74 O.S. ~~1981,~~ §317 shall be guilty of a misdemeanor and shall be fined not more than Fifty Dollars ($50.00) nor less than Ten Dollars ($10.00) for each days neglect, pursuant to 71 O.S. ~~1981,~~ §317.

265:3-3-10. The rights of parties at hearings

Any party, as defined in 75 O.S. ~~Supp. 1988,~~ §250.3 shall have the right to appear in any hearing in person or by counsel duly licensed to practice law in the State of Oklahoma, and any party and the Office of the State Fire Marshal shall have the power to call and examine witnesses, and to introduce evidence in a hearing before the State Fire Marshal.

SUBCHAPTER 5. HEARINGS

265:3-5-3. Motions

(a) The Office of the State Fire Marshal recognizes all motions permitted under the Oklahoma Pleading Code, 12 O.S. ~~Supp. 1988,~~ §2001 et seq. and a party's Motion requesting the Office of the State Fire Marshal to defer to an accepted plan of correction.

(b) All motions made during a hearing shall be made part of the record of the proceedings.

(c) All motions made outside a hearing are subject to the following rules:

(1) Such motions shall be made in writing to the State Fire Marshal, shall briefly state relief sought, and shall be accompanied by affidavits and/or memoranda setting forth the grounds upon which they are based.
(2) The moving party shall serve a copy of all motions and supporting documents on all other parties.
(3) Any response or objection to the motion shall be filed with the State Fire Marshal within fifteen (15) days of receipt of the motion, and shall be served on all parties.
(4) The State Fire Marshal may decide to hear oral argument or testimony thereon, in which case the State Fire Marshal shall notify the parties of such fact and of the time and place that such argument or the taking of such testimony.

265:3-5-4. Appearances

The provisions of Title 75 O.S. ~~Supp. 1855,~~ §250.3 shall govern appearances at a hearing.

265:3-5-6. Discovery

(a) Upon application and for good cause shown, the State Fire Marshal may permit the parties in a hearing to conduct discovery pursuant to the Oklahoma Code Civil Procedure, 12 O.S. ~~Supp. 1988,~~ §3201 et seq., subject to the provisions of the Oklahoma Administrative Procedures Act.
(b) A copy of the request for discovery shall be filed with the Office of State Fire Marshal.
(c) Witness fees and mileage shall be paid by the party at whose instance the witness appears and the person taking the deposition shall be paid by the party whose instance the deposition is taken.

[OAR Docket #14-482; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 10. SMOKE DETECTORS

[OAR Docket #14-483A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
265:10-1-2 [AMENDED]
Subchapter 3. Rationalization
265:10-3-1 [AMENDED]
265:10-3-2 [AMENDED]
265:10-3-3 [AMENDED]
265:10-3-4 [AMENDED]
Subchapter 5. Compliance
265:10-5-4 [AMENDED]
265:10-5-5 [AMENDED]
AUTHORITY:
74 O.S. §§ 324.7 and 324.11a; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Life Safety Code, NFPA 101, sections 16.3.4.5 and 17.3.4.5, 2009 Edition
NFPA Standard #72
Incorporating rules:
265:10-3-3; 265:10-3-4; 265:10-5-4; and 265:10-5-5
Availability:
Oklahoma State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, OKC, OK 72107, 405.522.5005, Monday-Friday, 8:00a-4:30p
ANALYSIS:
Amends Administrative Rules language to reference current state adopted codes. [74 O.S. §§ 324.11a; State Fire Marshal Commission]
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

265:10-1-2. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purpose and provisions of ~~the smoke detector act~~Title 74 §§324.11a and 324.11b.

SUBCHAPTER 3. RATIONALIZATION

265:10-3-1. Institutional

(a) **Definitions.**
(1) **"Hospital"** means a building or part thereof used for the medical, psychiatric, obstetrical or surgical care on a 24-hour basis of three or more inpatients. Hospital wherever used in these rules and regulations shall include General Hospitals, Mental Hospitals, Tuberculosis Hospitals, Children's Hospitals, Specialized Hospitals and any such facilities providing inpatient care.
(2) **"Nursing home"** means a building or part thereof used for the lodging, boarding and nursing care on a 24-hour basis of three or more persons who because of mental or physical incapacity may be unable to provide for their own needs and safety without the assistance of another person. Nursing Home wherever used in these rules

and regulations shall include ~~Nursing Homes, Convalescent Homes, Skilled Nursing Facilities and Infirmaries in Homes for the Aged~~nursing homes, convalescent homes, skilled nursing facilities and infirmaries in homes for the aged.

(3) **"Rest home"** means a facility that contains a group housing arrangement for three or more persons that provides at least two meals per day and such social and personal care services needed by the residents because of age or physical incapacity may be unable to provide for their own needs, but that do not provide intermediate or skilled nursing care.

(b) All hospitals, nursing homes, rest homes and convalescent homes, as defined in (a) of this section shall install smoke detectors as follows:

(1) New facilities: smoke detectors/detection systems must be installed as per the requirements set out in ~~the 2003 edition of the International Building Code~~the building codes as most recently adopted by the Oklahoma Uniform Building Code Commission.

(2) Existing facilities: approved single station or multiple station detectors must be installed in all sleeping rooms, Except in facilities which have an approved corridor smoke detection system and are protected by an approved automatic sprinkler system.

~~(3) In addition to the requirements set out for new facilities in the International Building Code, all I-2 facilities listed in (a) of this section shall install an approved automatics smoke detection system in all corridors at no greater than 30 feet on center spacing nor more than 15 feet from a wall measured perpendicular to the wall. Exception. Where each patient sleeping room is protected by an approved smoke detection system and a smoke detector connected to the system is provided at the smoke barriers and horizontal exit doors, such corridor system will not be required.~~

265:10-3-2. Churches, theaters and auditoriums [REVOKED]

~~All churches, theaters and auditoriums over 300 capacity, both new and existing, shall be protected by an approved smoke detector in all hazard areas that are not normally occupied as approved by the authority having jurisdiction. Hazard areas shall be defined as those identified in the 2003 edition of the International Building Code. Exception: Where the hazard is protected by an automatic sprinkler system.~~

265:10-3-3. Day nurseries (day care centers) and child care institutions

(a) **Definitions.**

(1) **"Day nursery (day care center)"** means a facility which provides care for six or more children for six or more hours of the 24-hour day.

(2) **"Child care institution"** means a 24-hour residential group care facility with a large number of unrelated children living together with adults other than parents. A specialized service to be selectively and appropriately used for certain children whose needs at the present time cannot be adequately met within the family.

(b) **Installation.**

(1) Existing and new day nurseries, whether called day care, family day care, or group day care, must follow the provisions for smoke detection as outlined in sections 16.3.4.5 and 17.3.4.5 of the ~~2006~~2009 edition of the Life Safety Code, NFPA 101.

(2) Child Care Institutions shall be provided with smoke detection as follows:

(A) New facilities must meet the provisions of the ~~2006 International Building Code~~building codes as most recently adopted by the Oklahoma Uniform Building Code Commission.

(B) Existing facilities must meet the appropriate provisions of the ~~2006~~2009 edition of the Life Safety Code based on the size of the facility.

(C) Existing child care institutions and day nurseries ~~may use battery operated single station detectors to meet the requirements of the code provisions~~must meet the provisions of the Life Safety Code, 2009 Edition.

265:10-3-4. Residential

(a) **Definitions.**

(1) **"Hotels/motels"** means buildings or groups of buildings under the same management in which there are sleeping accommodations for hire, primarily used by transients who are lodged with or without meals, whether designated as a hotel, inn, club or motel, or by any other name. So-called apartment hotels, because they are potentially subject to transient occupancy like that of hotels, shall be classified as hotels.

(2) **"Dormitories"** means buildings or spaces in buildings where group sleeping accommodations are provided for persons not members of the same family group, in one room or in a series of closely associated rooms under joint occupancy and single- management, as in college dormitories, fraternity houses, sorority houses, with or without meals, but without individual cooking facilities.

(3) **"Apartment houses"** means buildings containing three or more living units with independent cooking and bathroom facilities, whether designated as Apartment House, Apartments for the Elderly, Tenement, Garden Apartments, or by any other name. Apartments for the elderly are specifically designed for housing older individuals who are capable of self-preservation.

(4) **"Rooming houses"** Includes buildings in which separate sleeping rooms are rented, providing sleeping accommodations for persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants.

~~(5) **One and two family rental property** means all detached one or two family dwellings not more than three stories in height, and the accessory structures as indicated in the 2006 International Residential Code.~~

(b) **Approved installation.** All residential occupancies as defined in (a) of this section shall have smoke detection as

prescribed by ~~either~~ the ~~2006 International Building Code or the International Residential Code~~building codes as most recently adopted by the Oklahoma Uniform Building Code Commission.

SUBCHAPTER 5. COMPLIANCE

265:10-5-4. Equipment

(a) All devices, combination of devices and equipment to be installed in conformity with ~~current~~the edition of National Fire Protection Association (N.F.P.A) Standard #72 as referenced by the building codes most recently adopted by the Oklahoma Uniform Building Code Commission and shall be approved or listed and installed for the purpose for which they are intended.

(b) A device or system of devices having materials or forms different from those detailed in N.F.P.A. Standard #72 may be examined and tested according to the intent of these standards and, if found equivalent, may be approved.

~~(1) N.F.P.A. #72 Standard on Automatic Fire Detectors covers minimum performance, location, mounting, testing and maintenance requirements of automatic fire detectors for protection of the occupant, building, space, structure, area or object to be protected in accordance with the stated purpose.~~

~~(2) N.F.P.A. #72 Standard for the Installation, Maintenance, and Use of Household Fire Warning Equipment contains minimum requirements for the selection, installation, operation and maintenance of fire warning equipment for use within family living units.~~

265:10-5-5. Enforcement

(a) No person, partnership, corporation, organization, the State, city, town, county or other sub-division of this State owning a building or structure used as a Hospital, Church, Theater, Hotel, Motel, Apartment House, rooming House, Dormitory, Rest Home, Nursing Home, Day Nursery, Convalescent Home, Auditorium or Child Care Institution, existing or constructed, shall commence the installation of Smoke Detection ~~equipment~~system without obtaining a permit.

(b) Said permit for which a charge may be made in conformity with the local ordinances, except as limited in this Chapter as to governmental agencies, shall be obtained from the city, town or county in whose jurisdiction the installation is planned.

~~(c) Application for such installation permit shall be made to and such installation permit shall be issued by a city, town or county in whose jurisdiction the installation is planned. The city, town or county may require the submission of plans and specifications, covering the proposed installation and may refuse to issue a permit, unless the work so planned is in accordance with the applicable provisions of the current National Fire Protection Association Standard.~~

(c) In all geographical areas wherein no permit is required by local authorities, such permit must be obtained from the State Fire Marshal, who may require the submission of plans and specifications covering the proposed installation, and he shall refuse to issue such permit unless the work planned is in accordance with the applicable provisions of current N.F.P.A. Standard #72 as referenced by the building codes most recently adopted by the Oklahoma Uniform Building Code Commission.

(d) Nothing in this Chapter shall be construed as repealing any ordinance of any city, town or county requiring the submission to the local authorities of plans and specifications and the obtaining of permits, but the power of authority of any such city, town or county to levy or assess any charge for such permit or to make and enforce requirements prerequisite to the issuance of such permit, other than requiring compliance with this Chapter, shall, as to governmental agencies, be limited as set forth in (a) through ~~(h)~~(f) of this Section.

(e) No city, town, county, State or other subdivision of government shall charge, assess or collect any fee or other charge for such permit, except the regular and customary inspection fees fixed by ordinances for inspection of the work to be done under such permit, and no other charge, fee or other conditions of any kind under the authority of this Act shall be made a condition of or prerequisite to the obtaining of such permit by any such governmental agency.

~~(f) Nothing in this Chapter shall prevent or take away from any city, town or county the authority to enact and enforce rules and regulations containing higher standards and requirements than those provided in this Chapter.~~

~~(g) No certificate of occupancy shall be issued for any facility for which an installation permit has been issued by any city, town or county in whose jurisdiction the installation was made, unless the authority having jurisdiction has certified that said building is equipped with Smoke Detection equipment complying with this Chapter.~~

(~~h~~f) In all geographical areas where no permit is issued by local authorities, the State Fire Marshal shall certify that said building is equipped with a Smoke Detection ~~equipment~~system, complying with this Chapter.

[OAR Docket #14-483A; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 10. SMOKE DETECTORS

[OAR Docket #14-483]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Compliance
265:10-5-1 [AMENDED]
265:10-5-2 [AMENDED]
AUTHORITY:
74 O.S. §§ 324.7 and 324.11a; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 15, 2013 through March 18, 2013
PUBLIC HEARING:
March 18, 2013

ADOPTION:
April 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 10, 2013
APPROVED BY GOVERNOR:
May 15, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amends Administrative Rules language to reference current state adopted codes. [74 O.S. §§ 324.11a; State Fire Marshal Commission]
CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. COMPLIANCE

265:10-5-1. Period allowed for compliance

(a) All new construction shall conform to the applicable requirements of this Chapter on certification by the authority having jurisdiction, as described in (b) and (c) of this Section, upon completion of the construction.

(b) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses, including Apartments for the Elderly, and Rooming Houses of less than 10 units, which can not conform with the requirements of this Chapter on the effective Date of November 1,1986, shall be in compliance with this Subchapter.

(c) All Hospitals, Nursing Homes, Rest Homes, Convalescent Homes, Hotels, Motels, Dormitories, Apartment Houses, Including Apartments for the Elderly, and Rooming Houses of 10 units or more, which can not conform with the requirements of this Chapter on the effective date of November 1,1986, shall be in compliance with this Subchapter.

~~(d) All existing One and Two Family Rental Property shall be in compliance with this Subchapter.~~

265:10-5-2. Approval of sellers and installers

Every individual, firm or corporation commercially selling, installing, designing or repairing Smoke Detection Systems shall be licensed by the Alarm Division of the Oklahoma ~~State~~ Department of ~~Health~~Labor.

[OAR Docket #14-483; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 25. ~~ADOPTED NATIONAL~~REFERENCED STATE CODES AND STANDARDS

[OAR Docket #14-484A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:25-1-2 [AMENDED]
265:25-1-3 [AMENDED]
AUTHORITY:
74 O.S. §§ 324.7 and 324.11; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
International Building Code, 2009 Edition, Sections 109.2, 114.1, and 114.4
NFPA #99, 2000 Edition
NFPA #101, 2009 Edition
Incorporated rules:
265:25-1-3
Availability:
Oklahoma State Fire Marshal's Office, 2401 NW 23rd Street, Suite 4, OKC, OK 72107, 405.522.5005, Monday-Friday, 8:00a-4:30p
ANALYSIS:
Amends Administrative Rules language to reference current state adopted codes. [74 O.S. §§ 324.11a; State Fire Marshal Commission]
CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

265:25-1-2. Scope of ~~incorporated NFPA~~referenced standards

~~(a) When a provision of the National Fire Protection Association (N.F.P.A.) is incorporated by reference, all citations contained therein are also incorporated by reference; and the definition of terms contained therein shall apply as appropriate.~~

~~(b)~~ In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference, the provisions incorporated by reference shall prevail, except where the regulations herein set out are more stringent.

265:25-1-3. ~~Incorporated~~Referenced national and state codes and standards

The following ~~national~~building codes and standards are incorporated by reference:

(1) ~~International Building Code and its appendices, 2006 Edition, with the following modifications:~~The recently adopted by the Oklahoma Uniform Building Code Commission:

(A) ~~Section 108.1 Fee Schedule: Add additional wording to read as follows~~Pursuant to the International Building Code®, 2009 Edition, Section 109.2: A fee for each plan examination, building permit, and inspection shall be paid in accordance with the following schedule:

(i) Exemptions: the following entities are exempt from the fees associated with this section, except for archiving fees: Detention centers that require an annual inspection are exempt from annual inspection fees and Fire Departments duly constituted and meeting the reporting requirements of the State Fire Marshal ~~Agency~~Office.

(ii) Building Plan Review:

(~~II~~I) Review of plans submitted with an application for a building permit. Total permit fee is due at the time of submittal.

(~~I~~II) Preliminary review or in-house consultation (no permit issued) - $75.00

~~(iii) Alteration, Renovation, Repair:~~

(~~I~~III) Minimum permit fee - $50.00

~~(II) Rate per $1,000 of project evaluation - $3.75~~

~~(III) Demolition fee, first story, per square foot - $.05; additional stories, each - $5.00~~

(IV) Rates where total exceeds the minimum:

a. warehouse buildings, canopies: per square foot - $.10

b. commercial occupancy: per square foot - $.10

c. industrial buildings: per square foot - $.10

d. sprinkler plan review only: per square foot - $.03

e. fire alarm plan review only: per square foot - $.03

(iii) Above Ground Fuel Storage: Inspection and permit fee - $100.00

(~~vi~~iv) Fireworks:

(I) Class B Fireworks display inspection and permit-$125.00

(II) Class C pyrotechnic display inspection and permit- $250.00

(~~IV~~v) Field Inspections, per hour - $40.00, one hour minimum

(I) Change of Use of Existing Building Analysis - $40.00 per hour, one hour minimum

(II) Marinas Onsite inspection of facility will be billed at $40.00 per hour, one hour minimum

(III) Explosive Storage Facility: Inspection and permit fee is a minimum of $108.00 per magazine.

~~(iv) New Construction~~

(IV) Permit fees include the cost of a 50% and 100% on site inspection and occupancy permit. Additional onsite inspection caused by failure to comply with applicable codes or deviation from approved plans will be billed at $40.00 per hour the actual cost to the agency.

(~~x~~vi) ~~Fast Track plan review fee schedule~~Third Party Review:

(I) ~~Definition of Fast Track Review; A plan review which disrupts normal plan review schedules, and requires review in 72 hours or less. Note: If plans cannot be reviewed in 72 hours or less, notification will be given, but fee schedule still applies.~~In order to expedite review of plans, approved third party reviewers may be voluntarily used.

(II) ~~Check shall be made payable to: Office of the Oklahoma State Fire Marshal~~Third Party fees will be payable to the plan reviewer in addition to the Oklahoma State Fire Marshal Office's customary permit fees.

(III) Third Party reviewers may not be current employees of the Oklahoma State Fire Marshal's Office.

(vii) Required Plan Review Fees: Fees may be waived or reduced due to plan review charges by local authority.

~~(I) Minimum permit fee - $50.00~~

~~(II) Rates where total exceeds the minimum~~

~~a. warehouse buildings, canopies: per square foot - $.10~~

~~b. commercial occupancy: per square foot - $.10~~

~~c. industrial buildings: per square foot - $.10~~

~~d. sprinkler plan review only: per square foot - $.03~~

~~e. fire alarm plan review only: per square foot - $.03~~

~~(v) Above Ground Fuel Storage:~~

~~(I) Inspection and permit fee - $100.00~~

~~(vi) Fireworks:~~

~~(I) Class B Fireworks display inspection and permit - $125.00~~

~~(II) Class C pyrotechnic display inspection and permit - $250.00~~

~~(vii) Change of Use of Existing Building:~~

~~(I) Analysis – $40.00 per hour, one hour minimum~~

~~(viii) Required Plan Review Fees: Fees may be waived or reduced due to plan review charges by local authority.~~

~~(ix) Marinas:~~

~~(I) On-site inspection of facility will be billed at $40.00 per hour,one hour minimum~~

~~(x) Fast-Track plan review fee schedule~~

~~(I) Definition of Fast Track Review; A plan review which disrupts normal plan review schedules, and requires review in 72 hours or less. Note: If plans cannot be reviewed in 72 hours or less, notification will be given, but fee schedule still applies.~~

~~a. Review time $40.00 per hour~~

~~b. Two (2) hour minimum on all reviews.~~

~~(II) Check shall be made payable to: Office of the Oklahoma State Fire Marshal~~

~~(xi) Explosive Storage Facility: Inspection and permit fee is a minimum of $108.00 per magazine.~~

(B) ~~Add new wording into paragraph "113.4 Violation penalties" Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code,~~ Section 114.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by these codes, or cause same to be done, in conflict with or in violation of, any of the provision of the most recently adopted building codes and standards by the Oklahoma Uniform Building Code Commission and shall be subject to an administrative fine as per State Statute ~~72~~74 O.S., Section 324.9. The first repeat notice of violation or failure to provide a plan of correction a person may be subject to a warning, or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense.

(C) ~~Add new paragraph 112.4 "Procedures for Appeal of Condemnation,"~~ Procedures to be followed when appealing condemnation shall be those ~~outlines~~outlined in 74 O.S. §317.

~~(D) Add Section 101.4.8 NFPA 101 2006 edition. The provisions of the NFPA 101, 2006 edition shall only apply when the AHJ approves those provisions to be applicable. Where differences occur between provisions of this code and the NFPA, the most stringent code shall apply.~~

~~(2) International Fire Prevention Code and its appendices, 2006 Editionas most recently adopted by the Oklahoma Uniform Building Code Commission, with the following modifications:~~

~~(A) Add new wording to Section 109.3 to read as follows: Any Section 109.3 Violations penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter, or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative citation per State Statute 72 O.S., Section 324.9. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning, or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense.~~

(~~B~~D) Section ~~111.4~~114.4 adding new wording: Fine of not less than $50.00 or more than $200.00.

~~(C) Delete Section 307. Follow Oklahoma Statute Title 2 relating to unlawful burning.~~

~~(D) Add following to 102.7 NFPA 101 2006 Edition is allowed to use where approved by AHJ. Where differences occur between this code and NFPA 101, the most stringent code shall apply.~~

~~(3) International Property Maintenance Code and its appendices, 2006 Edition.~~

~~(A) Delete Section 106.3.~~

~~(B) Add new wording into Section 106.4 to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative fine per State Statute 74 O.S., Section 324.9. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning, or a fine of $100.00. Second violation continues after due notice has been served shall be deemed a separate offense.~~

~~(C) Section 704 to read as follows: 704 Installation:~~

(E) All smoke detector installation shall comply with State Statute 74 O.S., Section ~~324.11A~~324.11a concerning installation of smoke detectors.

~~(4) NFPA #10 Portable Fire Extinguishers and its annex's, 2007 Edition.~~

~~(5) NFPA #13 Installation of Sprinkler Systems and its annex's, 2007 Edition.~~

~~(6) NFPA #13D Installation of Sprinklers in One and Two Family Dwellings and its annex's, 2007 Edition.~~

~~(7) NFPA #13R Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height and its annex's, 2007 Edition.~~
~~(8) NFPA #25 Water Based Fire Protection Systems and its annex's, 2002 Edition.~~
~~(9) NFPA #30 Flammable and Combustible Liquids Code and its annex's, 2003 Edition.~~
~~(10) NFPA #30A Motor Fuel Dispensing facilities and Repair Garages and its annex's, 2003 Edition.~~
~~(11) NFPA #54 Natural Fuel Gas Code and its annex's, 2006 Edition.~~
~~(12) NFPA #70 The National Electric Code and its annex's, 2005 Edition.~~
~~(13) NFPA #72 National Fire Alarm Code and its annex's, 2007 Edition.~~
~~(14) NFPA #90A Air Conditioning and Ventilating Systems and its annex's, 2002 Edition.~~
~~(15) NFPA #96 Installation of Equipment for the Removal of Smoke & Grease Laden Vapors from Commercial Cooking Equipment and its annex's, 2004 Edition.~~
(2) NFPA #99 Health Care Facilities Code, 2000 Edition, as it applies for the life safety inspections of existing facilities and as required by other state referenced codes and federal mandates.
(~~16~~3) NFPA #101 Life Safety Code~~ and its annex's~~, ~~2006~~2009 Edition, as it applies for the life safety inspections of existing facilities and as required by other state referenced codes and federal mandates.
~~(17) NFPA #303 Fire Protection Standard for Marinas and Boatyards and its annex's, 2006 Edition.~~
~~(18) NFPA #850 Electric Generating Plants and High Voltage Direct Converter Stations and its annex's, 2005 Edition.~~
~~(19) NFPA #1123 Outdoor Display of Fireworks and its annex's, 2006 Edition.~~
~~(20) NFPA #1124 Manufacturing, Transportation and Storage of Fireworks and its annex's, 2006 Edition.~~
~~(21) NFPA #1126 Use of Pyrotechnics before a Proximate Audience and its annex's, 2006 Edition.~~
~~(22) Add new section 1-7 Violation Penalties to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be subject to an administrative citation per State Statute 74 O.S., Section 324.9. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense. Failure to comply with applicable codes, causing an additional inspection, will be billed at $40.00 per hour, one hour minimum.~~

[OAR Docket #14-484A; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 25. ~~ADOPTED NATIONAL~~REFERENCED STATE CODES AND STANDARDS

[OAR Docket #14-484]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:25-1-4 [AMENDED]
AUTHORITY:
74 O.S. §§ 324.7 and 324.11; 75 O.S. §§ 250 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 15, 2013 through March 18, 2013
PUBLIC HEARING:
March 18, 2013
ADOPTION:
April 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 10, 2013
APPROVED BY GOVERNOR:
May 15, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amends Administrative Rules language to reference current state adopted codes. [74 O.S. §§ 324.11a; State Fire Marshal Commission]
CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

265:25-1-4. Building permits - application - plans and specifications - construction or repair of correctional facilities

In accordance with 74 O.S., Section 324.11~~The~~the following use groups and occupancies are incorporated by reference:
(1) Educational buildings:
(A) Schools.
(B) Academics.
(C) Nursery schools.
(D) Kindergartens.
(E) Child day-care facilities.
(F) Colleges and universities.
(2) Hospitals:

(A) Health care facilities:
(i) Hospitals.
(ii) Nursing homes.
(B) Residential custodial care facilities:
(i) Nurseries.
(ii) Homes for the infirm aged.
(iii) ~~Mentally retarded~~Care institutions.
(iv) Supervisory care facilities.
(v) Ambulatory care facilities
(3) Assembly Halls:
(A) Armory.
(B) Assembly hall for 50 or more persons:
(i) Theaters.
(ii) Motion picture theaters.
(iii) Assembly halls.
(iv) Auditoriums.
(v) Exhibition halls.
(vi) Museums.
(vii) Libraries.
(viii) Dance halls.
(ix) Club rooms.
(x) Passenger stations and terminals for train depots.
(xi) Recreation piers.
(C) Auditorium.
(D) Bonded ~~warehouse~~warehouses.
(E) ~~Convent~~Convents.
(F) Convention ~~hall~~halls.
(G) ~~Church~~Churches.
(4) Dormitory for sleeping accommodations:
(A) Motels and hotels.
(B) Dormitories.
(C) Rooming houses.
(D) Residential restrained care institutions.
(E) Penal institutions.
(F) Jails.
(G) Correction centers.
(H) Orphanages for age 6 years and older.
(I) Reformitories.
(J) Detention centers.
(5) Factories.
(6) Stadiums.
(A) Coliseums.
(B) Bleachers.
(C) Grandstands.
(7) Warehouses.
(8) Government buildings:
(A) Municipal.
(B) County.
(C) State.
(9) Gymnasium.
~~(10) Power house.~~

[OAR Docket #14-484; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 35. FIELD CITATIONS

[OAR Docket #14-485]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:35-1-1 [AMENDED]
AUTHORITY:
74 O.S. §§ 324.7 and 324.9; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 15, 2013 through March 18, 2013
PUBLIC HEARING:
March 18, 2013
ADOPTION:
April 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 10, 2013
APPROVED BY GOVERNOR:
May 15, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Inernational Building Code, Section 114
International Fire Code, Section 109
Incorporating rule:
265:35-1-1
Availability:
Oklahoma State Fire Marshall, 2401 NW 23rd St., Suite 4, Oklahoma City, OK 73107, 405-522-5005; 8:00 am to 4:30 pm Monday through Friday
ANALYSIS:
Amends Administrative Rules language to reference current state adopted codes. [74 O.S. §§ 324.7 and 324.9; State Fire Marshal Commission]
CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

265:35-1-1. Field citations

(a) Only the Office of the State Fire Marshal designated employees will be authorized to issue a field citation for violations of the Adopted Codes. The field citation will describe the nature of the violation at the time the citation is issued.

(b) If the alleged violator disagrees with the citation, he/she has the right to request a hearing before the Administrative Hearing Officer. The hearing will be set within ten (10) days of receipt by the Office of the State Fire Marshal of the request for a hearing. If a hearing is held and the person is found to be responsible for the violation, administrative costs of $100.00

shall be assessed, in addition to the fine listed in the International Building Code, Section ~~116.4~~114; International Fire Code, Section ~~109.3~~109~~; International Property Maintenance Code, Section PM 106.4~~.

(c) If the alleged violator does not contest the field citation, then the alleged violator will have thirty (30) days from the date the citation is issued in which to remit to the Office of the State Fire Marshal the amount identified on the citation. The checks should be made payable to the Office of the State Fire Marshal.

(d) Failure to pay the amount noted on the citation, or failure to appear and contest the field citation, will result in other enforcement actions and requests for assessment of additional penalties, or administrative assessments as set forth in (B) above.

(e) Fines for field citations shall be assessed as shown in the International Building Code, Section ~~116.4~~114; International Fire Code, Section ~~109.3~~109~~; International Property Maintenance Code, Section PM 106.4~~.

(f) Issuance or payment of field citations shall in no way preclude other enforcement proceedings, administrative penalties, fines or order of the Office of the State Fire Marshal if the alleged violator fails to correct a violation in a reasonable manner, as determined by the Office of the State Fire Marshal.

(g) Proceeds from payment of field citations shall be deposited into the Office of the State Fire Marshal revolving fund.

[OAR Docket #14-485; filed 6-23-14]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 50. FIRE EXTINGUISHER INDUSTRY

[OAR Docket #14-486]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
265:50-1-1 [AMENDED]
265:50-1-2 [AMENDED]
265:50-1-3 [AMENDED]
265:50-1-3.1 [AMENDED]
Subchapter 3. License Requirements
265:50-3-2 [AMENDED]
265:50-3-3 [AMENDED]
265:50-3-4 [AMENDED]
265:50-3-5 [AMENDED]
Subchapter 7. Enforcement
265-50-7-1 [AMENDED]
265:50-7-2 [AMENDED]
AUTHORITY:
59 O.S. §§ 1820.1 et seq.; State Fire Marshal Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Transfer of authority from the Department of Health to the State Fire Marshal pursuant to SB 347. [59 O.S. §§ 1820.1 et seq.; State Fire Marshal Commission]
CONTACT PERSON:
Luke Tallant, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

265:50-1-1. Purpose

The rules of this chapter implement the Fire Extinguisher Licensing Act, Title 59 O.S. ~~Supp.2007~~, Section 1820.1 et seq.

265:50-1-2. Definitions

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

"Agency" means the Oklahoma State Fire Marshal's Office.

"Certificate of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work.

"Certification of a system" means testing per applicable code of any pre-engineered or engineered fire suppression system by a properly licensed individual working for a properly licensed company to verify that the system complies with all of the requirements of the applicable code, standard or manufacturer's manual.

"Commercial Building" means a building or structure used for any purpose or occupancy that is not defined in this section as a Residential Building.

"Committee" means the Fire Extinguisher Industry Committee.

~~**"Department"** means the Oklahoma State Department of Health.~~

"Direct Supervision" means the presence of a licensed manager or technician on the premise within the hearing or eye sight of the individual(s) requiring supervision.

"Engineered Fire Suppression System"~~shall mean~~means any fixed fire suppression unit that is designed by the installing or inspecting company. Manufacturers may provide design, installation or inspection criteria but each

system is specifically designed for a specific hazard area by someone outside of the manufacturer of the system.

"Engineered Fire Suppression Company" means a business that provides engineered fire suppression systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a engineered fire suppression system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Engineered Fire Suppression Designer" means a person who designs engineered fire suppression systems on behalf of a licensed Oklahoma engineered fire suppression system company.

"Engineered Fire Suppression Company Qualified Agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such engineered fire suppression systems industry business or a branch thereof.

"Engineered Fire Suppression System Salesperson" means a person who sells to others on behalf of licensed Oklahoma engineered fire suppression systems company by any means including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in the specification and/or layout of an engineered fire suppression system on behalf of an engineered fire suppression systems company.

"Engineered Fire Suppression System Technician" means an individual who is employed by an Oklahoma licensed engineered fire suppression systems company to plan, lay out, sell, install, maintain, repair, test, inspect or service engineered fire suppression systems.

"IBC" means the International Building Code®.

"ICC" means the International Code Council, Inc.

"Inspection" ~~shall mean~~means the virtual observation or test of any portable fire extinguisher, pre-engineered fire suppression system or engineered fire suppression system to determine if the system has been installed and is operating according to the applicable code, standard or manufacturer's manual.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m2) or more and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home and each shall be regarded as manufactured housing.

"NFPA" means the National Fire Protection Association®.

"Ownership" means the dominion, title or proprietary right in a company subject to the Fire Extinguisher Licensing Act and this chapter.

"Portable Fire Extinguisher"~~shall mean~~means any hand-held, wheeled, stationery or skid mounted unit designed for the unit itself to be mobile or the means of distributing the firefighting agent to be mobile to extinguish a fire. This includes all units that use a nozzle connected directly to the unit or a nozzle connected to a hose of any length which is connected to the unit.

"Portable Fire Extinguisher Company" means a business that provides portable fire extinguishers to others by any means, including, but not limited to, the sale, lease, rent, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a portable fire extinguisher, holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Portable Fire Extinguisher Company Qualified Agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such fire extinguisher industry business or a branch thereof.

"Portable Fire Extinguisher Salesperson" means a person who sells to others on behalf of licensed Oklahoma portable fire extinguisher company by any means including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in the specification and/or layout of a portable fire extinguisher on behalf of a portable fire extinguisher company.

"Portable Fire Extinguisher Technician" means an individual who is employed by an Oklahoma licensed portable fire extinguisher company to plan, lay out, sell, install, maintain, repair, inspect or service portable fire extinguishers.

"Pre-Engineered Fire Suppression System"~~shall mean~~means any fixed fire suppression system that is engineered by the manufacturer and provides, to installing companies, a design manual with preset limitations for the design, inspection or installation of the system.

"Pre-Engineered Fire Suppression Company" means a business that provides pre-engineered fire suppression systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning, installation, maintenance, repair, testing, modification, improvement, alteration, inspection or servicing of a pre-engineered fire suppression system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Pre-Engineered Fire Suppression Company Qualified Agent" means the person who shall be responsible for providing direct supervision over the function and local operations of such pre-engineered fire suppression systems industry business or a branch thereof.

"Pre-Engineered Fire Suppression System Salesperson" means a person who sells to others on behalf of licensed Oklahoma pre-engineered fire suppression systems company by any means including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door,

or any other type of personal interaction, and/or a person who participates in the specification and/or layout of a pre-engineered fire suppression system on behalf of a pre-engineered fire suppression systems company.

"Pre-Engineered Fire Suppression System Technician" means an individual who is employed by an Oklahoma licensed pre-engineered fire suppression systems company to design, plan, lay out, sell, install, maintain, repair, test, inspect or service pre-engineered fire suppression systems.

"Security Verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Supervision" means on-site supervision by a licensed qualified agent, technician or salesperson.

"System" means a pre-engineered or engineered fire suppression system, as defined in these rules, or a portion or combination of such systems.

"Trainee" means an individual who is employed by an Oklahoma licensed portable, pre-engineered or engineered company to learn to properly engage in the activities regulated by this chapter that can engage in any licensed category pursuant to this chapter while under the direct supervision of an individual holding the appropriate license in the category of work being performed.

265:50-1-3. Adopted references

The ~~Board of Health~~Oklahoma State Fire Marshal Commission hereby incorporates by reference the following standards governing the materials, services and conduct of the licenses and the employees of licensees in regard to the fire extinguisher industry:~~the~~ International Code Council (ICC) 2009 Edition International Building Code (IBC)®; 2009 Edition International Fire Code (IFC)®; the National Fire Protection Association (NFPA) 2010 Edition Standard for Portable Fire Extinguishers (NFPA 10)®; the 2011 Edition Standard on Carbon Dioxide Extinguishing Systems (NFPA 12)®; the 2009 Edition Standard on Halon 1301 Fire Extinguishing Systems (NFPA 12A)®; the 2009 Edition Standard for Dry Chemical Extinguishing Systems (NFPA 17)®; the 2009 Edition Standard for Wet Chemical Extinguishing Systems (NFPA 17A)®; the 2011 Edition National Electrical Code (NFPA 70)®; the 2013 Edition National Fire Alarm Code (NFPA 72)®; the 2011 Edition Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations (NFPA 96)®; the 2012 Edition Standard on Clean Agent Fire Extinguishing Systems (NFPA 2001)®; the 2010 Edition Standard on Water Mist Fire Protection Systems (NFPA 750)®; and 2012 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101)® as the minimum standard for installation for the fire extinguisher industry in Oklahoma. If a conflict exists between any of the above-referenced installation standards, the more stringent shall apply. If a conflict exists between any of the above-referenced codes or standards and this chapter, the requirements in this chapter shall apply.

265:50-1-3.1. Compliance with intent of Chapter

Where no specific standards or requirements are specified in this chapter or within other codes or regulations adopted by the ~~State Department of Health,~~Oklahoma State Fire Marshal Commission, compliance with the applicable standards of the National Fire Protection Association, American National Standard Institute (ANSI), or other nationally recognized fire safety standards approved by the State is prima facie evidence of compliance with the intent of this chapter.

SUBCHAPTER 3. LICENSE REQUIREMENTS

265:50-3-2. Application and license fees, period and display, and examination alternatives for prerequisites

(a) **Application and license fees.** The following fees apply to the Fire Extinguisher Industry licensure:

(1) Initial application and licensing fees:
- (A) Company - $250.00;
- (B) Company Qualified Agent - $200.00;
- (C) Designer Application - $200.00;
- (D) Technician - $75.00;
- (E) Trainee - $75.00;
- (F) Salesperson - $75.00;
- (G) Re-Examination, Per Attempt - $50.00

(2) Renewal Fees:
- (A) Company License - $250.00;
- (B) Company Qualified Agent - $100.00;
- (C) Designer - $100.00;
- (D) Technician - $35.00;
- (E) Trainee - $35.00;
- (F) Salesperson - $35.00;
- (G) Duplicate License - $25.00

(b) **License period.**

(1) A license shall expire on September 30, 2009 and each year thereafter. Renewals must be received or postmarked on or before September 30 of each year. Beginning October 1 a license may be renewed by paying double the renewal fee.

(2) Initial applicants for managers, designers, technicians, salespersons and trainees shall provide either:

(A) An application and a current criminal history record check dates within thirty days of application, from the Oklahoma State Bureau of Investigations. If the applicant has not resided in the State of Oklahoma for the past ten (10) years, a current criminal history record check from each State of previous residents will be required. In addition two (2) completed fingerprint cards and two (2) passport photos (provides for temporary licensure);

(B) An application two (2) completed fingerprint cards and two (2) passport photos (does not provide for temporary licensure).

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain

a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(4) From July 1, 2008 through September 20, 2008 the ~~Commissioner~~State Fire Marshal shall, upon proper application and payment of fee, make license without examination those persons who can provide evidence that they were engaged in fire suppression work prior to November 1, 2007. Example of evidence includes but not limited to:

(A) Invoices for work performed;

(B) Purchase receipts for industry related equipment;

(C) Documents of installation or services by employee;

(D) Provide documentation of printed advertising dated prior to the effective date of November 1, 2007; and

(E) Other documents as provided by the Committee.

(c) **Examination and Re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. However if the examinee notifies the ~~Department~~Agency within the seventy-two (72) hours before scheduled exam, the ~~Department~~Agency will reschedule the examination date with no additional fee required pursuant to ~~310:451-3-2(a)(1)~~265:50-3-2(a)(1).

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, plans, submittals and printed advertisements and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued company license number shall be located on all vehicles that display the company name.

(e) Personal license display. Each qualified agent, designer, technician, trainee or salesperson shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Oklahoma State ~~Department of Health~~Fire Marshal's Office or other authorities having jurisdiction. In addition the individual shall have a state/government issued photo ID in their possession while engaged in the licensed activity.

(f) **Personal license information.**

(1) Each individual license holder shall notify the Oklahoma State ~~Department of Health~~Fire Marshal's Office on a form specified and provided by the Oklahoma State ~~Department of Health~~Fire Marshal's Office within fourteen (14) days of the following:

(A) Any change in the home address.

(B) Any separation from an employer or change in employer.

(C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and qualified agent license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

265:50-3-3. Portable fire extinguisher license requirements

Licensing requirements for the portable fire extinguisher industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed portable fire extinguisher qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma shall apply for a separate license for each company office and have a licensed portable fire extinguisher qualified agent at each office. A portable fire extinguisher company shall notify the ~~Department~~Agency within fourteen (14) days in the event of the death of the portable fire extinguisher qualified agent or the qualified agent's separation from the company for any other reason and the company shall designate another licensed portable fire extinguisher qualified agent within thirty (30) days from separation.

(B) A licensed portable fire extinguisher technician or qualified agent shall be on site for any work being performed.

(2) **Qualified agent.**

(A) Each application for licensure as a portable fire extinguisher qualified agent shall include verification of 2000 hours of technical experience in the portable fire extinguisher business. The experience shall include verified /or licensed experience as a portable fire extinguisher technician or other related experience approved by the Committee.

(B) Each licensed portable fire extinguisher company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agents.

(C) Each licensed portable fire extinguisher company qualified agent shall have security background verification.

(D) As of October 1, 2008 each applicant for licensure as a portable fire extinguisher qualified agent shall pass an examination prescribed by the Committee.

(3) **Technician.**

(A) Each portable fire extinguisher technician shall work for a licensed portable fire extinguisher company and under the supervision of a portable fire extinguisher qualified agent.

(B) As of October 1, 2008 each applicant for licensure as a portable fire extinguisher technician shall pass an examination prescribed by the Committee.

(C) Each portable fire extinguisher technician shall have security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as trainee pursuant to this Chapter.

(4) **Trainee.**

(A) A portable fire extinguisher trainee shall be employed by a licensed portable fire extinguisher company.

(B) A portable fire extinguisher trainee shall work under the direct supervision of a licensed portable fire extinguisher qualified agent, portable fire extinguisher technician or a portable fire extinguisher salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per portable fire extinguisher company qualified agent, portable fire extinguisher technician or portable fire extinguisher salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each portable fire extinguisher salesperson shall work for a licensed portable fire extinguisher company and under the supervision of a portable fire extinguisher company qualified agent.

(B) As of October 1, 2008 each applicant for licensure as a portable fire extinguisher salesperson shall pass an examination prescribed by the Committee.

(C) Each portable fire extinguisher salesperson shall have security background verification.

265:50-3-4. Pre-engineered fire suppression system license requirements

Licensing requirements for the pre-engineered fire suppression system industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed pre-engineered fire suppression system qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma shall apply for a separate license for each company office and have a licensed pre-engineered fire suppression system qualified agent at each office. A pre-engineered fire suppression system company shall notify the ~~Department~~Agency within fourteen (14) days in the event of the death of the pre-engineered fire suppression system qualified agent or the qualified agent's separation from the company for any other reason and the company shall designate another licensed pre-engineered fire suppression system qualified agent within thirty (30) days from separation.

(B) A licensed pre-engineered fire suppression system technician or qualified agent shall be on site for any work being performed.

(C) The company will notify the ~~Department~~Agency of the physical address and telephone number for each company office in accordance with 59 O.S. Section 1820.14.

(2) **Qualified agent.**

(A) Each application for licensure as a pre-engineered fire suppression system qualified agent shall include verification of 4000 hours of experience in the pre-engineered fire suppression system business. The experience shall include verified or licensed experience as a pre-engineered fire suppression system technician or other related experience approved by the Committee.

(B) Each licensed pre-engineered fire suppression system company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agents.

(C) Each licensed pre-engineered fire suppression system company qualified agent shall have security background verification.

(D) As of October 1, 2008 each applicant for licensure as a pre-engineered fire suppression system qualified agent shall pass an examination prescribed by the Committee.

(3) **Technician.**

(A) Each pre-engineered fire suppression system technician shall work for a licensed pre-engineered fire suppression system company and under the supervision of a pre-engineered fire suppression system qualified agent.

(B) As of October 1, 2008 each applicant for licensure as a pre-engineered fire suppression system technician shall pass an examination prescribed by the Committee.

(C) Each pre-engineered fire suppression system technician shall have security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as trainee pursuant to this Chapter.

(4) **Trainee.**

(A) A pre-engineered fire suppression system trainee shall be employed by a licensed pre-engineered fire suppression system company.

(B) A pre-engineered fire suppression system trainee shall work under the direct supervision of a licensed pre-engineered fire suppression system qualified agent, pre-engineered fire suppression system technician or a pre-engineered fire suppression system salesperson.

(C) There shall be no more than three (3) trainees per pre-engineered fire suppression System Company qualified agent, pre-engineered fire suppression

system technician or pre-engineered fire suppression system salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each pre-engineered fire suppression system salesperson shall work for a licensed pre-engineered fire suppression system company and under the supervision of a pre-engineered fire suppression system company qualified agent.

(B) As of October 1, 2008 each applicant for licensure as a pre-engineered fire suppression system salesperson shall pass an examination prescribed by the Committee.

(C) Each pre-engineered fire suppression system salesperson shall have security background verification.

265:50-3-5. Engineered fire suppression system license requirements

Licensing requirements for the engineered fire suppression system industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed engineered firesuppression system qualified agent who is responsible for the operations of the company's office. Any company maintaining separate offices within Oklahoma shall apply for a separate license for each company office and have a licensed engineered fire suppression system qualified agent at each office. An engineered fire suppression system company shall notify the ~~Department~~Agency within fourteen (14) days in the event of the death of the engineered fire suppression system qualified agent or the qualified agent's separation from the company for any other reason and the company shall designate another licensed engineered fire suppression system qualified agent within thirty (30) days from separation.

(B) A licensed engineered fire suppression system technician or qualified agent shall be on site for any work being performed.

(C) The company will notify the ~~Department~~Agency of the physical address and telephone number for each company office in accordance with 59 O.S. Section 1820.14.

(2) **Qualified agent.**

(A) Each application for licensure as an engineered fire suppression system qualified agent shall include verification of experience in the engineered fire suppression system business. The experience shall include verified or licensed experience as an engineered fire suppression system technician or other related experience approved by the Committee.

(B) Each licensed engineered fire suppression system company qualified agent shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as qualified agents.

(C) Each licensed engineered fire suppression system company qualified agent shall have security background verification.

(D) As of October 1, 2008 each applicant for licensure as an engineered fire suppression system qualified agent shall pass an examination prescribed by the Committee.

(3) **Designer.**

(A) Each engineered fire suppression system designer shall work for a licensed engineered fire suppression system company and under the supervision of an engineered fire suppression system qualified agent.

(B) As of October 1, 2008 each applicant for licensure as an engineered fire suppression system designer shall pass an examination prescribed by the Committee.

(C) Each engineered fire suppression system designer shall have security background verification.

(4) **Technician.**

(A) Each engineered fire suppression system technician shall work for a licensed engineered fire suppression system company and under the supervision of an engineered fire suppression system qualified agent.

(B) As of October 1, 2008 each applicant for licensure as an engineered fire suppression system technician shall pass an examination prescribed by the Committee.

(C) Each engineered fire suppression system technician shall have security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as trainee pursuant to this Chapter.

(4) **Trainee.**

(A) An engineered fire suppression system trainee shall be employed by a licensed engineered fire suppression system company.

(B) An engineered fire suppression system trainee shall work under the direct supervision of a licensed engineered fire suppression system qualified agent, engineered fire suppression system technician or an engineered fire suppression system salesperson.

(C) There shall be no more than three (3) trainees per engineered fire suppression system company qualified agent, engineered fire suppression system technician or engineered fire suppression system salesperson per job site.

(D) Each trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each engineered fire suppression system salesperson shall work for a licensed engineered fire suppression system company and under the supervision of an engineered fire suppression system company qualified agent.

(B) As of October 1, 2008 each applicant for licensure as an engineered fire suppression system salesperson shall pass an examination prescribed by the Committee.

(C) Each engineered fire suppression system salesperson shall have security background verification.

SUBCHAPTER 7. ENFORCEMENT

265:50-7-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act or the violation of multiple sections of this Chapter or provision of the Act may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud or any similar offense or pleading guilty or nolo contender to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the ~~Department~~Agency within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

(e) Any person whose license is revoked pursuant to these rules may not perform fire extinguisher industry work before attaining licensure pursuant to OAC ~~310:451~~265:50.

265:50-7-2. Prohibited acts

(a) No person, entity or firm may perform portable, pre-engineered or engineered fire suppression work without first obtaining a license pursuant to these Rules.

(b) No person shall offer to engage in portable, pre-engineered or engineered fire suppression work during the period his license is suspended or revoked.

(c) No employing firm shall employ or use an unlicensed person to perform portable, pre-engineered or engineered fire suppression industry work.

(d) No person, entity or firm may transfer a license or registration.

(e) No person, licensed pursuant to these Rules shall enter into an agreement for the use of his license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the ~~Department~~Agency.

(f) No person shall make a materially false or fraudulent statement in an application for license, engage in cheating or otherwise commit an act in violation of Title 59 O.S.~~ 2007~~, Section ~~1820~~1820.1 et seq.

[OAR Docket #14-486; filed 6-23-14]

TITLE 300. GRAND RIVER DAM AUTHORITY
CHAPTER 35. LAKE RULES

[OAR Docket #14-712]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Definitions, Purpose and Application
300:35-1-5. [AMENDED]
Subchapter 3. General Provisions
300:35-3-14. [AMENDED]
Subchapter 7. Vessels
300:35-7-10. [REVOKED]
300:35-7-11. [AMENDED]
300:35-7-12. [AMENDED]
Subchapter 9. Sanctioned Events
300:35-9-3. [AMENDED]
Subchapter 11. Permits for Wharves, Landings, Buoys, Breakwaters and Docking Facilities
300:35-11-6. [AMENDED]
Subchapter 23. Four-Wheel Vehicles, Off-Road Vehicles and All Terrain Vehicles
300:35-23-10. [AMENDED]
AUTHORITY:
Grand River Dam Authority; 82 O.S. § 861A(B)(1); 82 O.S. § 863.2(B)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 16, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed amendments change references to the Grand River Dam Authority ("GRDA") Lake Patrol and law enforcement to "GRDA Police Officers" for consistency and clarity. The mailing address and phone number references have been removed.
CONTACT PERSON:
Ellen Caslavka Edwards, General Counsel, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256-0800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. DEFINITIONS, PURPOSE AND APPLICATION

300:35-1-5. ~~Law enforcement division~~GRDA police and compliance division ~~of GRDA~~

(a) GRDA has created a ~~law enforcement~~ Police~~division and compliance division~~Department and a Compliance Division for the purpose of enforcing these Rules on the waters and land of GRDA.

(b) The members of GRDA's ~~law enforcement division~~Police and Compliance Division are hereby declared to be the enforcement officers for GRDA. The enforcement officers for GRDA may enforce GRDA rules and regulations~~, those rules and regulations as may be issued pursuant to the provisions of Section 4200 *et seq.* of Title 63 of the Oklahoma Statutes~~, and the provisions of Sections 861 *et seq.* of Title 82 of the Oklahoma Statutes. The GRDA Police may also enforce those rules and regulations as may be issued pursuant to the provisions of Section 4200 *et seq.* of Title 63 of the Oklahoma Statutes, and all violations of criminal laws occurring within the boundaries of the counties where real property owned or leased by GRDA is located. The ~~enforcement~~GRDA Police officers shall have the power of peace officers during the performance of their duties, except in the serving and execution of civil process.

(c) The GRDA Police officers shall, in the event of emergency, assist in the rescue of any person who may be in danger and shall assist in the saving of any property that is in danger of being lost or damaged. They shall require the operator of any vessel operating on the waters of the lakes in any manner which is not in compliance with these Rules, or any applicable state law, to immediately remove said vessel from the lake until compliance has been had.

(d) The GRDA Police officers are charged with the duty of causing all vessels to be registered with proper registration numbers, or permit numbers, which shall be displayed upon such vessels.

(e) GRDA's ~~law enforcement~~Police officers may cooperate with federal, state and local enforcement officers in the enforcement of all federal and state laws upon the waters, lands and properties of GRDA or any other location within their jurisdiction.

SUBCHAPTER 3. GENERAL PROVISIONS

300:35-3-14. Permit applications

(a) Applications for GRDA permits required by these Rules are available at the permitting office inside the GRDA Ecosystems & Education Center located at the west end of Pensacola Dam in Langley, Oklahoma~~, by mail at P.O. Box 70, Langley, Oklahoma 74350, by calling 918-782-9594,~~ or ~~on~~visit the ~~GRDA~~ website at www.GRDA.com.

(b) In addition to any other requirement that may be applicable to a permit application, GRDA may, in its sole discretion, forward any application to fish and wildlife resource agencies, environmental agencies, and/or tribes for comment.

(c) These Rules cover the following types of GRDA permits:

(1) Private and commercial docks, wharves, landings, anchorages, and boat houses;
(2) Buoys;
(3) Private and commercial breakwaters;
(4) Private and commercial rail-systems and tram systems;
(5) Fences located on GRDA lands;
(6) Boat ramps;
(7) Retaining walls;
(8) Dredging (and excavation);
(9) Erosion control devices;
(10) Shoreline stabilization;
(11) Commercial operations (including dock installer, dredging contractor, commercial boat operator);
(12) Taking of raw water (including irrigation);
(13) Vegetation management plans; and
(14) Sanctioned event.

(d) Permit applications are subject to change without notice. Permitted activities must comply with all standards, rules and regulations in effect at the time the activity commences.

SUBCHAPTER 7. VESSELS

300:35-7-10. W.R. Holway reservoir

With the exception of the ~~Lake Patrol~~GRDA Police, vessels powered by internal combustion engines are not permitted on W.R. Holway Reservoir. Swimming is prohibited in the W.R. Holway Reservoir.

300:35-7-11. Penalties

(a) GRDA ~~law enforcement personnel~~Police officers may verbally order any person, firm, partnership, corporation, or any other entity that is violating any provision found in Title 63 or Title 21 of the Oklahoma Statutes or in any GRDA rules to immediately exit the waters and/or lands of GRDA. Failure to obey the verbal order may result in the ~~law enforcement personnel~~GRDA Police enforcing the provisions of 63 O.S.2001, § 4221 which provides that such failure to comply will constitute a misdemeanor punishable by a fine not to exceed Two Hundred Fifty Dollars ($250.00). (b) Additionally, any such person or entity, after notice and an opportunity to be heard as provided in Subchapter 21 herein, may be banned from the waters and/or lands of GRDA for a period of time up to, and including, ninety (90) days.

300:35-7-12. Duck Creek boating rules

Due to the unique nature of Duck Creek on the Grand Lake O' the Cherokees, GRDA implements, from time to time, special boating rules for the area. Please contact the GRDA ~~Lake Patrol~~Police, located at the GRDA Ecosystems & Education Center in Langley, Oklahoma, ~~or by mail at P.O. Box 70, Langley, Oklahoma 74350, or by calling 918-782-9594~~ or ~~see~~visit the website, www.GRDA.com for the current applicable Duck Creek Boating Rules.

SUBCHAPTER 9. SANCTIONED EVENTS

300:35-9-3. Public and environmental safety

(a) GRDA ~~law enforcement~~Police shall require that any sanctioned event be held in a safe manner and under safe environmental conditions.

(b) Any vessel operating in an unsafe manner, or without due regard to other vessels, water skiers, swimmers, sanctioned events, restrictive markers or buoys, existing wind or weather conditions, waves, or wakes, may be immediately removed from the waters of GRDA by GRDA ~~law enforcement~~Police.

(c) GRDA may require that any sanctioned event conform to specific environmental requirements for the purpose of protecting fish, wildlife, or habitat. Such requirements shall be specified on the sanctioned event permit. Any sponsor of a sanctioned event, or any participant in such sanctioned event, which fails to follow the environmental requirements may be immediately removed from the waters of GRDA by GRDA ~~law enforcement~~Police.

(d) In addition to the penalties specified herein, any person violating this rule may be subject to criminal sanctions as provided by law and any other penalties as provided in 300:35-7-11.

SUBCHAPTER 11. PERMITS FOR WHARVES, LANDINGS, BUOYS, BREAKWATERS AND DOCKING FACILITIES

300:35-11-6. Buoys

(a) No buoy shall be placed or replaced on the waters of GRDA without a permit from GRDA.

(b) All buoys placed on the lakes shall be commercially manufactured units approved by the ~~Lake Patrol~~GRDA Police and shall have reflective tape or paint on the top side. Any buoy not maintained in its proper location shall be subject to removal by GRDA. Any buoys, lighthouses or other types of markers placed with the permission of or installed and maintained by GRDA are primarily warning devices for the convenience of the public and should not be relied upon solely as navigational aids. GRDA assumes no liability or responsibility for loss or damages to life or property arising out of the public's reliance upon said devices.

SUBCHAPTER 23. FOUR-WHEEL VEHICLES, OFF-ROAD VEHICLES AND ALL TERRAIN VEHICLES

300:35-23-10. Penalty

(a) GRDA ~~law enforcement personnel~~Police and Compliance Officers may verbally order any person that is violating these rules to immediately exit the lands of GRDA.

(b) Additionally, any person, after notice and opportunity to be heard in accordance with Subchapter 21 herein, may be banned from the lands of GRDA for a period of time up to, and including, ninety (90) days.

[OAR Docket #14-712; filed 7-10-14]

TITLE 304. STATE USE COMMITTEE CHAPTER 10. OPERATIONAL PROCEDURES [REVOKED]

[OAR Docket #14-744]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
304:10-1-1. Purpose [REVOKED]
304:10-1-2. Definitions [REVOKED]
304:10-1-3. Qualifications [REVOKED]
304:10-1-4. Determination of fair market price [REVOKED]
304:10-1-5. Procurement schedule [REVOKED]
304:10-1-8. Grievances [REVOKED]
304:10-1-9. List of products and services for which fair market has not been determined [REVOKED]
304:10-1-10. Meetings [REVOKED]
304:10-1-11. Reports [REVOKED]
304:10-1-12. Contract levy [REVOKED]

AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 19, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 304, as the Department of Central Services and the State Use Committee have been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services. The revocation of these rules is necessary in order to comply with HB 1477 (2013).

CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

304:10-1-1. Purpose [REVOKED]

~~This subchapter contains the procedures and rules for the operations of the State Use Committee.~~

304:10-1-2. Definitions [REVOKED]

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

~~**"Committee"** means the Oklahoma State Use Committee.~~

~~**"Contracting officer"** means the person employed by the Department of Central Services as a contracting officer in the Purchasing Division, appointed by the State Purchasing Director with the advice of the Committee and designated specifically to solicit, develop, and negotiate contracts with agencies and individuals.~~

~~**"FEI"** means Federal Employer Identification.~~

~~**"Individual"** means a severely disabled person that is self-employed and has been certified by the Committee to supply products and services, seventy-five percent (75%) of which, is actually manufactured, produced, processed, assembled, performed or offered by the severely disabled person.~~

~~**"IRS"** means the Internal Revenue Service.~~

~~**"Severely disabled person"** means an individual who has a physical or mental disability constituting a substantial handicap to employment and preventing the person from engaging in normal competitive employment and includes any blind person. [75 O.S., Section 3003(4)]~~

~~**"Substantial handicap to employment"** means a residual, limiting physical or mental condition resulting from an injury, disease, or congenital defect which so limits the person's mobility, communication, self-care, self-direction, work tolerance, or work skills that the person is unable to engage in normal competitive employment over an extended period of time.~~

~~**"The Act"** means the provisions of 74 O.S., Section 3001 et seq. which relate to the purchase of products and services from qualified organizations.~~

~~**"Qualified nonprofit agency for the severely handicapped"** means a nonprofit agency which is certified as a sheltered workshop by the wage and hour division of the U.S. Department of Labor and employing severely disabled persons who constitute at least seventy-five percent (75%) of the personnel engaged in direct production of products or services offered by the agency for procurement by this state. [75 O.S., Section 3003(3)]~~

~~**"Qualified organization"** means a blind person, qualified nonprofit agency for the severely handicapped or severely disabled person contracting to supply goods or services. [75 O.S., Section 3003(5)]~~

304:10-1-3. Qualifications [REVOKED]

~~(a) Qualification by Committee. To ensure compliance with the Act, the Committee shall qualify individuals and nonprofit agencies prior to contract award.~~

~~(b) Individual qualification. An individual shall apply for qualification to the Committee and submit the following documents:~~

~~(1) To indicate the individual meets the statutory definition of a severely disabled person, the individual shall provide:~~

~~(A) a copy of the application and supporting documentation the individual submitted to the Social Security Administration for determination of disability and a copy of the final disability determination from the Administration;~~

~~(B) a narrative report, prepared and signed by a person licensed in the state of Oklahoma as a physician describing physical disabilities, or a psychiatrist or psychologist describing mental disabilities. The report shall fully describe the nature of the disability constituting a substantial handicap to employment with supporting medical records; and~~

~~(C) any additional information the Committee may require related to work history, vocational assessments and work related documents.~~

~~(2) an affidavit that the individual will perform 75% of the work to produce the products or services the individual offers for procurement by the state; and~~

~~(3) a statement which describes the nature and extent as expressed in a percentage of work a subcontractor, other person or entity may perform to produce the products or services.~~

~~(c) Agency qualification. A nonprofit agency that has been approved by the Wage and Hour Division of the U.S. Department of Labor as a sheltered workshop shall apply for qualification to the Committee and submit the following documents that indicate the nonprofit agency meets the requirements of a qualified organization:~~

~~(1) a tax exempt FEI number issued by the IRS, or a certificate from the IRS verifying that the entity meets the requirements for nonprofit status as defined by the IRS; and,~~

~~(2) a statement describing the nature and extent as expressed in a percentage of the work a subcontractor, other person or entity may perform to produce the products or services the nonprofit agency provides per a contract the Committee awards.~~

~~(3) a copy of certification as a sheltered workshop issued by the U. S. Department of Labor.~~

~~(4) a current copy of the nonprofit agency's certificate of insurance for worker's compensation insurance.~~

~~(d) Continuation of qualification. On January 31st of each year succeeding initial qualification by the Committee, the~~

~~qualified organizations shall provide evidence to the Committee of continued ability to qualify as follows:~~

~~(1) A qualified nonprofit agency for the severely handicapped shall submit:~~

~~(A) a current copy of its certification as a sheltered workshop from the U.S. Department of Labor; and~~

~~(B) a report for products and services on the Committee's procurement schedule indicating the qualified nonprofit agency for the severely handicapped's total labor hours in direct production by disabled workers and total agency labor hours in direct production by non-disabled workers during the previous calendar year.~~

~~(C) a current copy of the qualified nonprofit agency for the severely handicapped's certificate of insurance for worker's compensation insurance.~~

~~(2) An individual shall submit:~~

~~(A) a work history for the previous calendar year that indicates the number of hours the individual worked and the number of hours a subcontractor or other individuals worked in direct production of the products and services on the Committee's procurement schedule; and~~

~~(B) a current physician, psychiatrist or psychologist statement indicating the current status of the condition which constitutes a substantial handicap to employment, which shall include changes in the condition since the previous date of qualification by the Committee.~~

~~(e) Failure to meet qualifications. Whenever an a qualified organization fails to meet qualifications, the Committee may:~~

~~(1) Remove the qualified organization's products and services from the procurement schedule; or,~~

~~(2) Revoke the qualification of the qualified organization.~~

~~(f) Notice of failure to meet qualifications. The Committee shall direct the contracting officer to send written notice to the qualified organization at least thirty days prior to the effective date of the action taken pursuant to subsection (e) of this section.~~

304:10-1-4. Determination of fair market price [REVOKED]

~~The contracting officer shall recommend a fair market price for products and services in accordance with the State Use Committee's approved Fair Market Price Policy and in the manner described in this section.~~

~~(1) The contracting officer shall prepare a current market analysis to determine the fair price for the products or services requisitioned or used by state agencies utilizing internal as well as external sources and established pertinent criteria. When appropriate, the criteria may include, but not be limited to:~~

~~(A) A survey of comparable private contracts for like products and services;~~

~~(B) Research of other governmental entities within and outside the State of Oklahoma;~~

~~(C) Comparison, when appropriate, of wholesale and retail pricing of like commodities.~~

~~(2) Based on the data described in OAC 304:10-1-4 (1), the contracting officer or designee shall recommend a fair market price with supporting documentation to the Committee for consideration.~~

~~(3) The Committee shall, by majority vote, approve, modify, amend or disapprove the recommended fair market price.~~

~~(4) Whenever the Committee establishes a price, the price shall become the fair market price.~~

~~(5) If the product or service is one for which the pricing does not vary by state agency or location, the fair market price as approved, modified, or amended, shall remain in effect until the Committee establishes a new fair market price.~~

~~(6) If the product or service is one for which the price does vary depending on the state agency, location, or specifications, the Committee shall approve, each contract for the product or service.~~

~~(7) If the product or service is one for which fair market has not been established, either because the fair market for the type of product or service has been determined to vary depending on the state agency, location or specifications, the Contracting Officer, with the approval of the State Purchasing Director, is authorized to award a contract in accordance with the State Use Fair Market Price Policy to a qualified individual or organizations, thereby establishing fair market price, which establishment shall be subject to ratification by the Committee at the next regular Committee meeting.~~

~~(8) In the event of an emergency, with approval of the State Purchasing Director, the contracting officer may award a contract to an individual or agency for a maximum period of three (3) months without prior Committee approval, but subject to Committee approval at the next regular Committee meeting. If the Committee approves the contract, the contract shall terminate at the end of the contract period.~~

304:10-1-5. Procurement schedule [REVOKED]

~~(a) Compilation of procurement schedule. The contracting officer shall maintain and publish a current list of all products and services offered by qualified organizations.~~

~~(b) Approval of procurement schedule. The Committee shall approve items on the list or delete items from the list, consistent with the provisions of the Act, and shall designate the final list of approved items as the Procurement Schedule by majority vote. If additional products or services are offered by individuals or agencies, the Committee may add products and services to the Procurement Schedule by majority vote.~~

304:10-1-8. Grievances [REVOKED]

~~(a) Filing a protest or grievance. Any party who is aggrieved may file a written protest or grievance with the Chairperson of the Committee within fifteen (15) days of the aggrieved action.~~

~~(b) Investigation of protest or grievance. The Chairperson may assign a protest or grievance to a subcommittee to investigate and make recommendations to the Committee for resolving the grievance.~~

~~(c) Protest process. All protests shall be handled in accordance with the provisions of the Administrative Procedures Act. [75 O.S., Section 250 et seq.]~~

~~(d) Committee response to protest or grievance. The Committee shall respond in writing to the protesting or grieving party within ninety (90) days of receipt of the protest or grievance.~~

304:10-1-9. List of products and services for which fair market has not been determined [REVOKED]

~~The Committee shall publish a catalog listing the jobs that workshops can do for the State of Oklahoma, annually. The list of jobs shall be the Procurement Schedule.~~

304:10-1-10. Meetings [REVOKED]

~~(a) Number of regular meetings. The Committee shall conduct a minimum of six meetings per year, in compliance with the Open Meeting Act. The schedule for regular meetings will be adopted at the last regular meeting of each calendar year.~~

~~(b) Special meetings. Special meetings shall be called by the Committee Chairperson.~~

~~(c) Quorum. A majority of all current members of the Committee shall constitute a quorum.~~

~~(d) Request for notices of meeting. Upon written request, the Committee Vice-Chairperson shall notify any person, state agency, qualified organization or contractor, at least ten days prior to meeting dates, and shall make available the minutes of all meetings.~~

304:10-1-11. Reports [REVOKED]

~~(a) Failure to provide reports or documentation. Reports or documentation requested from a qualified organization by the Committee through the contracting officer, shall be completed within thirty (30) days of the date requested. The Committee may cancel contracts of otherwise qualified organizations who fail to provide reports, documentation or information required by utilization terms of a contract.~~

~~(b) Sales to political subdivisions other than the state. A qualified organization shall provide a quarterly report of purchases made by a political subdivision, excluding state agencies, from a contract the Committee awards. The report shall include:~~

~~(1) the name and address of each political subdivision;~~

~~(2) total amount of sales made to each political subdivision.~~

~~(c) Notice of contract cancellation. The Committee shall direct the Contracting Officer to send written notice to a qualified organization at least thirty days prior to the cancellation date of a contract pursuant to subsection (a) of this section.~~

304:10-1-12. Contract levy [REVOKED]

~~(a) Contract levy. Pursuant to 74 O.S., Section 3004.1, a one percent (1%) fee assessment shall be levied against qualified organizations for every contract awarded under the act for products and services of the severely disabled.~~

~~(b) Monthly reports and contract levy payments. Qualified organizations shall submit a monthly report by the 15th of each month to the State Use Contracting Officer. The report shall contain the total amount of payments received from state agencies and the one percent (1%) fee assessment based on the total amount of payments stated in the report.~~

~~(c) Failure to submit monthly reports and payments. Any fee assessment payment that is past due more than sixty (60) days shall be considered delinquent. A written notice of delinquency shall be sent by the State Use Contracting Officer to each qualified organization considered delinquent. The notice shall state the amount due and requirements for compliance.~~

~~(d) Revocation of a qualified organization. Failure to provide monthly reports and payments will be reported to the State Use Committee and the State Purchasing Director and may result in the revocation of the "qualified organization" procurement schedule and/or termination of their contracts.~~

[OAR Docket #14-744; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

[OAR Docket #14-806]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 29. Criminal History Background Checks [NEW]
310:2-29-1. Purpose [NEW]
310:2-29-2. [RESERVED]
310:2-29-3. Implementation [NEW]
310:2-29-4. [RESERVED]
310:2-29-5. Appeals [NEW]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Sections 1-1947(T)(2) and 1-1947(Y).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 29. Criminal History Background Checks [NEW]

310:2-29-1. Purpose [NEW]
310:2-29-2. [RESERVED]
310:2-29-3. Implementation [NEW]
310:2-29-4. [RESERVED]
310:2-29-5. Appeals [NEW]

Gubernatorial approval:
January 6, 2014

Register publication:
31 Ok Reg 417

Docket number:
14-70

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
This proposal promulgates new rules in the procedures of the Department of Health as required in amendments to the Long Term Care Security Act (Title 63 O.S. § 1-1944 et. seq.), as adopted in 2012, House Bill 2582. This bill authorized fingerprint based criminal history background checks on those applicants who would be employed in a variety of long-term care settings as defined in the law at Title 63 O.S. Section 1-1945(4). The law at Title 63 O.S. § 1-1947(T)(2) requires that the Department shall specify rules for issuing a waiver of the disqualification or employment denial and further specifies in paragraph (Y) the State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for the employers and nurse aide scholarship programs defined in Section 1-1945 of Title 63 of the Oklahoma Statutes.

CONTACT PERSON:
James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to james@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 29. CRIMINAL HISTORY BACKGROUND CHECKS

310:2-29-1. Purpose

These rules implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., as amended.

310:2-29-2. [RESERVED]

310:2-29-3. Implementation

(a) **Authority.** Title 63 O.S. Section 1-1947(Y) authorized the Department to establish through rulemaking the effective dates of subsections D through V of Section 1-1945 of Long Term Care Security Act, by category of employer.

(b) **Effective dates.** The effective dates for subsections D through V of Section 1-1947 (relating to screening and fingerprint based background checks) are defined below.

(1) For the following, compliance may begin February 1, 2014, but shall be required no later than March 1, 2014:

(A) Adult Day Care Centers as defined by Section 1-872 of Title 63 of the Oklahoma Statutes; and

(B) Residential care homes as defined by Section 1-820 Title 63 of the Oklahoma Statutes.

(2) For Specialized Nursing Facilities licensed pursuant to Title 63 O.S. Section 1-1901 et seq., compliance may begin February 1, 2014, but shall be required no later than April 1, 2014:

(3) For the following employers, compliance may begin February 1, 2014, but shall be required no later than May 1, 2014:

(A) Applicants for employment with the State Department of Health and Department of Human Services whose responsibilities include working inside long term care facilities, pursuant to Title 63 O.S. Section 1-1947(A)(1); and

(B) Nursing Facilities licensed pursuant to Title 63 O.S. Section 1-1901 et seq.,

(4) For the following employers compliance may begin February 1, 2014, but shall be required no later than June 1, 2014:

(A) Continuum of Care or Assisted Living facilities licensed pursuant to Title 63 O.S. Section 1-890.1 et seq.; and

(B) Hospice programs licensed pursuant to Title 63 O.S. Section 1-860.1 et seq.

(5) For Medicare Certified Home Care Agencies licensed pursuant to Title 63 O.S. Section 1-1960 et seq., compliance may begin February 1, 2014, but shall be required no later than July 1, 2014.

(6) For all other employers defined in Title 63 O.S. Section 1-1945(4), compliance may begin February 1, 2014, but shall be required no later than August 1, 2014.

(7) For Nurse Aide Scholarship Programs operated under contract with the Oklahoma Health Care Authority compliance may begin July 1, 2014, but shall be required no later than August 1, 2014.

(8) For staffing agencies or independent contractors as defined in Title 63 O.S. Section 1-1945(4), compliance shall match the contracted employer.

(9) Pursuant to Title 63 O.S. Section 1-1947(I)(5), *Medicaid home and community-based services waivered providers as defined in Section 1915 (c) or 1915 (i) of the federal Social Security Act may voluntarily participate in the submission of fingerprints for applicants. In lieu of fingerprinting, said providers shall obtain a name-based state criminal history record check from the* [Oklahoma State Bureau of Investigation] *at the fee established in Section 150.9 of Title 74 of the Oklahoma Statutes. No other fees shall apply to said providers relying on a name-based state criminal history record check. The determination of employment eligibility shall be made by said providers based on the criteria established in subsection D of* [Title 63 O.S. Section 1-1947].

(c) **Nurse Aide Scholarship Programs.** For the purposes of complying with Title 63 O.S. Section 1-1947(G) (related to conducting a registry screening and criminal history record check), the Nurse Aide Scholarship Program may refer the applicant's application and release to the Department for registry screening and authorization to collect fingerprints.

(d) **Alternate Name Based Background Check.** Where the Department is unable to authorize the collection and submission of fingerprints through an authorized collection site pursuant to Title 63 O.S. Section 1-1947(I), the Department shall conduct a name based search of the applicant in the criminal history database maintained by the Oklahoma State Bureau of Investigation.

310:2-29-4. [RESERVED]

310:2-29-5. Appeals

(a) **Notice.** A determination by the Department that finds an applicant not eligible for employment will result in a notice to the applicant to *include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment eligibility. The notice shall also include information regarding where to file and describe the appellate procedures* [63 O.S. § 1-1947(K)(2)].

(b) **Days to initiate an appeal.** Pursuant to Title 63 O.S. 1-1947(T)1), any individual who has been disqualified from or denied employment by an employer pursuant to Title 63 O.S. Section 1-1947 *may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification.*

(c) **Types of appeals.** An applicant may appeal the determination by:

(1) Challenging the finding that the applicant is the true subject of the results from a name-based registry background check;

(2) Challenging the criminal history record as inaccurate; or

(3) Requesting a waiver which gives the applicant the opportunity to demonstrate that the applicant should be allowed to work because he or she does not pose a risk to patients, facilities or their property.

(d) **Inaccuracy of criminal history record.** To demonstrate that the criminal history record is inaccurate, the applicant shall submit to the Department written documents, issued and certified by a governmental entity that demonstrate that the information contained in the criminal history report is inaccurate.

(e) **Criteria for consideration in a waiver review.** Pursuant to Title 63 O.S. Section 1-1947(T)(2), the Department shall consider the following criteria in considering whether the applicant merits a waiver of the applicant's determination of ineligibility:

(1) The time elapsed since the disqualifying criminal conviction, whether the applicant has fulfilled the sentence requirements, and whether there are any subsequent arrests or convictions of any nature;

(2) Any extenuating circumstances such as the offender's age at the time of conviction, substance abuse history and treatment, or mental health issues and treatment;

(3) Rehabilitation as demonstrated by character references and recommendation letters from past employers, the applicant's record of employment history, education, and training subsequent to conviction; and

(4) The relevancy of the particular disqualifying information with respect to the proposed employment of the individual to include the job type and duties, the extent to which the applicant has unsupervised access to service recipients, whether the crime was committed against a vulnerable child or adult, and whether the conviction was related to an employer subject to the requirements of the Long Term Care Security Act.

(f) **Where to file.** The applicant's appeal shall be submitted in writing to the Administrative Hearings Clerk for the Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117, and shall address the criteria specified in (d) of this Section and how the applicant merits a waiver of the disqualification from employment.

(g) **Conduct of hearing.** The appeal shall be conducted as an individual proceeding pursuant to this Chapter and the Administrative Procedures Act.

[OAR Docket #14-806; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 100. LICENSURE OF CREMATORIES [REVOKED]

[OAR Docket #14-807]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
310:100-1-1. Purpose [REVOKED]
310:100-1-2. Fee [REVOKED]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. § 1-104; Title 59 O.S. § 396.30.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal revokes the rules of the Board of Health concerning the licensure of crematories. The duties and functions concerning licensure of crematories were transferred by statutory modification from the Oklahoma State Department of Health to the Oklahoma Funeral Board. The Department's authority for rulemaking was found at Title 63 O.S. 1981, § 1-331 and renumbered as 59 O.S. § 396.30 by Laws 2003, HB 1270, c. 57, § 31, effective

April 10, 2003. The Oklahoma Funeral Board has adopted rules for the licensure of crematories [see Title 235 - Oklahoma Funeral Board, Chapter 10 - Funeral Services Licensing, Subchapter 14 - Crematories].

CONTACT PERSON:

James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to james@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

310:100-1-1. Purpose [REVOKED]

~~The rules in this Chapter implement the crematory licensure law, at 63 O.S. 1981, § 1-331.~~

310:100-1-2. Fee [REVOKED]

~~Licensure requirements for all crematories shall be subject to a licensure fee of $25.00 each calendar year and each crematory shall be in compliance with the requirements set forth in 63 O.S. 1981, Sections 1-331 through 1-333, with the exception that the State commissioner of Health may exempt from the licensure fee nonprofit crematories that are state-owned and/or state-operated.~~

[OAR Docket #14-807; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 276. HOME INSPECTION INDUSTRY [REVOKED]

[OAR Docket #14-808]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchatper 1. General Provisions [REVOKED]
310:276-1-1. Purpose [REVOKED]
310:276-1-2. Definitions [REVOKED]
310:276-1-3. Standards of workmanship and practice [REVOKED]
Subchapter 3. Procedures of the Committee [REVOKED]
310:276-3-1. Procedures of the committee [REVOKED]
Subchapter 5. License Requirements, License Fees, License Period, Re-examination, Display and Insurance [REVOKED]
310:276-5-1. Home Inspection license requirements [REVOKED]
310:276-5-2. License fees, license period, re-examination, display, and insurance requirements [REVOKED]
Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, and Substantial Compliance and Reciprocity [REVOKED]
310:276-9-1. Qualifications and examination applications [REVOKED]
310:276-9-2. Examinations [REVOKED]
310:276-9-3. Course approval requirements [REVOKED]
310:276-9-4. Instructor requirements [REVOKED]
310:276-9-5. Continuing education [REVOKED]
310:276-9-6. Denied application appeal [REVOKED]
310:276-9-7. Submission of records [REVOKED]
310:276-9-8. Substantial compliance and reciprocity [REVOKED]
Subchapter 11. License Revocation and Suspension and Additional Prohibited Acts [REVOKED]
310:276-11-1. License revocation and suspension [REVOKED]
310:276-11-2. Additional prohibited acts [REVOKED]

AUTHORITY:

Oklahoma State Board of Health, Title 63 O.S. § 1-104; 59 O.S. § 1000.4.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 2, 2013

COMMENT PERIOD:

October 1, 2013, through November 1, 2013

PUBLIC HEARING:

November 1, 2013

ADOPTION:

January 14, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 21, 2014

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:

June 19, 2014

EFFECTIVE:

September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

This proposal revokes the rules of the Board of Health concerning the home inspection industry. Effective November 1, 2008, the authority to "adopt, amend, repeal, and promulgate rules as may be necessary to regulate . . . home inspectors" was transferred from the Oklahoma State Department of Health to the Construction Industries Board [see 59 O.S., § 1000.4]. The Construction Industries Board promulgated emergency rules, effective November 11, 2008, and later superseded those emergency rules with permanent rules, effective July 11, 2009 [see Construction Industries Board rules OAC 158:70 and 158:10-3-5].

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:276-1-1. Purpose [REVOKED]

~~The rules in this Chapter implement the Home Inspection Licensing Act, Title 59 O.S. 2001, § 858-621 et seq.~~

310:276-1-2. Definitions [REVOKED]

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

~~**"Act"** means the Home Inspection Licensing Act, found at 59 O.S. § 858-621 et seq.~~

~~**"Alarm systems"** means warning devices, installed or free standing, including but not limited to: carbon monoxide~~

~~detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms.~~

~~**"Applicant"** means any person applying for an examination for a license or registration under the Act.~~

~~**"Architectural service"** means any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract.~~

~~**"Board"** means the State Board of Health.~~

~~**"Certificates of course completion"** means a document acceptable to the Committee which signifies satisfactory completion of course work and reflects the hours of credit earned.~~

~~**"Cheating"** means any unapproved deviation from any official instruction given before, during or after a home inspector license examination for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.~~

~~**"Classroom hour"** is equal to fifty (50) minutes out of each sixty (60) minute segment.~~

~~**"Client"** means a person with a direct material interest in the outcome of a home inspection who hires and compensates a home inspector for the performance of a home inspection.~~

~~**"Commissioner"** means the State Commissioner of Health.~~

~~**"Committee"** means the Committee of Home Inspector Examiners established by the Home Inspector Licensing Act, 59 O.S. 858-624.~~

~~**"Component"** means a part of a system.~~

~~**"Continuing education"** means education that is approved by the Committee to satisfy education requirements in order to renew licensure as a home inspector.~~

~~**"Continuing education verification form"** means a form acceptable to the Committee and completed by the course provider, that documents compliance with the continuing education requirements.~~

~~**"Decorative"** means ornamental; not required for the operation of the essential systems and components of a home.~~

~~**"Defect"** means a condition, malfunction or problem, which is not decorative, that would have a materially adverse effect on the value of a system or component, or would impair the health or safety of the occupants or client.~~

~~**"Department"** means the Oklahoma State Department of Health.~~

~~**"Describe"** means to report a system or component by its type or other observed, significant characteristics to distinguish it from other systems or components.~~

~~**"Dismantle"** means to take apart or remove any component, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance.~~

~~**"Engineering service"** means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.~~

~~**"Further evaluation"** means examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the home inspection.~~

~~**"Home"** or **"residence"** means any dwelling, from one to four (1-4) units in design, intended principally for residential purposes by one (1) or more individuals.~~

~~**"Home inspection" or "inspection"** *means a visual examination of any or all of the readily accessible physical real property and improvements to real property consisting of four or fewer dwelling units, including structural, lot drainage, roof, electrical, plumbing, heating and air conditioning and such other areas of concern as are specified in writing to determine if performance is as intended.* [59:858-622(5)]~~

~~**"Home inspection license unit"** means the staff and administrative support unit to the Committee of Home Inspector Examiners.~~

~~**"Home inspection report"** means a written opinion of the functional and physical condition of property written by the licensed home inspector pursuant to home inspection.~~

~~**"Home inspector"** means an individual licensed pursuant to the Home Inspection Licensing Act who, for compensation, conducts home inspections.~~

~~**"Inspect"** means to examine readily accessible systems and components of a building in accordance with these Standards of Practice, using normal operating controls and opening readily openable access panels.~~

~~**"Installed"** means attached such that removal requires tools.~~

~~**"Instructor"** means a person who presents course materials approved for qualifying education and continuing education credit hours that has the experience, training, and/or education in the course subject matter and has been approved by the Committee.~~

~~**"Normal working order"** means the system or component functions without defect for the primary purpose and manner for which it was installed.~~

~~**"Normal operating controls"** means devices such as thermostats, switches or valves intended to be operated by the homeowner.~~

~~**"Professional craftsman"** means a person who can demonstrate by certification, education or experience, specialized skill in the construction or repair of homes, duplexes, apartment buildings or similar structures. Persons demonstrating specialized skill by experience alone must be able to show that they have been actively engaged in their profession, trade or craft for at least one (1) year prior to the performance of a single item inspection.~~

~~**"Provider"** means a person, corporation, professional association or its local affiliates, or any other entity, which is approved by the Committee and provides approved qualifying and continuing education to home inspectors.~~

~~**"Readily accessible"** means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action which will likely involve risk to persons or property.~~

~~**"Readily openable access panel"** means a panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place.~~

~~**"Reciprocity agreement"** means an agreement whereby a home inspector who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.~~

~~**"Recreational facilities"** means spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories.~~

~~**"Report"** means to communicate in writing.~~

~~**"Representative number"** means one component per room for multiple similar interior components such as windows and electric outlets; one component on each side of the building for multiple similar exterior components.~~

~~**"Roof drainage systems"** means components used to carry water off a roof and away from a building.~~

~~**"Shut down"** means a state in which a system or component cannot be operated by normal operating controls.~~

~~**"Solid fuel burning appliances"** means a hearth and fire chamber or similar prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.~~

~~**"Structural component"** means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).~~

~~**"System"** means a combination of interacting or interdependent components, assembled to carry out one or more functions.~~

~~**"Technically exhaustive"** means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means.~~

~~**"Under-floor crawl space"** means the area within the confines of the foundation and between the ground and the underside of the floor.~~

~~**"Unsafe"** means a condition in a readily accessible, installed system or component which is judged to be a significant risk of personal injury during normal operation. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards.~~

~~**"Wiring methods"** means identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.~~

310:276-1-3. Standards of workmanship and practice [REVOKED]

~~(a) **General requirements and limitations.**~~

~~(1) The inspector shall be governed by the following general requirements:~~

~~(A) Only readily accessible systems and components of homes listed in these Standards shall be required to be inspected.~~

~~(B) Only installed systems and components of homes listed in these Standards shall be required to be inspected.~~

~~(C) The inspector shall report on those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order.~~

~~(D) The inspector shall report a reason why, if not self-evident, the system or component is not in normal working order.~~

~~(E) The inspector shall report the inspector's recommendations to correct or monitor the reported deficiency.~~

~~(F) The inspector shall report on any systems and components designated for inspection in these Standards which were present at the time of the Home Inspection but were not inspected and a reason they were not inspected.~~

~~(G) These Standards are not intended to limit inspectors from including other inspection services, systems or components in addition to those required by these Standards.~~

~~(H) These Standards are not intended to limit inspectors from specifying repairs and providing an opinion of the costs to cure, provided the inspector is appropriately qualified and willing to do so.~~

~~(I) These Standards are not intended to limit inspectors from excluding systems and components from the inspection if requested by the client.~~

~~(J) Beginning July 1, 2006, all home inspectors shall maintain a log or record of all home inspections performed for a minimum period of five years from the date of inspection. The log shall include the name of the client, the address of the property, and the date of the inspection. The home inspector shall maintain a copy of all home inspections completed within the past 36 months. The log may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon the request of an authorized representative of the Oklahoma State Department of Health.~~

~~(2) Inspections performed in accordance with these Standards are not technically exhaustive, will not identify concealed conditions or latent defects, and are applicable to buildings with four or fewer dwelling units and their garages or carports.~~

~~(3) The inspector is not required to perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority.~~

~~(4) Inspectors are not required to determine the condition of systems or components which are not readily accessible, the remaining life of any system or component, the strength, adequacy, effectiveness, or efficiency of any~~

~~system or component, the causes of any condition or deficiency, the methods, materials, or costs of corrections, future conditions including, but not limited to, failure of systems and components, the suitability of the property for any specialized use, compliance with any regulatory requirements other than this Chapter (codes, regulations, laws, ordinances, etc.), the market value of the property or its marketability, the advisability of the purchase of the property, the presence of potentially hazardous plants or animals including, but not limited to wood destroying organisms or diseases harmful to humans, the presence of any environmental hazards including, but not limited to toxins, carcinogens, noise, and contaminants in soil, water, and air, the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances, the operating costs of systems or components, or the acoustical properties of any system or component.~~

~~(5) Inspectors are not required to offer or perform any act or service contrary to law, perform engineering services, perform work in any trade or any professional service other than home inspection, or warranties or guarantees of any kind.~~

~~(6) Inspectors are not required to operate any system or component which is shut down or otherwise inoperable, any system or component which does not respond to normal operating controls, or shut-off valves.~~

~~(7) Inspectors are not required to enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, or the under-floor crawl spaces or attics which are not readily accessible.~~

~~(8) Inspectors are not required to inspect underground items including, but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active, systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements or common areas in multi-unit housing, such as condominium properties or cooperative housing.~~

~~(9) Inspectors are not required to perform any procedure or operation which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris, or dismantle any system or component, except as explicitly required by these Standards.~~

~~(b) **Structural system inspection requirements.**~~

~~(1) The inspector shall inspect the structural components including foundation and framing, by probing a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing would damage any finished surface or where no deterioration is visible.~~

~~(2) The inspector shall describe the foundation and report the methods used to inspect the under floor crawl space, the floor structure, the wall structure, the ceiling structure, and the roof structure and report the methods used to inspect the attic.~~

~~(3) The inspector is not required to provide any engineering service or architectural service, or offer an opinion as to the adequacy of any structural system or component.~~

~~(c) **Exterior inspection requirements.**~~

~~(1) The inspector shall inspect the exterior wall covering, flashing and trim, all exterior doors, attached decks, balconies, stoops, steps, porches, and their associated railings, the eaves, soffits, and fascias where readily accessible from the ground level, the vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to adversely affect the building, and the walkways, patios, and driveways leading to dwelling entrances.~~

~~(2) The inspector shall describe the exterior wall covering.~~

~~(3) The inspector is not required to inspect screening, shutters, awnings, and similar seasonal accessories, fences, geological, geotechnical or hydrological conditions, recreational facilities, outbuildings, seawalls, break-walls, and docks, and erosion control and earth stabilization measures.~~

~~(d) **Roof system inspection requirements.**~~

~~(1) The inspector shall inspect the roof covering, the roof drainage systems, the flashings, the skylights, chimneys, and roof penetrations.~~

~~(2) The inspector shall describe the roof covering and report the methods used to inspect the roof.~~

~~(3) The inspector is not required to inspect antennae, interiors of flues or chimneys which are not readily accessible, or other installed accessories.~~

~~(e) **Plumbing system inspection requirements.**~~

~~(1) The inspector shall inspect the interior water supply and distribution systems including all fixtures and faucets, the drain, waste and vent systems including all fixtures, the water heating equipment, the vent systems, flues, and chimneys, the fuel storage and fuel distribution systems, and the drainage sumps, sump pumps, and related piping.~~

~~(2) The Inspector shall describe the water supply, drain, waste, and vent piping materials, the water heating equipment including the energy source, and the location of main water and main fuel shut-off valves.~~

~~(3) The inspector is not required to inspect, the clothes washing machine connections, the interiors of flues or chimneys which are not readily accessible, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems.~~

~~(4) The inspector is not required to determine whether water supply and waste disposal systems are public or private, the quantity or quality of the water supply, or operate safety valves or shut-off valves.~~

~~(f) **Electrical system inspection requirements.**~~

~~(1) The Inspector shall inspect the service drop, the service entrance conductors, cables, and raceways, the service equipment and main disconnects, the service grounding, the interior components of service panels and sub panels, the conductors, the overcurrent protection devices, all readily accessible installed lighting fixtures, switches, ceiling fans, and receptacles, the ground fault circuit interrupters, and accessible wiring and splicing including the basement and attic.~~

~~(2) The Inspector shall describe the amperage and voltage rating of the service, the location of main disconnect(s) and sub panels, and the wiring methods.~~

~~(3) The Inspector shall report the presence of solid conductor aluminum branch circuit wiring, and the absence of smoke detectors.~~

~~(4) The inspector is not required to inspect the remote control devices unless the device is the only control device, the alarm systems and components, the low voltage wiring, systems and components, the ancillary wiring, systems and components not a part of the primary electrical power distribution system, or measure amperage, voltage, or impedance.~~

~~(g) **Heating system inspection requirements.**~~

~~(1) The inspector shall inspect the installed heating equipment, the vent systems, flues, and chimneys.~~

~~(2) The inspector shall describe the energy source, and the heating method by its distinguishing characteristics.~~

~~(3) The inspector is not required to inspect the interiors of flues or chimneys, which are not readily accessible, the humidifier or dehumidifier, the electronic air filter, the solar space heating system, or determine heat supply adequacy or distribution balance.~~

~~(h) **Air conditioning systems inspection requirements.**~~

~~(1) The inspector shall inspect the installed central and through-wall cooling equipment.~~

~~(2) The inspector shall describe the energy source, and the cooling method by its distinguishing characteristics.~~

~~(3) The inspector is not required to inspect electronic air filters, or determine cooling supply adequacy or distribution balance.~~

~~(i) **Interior inspection requirements.**~~

~~(1) The inspector shall inspect the readily accessible walls, ceilings, and floors, the steps, stairways, and railings, the countertops and a representative number of installed cabinets, and the readily accessible doors and windows, garage doors and garage door openers, and the following installed household appliances: garbage disposal, stove, cook top, dishwasher, vent hood, and free-standing stove.~~

~~(2) The inspector is not required to inspect the paint, wallpaper, and other finish treatments, the carpeting, the window treatments, the central vacuum systems, the household appliances not listed in OAC 310:276-1-3(i)(1), or recreational facilities.~~

~~(j) **Insulation and ventilation inspection requirements.**~~

~~(1) The inspector shall inspect the insulation and vapor retarders in unfinished spaces, the ventilation of attics and foundation areas, and the mechanical ventilation systems.~~

~~(2) The inspector shall describe the insulation and vapor retarders in unfinished spaces, and the absence of insulation in unfinished spaces at conditioned surfaces.~~

~~(3) The inspector is not required to disturb insulation or vapor retarders, or determine indoor air quality.~~

~~(k) **Fireplaces and solid fuel burning appliances inspection requirements.**~~

~~(1) The inspector shall inspect the vent systems, flues, and chimneys and the readily accessible portion of the firebox.~~

~~(2) The inspector shall describe the fireplaces and solid fuel burning appliances, and the chimneys.~~

~~(3) The inspector is not required to inspect the interiors of flues or chimneys, the firescreens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, or the heat distribution assists whether gravity controlled or fan assisted.~~

~~(4) The inspector is not required to ignite or extinguish fires, determine draft characteristics, or move fireplace inserts or stoves or firebox contents.~~

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE [REVOKED]

310:276-3-1. Procedures of the Committee [REVOKED]

~~(a) Committee meetings are generally, and unless otherwise stated by the Committee, held in the State Department of Health Building at 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117-1299. The committee shall meet as often as is necessary, but at least once each quarter. Meetings of the committee will comply with the Oklahoma Open Meetings Act.~~

~~(b) The Committee shall provide oversight to the overall licensure examination process; shall set minimum standards for certifying qualified applicants; may write examinations; may recommend regulations to the Commissioner and to the Board of Health; and, shall act as advisor to the Commissioner on home inspection matters.~~

~~(c) The only formal procedure available to the public is to apply for a home inspection license. Application for a home inspection license shall be accomplished by filling out an application for examination on a form provided by the Committee.~~

~~(d) The public may communicate with the Committee in person or by mail through the Department. The Department will make available all forms and instructions used by the Committee, rules, and all other written statements of policy or interpretations, all final orders, decisions and opinions. Copies of same may be provided in accordance with OAC 310:2-3-5.~~

SUBCHAPTER 5. LICENSE REQUIREMENTS, LICENSE FEES, LICENSE PERIOD, RE-EXAMINATION, DISPLAY AND INSURANCE [REVOKED]

310:276-5-1. Home inspection license requirements [REVOKED]

~~No person, on behalf of himself or a firm or company engaged in home inspection work shall engage or offer to engage in, by advertisement or otherwise, any home inspection work who does not possess a valid and appropriate license from the Department, unless otherwise exempt by law.~~

310:276-5-2. License fees, license period, re-examination, display, and insurance requirements [REVOKED]

~~(a) **Initial license fees.** The following fees apply to home inspection industry licensure:~~

~~(1) Approval fees for schools, instructors and home inspection organizations - $100.00~~

~~(2) Approval fees for educational course content - $50.00~~

~~(3) Application for license - $30.00~~

~~(4) Licensure for reciprocity - $50.00~~

~~(5) Examination fee - $200.00~~

~~(6) License fee - $250.00~~

~~(7) License Renewal - $150.00~~

~~(8) License reactivation - $50.00~~

~~(b) **License period.**~~

~~(1) A license shall expire twelve months after issuance, and may be renewed without penalty during the month following expiration.~~

~~(2) A license which has been expired for more than one (1) year shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and other licensure requirements.~~

~~(c) **Re-examination.** Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.~~

~~(d) **License display.** The state issued license number shall be placed on all letterhead stationery, business cards, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued license number.~~

~~(e) **Personal license display.** All persons subject to these rules shall possess the state issued card any time the person is working. The card shall be shown when requested.~~

~~(f) **Insurance requirements.** Each licensee must maintain insurance coverage and furnish and maintain in effect a certificate of insurance therefor which indicates that the licensee has a comprehensive general liability policy. Limits of liability are to be no less than $50,000.00 combined single limit for bodily injury and property damage. The certificate of insurance shall provide for thirty (30) days notice to the Home Inspection License Unit, prior to cancellation or material alteration of the required insurance.~~

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS, COURSE APPROVAL REQUIREMENTS, INSTRUCTOR REQUIREMENTS, CONTINUING EDUCATION, DENIED APPLICATION APPEAL, SUBMISSION OF RECORDS, AND SUBSTANTIAL COMPLIANCE AND RECIPROCITY [REVOKED]

310:276-9-1. Qualifications and examination applications [REVOKED]

~~Applicants for home inspection license examinations must be eighteen (18) years of age or older and be of good moral character, and every application must be accompanied by evidence of successful completion of fifty (50) clock hours of home inspection training that is approved pursuant to 310:276-9-3, or its equivalent.~~

310:276-9-2. Examinations [REVOKED]

~~(a) Home inspection license examinations may include, without limitation, written questions, consisting of open book, closed book and problems, based on current national standards, and other related questions.~~

~~(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.~~

~~(c) Each applicant shall pay the examination fee before undertaking any examination. Reexamination fees shall be the same as the initial examination fees.~~

~~(d) Unless authorized by the Committee, only examinees shall be permitted in the examination area.~~

~~(e) Applicants shall present positive identification before undertaking an examination.~~

~~(f) Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.~~

~~(g) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Committee shall determine when the applicant may retake the exam, which time shall be no fewer than three hundred sixty-five (365) days.~~

310:276-9-3. Course approval requirements [REVOKED]

~~(a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Committee in accordance with Section 310:276-5-2.~~

~~(b) Applications shall include the following information:~~

~~(1) Name and address of the provider;~~

~~(2) Contact person and his or her address, telephone number and fax number;~~

~~(3) The location of the courses or programs;~~

~~(4) The number and type of education credit hours requested for each course;~~

~~(5) Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;~~

~~(6) If a prior approved course has substantially changed, a summarization of these records;~~

~~(7) The names and qualifications of each instructor who is qualified in accordance with Section 310:276-9-4 and,~~

~~(8) Information as to how the proposed course meets the standard provided in Section 310:276-9-5(b).~~

~~(c) The Department may automatically accept without further review, courses pre-approved by the Committee.~~

~~(d) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.~~

~~(e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the committee before it is advertised or held.~~

~~(f) The Committee may decline to renew, or revoke the approval of any qualifying course or any instructor or entity previously approved to conduct a pre-licensing course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants to pass the national Home Inspection Examination or similar qualifying examination.~~

310:276-9-4. Instructor requirements [REVOKED]

~~(a) **Instructor Qualifications.** An instructor should have one of the following qualifications:~~

~~(1) Three (3) years of recent experience in the subject matter being taught; or~~

~~(2) A degree related to the subject area being taught; or~~

~~(3) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught.~~

~~(4) Other educational, teaching, or professional qualifications determined by the Committee which constitute an equivalent to one or more of the qualifications in the previously stated sub-paragraphs (1), (2), and (3) of this paragraph.~~

~~(b) **Instructor Renewal.** In order to maintain approved status, an instructor must furnish evidence that the instructor has taught a Committee approved course, or any other CEU course the Committee determines to be equivalent, within a required thirty-six (36) month period.~~

~~(c) **Re-application.** Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.~~

310:276-9-5. Continuing education [REVOKED]

~~(a) **Continuing education hours.** No home inspection license shall be renewed unless the licensee has completed at least five (5) clock hours of continuing education prior to the date of renewal.~~

~~(b) **Special Approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:~~

~~(1) Course content should be designed to update knowledge and improve inspection skills directly related to the components and systems described in Subchapter 1 of this Chapter.~~

~~(2) All courses shall be at least two (2) hours in length.~~

~~(3) Unless provided after regular working hours, the training location shall be outside the regular work place.~~

~~(4) Each attendee shall complete a course evaluation on a form provided by the Department. The CEU provider shall return the completed evaluation forms to the home inspection license unit with the sign-in sheets.~~

310:276-9-6. Denied application appeal [REVOKED]

~~(a) **Denied Instructor/Provider Application.** If the Committee fails to approve or rejects any proposed instructor or entity seeking to conduct an approved course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision. The applicant may appeal the decision by filing a written request for a hearing before the Committee within thirty (30) days after notice of denial. The Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter. No part of the application fee is refundable.~~

~~(b) **Denied Course Application.** If the Committee fails to approve or rejects any proposed continuing education offering or fifty (50) hour home inspection training course, the Committee shall give written notice of the rejection and the cause therefore within fifteen (15) days after such decision to the party applying for approval. Upon the written request from such party, filed within thirty (30) days after such notice of denial, the Committee shall set the matter for hearing to be conducted within sixty (60) days thereafter for an appeal of the determination of the cause for rejection. No portion of the fee is refundable.~~

310:276-9-7. Submission of records [REVOKED]

~~(a) An entity conducting an offering shall, within five (5) working days of the completion thereof, submit to the Committee on a form approved by the Committee, a list of the names and license numbers or social security numbers of the licensees who successfully completed the said offering. Each licensee successfully completing an offering shall be furnished a certificate certifying completion.~~

~~(b) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.~~

310:276-9-8. Substantial compliance and reciprocity [REVOKED]

~~(a) In addition to accepting courses approved as described in this Subchapter, qualifying and continuing education credits may be granted to an individual in such case that said individual~~

~~supplies acceptable documentation showing that the offering meets applicable Committee requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering.~~

~~(b) If a non-resident licensee satisfies a continuing education requirement in another state for license renewal, the Committee will exempt the non-resident licensee from the continuing education requirement in the state. In order to qualify for the exemption, the non-resident licensee must file with the license renewal of this state a certificate from the state in which the continuing education was satisfied stating that the non-resident licensee had completed the continuing education requirement for license renewal in that state. The certificate from the state verifying the non-resident's compliance with continuing education in the other state must be received by the Committee within sixty (60) days of issuance by the other state and must be received in conjunction with license renewal.~~

SUBCHAPTER 11. LICENSE REVOCATION AND SUSPENSION AND ADDITIONAL PROHIBITED ACTS [REVOKED]

310:276-11-1. License revocation and suspension [REVOKED]

~~(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.~~

~~(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.~~

~~(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.~~

~~(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.~~

~~(e) Any person whose license is suspended pursuant to these Rules may not perform a home inspection and, prior to reinstatement, must make application therefor, which must be accompanied by evidence of successful completion of the continuing education requirements set forth in OAC 310:276-9-3.~~

~~(f) Any person whose license is revoked pursuant to these rules may not perform a home inspection before attaining licensure pursuant to OAC 310:276-9-1.~~

~~(g) Failure to cooperate or provide information regarding an investigation may be grounds to suspend or revoke a licensee's home inspection license.~~

~~(h) Failure to maintain and furnish a certificate of insurance coverage as provided in OAC 310:276-5-2(f) may be grounds to suspend or revoke a licensee's home inspection license.~~

310:276-11-2. Additional prohibited acts [REVOKED]

~~(a) No person, entity, or firm may perform home inspection work without first obtaining a license or registration pursuant to these Rules.~~

~~(b) No person shall offer to engage in work as a home inspector during the period his or her license is suspended or revoked.~~

~~(c) No employing home inspection firm shall employ or use an unlicensed home inspector to perform home inspection work.~~

~~(d) No person, entity, or firm may transfer a license or registration.~~

~~(e) No home inspector, licensed pursuant to this Chapter, shall enter into an agreement for the use of his or her license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.~~

~~(f) No person shall make a materially false or fraudulent statement in an application for license or for approval of continuing education, engage in cheating, or otherwise commit an act in violation of 310:276-9-2(g).~~

~~(g) No person shall falsify or fail to disclose in a home inspection report a material defect.~~

~~(h) No person shall accept inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion.~~

~~(i) No person shall accept inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments.~~

~~(j) No person shall perform a home inspection upon a home, or any part thereof, where the home inspector has solicited or performed any work or repair service therein upon a system or component described in Subchapter 1 of this Chapter, within the previous thirty days. If the person performing the home inspection has performed such work within the previous one-hundred eighty days, such prior work must be disclosed to the client.~~

~~(k) No person shall solicit or perform work or repair services upon, home, or any part thereof, that the home inspector has inspected for one (1) year after the date of the inspection.~~

~~(l) No person shall knowingly accept compensation from more than one client for a single home inspection, unless the home inspector has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated.~~

~~(m) Unless upon demand in writing by the Department, a law enforcement agency, or by order of a court of competent jurisdiction, no person shall disclose the results of a home inspection to any person other than the client without the written consent of the client.~~

~~(n) No person shall fail to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client. Based upon the potentially adverse affect to the home inspector's ability to produce an unbiased report, some circumstances or conditions are presumed to adversely affect the client and must be disclosed to~~

~~the client in writing prior to the inspection. These include, but are not limited to, the following:~~

~~(1) Situations where the payment of remuneration or other consideration is made by the home inspector to a third party and representing a reward or compensation to the third party for the home inspector receiving inspection employment.~~

~~(2) Situations where the payment of remuneration or other consideration is received by the home inspector from a third party and representing a reward or compensation for the home inspector recommending services or products to the client or other persons having an interest in the inspected real property.~~

~~(3) In those cases where the client is the buyer of real property, situations where the home inspector has had some prior connection, relationship or association with the seller, his or her assigns or family members related to the seller within the second degree.~~

~~(4) Situations where prior reports or inspections have been made or conducted upon any system or component of the real property that the home inspector has agreed to inspect.~~

~~(o) No person shall fail to submit a written home inspection report within a reasonable time as determined by the Board to the client after compensation has been paid to the home inspector.~~

[OAR Docket #14-808; filed 7-18-14]

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

[OAR Docket #14-809]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Disease and Injury Reporting Requirements
310:515-1-3. Diseases to be reported immediately [AMENDED]
310:515-1-4. Additional diseases, conditions, and injuries to be reported [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. § 1-104; and Title 63 O.S., §§ 1-502 and 1-503
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:

The proposal updates the existing rules in accordance with recommendations from the Council of State and Territorial Epidemiologists (CSTE), the Centers for Disease Control and Prevention, and local health care partners pertaining to reportable diseases. The proposal amends the lists of reportable diseases, regarding diseases or conditions that are required to be reported to the Department. These changes minimally increase the reporting burden placed upon clinicians, have no impact on the reporting burden placed upon laboratories, and do not adversely affect the public health disease control and prevention activities.

The proposal adds novel coronavirus and novel Influenza A to the list of infectious diseases, reportable to the Department. The proposal expands reporting of influenza associated hospitalizations and deaths. The proposal is needed prepared for the reporting of suspected cases (especially those due to international travel to endemic areas and areas that such viruses are more likely to be initially spread) and the possibility of pandemic influenza or coronavirus, which have significant public health concern and risk. With these changes, the Department will receive information that is more rapid and precise, and the Department thereby will be better equipped to respond quickly and effectively to disease outbreaks or these novel respiratory pathogens.

The proposal refines requirements for reporting CD4 cell count and percentage results based on the federal requirement that states receiving Ryan White Part B funding must calculate the Unmet Need for Health Services, defined as the need for HIV-related health services by individuals with HIV who are aware of their HIV status, but are not receiving regular primary health care. Health Resources and Services Administration (HRSA) provides an Unmet Need Framework for this calculation and determines that an individual with HIV or AIDS is considered to have an unmet need for care (or to be out of care) when there is no evidence that s/he received any of the following three components of HIV primary medical care during a defined 12-month time frame: (1) viral load (VL) testing, (2) CD4 count, or (3) provision of anti-retroviral therapy (ART). Therefore, in order to accurately calculate unmet need in Oklahoma, all CD4 cell count and percentage test results must be reported. See http://hab.hrsa.gov/tools2/title2/t2SecVIIIChap1.htm#SecVIIIChap1d. and http://www.qualityforum.org/News_And_Resources/Press_Releases/2013/NQF_Endorses_Infectious_Disease_Measures.aspx.

With these changes, the Department will receive information on suspected cases of infection with novel viruses and thus be better equipped to respond quickly and effectively to disease outbreaks or unusual or uncommon adverse health conditions.

CONTACT PERSON:
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Jan Fox, RN, MPH, Director, HIV-STD Service, phone (405) 271-4636, e-mail JanF@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system or by telephone (405-271-4060 or 800-234-5963) immediately upon suspicion,

diagnosis, or testing as specified in the "Oklahoma Disease Reporting Manual".

(1) Anthrax (*Bacillus anthracis*).
(2) Bioterrorism - suspected disease.
(3) Botulism (*Clostridium botulinum*).
(4) Diphtheria (*Corynebacterium diphtheriae*).
(5) *Haemophilus influenzae* invasive disease.
(6) Hepatitis A (Anti-HAV-IgM+).
(7) Hepatitis B during pregnancy (HBsAg+).
(8) Measles (Rubeola).
(9) Meningococcal invasive disease (*Neisseria meningitidis*).
(10) Novel coronavirus.
(11) Novel influenza A.
(12) Outbreaks of apparent infectious disease.
(~~11~~13) Plague (*Yersinia pestis*).
(~~12~~14) Poliomyelitis.
(~~13~~15) Rabies.
(~~14~~16) Smallpox.
(~~15~~17) Tularemia (*Francisella tularensis*).
(~~16~~18) Typhoid fever (*Salmonella* Typhi).
(~~17~~19) Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, or submitted via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test as specified in the "Oklahoma Disease Reporting Manual".

(A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
(B) AIDS (Acquired Immunodeficiency Syndrome).
(C) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus).
(D) Brucellosis (*Brucella* spp.).
(E) Campylobacteriosis (*Campylobacter* spp.).
(F) Congenital rubella syndrome.
(G) Cryptosporidiosis (*Cryptosporidium* spp.).
(H) Dengue Fever.
(I) *E. coli O157, O157:H7,* or a Shiga toxin producing *E. coli*.
(J) Ehrlichiosis (*Ehrlichia* or *Anaplasma* spp.).
(K) Hantavirus pulmonary syndrome.
(L) Hemolytic uremic syndrome, postdiarrheal.
(M) Hepatitis B. If HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+ then report results of the entire hepatitis panel.
(N) Hepatitis C in persons < or = 40 years or in persons having jaundice or ALT > or = 400 regardless of age with laboratory confirmation. If hepatitis C EIA is confirmed by ~~RIBA or~~ NAT for HCV RNA, or signal-to-cut-off (s/co) ratio or index is predictive of a true positive then report results of the entire hepatitis panel.
(O) Human Immunodeficiency Virus (HIV) infection.
(P) Influenza associated ~~pediatric mortality~~hospitalization or death.
(Q) Legionellosis (*Legionella* spp.).
(R) Leptospirosis (*Leptospira interrogans)*.
(S) Listeriosis (*Listeria monocytogenes*).
(T) Lyme disease (*Borrelia burgdorferi*).
(U) Malaria (*Plasmodium* spp.).
(V) Mumps.
(W) Pertussis (*Bordetella pertussis*).
(X) Psittacosis (*Chlamydophila psittaci*).
(Y) Q Fever (*Coxiella burnetii*).
(Z) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
(AA) Rubella.
(BB) Salmonellosis (*Salmonella* spp.).
(CC) Shigellosis (*Shigella* spp.).
(DD) *Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).
(EE) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
(FF) Syphilis (*Treponema pallidum*).
(GG) Tetanus (*Clostridium tetani*).
(HH) Trichinellosis (*Trichinella spiralis*).
(II) Tuberculosis (*Mycobacterium tuberculosis*).
(JJ) Unusual disease or syndrome.
(KK) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
(LL) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or test result as specified in the OSDH Disease Reporting Manual.

(A) CD4 cell count ~~< 500~~ with corresponding CD4 cell count percentage of total (by laboratories only).
(B) Chlamydia infections (*Chlamydia trachomatis*).
(C) Creutzfeldt-Jakob disease.
(D) Gonorrhea (*Neisseria gonorrhoeae*).
(E) HIV viral load (by laboratories only).

(3) **Occupational or Environmental diseases.** Laboratories must report blood lead level results greater than 10 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month. Health care providers must report blood lead level results 20 ug/dL or greater within

twenty-four (24) hours and results 10-19 ug/dL within one (1) week.

(4) **Injuries (hospitalized and fatal cases only).**

(A) Burns.

(B) Drownings and Near Drownings.

(C) Traumatic Brain Injuries.

(D) Traumatic Spinal Cord Injuries.

[OAR Docket #14-809; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 526. DENTAL SERVICES

[OAR Docket #14-810]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Oklahoma Dental Loan Repayment Program
310:526-3-2 [AMENDED]
310:526-3-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Sections 1-104 and 1-2710 et seq. as amended by House Bill 2587, effective November 1, 2012.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed action modifies the criteria for selecting the number and types of participants and in the time period for participation in the Dental Loan Repayment Program. The circumstance for the Rule change came from legislation, HB 2587, effective November 1, 2012. The change allows the Advisory Committee and Department to select the appropriate number of Program participants based on funding and the appropriate type of participant (Oklahoma University College of Dentistry faculty or non-faculty), and allows the service obligation period to be adjusted.
CONTACT PERSON:
Susan Potter, Program Manager, Oklahoma Dental Loan Repayment Program, phone (405) 271-5502, email susanp@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. OKLAHOMA DENTAL LOAN REPAYMENT PROGRAM

310:526-3-2. Description and operation of the Program

(a) **Department's equal opportunity policies applicable.** The Department's Dental Service will administer the Oklahoma Dental Loan Repayment Program in accordance with the Department's policies governing equal opportunity and access to programs, services and activities.

(b) **General operation of the Program.** The Program will provide educational loan repayment assistance ~~to as many as five (5)~~ for a number not to exceed twenty-five (25)~~Oklahoma licensed~~ full time (or full time equivalent, or as designated by Advisory Committee or Department) dentists licensed to practice in Oklahoma ~~per year for a 2 to 5 year period per dentist~~. The Program will provide prorated educational loan repayment assistance based upon the percentage of time worked. ~~up to four full time equivalent dentists working in a designated dental health professional shortage area and one dentist full time equivalent entering or participating in the Program each year agreeing~~ Dentists entering the Program agree to teach at the University of Oklahoma College of Dentistry if applicable faculty positions are available, or provide dental care and services to Medicaid recipients in a designated dental health professional shortage area (DHPSA).

(c) **Determining individual awards.** The amount of award, not to exceed $25,000 per year for each participating full time equivalent dentist, shall be determined by the Department annually based upon the amount of funds appropriated to the Department. If the participating dentist's eligible loans are less than the cumulative repayment assistance total available over 5 years, that participating dentist shall be in the Program no longer than required to pay off the total eligible loans and shall not receive more funding assistance than the total eligible indebtedness.

(d) **Distributing the awards.** Each award shall be distributed ~~to the participating dentist by two party drafts made payable to the dentist and the appropriate loan agency in equal monthly disbursements throughout the service obligation~~in accordance with state law.

(e) **Default.** If the participating dentist does not fulfill the terms of the service obligation, the Department may collect from the participant the entire amount of loan repayment assistance extended to the participant under the Program, plus interest.

310:526-3-3. Eligibility to participate in the Program

(a) **Eligibility requirements common to both non-faculty and faculty participants.** Eligibility for repayment assistance for non-faculty and faculty participants requires compliance with the following requirements:

(1) receipt or award of a dental degree from an accredited United States dental school within the previous five (5) years;

(2) completion of all requirements to receive or be awarded an active unrestricted license to practice dentistry

in the State of Oklahoma at the time the service obligation begins; and,

(3) a financial need with outstanding eligible dental school loans.

(b) **Additional eligibility requirements for non-faculty participants.** Eligibility for repayment assistance for non-faculty participants requires compliance with the following additional requirements:

(1) an established general or pediatric dental practice, or the commitment to establish such a practice, located in an Oklahoma DHPSA;

(2) fulfillment of all applicable requirements of the Oklahoma Health Care Authority to qualify as a Medicaid Dental Provider at the time the service obligation begins; and,

(3) agree that during the service obligation/contract period, a minimum 30% of ~~patients treated are Medicaid recipients at the time of treatment, or 30% of~~ patient visits are by Medicaid recipients.

(c) **Additional eligibility requirements for faculty participants.** Eligibility for repayment assistance for faculty participants requires compliance with the additional requirement of abiding by the rules and regulations for a faculty member, and the job duties assigned by the Dean of the University of Oklahoma College of Dentistry.

(d) **Limitations upon eligibility common to both non-faculty and faculty participants.** A non-faculty or faculty participant's eligibility may be rescinded or terminated if any of the following conditions occur:

(1) a breach of an obligation for service to a federal, state, or local government entity;

(2) an obligation for service to a federal, state, or local government entity that will interfere with the fulfillment of the requirements of the Program that remains unsatisfied; or,

(3) default or material breach of an agreement to repay a higher education loan or borrowing agreement.

(e) **Additional considerations.**

(1) Preference will be given to graduates of the University of Oklahoma College of Dentistry.

(2) Preference will be given to eligible practice sites that are not Medicaid/SoonerCare specific.

(3) Geographic diversity of the participants is an objective of the Program.

(4) An eligible practice site is a solo, group, or incorporated private practice, and any federal, state, local, or private for-profit or nonprofit dental facility.

(5) To qualify for the 30% minimum Medicaid recipient requirement the participant must use ~~an unduplicated count of the patients treated or~~ a count of patient visits during the service obligation. The 30% requirement will be monitored monthly, but the participant will be deemed to be compliant if the yearly average is 30% or greater.

(f) **Eligible loans.** Loans eligible for repayment assistance are any loans for educational expenses while attending dental school from a college, university, government, commercial source, or an organization, institution, association, society, or corporation that is exempt from taxation under 501(c)(3) or (4) of the Internal Revenue Code of 1986. The ODLRP participant must be able to provide, upon request, documentation that commercial loans were used for payment of educational expenses.

[OAR Docket #14-810; filed 7-18-14]

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

[OAR Docket #14-811]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General provisions
310:531-1-2. Authority [AMENDED]
310:531-1-3. Definitions [AMENDED]
Subchapter 3. Advisory Committee [REVOKED]
310:531-3-1. Purpose [REVOKED]
310:531-3-2. Advisory Committee [REVOKED]
310:531-3-3. Rules of Order [REVOKED]
Subchapter 5. Vision Screening Standards for Children
310:531-5-2. Oklahoma Vision Screening Standards [AMENDED]
310:531-5-3. Approval of ~~Vision Screening Providers~~vision screening providers [AMENDED]
310:531-5-5. Re-approval of vision screening providers [AMENDED]
310:531-5-6. Approval of ~~trainers of vision screening providers~~vision screening trainers [AMENDED]
310:531-5-7. Re-approval of ~~trainers of vision screening providers~~vision screening trainers [AMENDED]
310:531-5-8. Approval of ~~trainers of vision screening trainers~~vision screening trainers of trainers[AMENDED]
310:531-5-9. Re-approval of ~~trainers of vision screening trainers~~vision screening trainers of trainers[AMENDED]
Subchapter 7. Registry Enforcement for Vision Screening
310:531-7-2. Grounds for discipline [AMENDED]
310:531-7-3. Complaint investigation [AMENDED]
310:531-7-4. Summary removal [AMENDED]
310:531-7-5. Appearance before the Advisory Committee [REVOKED]
310:531-7-6. Right to a hearing [AMENDED]
Subchapter 9. Sports Eye Safety Resource [REVOKED]
310:531-9-1. Purpose [REVOKED]
310:531-9-2. Eye safety resource [REVOKED]

AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. Sections 1-103a.1 and 1-104; and Title 70 O.S. Section 1210.284.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013

COMMENT PERIOD:
October 1, 2013, through November 1, 2013

PUBLIC HEARING:
November 1, 2013

ADOPTION:
January 14, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:

The rule changes implement provisions of Section 44, House Bill 1467, which created the Infant and Children's Health Advisory Council, and Section 79, which replaced the Vision Screening Advisory Committee established in 70 O.S. 2011, Section 1210.284, with the Infant and Children's Health Advisory Council and eliminates the role of the Advisory Committee in carrying out programmatic activities. The proposed rule changes delineate the responsibilities of the Department in carrying out statewide vision screening for children.

310:531-1-2. This rule provides the authority for this Chapter. The proposed modification of this rule adds Section 1-103a.1 of Title 63 of the Oklahoma Statutes.

310:531-1-3. This rule provides definitions in support of this Chapter. The proposed modifications of this rule implements changes in Section 1210.284 of Title 70 of the Oklahoma Statutes, which resulted in deletion of Advisory Committee and addition of Infant and Children's Health Advisory Council. In addition, changes include deletion of Professional Examination and Background checks, which are not used in this Chapter, clarification of the definition of Referral, and drafting error corrections in punctuation.

310:531-3-1, 310:531-3-2, and 310:531-3-3. These rules addressed the purpose, membership, and rules of order for the Advisory Committee. The proposed deletion of these rules implements changes in Section 1210.284 of Title 70 of the Oklahoma Statutes which resulted in revocation of the Advisory Committee.

310:531-5-2. This rule specified the Oklahoma vision screening standards for grades targeted for screening, minimal vision screening tests to be used, and standards for referral for a comprehensive eye exam. The proposed rule changes provide for potential use of new vision screening tools and associated referral standards recommended to the Department by the Advisory Council for Infant and Children's Health Advisory Council and determined by the Department as having comparable efficiency and effectiveness. In addition, drafting error corrections in punctuation are made in 310:531-5-2(a) and (c).

310:531-5-3, 310:531-5-5, 310:531-5-6, 310:531-5-7, 310:531-5-8 and 310:531-5-9. These rules address the role of the Advisory Committee in approving vision screening providers, vision screening trainers, and vision screening trainers of trainers. The proposed modifications of these rules implement changes in Section 1210.284 of Title 70 of the Oklahoma Statutes which resulted in revocation of the Advisory Committee and assigns these functions to the Department. In addition, drafting error corrections in punctuation and/or the use of definitions is made in 310:531-5-3, 310:531-5-6 (a), (b), (c), and (d), 310:531-5-7, 310:531-5-8 (a), (b), (c), and (d), and 310:531-5-9.

310:531-7-2 and 310:531-7-3. These rules addressed the role of the Advisory Committee in registry enforcement for vision screening. The proposed modifications of these rules implement changes in Section 1210.284 of Title 70 of the Oklahoma Statutes which resulted in revocation of the Advisory Committee and assigns these functions to the Department. In addition, drafting error corrections in use of definitions is made in 310:531-7-2 (b), (c), and a drafting error correction in punctuation is made in 310:531-7-3 (a).

310:531-7-4. This rule addresses summary removal. The proposed modification of this rule corrects a drafting error in spacing in (a) and (b) as well as corrects the use of a definition in (c).

310:531-7-5. This rule addressed the provision for a vision screening provider, trainer, or applicant to appear before the Advisory Committee as part of the process for registry enforcement for vision screening. The proposed deletion of this rule implements changes in Section 1210.284 of Title 70 of the Oklahoma Statutes which resulted in revocation of the Advisory Committee and as a result, its role with registry enforcement of vision screening.

310:531-7-6. This rule addresses the right to a hearing. The proposed modification of this rule makes a drafting error correction in spacing.

310:531-9-1 and 310:531-9-2. These rules addressed the role of the Advisory Committee as a sports eye safety resource. The proposed deletion of these rules implements changes in Section 1210.284 of Title 70 of the Oklahoma Statutes which resulted in revocation of the Advisory Committee and its role as a sports eye safety resource.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

310:531-1-2. Authority

Oklahoma State Board of Health; 70 O.S. § 1210.284; 63 O.S. §§1-103a.1, 1-105 and 1-106 et seq.

310:531-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

~~**"Advisory Committee"** means the Oklahoma Vision Screening Advisory Committee for Children.~~

"Board" means the State Board of Health.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health.

"Comprehensive Eye Exam" means a clinical assessment and tests administered by a licensed optometrist or ophthalmologist to assess a person's level of vision as well as detect any abnormality or diseases.

"Department" means the Oklahoma State Department of Health.

"HOTV Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) letters: H, O, T and V.

"Infant and Children's Health Advisory Council" means the advisory council to the Board and Department in the area of infant and child health including vision screening.

"Lea Symbol Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) symbols: circle, square, house, and apple.

"Ophthalmologist" means a person licensed by the state of Oklahoma to practice medicine who has a specialty in ophthalmology.

"Optometrist" means a person licensed by the state of Oklahoma to practice optometry.

"Random Dot E Stereo Test" means a vision screening test that determines relative stereo acuity or depth perception.

~~**"Professional Examination"** means a diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual.~~

"Referral" means parent/guardian notification that the student's screening results indicate a need for a ~~professional examination~~comprehensive eye exam by an ophthalmologist or optometrist.

"Snellen Letter Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart consisting of eight (8) or more rows of progressively smaller block type letters.

"Vision ~~Screening Provider~~screening provider(s)" means a person(s) who has successfully completed vision screening training using curricula approved by the ~~Advisory Committee~~Department, submitted an application to the ~~Advisory Committee~~Department, and has been approved by the ~~Advisory Committee~~Department as being a vision screening provider.

"Vision ~~Screening~~screening" means the process or system used to identify children in grades K, 1 and 3 who may be at risk of having or developing visual problems that may adversely affect their ability to acquire knowledge, skill or learning, for the purpose of recommending further evaluation by an optometrist or ophthalmologist.

"Vision ~~Screening Trainer~~screening trainer(s) " is a person(s) who has been approved as a vision screening provider and completed additional training approved by the ~~Advisory Committee~~Department to provide training to potential vision screening providers.

"Vision ~~Screening Trainer of Trainers~~screening trainer(s) of trainers" is a person(s) who has been approved as a vision screening provider and vision screening trainer and completed additional education and practicum approved by the ~~Advisory Committee~~Department to become a vision screening trainer of trainers.

"Vision Screening Registry" is a system for collecting and maintaining in a structured manner the names of individuals that have been approved by the ~~Advisory Committee~~Department as vision screening providers.

~~**"Background Check"** is the process of looking up and compiling criminal records of an individual.~~

SUBCHAPTER 3. ADVISORY COMMITTEE [REVOKED]

310:531-3-1. Purpose [REVOKED]

~~This subchapter creates the Oklahoma Vision Screening Advisory Committee for Children.~~

310:531-3-2. Advisory Committee [REVOKED]

~~(a) The Advisory Committee shall consist of five (5) members who shall be appointed by the Commissioner.~~

~~(b) The Advisory Committee is comprised of one licensed optometrist, one licensed ophthalmologist, one representative of the State Department of Education, one representative of the Oklahoma State Department of Health, and one representative of a statewide organization for the prevention of blindness.~~

~~(c) The first Advisory Committee shall serve the following terms: one member for one (1) year, two members for two (2) years, and two members for three (3) years. Thereafter, at the expiration of the term of each member, the Commissioner shall appoint a successor for a four (4) year term.~~

~~(d) Vacancies occurring in the Advisory Committee shall be filled for the remainder of the term by appointment by the Commissioner.~~

~~(e) Any Advisory Committee member may be removed by the Commissioner for incapacity, incompetence, neglect of duty, or misfeasance or malfeasance in office.~~

~~(f) Advisory Committee members may be reappointed at the completion of their term.~~

~~(g) The Advisory Committee will hold a minimum of one regular meeting annually, and special meetings as needed. Meetings shall be held at such time and place as the Advisory Committee may provide. The Advisory Committee shall elect annually the following officers: A chair, a vice-chair, and a secretary. Three members of the Advisory Committee shall constitute a quorum.~~

310:531-3-3. Rules of Order [REVOKED]

~~Roberts Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided by the Advisory Committee.~~

SUBCHAPTER 5. VISION SCREENING STANDARDS FOR CHILDREN

310:531-5-2. Oklahoma Vision Screening Standards

(a) Parents or guardians of any child subject to the Oklahoma School Code shall provide certification of vision screening for any child who is:

(1) in ~~Kindergarten~~kindergarten, and the vision screening shall be completed within the previous twelve (12) months or during the school year;

(2) in the ~~First~~first grade, and the vision screening shall be completed within the previous (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year; and

(3) in the ~~Third~~third grade, and the vision screening shall be completed within the previous twelve (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year.

(b) Vision screening must, at a minimum, utilize the following vision screening tests using standard screening procedures:

(1) For relative distance acuity, the Snellen Letter Chart, HOTV Chart, or Lea Symbol Chart, at a distance of ten (10) feet~~; and,~~or any new vision screening tool determined by the Department to be a comparably effective and efficient screening tool; and

(2) For stereo acuity, the Random Dot E Stereo Test, at a distance according to the calibration of the manufacturer, or any new vision screening tool determined by the Department as being a comparably effective and efficient screening tool.

(c) The following visual criteria shall be used as a basis for referring a child for further evaluation by an optometrist or ophthalmologist:

(1) For relative distance acuity, worse than 20/40 in either or both eyes for children below the ~~First~~first~~Grade~~grade or for new tools the equivalent, or worse than 20/30 in either or both eyes for children in the ~~First~~first grade or above or, for new screening tools

the equivalent, and for all children, a two or more line difference between either eye or, for new screening tools the equivalent; and,

(2) For relative stereo acuity, a child identifies the E correctly in less than four (4) consecutive responses out of ten (10) attempts or, for new vision screening tools the equivalent.

310:531-5-3. Approval of ~~Vision Screening Providers~~vision screening providers

(a) In order to become an approved vision screening provider, an individual must make application to the ~~Advisory Committee~~Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;
(2) the screening process;
(3) required screening tools;
(4) screening special populations; and,
(5) basic anatomy and physiology of the eye.

(b) The ~~Advisory Committee~~Department will review and ~~submit, a minimum of one time annually, a list of approved vision screening providers to the Department~~ approve vision screening providers.

(c) The vision screening provider approval will be valid from the date of approval by the ~~Advisory Committee~~Department and ends three years from the most recently approved training.

(d) All approved vision screening providers will be added to the statewide registry on the Internet website maintained by the Department.

(e) Unless otherwise provided by law, no person shall engage in vision screening as provided in 70 O.S. § 1210.284 without first being listed on the vision screening registry maintained by the Department.

310:531-5-5. Re-approval of vision screening providers

A vision screening provider currently approved by the ~~Advisory Committee~~Department may renew his or her application by submitting documentation of successful completion of training, conducted by an approved trainer, using an approved curricula, prior to the end of his or her third year.

310:531-5-6. Approval of ~~trainers of vision screening providers~~vision screening trainers

(a) In order to become an approved ~~trainer of vision screening providers~~vision screening trainer an individual must be an approved vision screening provider and make application to the ~~Advisory Committee~~Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;
(2) the screening process;
(3) required screening tools;
(4) screening special populations;
(5) basic anatomy and physiology of the eye; and,
(6) techniques for effective training of vision screening providers.

(b) The applicant must provide to the ~~Advisory Committee~~Department documentation of successful completion of training, which is administered by a vision screening trainer of trainers approved by the ~~Advisory Committee~~Department using training curricula for trainers approved by the ~~Advisory Committee~~ Department.

(c) The ~~Advisory Committee~~Department will review~~, approve and submit to the Department, at a minimum of one time annually, a list of qualified~~and approve~~trainers of vision screening providers~~vision screening trainers and the approved curricula used for training vision screening providers.

(d) The approval of a ~~trainer of vision screening providers~~vision screening trainer ends three years from the most recently approved training.

310:531-5-7. Re-approval of ~~trainers of vision screening providers~~vision screening trainers

A ~~trainer of vision screening providers~~vision screening trainer currently approved by the ~~Advisory Committee~~Department may renew his or her application by submitting documentation of successful completion of training, conducted by an approved vision screening trainer of trainers, using an approved curricula, prior to the end of his or her third year.

310:531-5-8. Approval of ~~trainers of vision screening trainers~~vision screening trainers of trainers

(a) In order to become an approved ~~trainer of vision screening trainers~~vision screening trainer of trainers, an individual must be an approved vision screening provider, an approved ~~trainer of vision screening providers~~vision screening trainer, and make application to the ~~Advisory Committee~~ Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

(1) common eye problems;
(2) the screening process;
(3) required screening tools;
(4) screening special populations;
(5) basic anatomy and physiology of the eye;
(6) techniques for effective training of vision screening providers; and,
(7) techniques for effective training of ~~trainers of vision screening trainers~~vision screening trainers of trainers.

(b) The applicant must provide to the ~~Advisory Committee~~Department documentation of successful completion of training, ~~which:~~which is administered by a vision screening trainer of trainers approved by the ~~Advisory Committee~~Department using training curricula for trainers approved by the ~~Advisory Committee~~Department.

(c) The ~~Advisory Committee~~Department will review~~, approve and submit to the Department, at a minimum of one time annually, a list of qualified~~and approve~~trainers of vision~~

~~screening trainers~~ vision screening trainers of trainers and the approved curricula used for training vision screening trainers.

(d) The approval of a ~~trainer of vision screening trainers~~vision screening trainers of trainers ends three years from most recently approved training.

310:531-5-9. Re-approval of ~~trainers of vision screening trainers~~vision screening trainers of trainers

A ~~trainer of vision screening trainers~~vision screening trainer of trainers currently approved by the ~~Advisory Committee~~Department may renew his or her application by submitting documentation of successful completion of training conducted by an approved trainer and use of an approved curriculum prior to the end of his or her third year.

SUBCHAPTER 7. REGISTRY ENFORCEMENT FOR VISION SCREENING

310:531-7-2. Grounds for discipline

(a) An approval of a vision screening provider may be modified, suspended, or terminated for one or more of the following reasons:

(1) Failure to conduct vision screenings according to the procedures and referral criteria approved by the ~~Advisory Committee~~Department, including but not limited to, deletion of one or more portions of the process outlined in the screening standards and training curriculum, or addition of one or more procedures not contained in the screening standards and training curriculum, in sections 310:531-5-2 and 310:531-5-3, respectively;

(2) Making referrals for ~~professional examinations~~comprehensive eye examinations that indicate a conflict of interest, financial or otherwise;

(3) Failure to participate in a training curricula approved by the ~~Advisory Committee~~ Department upon expiration of his or her three year approval;

(4) Violations of a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §§1232 *et seq*. and the rules promulgated thereunder; and

(5) Any act that harms, or threatens harm to, a child.

(b) An approval of a ~~trainer of vision screening providers~~vision screening trainer may be modified, suspended, or terminated for one or more of the following reasons:

(1) Failure to conduct training workshops for vision screening providers utilizing curricula and/or procedures approved by the ~~Advisory Committee~~Department;

(2) Failure to participate in a training curricula approved by the ~~Advisory Committee~~ Department upon expiration of the three year approval;

(3) Violations of a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §1232 *et seq*. and the rules promulgated thereunder; and

(4) Any act that harms, or threatens to harm, a child.

(c) An approval of a ~~trainer of trainers of vision screening providers~~vision screening trainer of trainers may be modified, suspended, or terminated for one or more of the following reasons:

(1) Failure to conduct training workshops for ~~trainers of vision screening trainers~~vision screening trainers utilizing curricula and/or procedures approved by the ~~Advisory Committee~~ Department;

(2) Failure to participate in a training curricula approved by the ~~Advisory Committee~~ Department upon expiration of the three year approval;

(3) Violations of a student's right of privacy in the student's education records pursuant to the Family Educational Rights and Privacy Act of 1974, 20 United States Code §§ 1232 *et seq*. and the rules promulgated thereunder; and

(4) Any act that harms, or threatens harm to, a child.

310:531-7-3. Complaint investigation

(a) **Reporting complaints.** Any person may report to the Department any complaint or allegations of non-compliance with 70 O.S. § 1210.284 or this Chapter by a vision screening provider or trainer by submitting the following:

(1) the name, address, and telephone number, if known, of the vision screening ~~provider or~~ provider or trainer who is the subject of the complaint;

(2) the location(s) where the alleged non-compliance occurred;

(3) the date(s) of non-compliance;

(4) the reporting party's name, address and telephone number; and,

(5) the specific allegations against the vision screening provider or trainer, including but not limited to references to, or a copy of supporting documentation regarding, or any witnesses to, the alleged non-compliance.

(b) **Process.** Upon receipt of a complaint against a vision screening provider or trainer alleging non-compliance with 70 O.S. § 1210.284 or this Chapter, the Department shall conduct an investigation. ~~Upon completion of the investigation, a written report will be prepared and presented to the Advisory Committee for recommendation. If sufficient evidence exists to initiate an individual proceeding, the Advisory Committee shall recommend that the Department initiate disciplinary proceedings.~~

310:531-7-4. Summary removal

(a) If in the course of an investigation the Department determines that a vision screening provider has engaged in conduct of a nature that is, or is likely to be detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent such harm, the Commissioner may order summary removal of the name of the vision screening provider from the registry for vision screening maintained by the Department pending the Department filing a petition to

remove the name of the vision screening provider from the registry following an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 309 *et seq*. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a vision screening provider has harmed, or threatened harm to, a child while providing vision screening services. The order of summary removal from the registry must include the specific grounds for the summary removal, a citation of the statute or law allegedly violated, and inform the ~~visionscreening~~vision screening provider of the process to request a hearing to contest the summary action.

(b) Any vision screening provider whose name has been summarily removed from the registry for vision screening may request a hearing to contest such summary action. The Department shall have the initial burden of persuasion to show that the provider has engaged in conduct that has caused, or is likely to cause, harm to a child. If the Department meets this burden of persuasion, the ~~visionscreening~~vision screening provider has the burden to prove that the conduct of the provider in providing ~~visionscreening~~ vision screening services would not harm a child.

(c) If in the course of an investigation the Department determines that a vision screening trainer has engaged in conduct of a nature that is, or is likely to be detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent such harm, the Commissioner may order summary removal of the name of the vision screening ~~provider~~trainer from the list for vision screening trainers maintained by the Department pending the Department filing a petition to remove the name of the vision screening trainer from the list following an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 309 *et seq*. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a vision screening trainer has harmed, or threatened harm to, a child while providing vision screening services. The order of summary removal from the list must include the specific grounds for the summary removal, a citation of the statute or law allegedly violated, and inform the vision screening trainer of the process to request a hearing to contest the summary action.

(d) Any vision screening trainer whose name has been summarily removed from the list for vision screening trainers may request a hearing to contest such summary action. The Department shall have the initial burden of persuasion to show that the trainer has engaged in conduct that has caused, or is likely to cause, harm to a child. If the Department meets this burden of persuasion, the vision screening trainer has the burden to prove that the conduct of the trainer in providing vision screening services would not harm a child.

310:531-7-5. Appearance before the Advisory Committee [REVOKED]

~~Except as provided for in section 310:531-7-4, if the Advisory Committee recommends that the status of a vision screening provider or trainer be modified, suspended, or terminated by these provisions the Committee shall first give a vision screening provider, or trainer, or applicant an opportunity to appear before the Advisory Committee at the next regularly scheduled meeting by providing written notice at least thirty (30) days in advance of the meeting. The vision screening provider, trainer, or applicant must advise in writing at least ten (10) days in advance of the next scheduled Advisory Committee meeting by postmarked notification to the Committee of his or her request to appear before the Committee. Failure to so notify may be deemed a waiver of the right to appear before the Advisory Committee.~~

310:531-7-6. Right to a hearing

Except as provided for in section 310:531-7-4, the name of a vision screening provider or trainer may not be removed from the vision screening registry or vision screening trainer's list until the Department provides notice to the vision screening provider or trainer and an opportunity for a hearing to contest the Department's allegations. The notice to the vision screening provider or trainer must comply with 75 O.S. § 309. The vision screening provider or trainer must request a hearing within twenty ~~(20)days~~ (20) days of receiving the notice from the Department or the sanction may be imposed by default.

SUBCHAPTER 9. SPORTS EYE SAFETY RESOURCE [REVOKED]

310:531-9-1. Purpose [REVOKED]

~~This subchapter identifies the role of the Advisory Committee in serving as a resource for sports eye safety.~~

310:531-9-2. Eye safety resource [REVOKED]

~~(a) The Advisory Committee may serve as a sports eye safety resource for Oklahoma public school districts and nonprofit community sports organizations by:~~

~~(1) Developing and providing educational materials to reduce eye injuries associated with various sporting activities; and~~

~~(2) Developing and providing educational materials on the use of protective eyewear that reduces the risk of sports related eye injuries.~~

[OAR Docket #14-811; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 550. NEWBORN SCREENING PROGRAM

[OAR Docket #14-812]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:550-1-1 [AMENDED]
310:550-1-2 [AMENDED]

Subchapter 3. Testing of Newborns
310:550-3-1 [AMENDED]
Subchapter 5. Specimen Collection
310:550-5-1 [AMENDED]
310:550-5-2 [AMENDED]
Subchapter 7. Hospital Recording
310:550-7-1 [AMENDED]
Subchapter 13. Parent and Health Care Provider Education
310:550-13-1 [AMENDED]
Subchapter 17. Follow-Up for Physicians
310:550-17-1 [AMENDED]
Subchapter 19. Reporting
310:550-19-1 [AMENDED]
Subchapter 21. Information
310:550-21-1 [AMENDED]
Appendix A. Instructions for Filter Paper Sample Collection [REVOKED]
Appendix A. Instructions for Filter Paper Sample Collection [NEW]
Appendix B. Report Form [REVOKED]
Appendix B. Report Form [NEW]
Appendix C. Refusal Form [REVOKED]
Appendix C. Refusal Form [NEW]
Appendix D. Recommended Pulse Oximetry Screening Protocoal [NEW]
Appendix E. Pulse Oximetry Screening Result Form [NEW]

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Sections 1-534, 1-550.5, and 1-705

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013

COMMENT PERIOD:
October 1, 2013, through November 1, 2013

PUBLIC HEARING:
November 1, 2013

ADOPTION:
January 14, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
This rule change amends the existing rule to include Severe Combined Immunodeficiency Syndrome (SCID) as a new test in the core panel of 29 genetic disorders for newborn screening (NBS) in Oklahoma, as recommended by the Advisory Committee on Heritable Disorders in Newborns and Children - Recommended Uniform Screening Panel (January 21, 2010). This change adds Pulse Oximetry screening for the detection of Critical Congenital Heart Disease to existing newborn screening rules as legislated by HB 1347 (2013) [63 O.S. § 1-550.5]. The new law requires inpatient or ambulatory health care facilities licensed by the State Department of Health that provide birthing and newborn care services to perform a pulse oximetry screening on every newborn in its care prior to discharge from the birthing facility. In addition, minor changes to the newborn screening report form are included. This form is submitted by the infant's specialist or primary care provider, and will now include additional information based on new clinical practice. The requisition/collection form is changed to bring the form and rules up to date with practice. Additional revised documents include a recommended pulse oximetry screening protocol and a pulse oximetry screening result form.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

310:550-1-1. Purpose

Under 63 O.S., Sections 1-533 and 1-534 the following rules and regulations are established concerning the screening of all infants born in Oklahoma for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ infants shall be screened for biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health. This chapter establishes the following rules and regulations concerning screening all infants born at a birthing facility in Oklahoma for critical congenital heart disease (CCDH) via pulse oximetry screening performed by the birthing facility pursuant to 63 O.S. Section 1-550.5.

310:550-1-2. Definitions

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

"Amino Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process amino acids properly due to a defective enzyme function. This causes an amino acid or protein build up in the body. If not treated early in life these defects can cause disability, mental retardation or death. Each amino acid disorder is associated with a specific enzyme deficiency. Treatment depends on the specific amino acid disorder.

"Biotinidase Deficiency" means an inherited disease caused by the lack of an enzyme that recycles the B vitamin biotin, which if not treated may cause serious complications, including coma and death.

"Birth Defects Registry" means a registry established by the Commissioner of Health to monitor and track birth defects for all infants born in Oklahoma.

"Birthing Facility"means a facility that provides care during labor and delivery, and their newborn infants. This includes a unit of a hospital that is licensed and accredited to provide birthing services, or a freestanding birthing center.

"Certified Laboratory" refers to the Oklahoma State Public Health Laboratory and/or a laboratory approved by the Oklahoma State Department of Health to conduct newborn screening.

"CCHD Screening" means the screening test for the detection of critical congenital heart disease that are recommended by the United States Department of Health and Human Services.

"CLIA '88" means the Clinical Laboratory Improvement Amendments of 1988, public law 100-578. This amendment applies to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

"Confirmatory Testing" means definitive laboratory testing needed to confirm a diagnosis.

"Congenital Adrenal Hyperplasia" or "CAH" will refer to the most common form of CAH, 21-hydroxylase deficiency. This genetic disorder is caused by the lack of an enzyme that the adrenal gland uses to process hormones. Serious loss of body salt and water can result in death. In girls the genitalia may appear as a male's, and can result in incorrect sex assignment. Hormone treatment is required for life.

"Congenital Hypothyroidism" means a disease caused by a deficiency of thyroid hormone (thyroxine) production, which if not treated leads to mental and physical retardation.

"Critical Congenital Heart Disease" means a congenital heart defect that places an infant at significant risk for disability or death if not diagnosed soon after birth.

"Cystic Fibrosis" means a multisystem genetic disorder in which defective chloride transport across membranes causes dehydration of secretions. The result is a production of a thick, viscous mucus that clogs the lungs. This leads to chronic lung infections, fatal lung disease, and also interferes with digestion. Early detection and treatment can prevent malnutrition, and enhance surveillance and treatment of lung infections.

"Days of Age" means the age of a newborn in 24-hour periods so that a newborn is one day of age 24 hours following the hour of birth for both blood spot screening and pulse oximetry screening.

"Department" refers to the Oklahoma State Department of Health.

"Discharge" means release of the newborn from care and custody of a perinatal licensed health facility to the parents or into the community.

"Disorder" means any condition detectable by newborn screening that allows opportunities, not available without screening, for early treatment and management to prevent mental retardation and/or reduce infant morbidity and mortality.

"Echocardiogram" means a test that uses ultrasound to provide an image of the heart.

"Fatty Acid Oxidation Disorders" refers to a group of inherited metabolic conditions in which the body is unable to oxidize (breakdown) fatty acids for energy due to a defective enzyme function. If not treated early in life this defect may cause mental retardation or death.

"Form Kit" or **"Newborn Screening Form Kit"** is a FDA approved (or licensed) filter paper kit bearing a stamped lot number that has been approved by the Commissioner of Health. For an example of a FDA approved kit, see Appendix A, Oklahoma Health Department (OHD) Form Kit #450.

"Galactosemia" means an inherited disease caused by the body's failure to break down galactose due to a defective enzyme function, which if not treated early in life may cause mental retardation or death.

"Hemoglobin" means a protein in the red blood cell that carries oxygen.

"Hemoglobinopathy" means an inherited hemoglobin disorder.

"Infant" means a child 6 months of age and under.

"Infant's Physician" means the licensed medical or osteopathic physician responsible for the care of the newborn.

"Initial Specimen" means the first blood specimen collected subsequent to birth, pursuant to these procedures.

"Long-term Follow-up" means follow-up services that begin with diagnosis and treatment and continues throughout the lifespan, including parent education, networking, referral, and case coordination.

"Medium-chain acyl coenzyme A dehydrogenase deficiency or **"MCAD"** means a genetic disorder of fatty acid metabolism. This disorder can cause metabolic crisis when an infant/child fasts. This crisis can lead to seizures, failure to breathe, cardiac arrest and death. Treatment is effective by preventing fasting.

"Newborn" means an infant 30 days of age and under.

"Newborn Screening" or "newborn screening tests" means screening infants for the disorders of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health and critical congenital heart disease (CCHD) via pulse oximetry screening conducted by birthing facilities on all newborns born in the state of Oklahoma.

"Newborn Screening Laboratory" means a laboratory operated by the Department or a laboratory certified by the Department to conduct the tests and carry out the follow-up required by these procedures.

"Newborn Screening Program" refers to the Public Health Laboratory and ~~Family Health~~ Prevention and Preparedness Services Short-term Follow-up Program at the Oklahoma State Department of Health.

"Newborn Screening Program Coordinator" refers to the coordinator of the ~~Family Health~~ Prevention and Preparedness Services Short-term Follow-up Program at the Oklahoma State Department of Health.

"Organic Acid Disorders" refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process organic acids properly. Each organic acid disorder is associated with a specific enzyme deficiency that causes the accumulation of organic acids in blood and urine. The accumulated compounds or their metabolites are toxic, resulting

in the clinical features of these disorders including mental retardation and death.

"Pediatric Sub-Specialist" means a physician licensed in Oklahoma, board certified in pediatrics and board certified in a pediatric sub-specialty of pediatric endocrinology, pediatric pulmonology, or pediatric hematology; or a physician licensed in Oklahoma, board certified in pediatrics whose primary area of practice is pediatric endocrinology, pediatric hematology, pediatric pulmonology, or metabolic specialist.

"Phenylketonuria" or **"PKU"** means an inherited disease caused by the body's failure to convert the amino acid phenylalanine to tyrosine due to defective enzyme function, which if not treated early in life, causes mental retardation.

"Planned Health Care Provider" or "Medical Home" means the health care provider who will be providing health care for the infant after discharge from the hospital.

"Premature Infant" means an infant weighing less than 2500 grams or any live birth before the thirty-seventh week of gestation.

"Pulse Oximetry Screening" means a test using a device placed on an extremity to measure the percentage of oxygen in the blood.

"Repeat Specimen" means an additional newborn screening specimen to be collected after the initial specimen.

"Satisfactory Specimen" means a specimen collected using a single form kit which is suitable in both blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health. All requested demographic information on the form kit must be completed. Federal CLIA '88 regulations require that the form kit's laboratory requisition contain sufficient patient data that must include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting the test.

"Screened" means a specimen that has been collected and tested on an infant less than 6 months of age.

"Screening" means a test to sort out apparently well persons who probably have a disease or defect from those who probably do not. A screening test is not intended to be diagnostic.

"Severe Combined Immunodeficiency" means a group of potentially fatal inherited disorders related to the immune system, which if not treated can lead to potentially deadly infections.

"Short-term Follow-up" includes services provided by the Department and the health care provider that begins when the laboratory reports an abnormal or unsatisfactory screen result and ends with a diagnosis of normal, lost (repeat testing not achieved), or affected with appropriate treatment and referral has been initiated.

"Sick Infant" means an infant with any condition or episode marked by pronounced deviation from the normal healthy state; illness.

"Sickle Cell Disease" means an inherited disease caused by abnormal hemoglobin(s) which if not treated early in life may result in severe illness, mental retardation or death (one variation is commonly referred to as sickle cell anemia).

"Specimen" means blood collected on the filter paper Newborn Screening Form Kit.

"Submitter" means a hospital, other facility, or physician submitting a Newborn Screening specimen.

"Transfer" means release of the newborn from care and custody from one licensed health facility to another.

"Unsatisfactory Specimen" means a specimen which is not collected on a form kit and/or is not suitable in blood quantity and quality to perform screening for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health and/or Federal CLIA '88 regulations are not followed and the form kit's laboratory requisition does not include patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting test.

SUBCHAPTER 3. TESTING OF NEWBORNS

310:550-3-1. Testing of newborns

(a) All newborns in Oklahoma shall be tested by a Certified Newborn Screening Laboratory for phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD)~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services, infants shall be screened for~~, biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health; a parent or guardian may refuse screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices.

(b) All newborns in Oklahoma shall be tested for CCHD by a pulse oximetry screening after twenty-four (24) hours of age or prior to discharge from the birthing facility.

(c) A parent or guardian who refuses the newborn screening blood test or pulse oximetry screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices shall also indicate in writing this refusal utilizing the Newborn Screening Program Parent Refusal Form as illustrated in Appendix C of this Chapter. This signed refusal form shall be placed in the newborn's medical record with a copy sent to the Newborn Screening Program Coordinator.

SUBCHAPTER 5. SPECIMEN COLLECTION

310:550-5-1. Specimen collection

(a) **Specimen collection for hospital births.** For all live hospital births, the physician, licensed or certified birth attendant shall order the collection of a newborn screening specimen on all newborns prior to transfusion, as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen should be collected as early as possible after 24 hours of age. Specimens shall be collected on a single Newborn Screening Form Kit using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(1) If the initial specimen for any infant is collected prior to 24 hours of age, the hospital and the physician are responsible for notifying the infant's parents verbally and in writing, utilizing the parent educational form on the Newborn Screening Form Kit, that a repeat specimen is necessary at three to five days of age. The infant's physician is responsible for insuring that the repeat specimen is collected.

(2) The hospital is responsible for submitting a Satisfactory Specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge or if the infant is to be hospitalized for an extended period of time the name of the infant's physician.

(3) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(4) Infants who are transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician and the receiving hospital to ensure the specimen is collected.

(5) It is the responsibility of the hospital and physician to ensure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn Screening Program Coordinator shall be notified. The physician is responsible for ensuring the specimen is collected as required.

(b) **Screening for premature/sick infants.** For all premature/sick infants, the physician shall order the collection of a newborn screening specimen prior to red blood cell transfusion, at three to seven days of age or immediately prior to discharge, whichever comes first. Due to the need to identify infants at risk for the disorders quickly, the specimen should be collected as early as possible after 24 hours of age. It is recommended that a repeat newborn screening specimen be collected at 14 days of age. Specimens shall be collected on the Newborn Screening Form Kit using capillary or venous blood. The hospital and the physician are responsible for ensuring that specimens are collected on all premature/sick infants.

(1) Premature/sick infants screened prior to 24 hours of age must be re-screened between 7-14 days of age.

(2) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be screened by the 7th day of life, with a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes and hemoglobin type (the accepted time period to determine hemoglobin type is 90 to 120 days after transfusion).

(3) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a serum free T4 (measured by direct dialysis or an equivalent method) and TSH at 7-14 days of age.

(c) **Specimen collection for out-of-hospital births.**

(1) All infants who are not born in a hospital shall be tested ~~at~~ as early as possible after 24 hours of age. The infant's physician, licensed or certified birth attendant is responsible for submitting a Satisfactory Newborn Screening Specimen. If there is not a physician, licensed or certified birth attendant involved in a non-hospital birth, the person attending the birth and the parents of the infant are responsible for submitting a Satisfactory Newborn Screening Specimen.

(2) If a physician examines a child in the first three months of life who was not born in a hospital, or born out of state, the physician will verify that the child has been screened. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen.

310:550-5-2. Technique for filter paper sample collection and pulse oximetry screening

(a) **Filter paper sample collection.**

(1) Specimens obtained with a Newborn Screening Form Kit should be collected in accordance with Appendix A of this Chapter. Failure to follow these methods of blood collection may cause inaccurate results and require repeat specimens.

(~~b~~2) Submitters are responsible for submitting a Satisfactory Newborn Screening Specimen.

(b) **Pulse oximetry screening.**

(1) **Pulse oximetry screening.** Pulse oximetry screening will be performed utilizing hospital protocol. See Appendix E for recommended protocol.

(2) **Authorized provider.** An authorized health care provider shall perform the pulse oximetry screening.

(3) **Newborn Infants Receiving Routine Care.**

(A) The birthing facility or nurse shall:

(i) Perform pulse oximetry screening on the newborn infant between twenty-four (24) hours and forty-eight (48) hours of life; or

(ii) If unable to perform the pulse oximetry screening, schedule the infant to be screened at the facility between twenty-four (24) hours and forty-eight (48) hours of life; or

(iii) Notify the infant's physician if screening was not performed.

(B) If the newborn infant is discharged from a facility after 12 hours of life but before twenty-four (24) hours of life, the birthing facility shall perform pulse oximetry screening as late as is practical before the newborn infant is discharged from the birthing facility and shall notify the infant's physician of the early screening.

(C) If the infant is discharged before 12 hours of life, the birthing facility shall perform the pulse oximetry screening between twenty-four (24) hours and forty-eight (48) hours of life.

(4) **Newborn infants in Special Care or Intensive Care.** Birthing facilities shall perform pulse oximetry screening on infants prior to discharge utilizing protocol recommended in appendix E, unless the infant has an identified congenital heart defect or has an echocardiogram done. Continuous pulse oximetry monitoring may not be substituted for CCHD screening.

(5) **Circumstances Where Pulse Oximetry Screening is not Indicated.** There may be instances where screening for CCHD is not indicated, including but not limited to instances where:

(A) The newborn infant's clinical evaluation to date has included an echocardiogram which ruled out CCHD; or

(B) The newborn infant has confirmed CCHD based on prenatal or postnatal testing.

(C) Indicate on NBS filter paper the pulse oximetry screening was not performed.

SUBCHAPTER 7. HOSPITAL RECORDING

310:550-7-1. Hospital recording

(a) **Newborn Screening Results.**

(1) The hospital shall implement a procedure to ensure that a newborn screening specimen has been collected on every newborn and transported to the Newborn Screening Laboratory within ~~24—48~~twenty-four (24) to forty-eight (48) hours of collection.

(~~b~~2) The hospital shall immediately notify the infant's physician, parents or guardians, and Newborn Screening Program Coordinator if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(~~c~~3) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician.

(~~d~~4) Any hospital or any other laboratory which collects, handles or forwards newborn screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician, name of the planned health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the Newborn Screening Form Kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results.

(~~e~~5) Specimens should be transported in the manner designated by the Department.

(b) **Pulse Oximetry Screening Results.**

(1) **Recordation of Results.**

(A) All pulse oximetry screening results shall be recorded in the newborn infant's medical record and the results reported to a parent or guardian prior to discharge from the hospital.

(B) All pulse oximetry screening results shall be recorded on the Newborn Screening Collection Kit (ODH #450), found in Appendix A, along with the following information:

(i) Newborn infant's:

(I) Name;

(II) Date of birth;

(III) Place of birth; and

(IV) Primary care physician after discharge; and

(ii) Mother's Name.

(C) If the infant is not screened for CCHD prior to the Newborn Screening Collection Kit being forwarded to the Public Health Laboratory for testing, fax documentation of CCHD screen results to the Oklahoma State Department of Health (OSDH) Newborn Screening (NBS) Program utilizing Appendix E. Include information listed above along with screen results.

(2) **Abnormal Pulse Oximetry Screen Results.**

(A) Abnormal pulse oximetry screening results shall be reported by the authorized health care provider who conducted the screening to the attending physician or attending clinician immediately.

(B) A newborn infant shall be evaluated immediately by an attending physician in order to complete the recommended protocol.

(C) A newborn infant may not be discharged from care until:

(i) A cause for the abnormal pulse oximetry screen has been determined;

(ii) An echocardiogram has been performed, read, and determined not to indicate CCHD; and/or

(iii) A plan of care and follow-up has been established with the infant's parent or guardian.

(D) The birthing facility shall report pulse oximetry screening results to the OSDH as specified in this regulation.

(E) The birthing facility shall provide notification of abnormal pulse oximetry results to the newborn infant's:

(i) Parent or guardian;

(ii) Physician or clinician following the inpatient infant; and

(iii) Primary care provider.

(3) **Newborn Infants Not Screened for CCHD.**

(A) If a newborn infant is not screened for CCHD secondary to discharge before 12 hours of life, the birthing facility shall:

(i) Follow-up with the family to screen the infant at their facility between twenty-four (24) and forty-eight (48) hours of life; or

(ii) Follow-up with the family to refer to an authorized facility for screening between twenty-four (24) and forty-eight (48) hours of life after discharge from the facility; and

(iii) Report screening results to the Department utilizing the form in Appendix E and indicating the reason for not screening which shall be "early discharge".

(B) If the newborn infant is not screened for CCHD secondary to screening not being indicated, the birthing facility shall report results to the Department utilizing the form in Appendix E and indicate the reason for not screening, which shall be "screening not indicated," with a notation for the reason pulse oximetry screening was not performed

(C) If the newborn infant is not screened secondary to parent or guardian refusal, the birthing facility shall fax a refusal form to the Department utilizing the form in Appendix C and indicate the reason for not screening, which shall be "parent refusal".

SUBCHAPTER 13. PARENT AND HEALTH CARE PROVIDER EDUCATION

310:550-13-1. Parent and Health Care Provider education

(a) The infant's physician or designee shall have the responsibility to ensure that at least one of each newborn's parent or legal guardian is notified about newborn screening and is provided information about the disorders and instructed to obtain screen results from the planned health care provider or Newborn Screening Program.

(b) The infant's physician or designee shall have the responsibility to ensure that at least one of each of the newborn's parent or legal guardian is notified about the pulse oximetry screening and is provided information about the pulse oximetry screening and instructed to obtain screen results from the birthing facility or the planned health care provider.

(c) The hospital will be responsible or designate a responsible party to distribute the Newborn Screening Program's written educational materials on newborn screening and pulse oximetry screening provided by the Department to at least one of each newborn's parent or legal guardian.

(~~c~~d) Hospitals shall provide ongoing training programs for their employees involved with newborn screening and pulse oximetry screening procedures. These training programs shall include methods of collecting a ~~Satisfactory Newborn Screening Specimen~~satisfactory newborn screening specimen and proper pulse oximetry screening method.

(~~d~~e) The hospital is responsible for ensuring that employees who collect, handle or perform newborn screening tests or perform pulse oximetry screening are informed of their responsibilities with respect to screening procedures.

SUBCHAPTER 17. FOLLOW-UP FOR PHYSICIANS

310:550-17-1. Follow-up for physicians

(a) If a physician examines a child in the first three months of life, the physician will verify that the child has been screened, and document results in the infant's medical record. If the child has not been screened or if results of screening are not available, the physician should submit a Satisfactory Newborn Screening Specimen within 48 hours or as soon as possible.

(b) On written notification by the Newborn Screening Program of follow-up requirements for a newborn screen result of abnormal, unsatisfactory and less than 24 hours of age at time of collection; the infant's physician or designee will obtain required repeat screening, confirmatory testing, or diagnostic studies, in the timeframe specified so that therapy, when indicated, can be initiated expediently.

(c) The infant's physician may selectively rescreen infants as clinically indicated.

(d) Because patients may relocate without a forwarding address or contact information, where these rules place responsibility upon physicians and hospitals to follow-up or notify parents, then that shall be deemed to require only that a reasonable search be made and that if the parents are not contacted that the Newborn Screening Program Coordinator be notified of the non-follow-up or non-notification after efforts to contact the parents have been exhausted.

(e) For appropriate comprehensive medical care, all confirmed cases of congenital hypothyroidism, galactosemia, phenylketonuria, sickle cell disease, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health, should have a referral to a pediatric sub-specialist, and the parent should be referred for enrollment in newborn screening long-term follow-up services as designated by the Newborn Screening Program. For referral information, please contact the Newborn Screening Short-term Follow-up Program at (405) 271-6617 or 1-800-766-2223, ext. 6617.

SUBCHAPTER 19. REPORTING

310:550-19-1. Physician Reporting and Medical Records

(a) If confirmatory or follow-up testing is not performed by the Newborn Screening Laboratory or through a contract laboratory designated by the Newborn Screening Program, the infant's physician must report to the Newborn Screening Program Coordinator the results within 7 days after the completion of the medical evaluation, using the Department's Newborn Screening Report Form as illustrated in Appendix B of this Chapter. A copy of the confirmatory test results must accompany the report form.

(b) For all diagnosed cases of phenylketonuria, congenital hypothyroidism, galactosemia, sickle cell diseases, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), ~~and after October 1, 2007, upon completion of validation studies and establishment of short-term follow-up services,~~ biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, ~~and~~ organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health, the infant's physician shall report treatment date if applicable, and referral information to the Newborn Screening Program Coordinator by completing the Department's Newborn Screening Report Form as illustrated in Appendix B of this Chapter.

(c) These reports shall be confidential and may be utilized only for the purpose of ensuring service delivery, program administration, data analysis, and evaluation.

(d) On request, a birthing facility or health care provider shall make available to the OSDH NBS Program or Oklahoma Birth Defects Registry:

(1) Medical records;

(2) Records of laboratory test; and

(3) Any other medical information considered necessary to:

(A) Determine final outcomes of abnormal CCHD screening results; and

(B) Evaluate CCHD screening activities in the State; including:

(i) Performance of follow-up evaluations and diagnostic tests;

(ii) Initiation of treatment when necessary; and

(iii) Surveillance of the accuracy and efficacy of the screening.

(e) Information that the Department receives under this chapter is confidential and may only be used or disclosed:

(1) To provide services to the newborn infant and the infant's family;

(2) To study the relationships of the various factors determining the frequency and distribution of CCHD;

(3) For State or federally mandated statistical reports; and

(4) To ensure that the information received by the Department is accurate and reliable.

SUBCHAPTER 21. INFORMATION

310:550-21-1. Information

(a) For information regarding laboratory procedures, or results of laboratory tests or to order form kits, contact Public Health Laboratory Service, Oklahoma State Department of Health, P.O. Box 24106, Oklahoma City, Oklahoma 73124-0106, (405) 271-5070, FAX (405) 271-4850.

(b) For general information or information regarding follow-up for newborn screening or pulse oximetry screening, contact Newborn Screening Short-term Follow-up Program, ~~Family Health~~ Prevention and Preparedness Services, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. General information about the Newborn Screening Program is available on the OSDH Web site at www.health.ok.gov.

APPENDIX A. INSTRUCTIONS FOR FILTER PAPER SAMPLE COLLECTION [REVOKED]

APPENDIX A. INSTRUCTIONS FOR FILTER PAPER SAMPLE COLLECTION [NEW]

Adapted from CLSI *Blood Collection on Filter Paper for Newborn Screening Programs*; Approved Standard-Fifth Edition, LA4-A5, Vol.27 No.20, 2007.

Preliminary Steps
Ensure that the expiration date of the filter paper form kit has not passed. Complete the required information on the filter paper form kit. A ballpoint pen should be used; soft-tip pins will not copy through to the other sheets of paper. Address imprint devices (or adhesive labels) should never be used unless the handling process ensures that the patient information is not obscured and the blood collection area is not compromised. Do not use typewriters or printers that might compress the paper. Avoid touching the area within the circles on the filter paper section before, during and after collection (blood spots) of the specimen. Do not allow water, feeding formulas, antiseptic solutions, glove powder, hand lotion, or other materials to come into contact with the specimen card before or after use.

Precautions
Confirm the identity of the infant and ensure accuracy of the demographic data on the card. Wash hands vigorously before proceeding. All appropriate precautions, including wearing powder-free gloves (changing gloves between infants), should be taken for handling blood and disposing of used lancets in a biohazard container for sharp objects.

Site Preparation
Warm the newborn's heel, since warming the skin-puncture site can help increase blood flow. A warm, moist towel or diaper at a temperature no higher than 42° C may be used to cover the site for 3 minutes. This technique increases the blood flow sufficiently and will not burn the skin. In addition, positioning the infant's leg lower than the heart will increase venous pressure.

Cleaning the Site
The skin should be wiped with alcohol (isopropanol/water: 70/30 by volume, "70%"). Allow the skin to air dry.

Puncture
To obtain sufficient blood flow, puncture the infant's heel on the plantar surface of the heel with a sterile lancet or with a heel incision device. The incision device provides excellent blood flow by making a standardized incision 1.0 mm deep by 2.5 mm long. Any puncture device used should be selected so that the puncture does not exceed 2.0 mm in depth. For infant safety, scalpel blades or needles must not be used to puncture the skin for blood collection. Disposable skin puncture lancets of different designs are commercially available for performing the heel stick on infants. For worker safety, disposable skin puncture devices that protect the user from unintentional self-inflicted skin punctures should be used.

In small, premature infants, the heel bone (calcaneus) might be no more than 2.0 mm beneath the plantar heel skin surface and half this depth at the posterior curvature of the heel. Studies indicate that for some infants (including full-term infants) a puncturing depth of 2.0 mm might be excessive and might cause bone damage. In this situation other collection methods should be considered.

Direct Application
After the heel has been punctured, wipe away the first drop of blood with a sterile gauze pad or cotton ball and allow a larger drop of blood to form. (Intermittently apply gentle pressure to the heel with the thumb, and ease this pressure as drops of blood form). Touch the filter paper gently against the large blood drop and, in one step, allow a sufficient quantity of blood to soak through and completely fill a preprinted circle on the

filter paper. Do not press the filter paper against the puncture site on the heel. Blood should be applied only to one side of the filter paper. Both sides of the filter paper should be examined to assure that the blood uniformly penetrated and saturated the paper. During collection avoid milking or layering:

Milking: Excessive milking or squeezing the puncture might cause hemolysis of the specimen or result in an admixture of tissue fluids with the specimen and might adversely affect the test result.

Layering: Do not apply layers of successive blood drops to the same printed circle. Applying successive drops of blood to already partially dried spots causes nonuniform analyte concentrations and invalidates the specimens.

After blood has been collected from the heel of the newborn, the foot should be elevated above the body, and a sterile gauze pad or cotton swab pressed against the puncture site until the bleeding stops. It is not advisable to apply adhesive bandages over skin puncture site on newborns.

Collection
The required blood spots should be collected so that there is one in each pre-printed circle of the filter paper. Failure to collect and fill each pre-printed circle might result in the specimen being rejected (unsatisfactory) for testing. If blood flow diminishes so that a circle is not completely filled, repeat the sampling technique using a new circle or, if necessary, a new blood collection card.

For alternative methods to specimen collection (e.g., capillary tube, dorsal hand vein, umbilical venous catheter or umbilical arterial catheter) refer to the CLSI *Blood Collection on Filter Paper for Newborn Screening Programs*; Approved Standard-Fifth Edition (LA4-A5, Vol. 27 No. 20) or contact the Newborn Screening Program Coordinator.

Drying
Avoid touching or smearing the blood spots. Allow the blood specimen to air dry on a horizontally level, nonabsorbent, open surface for at least 3 hours at an ambient temperature of 15° C to 22° C. Keep the specimen away from direct sunlight (indirect room light is not usually detrimental unless accompanied by heat). Blood spots on the filter paper should not be heated, stacked, or allowed to touch other surfaces during the drying process.

The Filter Paper has a new fold-over protective cover. This protective cover is used to protect the blood spots from contamination and can be used in the drying process. To use the protective cover in the drying process simply elevate the blood spots to gently rest on the edge of the protective cover. After drying, the protective cover should be placed over the spots to prevent contamination.

Stacking
Since leaching (cross-contamination) between specimens might occur, specimen-to-specimen contact is not appropriate. Before placing the specimens in a paper envelope for mailing, use the fold-over protective cover to cover each individual blood spot. When stacking of exposed blood spots cannot be avoided, the following procedure should be done:

Before placing the specimens in a paper envelope for mailing, the dried blood spots on the collection card should be rotated 180° from the blood spots on the cards in the stack immediately above and below.

If the physical barrier is used (fold-over protective cover), specimen rotation is not necessary.

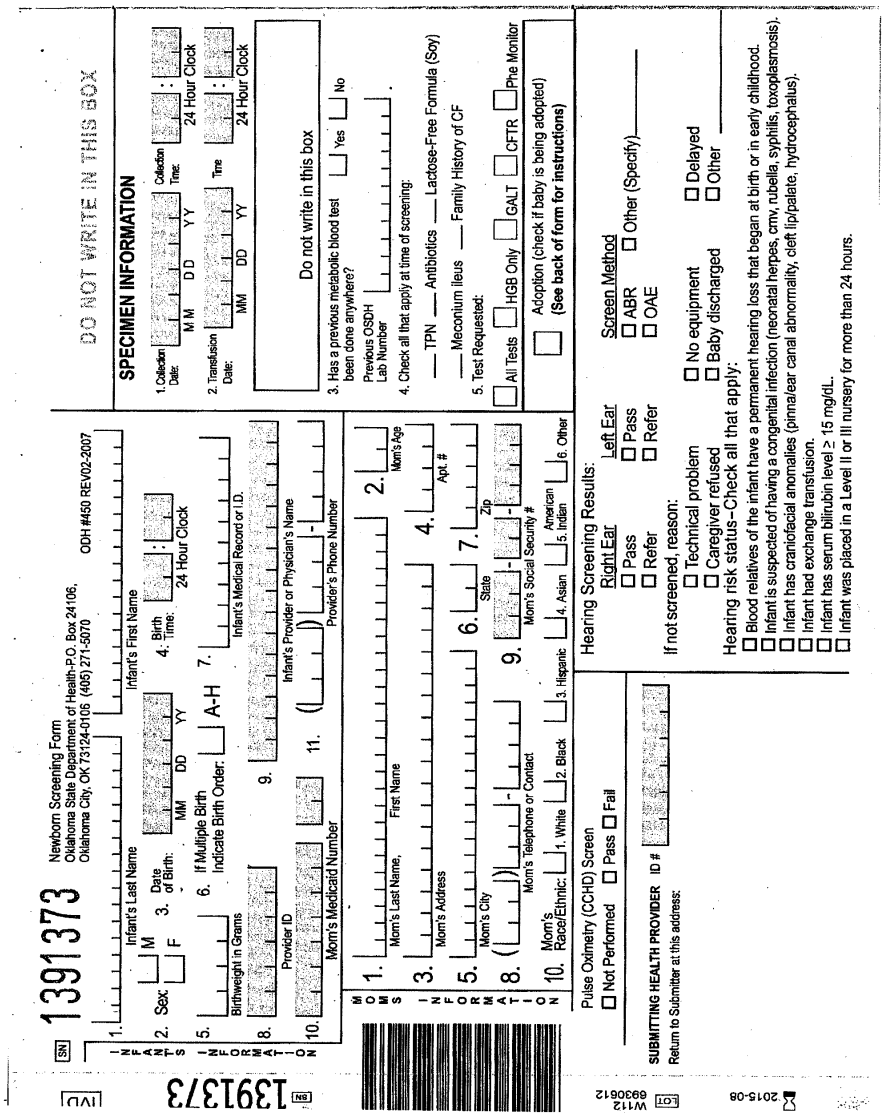
Mailing
Specimens should be transported in the manner designated by the Department. The collection card should

be transported or mailed to the Newborn Screening Program laboratory within twenty-four (24) hours after collection. Mailing delays at collection sites should be avoided, and the postal or transport environment relative to possible delays should be considered. Never place the filter paper specimen in plastic bags. Use the form kit's protective overlay to cover the filter paper spots when mailing or transporting. If mailing the specimens use a U.S. Postal Service approved envelope.

Information

For information regarding specimen collection, Postal regulations, envelope and form kit purchasing, please contact the Newborn Screening Program Laboratory at (405) 271-5070.

OHD #450 Form Kit



SN 13913 73

Newborn Screening Form
Oklahoma State Department of Health-P.O. Box 24106,
Oklahoma City, OK 73124-0106 (405) 271-5070

ODH #450 REV02-2007

INFANTS INFORMATION

1. Infant's Last Name
Infant's First Name
2. Sex: M F
3. Date of Birth: MM DD YY
4. Birth Time: : 24 Hour Clock
5. Birthweight in Grams
6. If Multiple Birth indicate Birth Order: A-H
7. Infant's Medical Record or I.D.
8. Provider ID
9. Infant's Provider or Physician's Name
10. Mom's Medicaid Number
11. ( ) - Provider's Phone Number

MOMS INFORMATION

1. Mom's Last Name, First Name
2. Mom's Age
3. Mom's Address
4. Apt. #
5. Mom's City
6. State
7. Zip
8. ( ) - Mom's Telephone or Contact
9. - - Mom's Social Security #
10. Mom's Race/Ethnic: 1. White 2. Black 3. Hispanic 4. Asian 5. American Indian 6. Other

Pulse Oximetry (CCHD) Screen
☐ Not Performed ☐ Pass ☐ Fail

SUBMITTING HEALTH PROVIDER ID #
Return to Submitter at this address:

DO NOT WRITE IN THIS BOX

SPECIMEN INFORMATION

1. Collection Date: MM DD YY Collection Time: : 24 Hour Clock
2. Transfusion Date: MM DD YY Time: : 24 Hour Clock

Do not write in this box

3. Has a previous metabolic blood test been done anywhere? ☐ Yes ☐ No
Previous OSDH Lab Number
4. Check all that apply at time of screening:
— TPN — Antibiotics — Lactose-Free Formula (Soy)
— Meconium Ileus — Family History of CF
5. Test Requested:
☐ All Tests ☐ HGB Only ☐ GALT ☐ CFTR ☐ Phe Monitor
☐ Adoption (check if baby is being adopted) (See back of form for instructions)

Hearing Screening Results:
Right Ear: ☐ Pass ☐ Refer
Left Ear: ☐ Pass ☐ Refer
Screen Method: ☐ ABR ☐ OAE ☐ Other (Specify)_____
If not screened, reason:
☐ Technical problem ☐ No equipment ☐ Delayed
☐ Caregiver refused ☐ Baby discharged ☐ Other _____
Hearing risk status–Check all that apply:
☐ Blood relatives of the infant have a permanent hearing loss that began at birth or in early childhood.
☐ Infant is suspected of having a congenital infection (neonatal herpes, cmv, rubella, syphilis, toxoplasmosis).
☐ Infant has craniofacial anomalies (pinna/ear canal abnormality, cleft lip/palate, hydrocephalus).
☐ Infant had exchange transfusion.
☐ Infant has serum bilirubin level ≥ 15 mg/dL.
☐ Infant was placed in a Level II or III nursery for more than 24 hours.

IVD 13913 73 SN LOT 6930612 W112 2015-08

OHD #450 Form Kit (cont)

NEWBORN SCREENING PROGRAM

ATTENTION PROVIDER

DETACH AND GIVE TO PARENT OR GUARDIAN

SN 1395395

Baby's Last Name

Baby's First Name

Oklahoma State Department of Health

Newborn Screening Program

OKLAHOMA NEWBORN SCREENING Dried-blood Spot PROGRAM

THE NEWBORN SCREENING BLOOD TEST

A special blood test has been done to protect your baby from hidden disease. The test screens for the disorders listed on the back of this form. These disorders are harmful if treatment is not started within the first month of life (each disorder is explained on the back of this sheet).

WILL FURTHER TESTING BE REQUIRED?

If your baby is tested before 24 hours of age, the test must be repeated at 3 to 5 days of age. If the blood test is abnormal or inadequate to test, a repeat test will be needed. Please contact your baby's physician to determine if your baby needs a repeat test.

ASK YOUR BABY'S DOCTOR FOR THE TEST RESULTS

Please take this form with you to your baby's first doctor visit and ask for test results. If your baby's doctor does not have the test results and you have not been notified by mail, please call the Oklahoma State Department of Health when your baby is three weeks of age at **(405) 271-6617 or 1-800-766-2223.**

OHD #450 Form Kit (cont)

Early Detection and Treatment Provide Oklahoma Infants a Healthy Start

Congenital Hypothyroidism – Congenital hypothyroidism is usually caused by abnormal development or absence of the thyroid gland. Treatment includes daily thyroid medication to prevent mental retardation and poor growth.

Classic Galactosemia – Galactosemia occurs when the baby cannot break down a special sugar in milk called galactose. Treatment includes a galactose free diet.

Congenital Adrenal Hyperplasia 21-hydroxylase Deficiency (CAH) – CAH is caused by the lack of an enzyme that the adrenal gland uses to process hormones. In girls the genitalia may appear like that of a male, and can result in incorrect sex assignment. Treatment includes medication (hormones) to prevent serious illness and death.

Cystic Fibrosis – Cystic Fibrosis is a disorder that causes thick mucus to collect in the lungs and other body organs, which can result in breathing problems, lung infections, and poor digestion of food. Treatment includes medication and close monitoring by the Cystic Fibrosis Center.

Sickle Cell Disease & other hemoglobin disease – Sickle cell disease occurs when the hemoglobin in the red blood cells does not develop normally. Red blood cells have the important job of delivering oxygen to different parts of the body. Treatment includes medication and close monitoring by a Hematologist.

Medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD) & Other Fatty Acid Oxidation Disorders – These conditions prevent the body from using certain fats for energy, particularly during periods without food (fasting). Treatment includes frequent feedings, dietary management, and medication.

Phenylketonuria (PKU) & Other Amino Acid Disorders – Amino Acid Disorders, including PKU, are caused by the body's inability to break down certain proteins in food, or by the body's inability to handle the extra nitrogen produced by the breakdown of protein. Treatment includes strict dietary management and may include medication.

Organic Acid Disorders – These conditions are caused by the body's inability to process certain proteins and/or fats properly. Treatment includes strict dietary management and may include medication.

Biotinidase Deficiency – The vitamin biotin is found in many foods, and is important for proper growth and development. Biotinidase Deficiency prevents babies from using biotin in a normal manner. Treatment includes biotin (vitamin) supplements and regular monitoring.

For all of these disorders, early treatment is needed to prevent severe illness or death.

Special Note: for sickle cell disease and cystic fibrosis screening, the blood test might find that your baby is a "carrier" of a disorder. Genetic Counseling is recommended.

Questions about the newborn screening blood test?
Call: 405-271-6617 or 800-766-2223
E-mail: newbornscreen@health.ok.gov
Web site: http://nsp.health.ok.gov

OHD #450 Form Kit (cont)

Instruction on Specimen Collection and Mailing (Complies with CLSI Standard LA 4 – A5)

SUBMITTER RESPONSIBILITY

1. Completion of form.
2. Collection of an adequate specimen for testing.
3. Send specimens within 24 hours of collection.
4. The quality of the specimen received by the Public Health Laboratory Service.
5. Listing the planned health care provider who will be providing well care for the infant after discharge or infant's physician if the infant is to be hospitalized for extended period of time.

SCREENING REQUIREMENTS FOR ALL NEWBORNS

1. Prior to blood transfusion, as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first.
2. If infant is screened at less than 24 hours of age, repeat screen at 3-5 days of age (if premature or a sick infant, repeat screen at 7-14 days of age).
3. All premature and sick infants should have a repeat screen at 14 days of age.

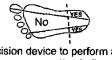
COMPLETION OF FORM

1. Legibly print and complete all information requested.
2. List submitter's return address and submitter ID number. Submitter means the facility or provider who has collected the specimen.
3. List the provider or physician who will be following the baby for well care or the attending physician if the infant is hospitalized for an extended period of time.
4. List the parent's correct address and phone number for notification of abnormal results.
5. Document results of the infant's pulse oximetry (CCHD) screen.

Note: All results are sent to the submitter and the provider listed on the form.

COLLECTION OF BLOOD SPECIMEN

1. To prevent specimen contamination do not touch any of the filter paper circles before or after collection.
2. Select puncture site and cleanse with 70% isopropanol and allow heel to air dry. Usual puncture site is illustrated below.



3. Use a sterile, disposable lancet or heel incision device to perform a swift clean puncture.
4. Wipe away first drop of blood with a sterile gauze or cotton ball.
5. Gently touch the filter paper against a large drop of blood and allow a sufficient quantity of blood to soak through to completely fill the preprinted circle on the filter paper. Blood must be applied to only one side of the filter paper and circle area should be fully saturated.
6. Fill each circle with ONE large drop of blood.
7. Protect freshly collected specimens from contamination.
8. Allow blood specimen to air dry at room temperature for at least 3 hours in a horizontal position. **Do not stack wet specimens. Insufficient drying will adversely affect the test results. DO NOT PLACE FILTER PAPER SPECIMENS IN A PLASTIC BAG.**
9. Specimen may be "Unsatisfactory for Testing" for the following reasons:
   a. Circles not completely filled in or not thoroughly saturated.
   b. Uneven saturation of circles or multiple sample application.
   c. Specimen appears contaminated.
   d. Clotted or caked blood on filter paper, or damaged filter paper.
   e. Assay inhibition due to antibiotic or other substance.
   f. Incomplete elution of blood from filter paper.
   g. Laboratory requisition incomplete or improperly completed.
   h. Results inconsistent – possibly due to improper sample collection.
   i. Specimen submitted on incorrect form or expired form.
   j. No specimen received with form.
   k. Specimen placed in plastic bag while wet.
   l. Receipt of specimen was more than 14 days from date of collection.

To Order Newborn Screening Collection Kits (ODH #450): Call (405) 271-5070

Specimens should be transported in the manner designated by the OSDH Public Health Laboratory Service. Send specimens within 24 hours of collection.

Courier Service address:
NEWBORN SCREENING SECTION
Public Health Laboratory Service
1000 NE 10th Street
Oklahoma City, OK 73117-1299

Mailing address: *(using United States Postal Service)*
NEWBORN SCREENING SECTION
Public Health Laboratory Service
P.O. Box 24106
Oklahoma City, OK 73124-0106

Adoption

If infant is being adopted, check the Adoption box on the front of the form. List the agency or lawyer that is handling the adoption in the "Mom's Information" section. Please note: for proper identification, the "Infant's Information" section must be completed accurately. Questions? Please call (405) 271-6617 or (800) 766-2223.

APPENDIX B. REPORT FORM [REVOKED]

APPENDIX B. REPORT FORM [NEW]

Newborn Screening Program Report Form

Infant's Name:_____ Infant's Birth Date__ __ / __ __ / __ __

Newborn Screening Program Lab #:_____ Mother's Name:_____

[ ] Diagnosis pending, Follow-up Plan:

Final Diagnosis (please attach confirmation lab results)
[ ] Normal
[ ] Trait Condition (specify carrier status)_____
[ ] Classic Galactosemia (GG phenotype/genotype)
[ ] Duarte/Galactosemia Compound Heterozygote (DG phenotype/genotype)
[ ] Congenital Adrenal Hyperplasia due to 21-Hydroxylase Deficiency
[ ] Cystic Fibrosis
[ ] Classic Phenylketonuria (PKU)
[ ] Hyperphenylalaninemia (not clinically significant)
[ ] Hyperphenylalaninemia (clinically significant treatment required)
[ ] Congenital Hypothyroidism
[ ] Medium-chain Acyl Coenzyme A Dehydrogenase Deficiency (MCAD)
[ ] Sickle Cell Disease (specify type)_____
[ ] Hemoglobin disease (specify type)_____
[ ] Biotinidase deficiency
[ ] Fatty Acid Oxidation Disorder (specify)_____
[ ] Organic Acid Disorder (specify)_____
[ ] Amino Acid Disorder (specify)_____
[ ] Severe Combined Immunodeficiency (specify type)_____
[ ] Other(specify)_____

Treatment Indicated? [ ] yes [ ] no
Date treatment started __ __ / __ __ / __ __

Referred to pediatric sub-specialist:
[ ] Endocrinologist (specify name): _____
[ ] Hematologist (specify name): _____
[ ] Metabolic Specialist (specify name): _____
[ ] Pulmonologist (specify name): _____
[ ] Immunologist (specify name):_____

Family referred for (check all that apply):
[ ] Genetic counseling (check provider):
__ Sickle Cell Association __ Geneticist __ Other
[ ] Enrollment in Newborn Screening Long-term Follow-up Program
[ ] Early Intervention Services

Print Physician's Name _____Telephone _____

Physician Signature_____ Date __ __ / __ __ / __ __

Mail or Fax this follow-up form with complete diagnostic information and confirmation lab results to: Prevention and Preparedness Services; ATTN: Newborn Screening Program Coordinator; 1000 NE Tenth Street, Oklahoma City, OK 73117-1299; Fax: (405) 271-4892; For questions or referral information, please call the Newborn Screening Program Coordinator at (405) 271-6617 or 1-800-766-2223.

APPENDIX C. REFUSAL FORM [REVOKED]

APPENDIX C. REFUSAL FORM [NEW]

Oklahoma State Department of Health
Refusal of the Newborn Screening Blood Test
Religious Tenets and Practices Refusal

Infant's Name:_____Medical Record Number:_____

Date of Birth: __ __ / __ __ / __ __

Attending Physician or Provider, print name:_____

Place of Birth:

__ Hospital, print name_____

__ Birthing Facility, print name_____

__ Home Birth

Type of Screen Refused: ___ Newborn Blood Test ____ Pulse Oximetry Screen

I have received and read the parent educational brochure printed by the Oklahoma Department of Health on the Newborn Screening blood test and pulse oximetry screening. I understand that these disorders are easily detected by testing a small blood sample from my baby's heel or by measuring the amount of oxygen in my baby's blood.

I have been informed that all newborns are required by law (under 63 O.S. 2002, Sections 1-533 and 1-534) to have a newborn screening test collected and pulse oximetry screening performed.

I have been informed and I understand that this screening is done to detect these disorders because symptoms sometimes do not appear for several weeks or months, and irreversible damage can occur before symptoms become apparent to a family or a physician.

I have been informed and I understand that, if untreated, these conditions may cause permanent damage to my child, including mental retardation, growth failure, and even death. This permanent health damage can be prevented through early detection and treatment.

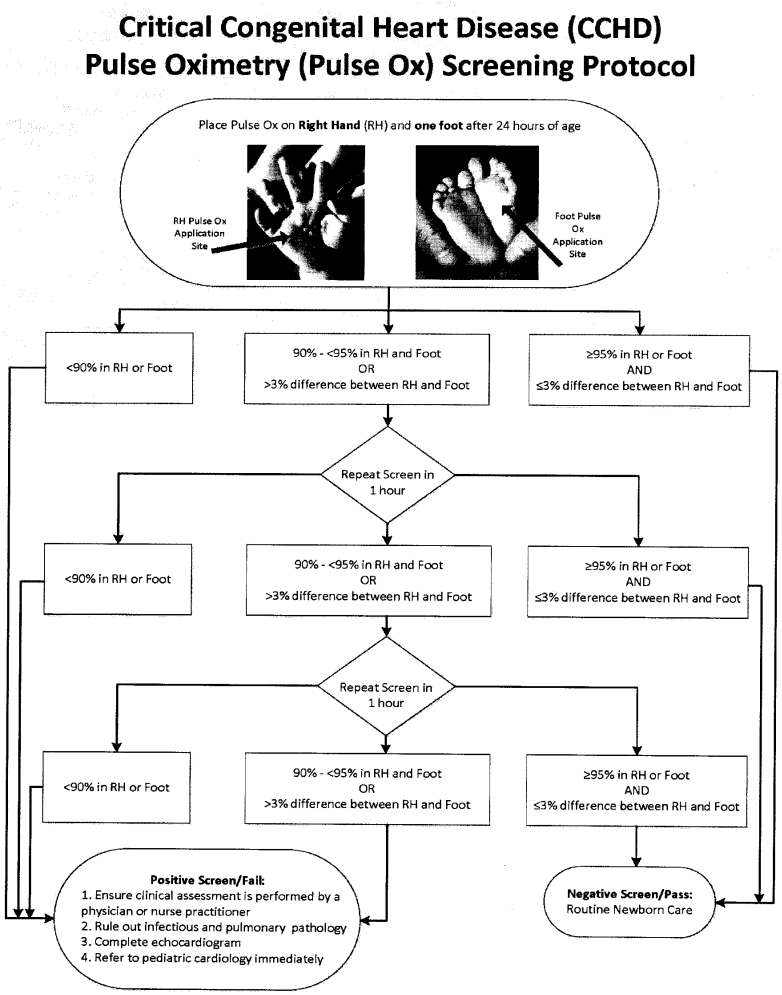
I have discussed the newborn screening test and pulse oximetry screening with my physician or health care provider and I understand the risks to my child if the screening test is not completed.

I understand that the law allows a parent or guardian to refuse newborn screening and pulse oximetry screening based on the grounds that such examination conflicts with a person's religious tenets and practices. I elect to refuse newborn screening on that such testing of my infant conflicts with my religious tenets and practices. My decision was made freely and I accept the legal responsibility for the consequences of this decision.

_____	_____	___/___/___
Printed Parent/ Guardian's Name	Parent/Guardian Signature	Date
_____	_____	___/___/___
Print Witness Name	Signature of Witness	Date

Original to infant's record, provide a copy to parent, and forward copy by fax or mail to: Oklahoma State Department of Health, Newborn Screening Program Coordinator, 1000 NE Tenth Street, Oklahoma City, OK 73117-1299, (405) 271-6617 or 1-800-766-2223; Fax (405) 271-4892.

APPENDIX D. RECOMMENDED PULSE OXIMETRY SCREENING PROTOCOL [NEW]



APPENDIX E. PULSE OXIMETRY SCREENING RESULT FORM [NEW]

Oklahoma State Department of Health
Pulse Oximetry Screening Result Form

Infant Information:

Infant's Last Name: _____ Infant's First Name: _____

Medical Record Number: _____ Primary Physician: _____

Date of Birth: ___/___/___ Birth Hospital: _____

Mother's Last Name: _____ Mother's First Name: _____

Pulse Oximetry Screening:

Date of Screening: __/__/__

Age at Time of Screening: _____Days or ____Hours

Result:_Pass/Negative ___Fail/Positive ___Not Performed

Complete this section only if pulse oximetry screen was not performed:

Reason pulse oximetry screening not perform:

____Early Discharge

____Screening Not Indicated due to _____

____Parent Refusal

Screener's Name:_____

Screener's Signature:_____ Date: __/__/__

Mail or Fax this follow-up form to: Oklahoma State Department of Health
Prevention and Preparedness Services
ATT: Newborn Screening Program Coordinator
1000 NE Tenth Street
Oklahoma City, OK 73117-1299
Fax: (405) 271-4892

For questions or referral information, please call the Newborn Screening Program Coordinator at (405) 271-6617 or 1-800-766-2223.

[OAR Docket #14-812; filed 7-18-14]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 658. INDEPENDENT REVIEW ORGANIZATION CERTIFICATION RULES [REVOKED]

[OAR Docket #14-813]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
310:658-1-1. Purpose [REVOKED]
Subchapter 3. Applying for a Certificate [REVOKED]
310:658-3-1. Application required [REVOKED]
310:658-3-2. Description of application form [REVOKED]
Subchapter 5. Standards for Independent Review Organizations [REVOKED]
310:658-5-1. Procedures for informed consent [REVOKED]
310:658-5-2. Independence and objectivity of review organization and process [REVOKED]
310:658-5-3. Independence and objectivity of health care professionals [REVOKED]
310:658-5-4. Identity of physician [REVOKED]
310:658-5-5. Confidentiality of records and information [REVOKED]
310:658-5-6. Expedited appeals [REVOKED]
310:658-5-7. Fair business practices [REVOKED]
310:658-5-8. Other duties of independent review organizations [REVOKED]
Subchapter 7. Issuance or Denial of Certificate [REVOKED]
310:658-7-1. Conditions for issuance or renewal [REVOKED]
310:658-7-2. Duration of certificate [REVOKED]
310:658-7-3. Denial or nonrenewal of application [REVOKED]
310:658-7-4. Certificate transfer [REVOKED]
Subchapter 9. Duties of Health Benefit Plans [REVOKED]
310:658-9-1. Information provided to the Department [REVOKED]
310:658-9-2. Information provided to independenet review organization [REVOKED]
Subchapter 11. Forms for Use by Insured Persons [REVOKED]
310:658-11-1. Request for external review form [REVOKED]
310:658-11-2. Medical records release form [REVOKED]
310:658-11-3. Informed consent form [REVOKED]
Subchapter 13. Department Procedures [REVOKED]
310:658-13-1. Request for external review form [REVOKED]
310:658-13-2. List of certified independent review organizations [REVOKED]
Subchapter 15. Reporting Requirements [REVOKED]
310:658-15-1. Records [REVOKED]
310:658-15-2. Annual Reports [REVOKED]
310:658-15-3. Decision fiilngs [REVOKED]
Subchapter 17. Prohibited Acts [REVOKED]
310:658-17-1. Prohibited acts [REVOKED]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. § 1-104; Title 36 O.S. § 6475.1.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This action revokes the rules of the Board of Health concerning independent review organization certification and external review. Effective August 26, 2011, The Uniform Health Carrier External Review Act, sections 25 through 41 of House Bill 2072 (2011), transferred responsibility for external reviews and approval of independent review organizations to the Oklahoma Insurance Department [see Title 36 O.S. § 6475.1 et. seq.]. The Oklahoma Insurance Department promulgated emergency rules, effective September 12,, 2011, and later superseded those emergency rules with permanent rules, effective July 14, 2012 [see Title 365, Insurance Department, Chapter 10, Subchapter 29 - External Review Regulations.]
CONTACT PERSON:
James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to james@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:658-1-1. Purpose [REVOKED]

~~This Chapter provides for certification of independent review organizations under authority of the following laws: 63 O.S. Supp. 1999, Section 2528.1 et seq., (the Oklahoma Managed Care External Review Act); and 75 O.S. Supp. 1998, Section 250.1 through 323, (Administrative Procedures Act).~~

310:658-1-2. Definitions [REVOKED]

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

~~**"Act"** means the Oklahoma Managed Care External Review Act, Title 63 O.S. Supp. 1999, Section 2528.1 et seq.~~

~~**"Department"** means the Oklahoma State Department of Health.~~

~~**"Designee"** means *an individual designated through expressed written consent by an insured person to represent the interests of the insured person, including, but not limited to, the insured person's physician or where applicable such person's primary care physician* [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~**"Health benefit plan"** or **"Plan"** means *individual or group hospital or medical insurance coverage, a not for profit hospital or medical service or indemnity plan, a prepaid health plan, a health maintenance organization, a preferred provider plan, the State and Education Employees Group Insurance Plan, coverage provided by a Multiple Employer Welfare Arrangement (MEWA), or a self insured plan* [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~**"Informed consent form"** means a document to be *signed by the insured person or the designee of the insured person acknowledging receipt of a copy of the terms and conditions of the external review process as provided by* Title 63 O.S. Supp. 1999 Section 2528.5 *and acknowledging understanding of and consent to such terms and conditions* [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~**"Insured person"** means *an individual who receives medical care and treatment through a health benefit plan. In the case of a minor child, the term includes the parent or legal guardian of the child and, in the case of an incapacitated or partially incapacitated person, the legal guardian of such person* [Title 63 O.S. Supp. 1999, Section 2528.2].~~

SUBCHAPTER 3. APPLYING FOR A CERTIFICATE [REVOKED]

310:658-3-1. Application required [REVOKED]

~~(a) Each prospective independent review organization shall apply for a certificate on a form provided by the Department.~~

~~(b) The individual, partnership, association, corporation, or other public or private legal entity responsible for providing or arranging external reviews shall be the applicant for the certificate.~~

310:658-3-2. Description of application form [REVOKED]

~~(a) The application for a certificate requires information to assess the conformity of an independent review organization to the Act and OAC 310:658 as follows:~~

~~(1) A narrative overview of the independent review organization's operations and its experience in conducting external reviews;~~

~~(2) A copy of the independent review organization's basic organizational documents and bylaws, and a organizational chart;~~

~~(3) The chief executive officer's name and biographical information;~~

~~(4) The contact person's name, business address and telephone number;~~

~~(5) A list of names and official capacities of all persons responsible for the activities of the independent review organization, including:~~

~~(A) All members of the governing body, the officers and directors of a corporation, and the partners or associates of a partnership or association; and,~~

~~(B) Disclosure of any contracts or arrangements between them and the independent review organization, including any appearance of a conflict of interest as specified in the Act;~~

~~(6) A description of the procedures for accomplishing informed consent;~~

~~(7) A description of the procedures or methods for ensuring the independence and objectivity of the review organization and review process, to include a description of the method used to establish fees for external reviews, and a description of the method used to ensure timely selection of expert reviewers;~~

~~(8) A description of the procedures or methods for ensuring the independence and objectivity of health care professionals, including procedures for disseminating to the Department information on the current licenses and clinical practice activities of those professionals;~~

~~(9) A description of the procedures or methods for ensuring that the identity of a physician cannot be a factor in the decision on an appeal;~~

~~(10) A description of the procedures or methods for ensuring the confidentiality of medical records and other confidential information;~~

~~(11) A description of the procedures or methods for conducting external reviews and expedited reviews within time frames under the Act and OAC 310:658, to include procedures or methods for ensuring the availability of expert reviewers on a timely basis;~~

~~(12) Such other information as is essential for the Department to determine the applicant's conformity to the Act and OAC 310:658.~~

~~(b) The application to renew a certificate requires any changes in information previously submitted to the Department by the independent review organization.~~

SUBCHAPTER 5. STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS [REVOKED]

310:658-5-1. Procedures for informed consent [REVOKED]

~~(a) The independent review organization's written notice of decision to accept an appeal for full external review shall advise the insured person or the designee to submit the informed consent form prescribed by the Department to the independent review organization.~~

~~(b) The independent review organization shall ensure that an appeal does not proceed to a full external review before the independent review organization receives the informed consent form signed by the insured person or the designee.~~

310:658-5-2. Independence and objectivity of review organization and process [REVOKED]

~~(a) In addition to eligibility requirements set forth in Section 2528.9.C of the Act, no person or entity shall be certified as an independent review organization if it owns or controls, is owned or controlled by, or exercises common control with any national, state or local illness, health benefit or public advocacy group.~~

~~(b) The independent review organization shall ensure that the identities of the insured person, the designee, the health benefit plan, and any health professionals and health facilities associated with the insured and the plan are not disclosed to any person who will render a decision on an appeal.~~

~~(c) The independent review organization shall ensure that the fees charged to health benefit plans reflect the reasonable~~

~~costs of conducting external reviews, and that the fees do not vary based on the identity of the health benefit plan.~~

~~(d) The independent review organization shall ensure the availability of expert reviewers adequate to comply with the time requirements for external reviews provided in the Act and OAC 310:658.~~

310:658-5-3. Independence and objectivity of health care professionals [REVOKED]

~~(a) The independent review organization shall ensure that an expert reviewer does not receive from the organization and does not attempt to obtain information identifying any party associated with an appeal.~~

~~(b) The independent review organization shall ensure that the expert reviewer relies upon the written record as provided in Section 2528.8 of the Act.~~

~~(c) The independent review organization shall ensure that an expert reviewer meets the qualifications and standards of Section 2528.10 of the Act.~~

310:658-5-4. Identity of physician [REVOKED]

~~The health benefit plan shall ensure that information which would identify a physician associated with an insured person or with a health benefit plan is not disclosed to any person who will render a decision on an appeal relating to that physician.~~

310:658-5-5. Confidentiality of records and information [REVOKED]

~~(a) The independent review organization shall protect against unauthorized disclosure of medical records and confidential information submitted by the physician, the insured person or the designee.~~

~~(b) The independent review organization shall obtain written acknowledgements from all expert reviewers and other personnel associated with the organization indicating understanding that any person causing, aiding, or abetting the unauthorized release of confidential information is responsible for failure to comply with a standard of due care.~~

~~(c) The independent review organization shall ensure that information about the diagnosis, treatment or health of any insured person shall be available to expert reviewers and other personnel only to the extent necessary to accomplish the purposes of this Act and OAC 310:658 and only with the written consent of the insured person or the designee.~~

~~(d) The independent review organization shall ensure that confidential information is not used for marketing or solicitation.~~

310:658-5-6. Expedited appeals [REVOKED]

~~The independent review organization shall ensure that, in the case of a physician certification of emergency, the full external review shall be completed as provided in Section 2528.7.F of the Act. The independent review organization shall make provisions for expeditiously obtaining:~~

~~(1) Medical records;~~

~~(2) Other information submitted by the insured or the insured's physician; and~~

~~(3) Contracts from the health benefits plan.~~

310:658-5-7. Fair business practices [REVOKED]

~~An independent review organization and anyone associated with the independent review organization shall not:~~

~~(1) Enter into any formal or informal relationship or agreement with a health benefit plan to encourage selection of the independent review organization for review of appeals or to influence the outcomes of reviews;~~

~~(2) Advertise or market its services, solicit insured persons or designees, or otherwise entice or encourage any insured person or designee to file an appeal of a health benefit plan decision; or~~

~~(3) Assert or imply directly or indirectly that certification qualifies the independent review organization to provide external reviews except as authorized under the Act and OAC 310:658.~~

310:658-5-8. Other duties of independent review organizations [REVOKED]

~~Each plan shall provide toll-free incoming telephone service that is capable of receiving, accepting or recording information at all times and that is capable of providing appropriate instructions to incoming telephone callers during other than normal business hours.~~

SUBCHAPTER 7. ISSUANCE OR DENIAL OF CERTIFICATE [REVOKED]

310:658-7-1. Conditions for issuance or renewal [REVOKED]

~~The Department shall issue or renew a certificate when the Department finds that the independent review organization meets the requirements of the Act and OAC 310:658.~~

310:658-7-2. Duration of certificate [REVOKED]

~~Each certificate issued or renewed by the Department to an independent review organization shall be effective for a period of two (2) years from the date of issue or renewal, unless earlier revoked or suspended by the Department based on violations of the Act or OAC 310:658.~~

310:658-7-3. Denial or nonrenewal of application [REVOKED]

~~(a) An application for a certificate may be denied or not renewed based on the applicant's failure to demonstrate compliance with the Act and OAC 310:658.~~

~~(b) After denial or nonrenewal, a person or entity may submit a new application for certification.~~

310:658-7-4. Certificate transfer [REVOKED]

~~No certificate shall be issued to any person or entity other than the person or entity making application. A certificate shall not be transferred in whole or part to another person or entity.~~

SUBCHAPTER 9. DUTIES OF HEALTH BENEFIT PLANS [REVOKED]

310:658-9-1. Information provided to the Department [REVOKED]

~~Immediately upon notifying an independent review organization of its selection under Section 2528.6.B.1 of the Act, the Plan shall provide the following to the Department:~~

~~(1) The name of the independent review organization selected by the Plan;~~

~~(2) The name, mailing address, and telephone number of the insured person or the designee; and,~~

~~(3) A copy of the Plan's final decision to deny coverage or reimbursement.~~

310:658-9-2. Information provided to independent review organization [REVOKED]

~~Immediately upon notification from the independent review organization that the insured person has filed the documents required in Section 2528.6.C of the Act, the health benefit plan shall provide the independent review organization with information needed by that organization to determine the insured's conformity to Section 2528.6.D of the Act.~~

SUBCHAPTER 11. FORMS FOR USE BY INSURED PERSONS [REVOKED]

310:658-11-1. Request for external review form [REVOKED]

~~The request for external review form requires the following:~~

~~(1) Identifying information for the insured person and the health benefit plan;~~

~~(2) A statement of the reasons for the request; and~~

~~(3) A blank for the signature of the insured person or the designee.~~

310:658-11-2. Medical records release form [REVOKED]

~~The medical records release form requires the following:~~

~~(1) Identifying information for the insured person;~~

~~(2) A statement authorizing the independent review organization to obtain necessary medical records; and~~

~~(3) A blank for the signature of the insured person or the designee.~~

310:658-11-3. Informed consent form [REVOKED]

~~The informed consent form includes the following:~~

~~(1) A copy of the terms and conditions of the external review process as provided in Section 2528.5 of the Act;~~

~~(2) An acknowledgement of receipt of the terms and conditions;~~

~~(3) An acknowledgement of understanding of and consent to the terms and conditions;~~

~~(4) A blank for identifying information for the insured person and the designee; and~~

~~(5) A blank for the signature of the insured person or the designee.~~

SUBCHAPTER 13. DEPARTMENT PROCEDURES [REVOKED]

310:658-13-1. Request for external review form [REVOKED]

~~Immediately upon receipt of the notice of selection required in OAC 310:658-9-1, the Department shall provide the insured person with the following:~~

~~(1) Notice of the opportunity to object to the selected independent review organization;~~

~~(2) Notice of the forms and information to be provided by the insured person to the independent review organization, to include:~~

~~(A) The request for external review form;~~

~~(B) A copy of the Plan's final decision to deny coverage or reimbursement;~~

~~(C) A medical records release; and~~

~~(D) An informed consent form.~~

310:658-13-2. List of certified independent review organizations [REVOKED]

~~The Department shall make available to all health benefit plans, and update at least annually, a list of certified independent review organizations.~~

SUBCHAPTER 15. REPORTING REQUIREMENTS [REVOKED]

310:658-15-1. Records [REVOKED]

~~Independent review organizations shall maintain written records on all requests for external reviews. Said records shall be available for inspection upon request by the Department.~~

310:658-15-2. Annual reports [REVOKED]

~~An independent review organization shall file with the Department not later than March 1 of each year for the preceding calendar year:~~

~~(1) The year's experience in conducting external reviews, on a form provided by the Department, that includes the following:~~

~~(A) Information on appeals received, accepted, pending and completed;~~

~~(B) Information on expedited reviews; and~~

~~(C) Information on reviews terminated due to plan reconsideration; and~~

~~(2) Such other information as is essential for the Department to determine an independent review organization's compliance with the Act and OAC 310:658.~~

310:658-15-3. Decision filings [REVOKED]

~~An independent review organization shall, within thirty (30) days after reaching a final decision on an external review, submit to the Department the written notification of the decision.~~

SUBCHAPTER 17. PROHIBITED ACTS [REVOKED]

310:658-17-1. Prohibited acts [REVOKED]

~~No person or entity shall assert or imply directly or indirectly that it has been certified by the Department as an independent review organization unless that person or entity first obtains a certificate from the Department.~~

[OAR Docket #14-813; filed 7-18-14]

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

[OAR Docket #14-814]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Medical Records Department
310:667-19-2. [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Sections 1-534, 1-550.5, and 1-705.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATION BY REFERENCE:
"n/a"
ANALYSIS:
This rule change amends the existing rule to include Severe Combined Immunodeficiency Syndrome (SCID) as a new test in the core panel of 29 genetic disorders for newborn screening (NBS) in Oklahoma, as recommended by the Advisory Committee on Heritable Disorders in Newborns and Children - Recommended Uniform Screening Panel (January 21, 2010). This change adds Pulse Oximetry screening for the detection of Critical Congenital Heart Disease to existing newborn screening rules as legislated by HB 1347 (2013) [63 O.S. § 1-550.5]. The new law requires inpatient or ambulatory health care facilities licensed by the State Department of Health that provide birthing and newborn care services to perform a pulse oximetry screening on every newborn in its care prior to discharge from the birthing facility. Minor changes were made to the newborn screening report form submitted by the infant's specialist or primary care provider to include additional information based on new clinical practice. The requisition/collection form was revised to bring the form and rules up to date with practice. Documents added in the appendix include a recommended pulse oximetry screening protocol and a pulse oximetry screening result form.
CONTACT PERSON:
Sharon Vaz, Director, Screening and Special Services, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone (405) 271-6617, e-mail sharonav@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 19. MEDICAL RECORDS DEPARTMENT

310:667-19-2. Reports and records

(a) Reports shall be made by each hospital to the appropriate agency, including but not limited to the following:

(1) Communicable disease.

(2) Births and deaths.

(3) Periodic reports to the Department on forms supplied for this purpose.

(4) Newborn hearing screening report.

(A) All hospital nurseries shall complete a newborn hearing screening report form on all live newborns discharged from their facility. For facilities with a two-year average annual birth census of 15 or greater, physiologic hearing screening results as well as "at risk" indicators must be recorded on the report form; for facilities with a two-year average annual birth census of fewer than 15, "at risk" indicators must be recorded and if physiologic hearing screening is conducted, those results also must be recorded on the report form. It shall be the responsibility of the hospital administrator to assure that the Newborn Hearing Screening Report Form is correctly completed and subsequently submitted to the Department. The hospital administrator may designate one individual, who shall then be responsible for review of all newborn discharge summaries to insure that a report form has been completed for each infant and that the report form is a permanent part of that infant's record. A copy of the hearing screening report form must be given to the infant's caregiver at discharge.

(B) If an infant is transferred from one hospital to another, the second hospital shall be responsible for providing physiologic hearing screening, "risk

indicator" screening, and for completion of the report form.

(C) It shall be the responsibility of the hospital administrator to insure that all completed report forms are mailed to the Department within seven (7) days of an infant's birth.

(D) It shall be the responsibility of the attending physician or licensed independent practitioner to inform parents if their infant passed or was referred on the physiologic hearing screening and/or if the infant is to be considered "at risk" for hearing impairment. Prior to discharge, the attending physician or licensed independent practitioner shall review the completed report form and shall inform the parents of their infant's status. Infants who do not pass the physiologic screening shall be referred for a diagnostic audiological evaluation as soon as possible.

(E) It shall be the responsibility of the coordinator of the Newborn Hearing Screening Program at the Department to arrange for hospital in-service training for all hospital personnel involved in the process of completion of report forms. A manual of procedures shall be available in regard to processing of screening forms. The literature for distribution to parents shall be available from the Department.

(5) Newborn metabolic disorder screening.

(A) **Testing of newborns.** All newborns in Oklahoma shall be tested for phenylketonuria, hypothyroidism, galactosemia and sickle cell diseases~~ by a Certified Newborn Metabolic Disorder Screening Laboratory as defined in Chapter 550 of this Title;~~, cystic fibrosis, congenital adrenal hyperplasia, medium-chain acyl coenzyme A dehydrogenase deficiency (MCAD), biotinidase deficiency, amino acid disorders, fatty acid oxidation disorders, organic acid disorders, and upon completion of laboratory validation studies and establishment of short-term follow-up services, Severe Combined Immunodeficiency (SCID) detectable via the Department's laboratory technology utilized in newborn screening and approved by the Commissioner of Health as defined in Chapter 550 of this Title. All infants born at a birthing facility in Oklahoma shall be screened for Critical Congenital Heart Disease (CCHD) utilizing pulse oximetry.~~a~~A parent or guardian may refuse ~~metabolic disorder~~ newborn screening and/or pulse oximetry screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices. A parent or guardian who refuses ~~metabolic disorder~~ newborn screening or pulse oximetry screening of their newborn on the grounds that such examination conflicts with their religious tenets and practices shall also indicate in writing this refusal in the newborn's medical record with a copy sent to the Newborn ~~Metabolic Disorder~~ Screening Program, ~~Maternal and Child Health~~Prevention and Preparedness~~Service~~Services, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299.

(B) **Specimen collection for hospital births.** For all live hospital births, the physician or licensed independent practitioner shall order the collection of a newborn ~~metabolic disorder~~ screening specimen on all newborns prior to transfusion, ~~at three to five days of age~~as early as possible after 24 hours of age or immediately prior to discharge, whichever comes first. Specimens shall be collected on the Newborn ~~Metabolic Disorder~~Screening Form Kit as described in Appendix A of Chapter 550 of this Title using capillary or venous blood. Cord blood is unacceptable. The hospital is responsible for collecting specimens on all infants.

(i) If the initial specimen for any infant is collected prior to 24 hours of age, the hospital and the physician or licensed independent practitioner are responsible for notifying the infant's parents that a repeat specimen is necessary at three to five days of age. The infant's physician or licensed independent practitioner is responsible for insuring that the repeat specimen is collected.

(ii) The hospital is responsible for submitting a satisfactory specimen and for documenting all requested information on the form kit including the parent/guardian's name, address, phone or contact phone number and the planned health care provider who will be providing well care for the infant after discharge, or if the infant is to be hospitalized for an extended period of time, the name of the infant's physician or licensed independent practitioner.

(iii) The hospital is responsible for documenting specimen collection and results in the infant's hospital record.

(iv) Infants transferred from one hospital to another during the newborn period shall have specimen collection documented in the infant's hospital record. It is the responsibility of the physician or licensed independent practitioner and the receiving hospital to insure a specimen is collected.

(v) It is the responsibility of the hospital and physician or licensed independent practitioner to insure that all infants are screened prior to discharge. If an infant is discharged prior to specimen collection, the Newborn ~~Metabolic Disorder~~ Screening Program Coordinator shall be notified by contacting ~~Maternal and Child Health~~ Newborn Screening Program, Prevention and Preparedness~~Service~~Services, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, Oklahoma 73117-1299, (405) 271-6617, FAX (405) 271-4892, 1-800-766-2223, ext. 6617. The physician or licensed independent practitioner is responsible for insuring the specimen is collected

~~at three to five days of age~~as early as possible after 24 hours of age.

(C) **Pulse oximetry screening for birthing hospitals.** For all live hospital births, the physician or licensed independent practitioner shall order the pulse oximetry screening for newborns to be performed after 24 hours of age or prior to discharge from a facility.

(i) If unable to perform the screening after 24 hours of age or prior to discharge, schedule the infant to be screened at the hospital between 24 hours and 48 hours of life; or notify the infant's physician if screening was not performed.

(ii) If the newborn infant is discharged from a facility after 12 hours of life but before 24 hours of life, the birthing facility shall perform screening as late as is practical before the newborn infant is discharged from the birthing facility.

(iii) If the infant is discharged before 12 hours of life, the birthing facility shall perform the screening between 24 hours and 48 hours of life.

(iv) For newborn infants in special care or intensive care, birthing facilities shall perform pulse oximetry screen on infants prior to discharge utilizing recommended protocol, unless the infant has an identified congenital heart defect or has an echocardiogram performed. Continuous pulse oximetry monitoring may not be substituted for CCHD screening.

(v) There may be instances where screening for CCHD is not indicated, including but not limited to instances where:

(I) The newborn infant's clinical evaluation to date has included an echocardiogram which ruled out CCHD; or

(II) The newborn infant has confirmed CCHD based on prenatal or postnatal testing.

(III) Indicate on NBS filter paper that screening was not performed.

(D) **Screening for premature/sick infants.** For all premature/sick infants, the physician or licensed independent practitioner shall order the collection of a newborn ~~metabolic disorder~~ screening specimen prior to red blood cell transfusion, ~~at three to seven days of age~~as early as possible after 24 hours of age, or immediately prior to discharge, whichever comes first. It is recommended that a repeat newborn ~~metabolic disorder~~ screening specimen be collected at 14 days of age. Specimens shall be collected on the Newborn ~~Metabolic Disorder~~Screening Form Kit using capillary or venous blood. The hospital is responsible for collecting specimens on all premature/sick infants.

(i) Premature/sick infants screened prior to 24 hours of age must be re-screened between 7-14 days of age.

(ii) Premature/sick infants who could not be screened prior to a red blood cell transfusion should be re-screened by the 7th day of life and a repeat specimen collected when plasma and/or red cells will again reflect the infant's own metabolic processes or phenotype. The accepted time period to determine hemoglobin type is 90 to 120 days after transfusion.

(iii) The recommended follow-up study for an abnormal thyroid screen in a premature infant is a serum free T4 (measured by direct dialysis or an equivalent method)and TSH at 7-14 days of age.

(~~D~~E) **Newborn Screening Hospital recording.** The hospital shall implement a procedure to assure that a newborn screening specimen has been collected on every newborn and mailed to the Newborn ~~Metabolic Disorder~~ Screening Laboratory within 24 - 48 hours of collection.

(i) The hospital shall immediately notify the infant's physician or licensed independent practitioner, and parents or guardians if an infant is discharged without a sample having been collected. This notification shall be documented in the infant's hospital record.

(ii) If no test results are received within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Metabolic Disorder Screening Laboratory to verify that a specimen had been received. If no specimen has been received, the hospital shall notify the physician or licensed independent practitioner.

(iii) Any hospital or any other laboratory which collects, handles or forwards newborn ~~metabolic disorder~~ screening samples shall keep a log containing name and date of birth of the infant, name of the attending physician or licensed independent practitioner, name of the health care provider who will be providing well care for the infant after discharge, medical record number, serial number of the form kit used, date the specimen was drawn, date the specimen was forwarded, date the test results were received and the test results, and pulse oximetry screening results.

~~(iv) The hospital is responsible for assuring that employees who collect, handle or perform newborn metabolic screening tests are informed of their responsibilities with respect to screening procedures.~~

(F) **Pulse oximetry screening hospital recording.** The hospital shall implement a procedure to assure that pulse oximetry screening has been performed on every newborn prior to discharge.

(i) All pulse oximetry screening results shall be recorded in the newborn infant's medical record and results reported to a parent or guardian prior to discharge from the hospital.

(ii) All pulse oximetry screening results shall be recorded on the Newborn Screening Collection Kit (ODH #450), as described in Appendix A of Chapter 550 of this Title, or faxed to the Oklahoma State Department of Health Newborn Screening Program.

(~~E~~G) **Parent and health care provider education.** The hospital will be responsible or designate a responsible party to distribute the Newborn ~~Metabolic Disorder~~ Screening Program's written educational materials on newborn ~~metabolic disorder~~ screening and pulse oximetry screening provided by the Department to at least one of each newborn's parent or legal guardian.

(~~F~~H) **Training.** Hospitals shall provide ongoing training programs for their employees involved with newborn screening procedures. These training programs shall include methods of collecting a ~~Satisfactory Newborn Metabolic Disorder Screening Specimen~~satisfactory newborn screening specimen and proper pulse oximetry screening methods. The hospital is responsible for ensuring that employees who collect, handle or perform newborn screening tests; or perform pulse oximetry screening are informed of their responsibilities with respect to screening procedures.

(6) **Birth defects.** Each hospital shall maintain a list of patients up to six (6) years of age who have been diagnosed with birth defects, and all women discharged with a diagnosis of stillbirth or miscarriage. On request, each hospital shall make the medical records of these individuals available to the State Department of Health.

(7) **Abortions.** Attending physicians shall complete and submit to the Department a report form for each abortion performed or induced as required by 63 O.S. 1999, Section 1-738.

(b) **Record of patient admission.**

(1) All persons admitted to any institution covered by these standards shall be under the care of a doctor of medicine (M.D.) or osteopathy (D.O.) duly licensed to practice medicine and surgery in the State of Oklahoma or a licensed independent practitioner, whose name shall be shown on the admitting record.

(2) The hospital admitting record also shall show the following for each patient.

(A) Full name of patient with age, sex, address, marital status, birth date, home phone number, date of admission, and admitting diagnosis.

(B) Next of kin, with address, phone number, and relationship.

(C) Date and time of admission, the admission and final diagnoses, and the name of physician or licensed independent practitioner.

(D) Any advanced directive for health care as defined in the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.

(3) Special clinical reports shall be kept, including the following:

(A) Obstetrical patients throughout labor, delivery, and post-partum.

(B) Newborn, giving the infant's weight, length, and other notes relative to physical examination.

(C) Surgical and operative procedures, including pathological reports.

(D) Record of anesthesia administration.

(c) **Orders for medications, treatments, and tests.**

(1) All medication orders shall be written in ink and signed by the ordering physician or practitioner authorized by law to order the medication, with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician- approved hospital policy after an assessment for contraindications. The order shall be preserved on the patient's chart.

(2) All orders shall be written in ink and signed by the ordering physician or practitioner. Orders received by resident physicians shall be co-signed if required by medical staff bylaws. The order shall be preserved on the patient's chart.

(3) All orders taken from the physician or practitioner, for entry by persons other than the physician or practitioner, shall be countersigned.

(4) Telephone or verbal orders may be authenticated by an authorized physician or practitioner other than the ordering physician or practitioner when this practice is defined and approved in the medical staff bylaws. If allowed, medical staff bylaws must identify the physicians or practitioners who may authenticate another physician's or practitioner's telephone or verbal order, e.g. physician partners or attending physicians or practitioners, and define the circumstances under which this practice is allowed. The bylaws must also specify that when a covering or attending physician or practitioner authenticates the ordering physician's or practitioner's telephone or verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final. The person taking the telephone or verbal order shall read the order back to the physician or practitioner to ensure it was correctly understood and verify on the order the fact that the order was read back. Each facility, within its own procedures and protocols, shall establish a verification process to be placed on orders to demonstrate that the order was read back to the physician.

[OAR Docket #14-814; filed 7-18-14]

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

[OAR Docket #14-815]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Resident care services
310:675-9-9.1. Medication services [AMENDED]

AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. § 1-104; Title 63 O.S. § 1-1950(C)(1).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 2, 2013
COMMENT PERIOD:
October 1, 2013, through November 1, 2013
PUBLIC HEARING:
November 1, 2013
ADOPTION:
January 14, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal amends rules promulgated in accordance with 63 O.S. Section 1-1950(C)(1) which authorized the State Board of Health to promulgate rules necessary for proper control and dispensing of nonprescription drugs in nursing facilities.

Section 310:675-9-9.1(i) addresses those procedures for maintaining nonprescription drugs for dispensing from a common or bulk supply. This proposed rule amendment deletes the requirement in OAC 310:675-9-9.1(i)(8) which limits the bulk nonprescription drugs that nursing facilities may maintain for residents. The current requirement provides that only oral analgesics, antacids, and laxatives may be dispensed from bulk supplies. This change will allow nursing facilities to maintain bulk supplies of other nonprescription drugs, such as cough medicines.
CONTACT PERSON:
Mike Cook, Assistant Chief, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to mikec@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-9.1. Medication services

(a) **Storage.**

(1) Medications shall be stored in a medication room, a locked cabinet, or a locked medication cart, used exclusively for medication storage.

(2) The medication storage area temperature shall be maintained between 60° F. (15.5° C.) to 80° F.(26.6° C.)

(3) The medication room, the medication storage cabinet, and medication cart shall be locked when not in use.

(4) The key to the medication storage areas shall be in the possession of the person responsible for administering medications.

(5) Scheduled medications shall be in a locked box within the locked medication area or cart.

(6) Medications for external use shall be stored separately from medications for internal use.

(7) Medications requiring refrigeration shall be kept within a temperature range of 36° F. (2.2° C.) to 48° F. (8.8° C.) and separated from food and other items. There shall be a method for locking these medications.

(8) The medication areas shall be well lighted, clean and organized.

(9) Running water shall be in close proximity to the medication area.

(10) Powdered over-the-counter medication for topical use may be kept in the resident's room for administration by a nurse aide if:

(A) The facility develops and implements policies and procedures for safe storage and application of the powder; and

(B) Each aide who applies the over-the-counter topical medication is trained in accordance with the established policies and procedures of the facility.

(b) **Emergency medications.** Emergency medication, policies and equipment shall include but not be limited to:

(1) An electric suction machine with necessary aseptic aspirator tips.

(2) An emergency tray or cart with the following items labeled and accessible to licensed personnel only: resuscitation bag; tongue depressors; and assorted airways; sterile hypodermic syringes in 2 cc, 5 cc, and 20 cc or larger sizes and appropriate needles. The content shall be limited to emergency medications and contain no scheduled medications. Only two single dose vials of the following medications may be on the tray or cart: 50% Dextrose, respiratory stimulant, a cardiac stimulant, injectable lasix, injectable dilantin and injectable benadryl.

(3) A certified medication aide shall not administer injectable medications from any emergency tray or cart, but shall have access to resuscitation bags, tongue depressors, and assorted sizes of airways.

(c) **Medication accountability.**

(1) Medications shall be administered only on a physician's order.

(2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication. Medications shall be prepared within one hour of administration.

(3) An accurate written record of medications administered shall be maintained. The medication record shall include:

(A) The identity and signature of the person administering the medication.

(B) The medication administered within one hour of the scheduled time.

(C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.

(D) Adverse reactions or results.

(E) Injection sites.

(F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.

(G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(d) **Medication labels and handling.**

(1) All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of medication, dosage, directions for use, date of issue and expiration, and name, address and telephone number of pharmacy or physician issuing the medication, and the quantity. If a unit dose system is used, medications shall indicate, at least, the resident's full name, physician's name and strength of medication, and directions for use.

(2) When over-the-counter medications are prescribed and obtained in the original manufacturers container, the package directions shall be considered part of the label. The resident's name shall be on the package.

(3) Each resident's medications shall be kept or stored in the originally received containers. Paper envelopes shall not be considered containers.

(4) Medication containers having soiled, damaged, illegible or makeshift labels shall be relabeled by the issuing pharmacy or physician. Labels on containers shall be clearly legible and firmly affixed. No label shall be superimposed on another label on a medication container except for over-the-counter medication containers.

(5) No person shall change labels on medication containers. If the attending physician orders a change of directions, there shall be a procedure to mark the container indicating a label change is needed at the next prescription refill.

(6) A pharmacist shall dilute, reconstitute and label medications, whenever possible. If not possible, a registered nurse may reconstitute, dilute and label medications. A distinctive, indelible, supplementary label shall be affixed to the medication container when diluted or reconstituted for other than immediate use. A licensed practical nurse may reconstitute oral medications only. The label shall include the following: resident's name, dosage and strength per unit/volume, nurse's initials, expiration date, and date and time of dilution or reconstitution.

(7) When a resident is discharged, or is on therapeutic leave, the unused medication shall be sent with the resident, or with the resident's representative, unless there is a written physician's order to the contrary, or the medication has been discontinued, or unless the resident or the resident's representative donates unused prescription medications for dispensation to medically indigent persons in accordance with the Utilization of Unused Prescription Medications Act. The clinical record shall document the quantity of medication sent, and returned or donated, and the signature of the person receiving or transferring the medications.

(8) All medication orders shall be automatically stopped after a given time period, unless the order indicates the number of doses to be administered, or the length of time the medication is to be administered. The automatic stop order may vary for different types of medications. The facility shall develop policies and procedures, in consultation with the medical director and pharmacist, to review automatic stop orders on medications. The policy shall be available to personnel administering medications.

(9) No resident shall be allowed to keep any medications unless the attending physician or interdisciplinary team has indicated on the resident's clinical record that the resident is mentally and physically capable of self-administering medications.

(10) A resident who has been determined by the physician or interdisciplinary team as capable of self-administering medication may retain the medications in a safe location in the resident's room. The facility shall develop policies for accountability. Scheduled medications shall not be authorized for self-administration, except when delivered by a patient controlled analgesia pump.

(11) A physician's telephone orders shall be conveyed to, recorded in the clinical record, and initialed by the licensed nurse receiving the orders.

(12) Medications shall be administered only by a physician, registered nurse, a licensed practical nurse, or a certified medication aide. The only injectables which a certified medication aide may administer are insulin and vitamin B-12 and then only when specifically trained to do so.

(13) A pharmacy, operating in connection with a facility, shall comply with the State pharmacy law and the rules of the Oklahoma State Board of Pharmacy.

(14) Powdered over-the-counter medication for topical use may be administered by a trained nurse aide when designated in writing by the attending physician and delegated by a licensed nurse. The licensed nurse shall ensure that the aide demonstrates competency in reporting skin changes, storage, application and documentation policies and procedures. The licensed nurse or the attending physician shall document in the resident's record a skin assessment at least twice each week and more often if required by the facility's approved policy.

(e) **Medication destruction.**

(1) Non-controlled medications prescribed for residents who have died and non-controlled medications which have been discontinued shall be destroyed by both the director of nursing and a licensed pharmacist or another licensed nurse. Controlled medication shall be destroyed by a licensed pharmacist and the Director of Nursing. The facility may transfer unused prescription drugs to city-county health department pharmacies or county pharmacies in compliance with the Utilization of Unused Prescription Medications Act and all rules promulgated thereunder. Prescription only medications including controlled medications shall not be returned to

the family or resident representatives. The destruction and the method used shall be noted on the clinical record.

(2) Medications prescribed for one resident may not be administered to, or allowed in the possession of, another resident.

(3) There shall be policies and procedures for the destruction of discontinued or other unused medications within a reasonable time. The policy shall provide that medications pending destruction shall not be retained with the resident's current medications. The destruction of medication shall be carried out in the facility and a signed record of destruction shall be retained in the facility.

(f) **Medication regimen review.** The facility shall ensure that each resident's medications are reviewed monthly, by a registered nurse or a licensed pharmacist. The reviewer shall notify the physician and director of nursing, in writing, when irregularities are evident.

(g) **Consultant pharmacist.** The facility shall have a consultant licensed pharmacist to assist with the medication regimen review and medication destruction. The consultant pharmacist shall discuss policies and procedures for the administration, storage, and destruction of medications with the administrator, director of nursing and other appropriate staff.

(h) **Emergency pharmacy.** The facility shall have a contract, or letter of agreement, with a licensed pharmacy that agrees to serve as the emergency pharmacy. The emergency pharmacy shall be available twenty-four hours a day.

(i) **Bulk nonprescription drugs.** A facility may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

(1) **Policy of facility.** The facility must have and follow a written policy and procedure to assure safety in dispensing and documentation of medications given to each resident.

(2) **Acquisition.** The facility shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for all medications maintained in bulk.

(3) **Dispensing.** Only licensed nurses, physicians, pharmacists or certified medication aides (CMA) may dispense for administration these medications and only upon the written order for as needed (p.r.n.) or nonscheduled dosage regimens dosing from a physician as documented in the clinical record of the resident.

(4) **Storage.** Bulk medications shall be stored in the medication area and not in resident rooms.

(5) **Records.** The facility shall maintain records of all bulk medications which are dispensed on an individual signed medication administration record (MAR).

(6) **Labeling.** The original labels shall be maintained on the container as it comes from the manufacturer or on the unit-of-use (blister packs) package.

(7) **Package size.** The maximum size of packaging shall be established by the facility in its policy and procedures and shall insure that each resident receives the correct dosage; provided however, that no liquid medications shall be acquired nor maintained in a package size which exceeds 16 fluid ounces.

(8) **Allowed nonprescription drugs.** Facilities may have only oral analgesics, antacids, and laxatives for bulk dispensing and/or drugs listed in a facility formulary developed or approved by the consultant pharmacist, medical director and director of nurses. Non formulary over the counter medications may be prescribed if the resident has therapeutic failure, drug allergy, drug interaction or contraindications to the formulary over the counter medication.~~No other categories of medication may be maintained as bulk medications.~~

[OAR Docket #14-815; filed 7-18-14]

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

[OAR Docket #14-578]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
317:2-1-7 [AMENDED]
(Reference APA WF # 13-30)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, 56 Okla. Stat. 1011.9, 42 U.S.C. § 1396a(a)(42)(B)(ii)(III), 42 C.F.R. §447.202, and 75 Okla. Stat. 250.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is amended to more accurately reflect each party's responsibilities in an audit and clarify other audit procedures in order to streamline the process. The proposed changes define responsibilities of providers, who can represent a provider in her/his absence, and the duties of the docket clerk and the Administrative Law Judge during an audit. Further, the rule clarifies timeframes for document submission and prehearings.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

317:2-1-7. ~~Oklahoma Health Care Authority Audit~~Program Integrity Audit Appeals

All appeals related to audits ~~and/or reviews~~originating from Program Integrity resulting in overpayments are heard by an ~~OHCA~~ Administrative Law Judge per 56 Okla. Stat. § 1011.9.

(1) If a provider disagrees with a decision of an OHCA audit, which has determined that the provider has received an overpayment, the provider may appeal, within 20 days of the date of that decision by submitting an LD-2 form to OHCA's docket clerk.

(2) The appeal will be commenced by the receipt of an LD-2 form from the appellant provider. The form must set out with specificity~~,~~ the overpayment ~~decision~~finding to which the provider objects along with the grounds for the appeal. The provider ~~should~~shall explain in detail~~,~~ the factual and/or legal basis for disagreement with the ~~allegedly~~alleged erroneous decision. ~~All~~The provider shall attach to the LD-2 form all relevant exhibits the provider believes necessary to decide the appeal ~~should be attached to the LD-2 form~~, including the following:

(A) Citations for any statute or rule that the provider ~~feels~~contends has been violated;

(B) The provider's name, address and telephone number;

(C) The name, address, and phone number of the provider's representative, if any; and

(D) The LD-2 must be signed by the provider or provider's representative.

(i) For purposes of this section, "provider" means the person or entity against which the overpayment is sought.

(ii) If someone other than an individual provider or entity's authorized representative is representing the provider, he/she must be licensed to practice law within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must comply with 5 Okla. Stat. Art II, Sec. 5, and rules of the Oklahoma Bar Association.

(3) The burden of proof during the hearing will be upon the provider and the Administrative Law Judge will decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court.

(~~3~~4) ~~Upon receipt of the appeal by the docket clerk, the matter will be docketed for a hearing before an OHCA Administrative Law Judge.~~Within approximately 45 days of receiving the LD-2, the docket clerk will schedule a prehearing conference before an Administrative Law Judge. This period of time is intended to allow parties an opportunity to settle the dispute prior to the pre-hearing. Settlement or mediation of audit disputes is encouraged and can begin at any time of the audit process between the provider and OHCA's legal division. If settlement is reached, the terms shall be set out in writing and signed by both parties and/or their representatives. Upon the finalization and signature of the settlement agreement, the appeal(s) shall be dismissed with prejudice.

(~~4~~5) Any change in contact information during the course of the appeal should be immediately reported to the OHCA docket clerk.

(~~5~~6) The OHCA, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.

~~(6) Within 45 days of the LD-2 being received and filed by the OHCA, any settlement discussions being held by the parties must be finalized. Settlement or mediation of audit disputes is encouraged and can begin at any time of the audit process between the provider and OHCA's Legal Division. If settlement is reached, the terms shall be set out in writing and signed by both parties and/or their representatives. Upon the finalization and signature of the settlement agreement, the appeal(s) shall be dismissed.~~

(7) Audit appeals which are not settled will commence with a prehearing conference before the assigned administrative law judge as follows:

(A) At the conference the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.

(B) Each party shall be present, on time and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown.

(C) ~~Prior~~Within fifteen days prior to the prehearing conference, the Appellant ~~each party~~ shall file a prehearing conference statement with the ~~OHCA~~docket clerk and provide a copy to the other party; and within 10 days prior to the prehearing conference, OHCA shall file a prehearing conference statement with the docket clerk and provide a copy to the other party. Each party's prehearing conference statement shall include:

(i) A brief statement of his or her case, to include a list of stipulations and legal and factual issues to be heard;

(ii) A list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer;

(iii) A list of any documents and exhibits and the original, or a copy, of each document or exhibit to be offered into evidence or presented at the hearing; and

(iv) Any requirements or requests for discovery.

~~(D) Administrative Law Judge shall:~~

~~(i) hear and rule on pending requests or motions;~~

~~(ii) rule on whether or not witnesses have knowledge of the facts at issue;~~

~~(iii) rule on whether or not documents and exhibits are relevant;~~

~~(iv) rule on whether or not discovery requests and other motions and requests are relevant;~~

~~(v) strike or deny witnesses, documents, exhibits, discovery requests and other requests or motions which are cumulative, not relevant or not material, used as a means of harassment, unduly burdensome or not timely filed; and~~

~~(vi) identify and rule on errors being appealed and issues to be heard at the administrative hearing.~~

(D) The prehearing conference shall be informal, structured by the administrative law judge, and not open to the public. The administrative law judge shall record the prehearing conference by digital recording.

(i) Each party shall be notified of the date of the prehearing conference at least ~~10~~20 calendar days prior to the scheduled prehearing conference.

(ii) Witnesses, not including a named party, shall not appear at the prehearing conference. Nor shall any witness~~or present~~ testimony be presented at the prehearing conference.

(E) A request for continuance of a prehearing conference can be made up to three days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The administrative judge shall rule on the request and in no case shall a combination of continuances exceed a total of 30 calendar days except for good cause shown.

(F) ~~The~~Following the prehearing conference, the administrative judge shall issue ~~a prehearing conference statement~~an Order setting out the witnesses, exhibits, documents, and issues to be presented at the hearing; the hearing date; the decisions reviewed and made during the prehearing conference; other scheduling deadlines as may be needed; and any stipulations agreed to by the parties. The administrative judge should attempt to issue the Order within two weeks of the prehearing conference.

(8) Administrative Law Judge shall:

(A) Hear and rule on pending requests or motions;

(B) Rule on whether witnesses have knowledge of the facts at issue;

(C) Rule on whether a witness shall produce a report to detail proposed testimony as described in Rule 26 of the Federal Rules of Procedure;

(D) Rule on whether discovery requests and other motions and requests are relevant;

(F) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed; and

(G) Identify and rule on errors being appealed and issues to be heard at the administrative hearing.

(~~8~~9) The hearing shall be digitally recorded and closed to the public.

(~~9~~10) The administrative law judge should attempt to make the final hearing decision within 180 days from the date of the prehearing conference. The final order shall be the entire record of the appeal. Pursuant to Administrative Procedures Act, the Order does not need to contain findings of fact or conclusions of law. The final order is the final decision and is not appealable to the CEO.

[OAR Docket #14-578; filed 6-30-14]

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

[OAR Docket #14-556]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Health Access Networks
317:25-9-2. [AMENDED]
(Reference APA WF # 13-04)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes; Section 1011.6 of Title 56 of Oklahoma Statutes; House Bill 2842
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is being revised to give providers greater flexibility in the populations with complex health care needs that can receive care management services through HANs. Policy is also amended to remove the HMP care management component as a responsibility of the HAN and to allow HMP to provide health coaching services to "high risk" or "at risk" members that are in the HAN but not receiving care management services through the HAN. These changes streamline policy in the waiver, contract, and OHCA rules.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. HEALTH ACCESS NETWORKS

317:25-9-2. Requirements

(a) HAN's are non-profit, administrative entities that work with providers to coordinate and improve the quality of care for SoonerCare members. The HAN must:

(1) be organized for the purpose of restructuring and improving the access, quality, and continuity of care to SoonerCare members;

(2) offer patients access to all levels of care, including primary, outpatient, specialty, certain ancillary services, and acute inpatient care, within a community or across a broad spectrum of providers across a service region or the State;

(3) submit an application to the OHCA as specified in (c) of this Section;

(4) offer core components of electronic medical records, improved access to specialty care, telemedicine, and expanded quality improvement strategies;

(5) have an organized and systematic quality improvement process, including the identification of measurable performance targets; and

~~(6) offer care management/care coordination to persons with complex health care needs including:~~

~~(A) the co-management of individuals enrolled in OHCA's Health Management Program;~~

~~(B) individuals with frequent emergency room utilization;~~

~~(C) women enrolled in the Oklahoma Cares Program diagnosed with breast or cervical cancer;~~

~~(D) pregnant women enrolled in the High Risk OB Program; and~~

~~(E) individuals enrolled in the Pharmacy Lock In Program; and~~

(6) offer care management/care coordination to persons in the HANs. This includes care management for specified members with complex health care needs as approved by OHCA. The HAN will not provide care management services to HMP members in the HAN, as these members will receive care management from HMP health coaches or from the OHCA internal Chronic Care Unit.

(b) Networks must meet at least two of the following:

(1) have a formal affiliation agreement/partnership at the community-level with traditional and non-traditional providers;

(2) have a formal program to promote public health principles, community development, and local educational programs to address the challenges of rural and underserved populations; and

(3) have 501(c)3 or not-for-profit status.

(c) In order to qualify to participate as a SoonerCare contracted HAN's, the network must submit an application to the OHCA that details how the network plans to:

(1) reduce costs associated with the provision of health care services to SoonerCare, uninsured and underinsured individuals;

(2) improve access to, and the availability of, health care services provided to individuals served by the health access network;

(3) enhance the quality and coordination of health care services provided to such individuals through mutually defined quality improvement initiatives;

(4) improve the health status of communities served by the health access network;

(5) reduce health disparities in such communities;

(6) identify all PCPs, specialty providers, and other provider types affiliated with the health access network.

(d) The application to participate as a SoonerCare contracted HAN's will be accepted and approved at the sole discretion of OHCA with implementation initiated after completion of a readiness review by OHCA staff and approval by OHCA's Medical Advisory Taskforce (MAT).

[OAR Docket #14-556; filed 6-30-14]

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

[OAR Docket #14-580]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-4 [AMENDED]
(Reference APA WF # 13-35)

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013

COMMENT PERIOD:
January 15, 2014 through February 14, 2014

PUBLIC HEARING:
February 24, 2014

ADOPTION:
March 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Policy is amended to specify that providers enroll in Electronic Fund Transfers for Medicaid reimbursement via the electronic enrollment process. Language referencing the Provider Relations unit will be removed as this unit no longer exists.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-4. ~~Electronic fund transfer or direct deposit~~Electronic fund transfer/direct deposit

~~To comply with the Cash Management Act of 1990, the Medicaid agency and the Office of State Treasurer offer a service of~~Providers must accept Medicaid reimbursement via Electronic Fund Transfer/Direct Deposit~~ or Direct Deposit of Medicaid provider payments~~. These payments are deposited electronically by the State Treasurer to the~~ provider's~~ financial institution the provider designates during the electronic enrollment process. ~~Provider authorizations are mailed to new providers after initial enrollment in the Medicaid program. Additional Electronic Funds Transfer Authorization forms may be requested from Provider Relations.~~Providers may change the designated financial institution by submitting an update through the electronic enrollment process, subject to OHCA acceptance.

[OAR Docket #14-580; filed 6-30-14]

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

[OAR Docket #14-560]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-46. [AMENDED]
(Reference APA WF # 13-18)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rules are revised to update references to other areas of policy within the text. The policy that is referenced in the tuberculosis rules is outdated and it has been revoked. Additionally, correct policy references are inserted to replace the revoked policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-46. Services for persons infected with tuberculosis

(a) Oklahoma Medicaid provides optional coverage of tuberculosis (TB) related services for certain TB infected individuals. Services covered under this program are not restricted to the Medicaid scope of coverage or limitations. Services for TB infected individuals that exceed the scope of Medicaid services must be prior authorized. Individuals eligible only under the optional TB-related services program can receive TB related services such as:

(1) Prescribed medications:

(A) Prescription drugs indicated for the treatment of TB up to the Medicaid established prescription limit; and

(B) Other drugs related to the treatment of TB beyond the prescriptions covered under Medicaid, require prior authorization obtained from the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(2) Physician services:

(A) Physician services include:

(i) ambulatory physician services;

(ii) office visits; and

(iii) ambulatory surgery and such, but not including inpatient services.

(B) Office visits are not limited for TB infected persons. However, prior authorization is required when the limit under Medicaid is exceeded;

(3) Outpatient hospital services;

(4) Rural Health Clinic services;

(5) Federally Qualified Health Clinic services;

(6) Laboratory and x-ray services. Necessary laboratory and x-ray services (including services to confirm presence of TB infection) are covered for infected persons. Screening tests to detect and confirm presence of TB do not require prior authorization;

(7) Tuberculosis Clinic services (See ~~317:30-5-911~~317:30-5-1159 for description of these services); and

(8) Targeted Case Management services~~ (See 317:30-5-921 for a description of these services)~~.

(b) Persons eligible for services only under optional TB coverage do not receive the full range of Medicaid benefits. Coverage is limited as set out in this Section.

(c) Persons eligible under Medicaid who are infected with TB may also be eligible for TB services and receive these extended benefits.

[OAR Docket #14-560; filed 6-30-14]

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

[OAR Docket #14-587]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services
317:30-3-65.8 [AMENDED]
(Reference APA WF # 13-51)
AUTHORITY:
The Oklahoma Health Care Authority Board; the Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to expand the age for which application of fluoride varnish during course of a well child screening is covered, from ages 12 months to 42 months to ages 6 months to 60 months.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 4. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) PROGRAM/CHILD HEALTH SERVICES

317:30-3-65.8. Dental services

(a) At a minimum, dental services include relief of pain and infection; limited restoration of teeth and maintenance of dental health; and oral prophylaxis every 184 days. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam composites and posterior amalgam restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic partial and lingual arch bars; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized (refer to OAC 317:30-5-696(3) for amount, duration and scope).

(b) Dental screens should begin at the first sign of tooth eruption by the primary care provider and with each subsequent visit to determine if the child needs a referral to a dental provider. Dental examinations by a qualified dental provider should begin before the age of two(unless otherwise indicated) and once yearly thereafter. Additionally, children should be seen for prophylaxis once every 184 days, if indicated by risk assessment. All other dental services for relief of pain and infection, restoration of teeth and maintenance of dental health should occur as the provider deems necessary.

(c) Separate payment will be made to the member's primary care provider for the application of fluoride varnish during the course of a well child screening for members ages ~~12~~6 months to ~~42~~60 months. Reimbursement is limited to two applications per year by eligible providers who have attended an OHCA-approved training course related to the application of fluoride varnish.

[OAR Docket #14-587; filed 6-30-14]

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

[OAR Docket #14-559]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
(Reference APA WF # 13-17)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes; 42 USC § 1396(bb)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Tobacco cessation counseling policy is revised to include Maternal/Child Health Licensed Clinical Social Workers (LCSWs) with certification as a tobacco treatment specialist as a qualified provider for cessation counseling services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's ~~(OHCA's)~~(OHCA) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

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

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies or opportunistic infections.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, OKDHS form 08MA016E, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for the insertion and/or implantation of

contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling.

(Q) Laboratory testing (such as complete blood count (CBC), platelet count, or urinalysis) for monitoring members receiving chemotherapy, radiation therapy, or medications that require monitoring during treatment.

(R) Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(S) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

(T) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number;

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(U) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and signs off on the billed encounter;

(ii) Attending physician is present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(V) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

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

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

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

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

(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

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

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

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

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

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

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members

infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the member to describe their smoking use;

(II) Advising the member to quit;

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

(IV) Assisting the member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, advanced registered nurse practitioners, certified nurse midwives, dentists, ~~and~~ Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS). It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

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

(GG) Genetic testing is covered when medically necessary. Genetic testing is considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition or is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified); and

(ii) The result of the test will directly impact the clinical decision-making or clinical outcome for the member; and

(iii) The testing method is considered scientifically valid for the identification of a specific genetically-linked inheritable disease; and

(iv) Documentation is provided from a licensed genetic counselor or physician with genetic expertise that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.

(2) General coverage exclusions include the following:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Refractions and visual aids.

(E) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomies.

(I) Medical services considered experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

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

(O) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(P) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(Q) Speech and Hearing services.

(R) Mileage.

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

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

(U) Inpatient chemical dependency treatment.

(V) Fertility treatment.

(W) Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.

(A) All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements are not authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements is proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency.

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(G) Non-therapeutic hysterectomies.

(H) Medical Services considered experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is

performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(L) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

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

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

(O) Mileage.

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

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

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

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

[OAR Docket #14-559; filed 6-30-14]

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

[OAR Docket #14-558]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-126. [AMENDED]
(Reference APA WF # 13-10)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-126. [AMENDED]
GUBERNATORIAL APPROVAL:
July 1, 2014
REGISTER PUBLICATION:
31 Ok Reg 663
DOCKET NUMBER:
14-699
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to remove reference to OKDHS form Adm 41, a form used to claim therapeutic and hospital leave. The form has not been utilized in over 7 years and the agency now tracks leave through its claims system; therefore, the process to claim leave in the rules is obsolete and must be amended to reflect current practice.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-126. Therapeutic leave and Hospital leave

Therapeutic leave is any planned leave other than hospitalization that is for the benefit of the patient. Hospital leave is planned or unplanned leave when the patient is admitted to a licensed hospital. Therapeutic leave must be clearly documented in the patient's plan of care before payment for a reserved bed can be made.

(1) Effective July 1, 1994, the nursing facility may receive payment for a maximum of seven (7) days of therapeutic leave per calendar year for each recipient to reserve the bed. ~~Claims for therapeutic leave are to be submitted on Form Adm 41 (Long Term Care Claim Form)~~.

(2) Effective January 1, 1996, the nursing facility may receive payment for a maximum of five days of hospital leave per calendar year for each recipient to reserve the bed when the patient is admitted to a licensed hospital.

(3) The Intermediate Care Facility for ~~the Mentally Retarded (ICF/MR)~~Individuals with Intellectual Disabilities (ICF/IID) may receive payment for a maximum of 60 days of therapeutic leave per calendar year for each recipient to reserve a bed. No more than 14 consecutive days of therapeutic leave may be claimed per absence. Recipients approved for ICF/~~MR~~IID on or after July 1 of the year will only be eligible for 30 days of therapeutic leave during the remainder of that year. ~~Claims for therapeutic leave are to be submitted on Form Adm-41~~.

(4) Midnight is the time used to determine whether a patient is present or absent from the facility. The day of discharge for therapeutic leave is counted as the first day of leave, but the day of return from such leave is not counted. For hospital leave, the day of hospital admission is the first day of leave. The day the patient is discharged from the hospital is not counted as a leave day.

(5) Therapeutic and hospital leave balances are recorded on the Medicaid Management Information System (MMIS)~~ recipient recordbased on the Form Adm-41 submitted by the facility~~. When a patient moves to another facility, it is the responsibility of the transferring facility to forward the patient's leave records to the receiving facility. ~~Forms are available in the local county OKDHS office.~~

[OAR Docket #14-558; filed 6-30-14]

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

[OAR Docket #14-565]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-133.3. [NEW]
(Reference APA WF # 13-29)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.185 Respiratory care for ventilator-dependent individuals
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to comply with Federal Law, 42 CFR 440.185, for ventilator-dependent individuals and clarify Nursing Home admission for ventilator-dependent and tracheostomy care services for residents in a nursing home facility.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-133.3. Nursing home ventilator-dependent and tracheostomy care services

(a) Admission is limited to ventilator-dependent and/or qualified tracheostomy residents.

(b) The ventilator-dependent resident and/or qualified tracheostomy resident must meet the current nursing facility level of care criteria. (Refer to OAC 317:30-5-123.)

(c) All criteria must be present in order for a resident to be considered ventilator-dependent:

(1) The resident is not able to breathe without a volume with a backup.

(2) The resident must be medically dependent on a ventilator for life support 6 hours per day, seven days per week.

(3) The resident has a tracheostomy.

(4) The resident requires daily respiratory therapy intervention (i.e., oxygen therapy, tracheostomy care, physiotherapy or deep suctioning). These services must be available 24 hours a day.

(5) The resident must be medically stable and not require acute care services. A Registered Nurse or Licensed Practical Nurse must be readily available and have primary responsibility of the unit at all times.

(d) The resident will also be considered ventilator-dependent if all of the above requirements were met at admission but the resident is in the process of being weaned from the ventilator. This excludes residents who are on C-PAP or Bi-PAP devices only.

(e) All criteria must be present in order for a resident to be considered as tracheostomy care qualified:

(1) The resident is not able to breathe without the use of a tracheostomy.

(2) The resident requires daily respiratory therapy intervention (i.e., oxygen therapy, tracheostomy care, chest

physiotherapy, or deep suctioning). These services must be available 24 hours a day.

(3) A Registered Nurse or Licensed Practical Nurse must be readily available and have primary responsibility of the unit.

(f) Not withstanding the foregoing, a ventilator-dependent or qualified tracheostomy resident who is in the process of being weaned from ventilator dependence or requiring qualified tracheostomy treatment shall continue to be considered a qualified resident until the weaning process is completed.

[OAR Docket #14-565; filed 6-30-14]

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

[OAR Docket #14-576]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2 [AMENDED]
(Reference APA WF # 13-26)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is being revised to add language that sets boundaries as to what is deemed approved genetic testing methods. Problems have recently arisen which call for more stringent policy, particularly issues regarding lab billing for expensive methods that lack sufficient evidence for their use.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's ~~(OHCA's)~~(OHCA) SoonerCare program, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

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

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgery center (ASC) or a Medicare certified hospital that offers outpatient surgical services.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for members with proven malignancies or opportunistic infections.

(G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare member, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Diagnostic x-ray and laboratory services.

(J) Mammography screening and additional follow-up mammograms.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs administered by OHCA. A copy of the authorization, OKDHS form 08MA016E, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for the insertion and/or implantation of contraceptive devices during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.

(P) Genetic counseling.

(Q) Laboratory testing (such as complete blood count (CBC), platelet count, or urinalysis) for monitoring members receiving chemotherapy, radiation therapy, or medications that require monitoring during treatment.

(R) Payment for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(S) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the member in conformity with federal regulations.

(T) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma SoonerCare provider number;

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(U) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and signs off on the billed encounter;

(ii) Attending physician is present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(V) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

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

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

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

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

(i) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

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

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

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

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

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

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the member to describe their smoking use;

(II) Advising the member to quit;

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

(IV) Assisting the member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, advanced registered nurse practitioners, certified nurse midwives, dentists, ~~and~~ Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist Certification (CTTS). It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP care coordination payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

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

(GG) Genetic testing is covered when medically necessary. Genetic testing ~~is~~may be considered medically necessary when the following conditions are met:

(i) The member displays clinical features of a suspected genetic condition or is at direct risk of inheriting the genetic condition in question (e.g., a causative familial variant has been identified); and

(ii) ~~The result of the test will directly impact the clinical decision-making or clinical outcome for the member~~Clinical studies published in peer-reviewed literature have established strong evidence that the result of the test will positively impact the clinical decision-making or clinical outcome for the member; and

(iii) The testing method is ~~considered~~proven to be scientifically valid for the identification of a specific genetically-linked inheritable disease or clinically important molecular marker; and

(iv) Documentation is provided from a licensed genetic counselor or physician with genetic expertise that supports the recommendation for testing based on a review of risk factors, clinical scenario, and family history.

(2) General coverage exclusions include the following:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Refractions and visual aids.

(E) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology (CPT) and the Centers for Medicare and Medicaid Services (CMS).

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomies.

(I) Medical services considered experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per member, except those visits in connection with family planning or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review,

treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

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

(O) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(P) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(Q) Speech and Hearing services.

(R) Mileage.

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

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

(U) Inpatient chemical dependency treatment.

(V) Fertility treatment.

(W) Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's SoonerCare program, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. For services rendered to a minor child, the child's parent or court-appointed legal guardian must provide written authorization prior to the service being rendered, unless there is an explicit state or federal exception to this requirement. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.

(A) All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements are not authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements is proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency.

(7) **General exclusions.** The following are excluded from coverage for members under the age of 21:

(A) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same member on the same day, except when supplemental skills are required and different specialties are involved.

(D) Pre-operative care within 24 hours of the day of admission for surgery and routine post-operative care as defined under the global surgery guidelines promulgated by Current Procedural Terminology

(CPT) and the Centers for Medicare and Medicaid Services (CMS).

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or reversal of sterilization procedures for the purposes of conception.

(G) Non-therapeutic hysterectomies.

(H) Medical Services considered experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician services which are administrative in nature and not a direct service to the member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(L) Payment for the services of social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

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

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

(O) Mileage.

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

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

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

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

[OAR Docket #14-576; filed 6-30-14]

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

[OAR Docket #14-577]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-20 [AMENDED]
(Reference APA WF # 13-27)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is added to include language that explicitly addresses proper billing in regard to nucleic acid testing of single/multiple infectious organisms in a specimen.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-20. Laboratory services

This Section covers the guidelines for payment of laboratory services by a provider in his/her office, a certified laboratory and for a pathologist's interpretation of laboratory procedures.

(1) **Covered lab services.** Providers may be paid for covered clinical diagnostic laboratory services only when they personally perform or supervise the performance of the test. If a provider refers specimen to a certified laboratory or a hospital laboratory serving outpatients, the certified laboratory or the hospital must bill for performing the test.

(A) Reimbursement for lab services is made in accordance with the Clinical Laboratory Improvement Amendment of 1988 (CLIA). These regulations provide that payment may be made only for services furnished by a laboratory that meets CLIA conditions, including those furnished in physicians' offices. Eligible providers must be certified under the CLIA program and have obtained a CLIA ID number from CMS and have a current contract on file with the OHCA.

(B) Reimbursement rate for laboratory procedures is the lesser of the CMS National 60% fee or the local carrier's allowable (whichever is lower).

(C) Medically necessary laboratory services are covered.

(2) **Compensable outpatient laboratory services.** Medically necessary laboratory services are covered.

(3) **Non-compensable laboratory services.**

(A) Separate payment is not made for blood specimens obtained by venipuncture or urine specimens collected by a laboratory. These services are considered part of the laboratory analysis.

(B) Claims for inpatient full service laboratory procedures are not covered since this is considered a part of the hospital rate.

(C) Billing multiple units of nucleic acid detection, whether using the direct probe or amplified probe technique, for single infectious organisms when testing for more than one infectious organism in a specimen is not permissible.

(~~C~~D) Laboratory services not considered medically necessary are not covered.

(4) **Covered services by a pathologist.**

(A) A pathologist may be paid for interpretation of inpatient surgical pathology specimen. The appropriate CPT procedure code and modifier is used.

(B) Full service or interpretation of surgical pathology for outpatient surgery performed in an outpatient hospital or Ambulatory Surgery Center setting.

(5) **Non-compensable services by a pathologist.** The following are non-compensable pathologist services:

(A) Tissue examinations for identification of teeth and foreign objects.

(B) Experimental or investigational procedures.

(C) Interpretation of clinical laboratory procedures.

[OAR Docket #14-577; filed 6-30-14]

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

[OAR Docket #14-557]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211.15. [AMENDED]
(Reference APA WF # 13-07)
AUTHORITY:
The Oklahoma Health Care Authority Board; the Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clarify diabetic supplies are covered items when medically necessary according to the member's diabetic classification (e.g., Type 1 insulin and non-insulin dependent and type 2 insulin and non-insulin dependent and gestational diabetes).
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.15. Supplies

(a) The OHCA provides coverage for supplies that are prescribed by the appropriate medical provider, medically necessary and meet the special requirements below.

(b) Special requirements:

(1) **Intravenous therapy.** Supplies for intravenous therapy are covered items. Drugs for IV therapy are covered items only as specified by the Vendor Drug program.

(2) **Diabetic supplies.** Glucose test strips and lancets are covered when medically necessary and prescribed by a physician, physician assistant, or an advanced practice nurse. A maximum of 100 glucose test strips and 100 lancets per month ~~when medically necessary and prescribed by a physician~~ are covered items for insulin dependent members and a maximum of 100 glucose test strips and 100 lancets per 90 days are covered for non-insulin dependent members. Members diagnosed with gestational diabetes may receive a maximum of 150 glucose test strips and 150 lancets per month when the appropriate diagnostic classification for gestational diabetes is used. Diabetic supplies in excess of these parameters must be prior authorized.

(3) **Catheters.** Permanent indwelling catheters, male external catheters, drain bags and irrigation trays are covered items. Single use self catheters when the member has a history of urinary tract infections is a covered item. The prescription from the attending physician must indicate such documentation is available in the member's medical record.

(4) **Colostomy and urostomy supplies.** Colostomy and urostomy bags and accessories are covered items.

[OAR Docket #14-557; filed 6-30-14]

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

[OAR Docket #14-568]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-41. [AMENDED]
317:30-5-42.1. [AMENDED]
(Reference APA WF # 13-40)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is updated to further clarify the definition of inpatient and outpatient status for hospitals. Specifically, how hospitals may bill in the event a member is admitted as an inpatient but later determined by OHCA not to meet criteria for inpatient status; current policy is silent to the appropriate claim filing for these instances. The proposed revisions would clarify that hospitals may submit an outpatient claim for the ancillary services provided to the member while they were on inpatient status; this change will align policy with current practice.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-41. Inpatient hospital coverage/limitations

(a) Covered hospital inpatient services are those medically necessary services which require an inpatient stay ordinarily furnished by a hospital for the care and treatment of inpatients and which are provided under the direction of a physician or dentist in an institution approved under OAC:317:30:5-40.1(a) or (b). Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care or critical access hospitals are reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.

(b) **Inpatient status.** OHCA considers a member an inpatient when the member is admitted to the hospital and is counted in the midnight census. In situations when a member inpatient admission occurs and the member dies, is discharged following an obstetrical stay, or is transferred to another facility on the day of admission, the member is also considered an inpatient of the hospital.

(1) **Same day admission.** If a member is admitted and dies before the midnight census on the same day of admission, the member is considered an inpatient.

(2) **Same day admission/discharge C obstetrical and newborn stays.** A hospital stay is considered inpatient stay when a member is admitted and delivers a baby, even when the mother and baby are discharged on the date of

admission (i.e., they are not included in the midnight census). This rule applies when the mother and/or newborn are transferred to another hospital.

(3) **Same day admission/discharges other than obstetrical and newborn stays.** In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the hospital may bill on an outpatient claim for the ancillary services provided during that time.

(~~3~~4) **Discharges and Transfers.**

(A) **Discharges.** A hospital inpatient is considered discharged from a hospital paid under the DRG-based payment system when:

(i) The patient is formally released from the hospital; or

(ii) The patient dies in the hospital; or

(iii) The patient is transferred to a hospital that is excluded from the DRG-based payment system, or transferred to a distinct part psychiatric or rehabilitation unit of the same hospital. Such instances will result in two or more claims. Effective January 1, 2007, distinct part psychiatric and rehabilitation units excluded from the Medicare Prospective Payment System (PPS) of general medical surgical hospitals will require a separate provider identification number.

317:30-5-42.1. Outpatient hospital services

(a) Hospitals providing outpatient hospital services are required to meet the same requirements that apply to OHCA contracted, non-hospital providers performing the same services. Outpatient services performed outside the hospital facility are not reimbursed as hospital outpatient services.

(b) Covered outpatient hospital services must meet all of the criteria listed in (1) through (4) of this subsection.

(1) The care is directed by a physician or dentist.

(2) The care is medically necessary.

(3) The member is not an inpatient (see OAC 317:30-5-41).

(4) The service is provided in an approved hospital facility.

(c) Covered outpatient hospital services are those services provided for a member who is not a hospital inpatient. A member in a hospital may be either an inpatient or an outpatient, but not both (see OAC 317:30-5-41).

(d) In the event a member is admitted as an inpatient, but is determined to not qualify for an inpatient payment based on OHCA criteria, the hospital may bill on an outpatient claim for the ancillary services provided during that time.

(~~d~~e) Separate payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not integral to the procedure and are not included in the reimbursement for the procedure itself.

(~~e~~f) Physical, occupational, and speech therapy services are covered when performed in an outpatient hospital based setting. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year. Claims for these services must include the appropriate revenue code(s).

[OAR Docket #14-568; filed 6-30-14]

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

[OAR Docket #14-571]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-216. [AMENDED]
(Reference APA WF # 13-12)
AUTHORITY:
The Oklahoma Health Care Authority Board; the Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clarify the use of options for manually pricing durable medical equipment items. Policy will be modified to reflect that OHCA will calculate and compare prices based on different methodologies, then use the lesser of the two for reimbursement. One method will use Manufacturer Suggested Retail Price (MSRP) minus 30%. The other option for manually-priced DME items will be invoice cost plus 30%.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-216. Prior authorization requests

(a) **Prior authorization requirements.** Requirements vary for different types of services. Providers should refer to the service-specific sections of policy or the OHCA website for services requiring PA.

(1) **Required forms.** ~~Form HCA-12A may be obtained at local county OKDHS offices and is~~All required forms are available on the OHCA web site at www.okhca.org.

(2) **Certificate of medical necessity.** The prescribing provider must complete the medical necessity section of the CMN. This section cannot be completed by the supplier. The medical necessity section can be completed by any health care clinician; however, only the member's treating provider may sign the CMN. By signing the CMN, the physician is validating the completeness and accuracy of the medical necessity section. The member's medical records must contain documentation substantiating that the member's condition meets the coverage criteria and the answers given in the medical necessity section of the CMN. These records may be requested by OHCA or its representatives to confirm concurrence between the medical records and the information submitted with the prior authorization request.

(b) **Submitting prior authorization requests.** Contact information for submitting prior authorization requests may be found in the OHCA Provider Billing and Procedures Manual. An electronic version of this manual is located on the OHCA web site.

(c) **Prior authorization review.** Upon verifying the completeness and accuracy of clerical items, the PA request is reviewed by OHCA staff to evaluate whether or not each service being requested meets SoonerCare's definition of "medical necessity" [see OAC 317:30-3-1 (f)] as well as other criteria.

(d) **Prior authorization decisions.** After the ~~HCA-12A~~PA request is processed, a notice will be issued ~~advising whether or not the item is authorized~~regarding the outcome of the review. If ~~authorization is issued,~~the request is approved the notice will include an authorization number, ~~the time period for which the device is being authorized and~~ the appropriate ~~procedure code~~date span and procedure codes approved.

(e) **Prior authorization does not guarantee reimbursement.** Provider status, member eligibility, and medical status on the
date of service, as well as all other SoonerCare requirements, must be met before the claim is reimbursed.

(f) **Prior authorization of manually-priced items.** ~~Manually-priced items must include documentation showing the supplier's Manufacturer's Suggested Retail Price (MSRP) of the item with the request for prior authorization. The MSRP must be listed for each item in the "billed charges" box on the HCA-12A. If an item does not have an MSRP, the provider must include a copy of the current invoice indicating the cost to the provider and a statement from the manufacturer that there is no MSRP available. Reimbursement will be determined as per OAC 317:30-5-218.~~Manually-priced items must be prior authorized. If manual pricing is used, the provider is reimbursed at the provider's documented Manufacturer's Suggested Retail Price (MSRP) minus 30% or invoice cost plus 30%, whichever is the lesser of two. OHCA may establish a fair market price through claims review and analysis.

[OAR Docket #14-571; filed 6-30-14]

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

[OAR Docket #14-582]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-240.1 [AMENDED]
317:30-5-240.2 [AMENDED]
317:30-5-240.3 [AMENDED]
317:30-5-241 [AMENDED]
317:30-5-241.1 [AMENDED]
317:30-5-241.2 [AMENDED]
317:30-5-241.3 [AMENDED]
317:30-5-241.5 [AMENDED]
317:30-5-248 [AMENDED]
317:30-5-249 [AMENDED]
(Reference APA WF # 13-46)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, 43 A Oklahoma Statute 3-326; 42 CFR 440.230, and CFR 447.253(b)(iii)(A) , 483.15(g), and 483.20
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.2 [AMENDED]
317:30-5-241.3 [AMENDED]
GUBERNATORIAL APPROVAL:
July 1, 2014
REGISTER PUBLICATION:
31 Ok Reg 651
DOCKET NUMBER:
14-706
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's outpatient behavioral health (OBH) rules are revised to remove the behavioral health rehabilitation specialist (BHRS) designation from policy since, effective July 1, 2014, these services will only be reimbursed

if provided by an LBHP, CADC or Case Manager II (CM II). Changes are also made to the rules to clarify that OBH services cannot be separately billable to individuals residing in nursing facilities. Reimbursements for these services are included within the nursing facility rate, as required by federal regulation. Additionally, clarification is made that individual and group psychotherapy services cannot be provided to children ages 0-3 unless medical necessity criteria is met, and partial hospitalization (PHP) and day treatment language is amended to clarify psychosocial rehabilitation is not allowed for children ages 0-3 and prior authorization is required for children ages 4-6. Additional changes include: additional supervision requirements for paraprofessionals by licensed, master level staff that render services to members outside of an agency setting, revising peer recovery support specialist services to include youth ages 16-18 that are transitioning into adulthood, revise behavioral health rehabilitation service documentation requirements, and clarifying when services may be rendered without a treatment plan. Other revisions are also made to make minor "cleanup" changes to terminology, which include changes mandated by the Diagnostic and Statistical Manual (DSM) V.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-240.1. Definitions

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

"Accrediting body" means one of the following:

(A) Accreditation Association for Ambulatory Health Care (AAAHC);

(B) American Osteopathic Association (AOA);

(C) Commission on Accreditation of Rehabilitation Facilities (CARF);

(D) Council on Accreditation of Services for Families and Children, Inc. (COA);

(E) The Joint Commission (TJC) formerly known as Joint Commission on Accreditation of Healthcare Organizations; or

(F) other OHCA approved accreditation.

"Adult" means an individual 21 and over, unless otherwise specified.

"AOD" means Alcohol and Other Drug.

"AODTP" means Alcohol and Other Drug Treatment Professional.

"ASAM" means the American Society of Addiction Medicine.

"ASAM Patient Placement Criteria (ASAM PPC)" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Behavioral Health (BH) Services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance abuse, and co-occurring disorders.

"BHAs" means Behavioral Health Aides.

~~**"BHRS"** means Behavioral Health Rehabilitation Specialist.~~

"Certifying Agency" means the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

"Child" means an individual younger than 21, unless otherwise specified.

"Client Assessment Record (CAR)" means the standardized tool recognized by OHCA and ODMHSAS to evaluate the functioning of the member.

"CM" means case management.

"CMHCs" means Community Mental Health Centers who are state operated or privately contracted providers of behavioral health services for adults with serious mental illnesses, and youth with serious emotional disturbances.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"EBP" means an Evidence Based Practice per the Substance Abuse & Mental Health Services Administration (SAMHSA).

"EPSDT" means the Medicaid Early and Periodic Screening, Diagnostic and Treatment benefit for children. In addition to screening services, EPSDT also covers the diagnostic and treatment services necessary to ameliorate acute and chronic physical and mental health conditions.

"FBCS" means Facility Based Crisis Stabilization.

"FSPs" means Family Support Providers.

~~**"ICF/MR"**~~ **"ICF/IID"** means Intermediate Care Facility for ~~the Mentally Retarded~~Individuals with Intellectual Disabilities.

"Institution" means an inpatient hospital facility or Institution for Mental Disease (IMD).

"IMD" means Institution for Mental Disease as per 42 CFR 435.1009 as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. The regulations indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases. Title XIX of the Social Security Act provides that, except for individuals under age 21 receiving inpatient psychiatric care, Medicaid (Title XIX) does not cover services to IMD patients under 65 years of age [section 1905(a)(24)(B)].

"Level of Functioning Rating" means a standardized mechanism to determine the intensity or level of services needed based upon the severity of the member's condition. The CAR level of function rating scale is the tool that links the

clinical assessment to the appropriate level of Mental Health treatment. Either the Addiction Severity Index (ASI) or the Teen Addiction Severity Index (TASI), based on age, is the tool that links the clinical assessment to the appropriate level of Substance Abuse (SA) treatment.

"LBHP" means a Licensed Behavioral Health Professional.

"MST" means the EBP Multi-Systemic Therapy.

"OAC" means Oklahoma Administrative Code, the publication authorized by 75 O.S. 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"ODMHSAS contracted facilities" means those providers that have a contract with the ODMHSAS to provide mental health or substance ~~abuse~~use disorder treatment services, and also contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

"OHCA" means the Oklahoma Health Care Authority.

"OJA" means the Office of Juvenile Affairs.

"Provider Manual" means the OHCA BH Provider Billing Manual.

"RBMS" means Residential Behavioral Management Services within a group home or therapeutic foster home.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.

~~**"RSS"**~~**"PRSS"** means Peer Recovery Support Specialist.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"Serious Emotional Disturbance (SED)" means a condition experienced by persons from birth to 18 that show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious emotional disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either ~~(A) or (B)~~i or ii below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

"Serious Mental Illness (SMI)" means a condition experienced by persons age 18 and over that show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious mental illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious mental illness.

(C) The adult must exhibit either ~~(A) or (B)~~(i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional

impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations).

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Trauma informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

317:30-5-240.2. Provider participation standards

(a) **Accreditation and certification status.** Any agency may participate as an OPBH provider if the agency is qualified to render a covered service and meets the OHCA requirements for provider participation.

(1) Private, Community-based Organizations must be accredited as a provider of outpatient behavioral health services from one of the accrediting bodies and be an incorporated organization governed by a board of directors or be certified by the certifying agency in accordance with Section(s) 3-317, 3-323A, 3-306.1, or 3-415 of Title 43A of the Oklahoma Statutes;

(2) State-operated programs under the direction of ODMHSAS must be accredited by one of the accrediting bodies or be certified by the certifying agency in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statues;

(3) Freestanding Psychiatric Hospitals must be licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards and JCAHO accreditation;

(4) General Medical Surgical Hospitals must be appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA accreditation;

(5) Federally Qualified Health Centers/Community Health Centers facilities that qualify under OAC 317:30-5-660;

(6) Indian Health Services/Tribal Clinics/Urban Tribal Clinics facilities that qualify under Federal regulation;

(7) Rural Health Clinics facilities that qualify under OAC 317:30-5-355;

(8) Public Health Clinics and County Health Departments;

(9) Public School Systems.

(b) **Certifications.** In addition to the accreditation in paragraph (a) above or ODMHSAS certification in accordance with Section(s) 3-317–, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statutes, provider specific credentials are required for the following:

(1) Substance Abuse agencies (OAC 450:18-1-1);

(2) Evidence Based Best Practices but not limited to:

(A) Assertive Community Treatment (OAC 450:55-1-1);

(B) Multi-Systemic Therapy (Office of Juvenile Affairs); and

(C) Peer Support/Community Recovery Support;

(3) Systems of Care (OAC 340:75-16-46);

(4) Mobile and Facility-based Crisis Intervention (OAC 450:23-1-1);

(5) Case Management (OAC 450:50-1-1);

(6) RBMS in group homes (OAC 377:10-7) or foster care settings (OAC 340:75-8-4);

(7) Day Treatment - CARF, JCAHO, or COA will be required as of December 31, 2009; and

(8) Partial Hospitalization/Intensive Outpatient CARF, JCAHO, or COA will be required as of December 31, 2009.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, COA or AOA accreditation or ODMHSAS certification in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 or Title 43A of the Oklahoma Statutes will supply the documentation from the accrediting body or certifying agency, along with other information as required for contracting purposes to the OHCA. The contract must include copies of all required state licenses, accreditation and certifications.

(2) If the contract is approved, a separate provider identification number for each outpatient behavioral health service site will be assigned. Each site operated by an outpatient behavioral health facility must have a separate provider contract and site-specific accreditation and/or certification as applicable. A site is defined as an office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the member's residence, a school, or when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(3) All behavioral health providers are required to have an individual contract with OHCA in order to receive SoonerCare reimbursement. This requirement includes outpatient behavioral health agencies and all individual rendering providers who work within an agency setting. Individual contracting rendering provider qualification requirements are set forth in OAC 317:30-3-2 and ~~OAC 317:30-5-280~~317:30-5-240.3.

(d) **Standards and criteria.** Eligible organizations must meet each of the following:

(1) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.

(2) Have a multi-disciplinary, professional team. This team must include all of the following:

(A) One of the LBHPs;

(B) A ~~BHRS~~Certified Behavioral Health Case Manager II (CM II) or CADC, if individual or group rehabilitative services for behavioral health disorders are provided, and the designated LBHP(s) on the team will not be providing rehabilitative services;

(C) An AODTP, if treatment of ~~alcohol and other drug~~substance use disorders is provided;

(D) A registered nurse, advanced practice nurse, or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and Support Service is provided;

(E) The member for whom the services will be provided, and parent/guardian for those under 18 years of age.

(F) A member treatment advocate if desired and signed off on by the member.

(3) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241 et seq., as applicable to their program. Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services.

(A) Assessments and ~~Treatment~~Service Plans;

(B) Psychotherapies;

(C) Behavioral Health Rehabilitation services;

(D) Crisis Intervention services;

(E) Support Services; and

(F) Day Treatment/Intensive Outpatient.

(4) Be available 24 hours a day, seven days a week, for Crisis Intervention services.

(5) Provide or have a plan for referral to physician and other behavioral health services necessary for the treatment of the behavioral disorders of the population served.

(6) Comply with all applicable Federal and State Regulations.

(7) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.

(8) Demonstrate the ability to keep appropriate records and documentation of services performed.

(9) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(10) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

317:30-5-240.3. Staff Credentials

(a) **Licensed Behavioral Health Professional (LBHPs).** LBHPs are defined as follows:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided, issued by one of the licensing boards listed in (A) through (F)~~or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (A) through (F) of this paragraph~~. The exemptions from licensure under 59 § 1353(4) (Supp. 2000) and (5), 59 § 1903(C) and (D) (Supp. 2000), 59 § 1925.3(B) (Supp. 2000) and (C), and 59 § 1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist,

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(5) Licensure candidates actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (2)(A) through (F) above. The supervising licensed professional responsible for the member's care must:

(A) staff the member's case with the candidate,

(B) be personally available, or ensure the availability of a fully licensed LBHP to the candidate for consultation while they are providing services,

(C) agree with the current plan for the member, and

(D) confirm that the service provided by the candidate was appropriate; and

(E) The member's medical record must show that the requirements for reimbursement were met and the

licensed professional responsible for the member's care has reviewed, countersigned, and dated the service plan and any updates thereto so that it is documented that the licensed professional is responsible for the member's care.

(b) **Certified Alcohol and Drug Counselors (CADC's).** CADC's are defined as having a current certification as a CADC in the state in which services are provided.

~~(c) **Behavioral Health Rehabilitation Specialists (BHRS).** BHRSs are defined as follows:~~

~~(1) After 7/01/10:~~

~~(A) Bachelor degree earned from a regionally accredited college or university recognized by the United States Department of Education and completion of the ODMHSAS training as a Behavioral Health Rehabilitation Specialist; or~~

~~(B) CPRP (Certified Psychiatric Rehabilitation Practitioner) credential; or~~

~~(C) Certification as an Alcohol and Drug Counselor; or~~

~~(D) A current license as a registered nurse in the state where services are provided and completion of the ODMHSAS training as a Behavioral Health Rehabilitation Specialist; or~~

~~(E) If qualified as a BHRS prior to 07/01/10 and have a ODMHSAS letter on file confirming that the individual meets BHRS qualifications.~~

~~(2) BHRS designations made between July 1, 2010 through June 30, 2013 will continue to be recognized until June 30, 2014 at which time 7/1/13 criteria must be met. Unless otherwise specified in rules, on or after 7/01/13, BHRS will be required to meet one of the following criteria:~~

~~(A) LBHP;~~

~~(B) CADC; or~~

~~(C) Current certification by ODMHSAS as a Behavioral Health Case Manager II as described in OAC 317:30-5-595(2).~~

(~~d~~c) **Multi-Systemic Therapy (MST) Provider.** Masters level who work on a team established by OJA which may include Bachelor level staff.

(~~e~~d) **~~Community~~Peer Recovery Support Specialist ~~(RSS)~~(PRSS).** The ~~community/recovery support worker~~Peer Recovery Support Specialist must ~~meet the following criteria:~~be certified by ODMHSAS pursuant to requirements found in OAC 450:53.

~~(1) High School diploma or GED;~~

~~(2) Minimum one year participation in local or national member advocacy or knowledge in the area of behavioral health recovery;~~

~~(3) current or former member of behavioral health services; and~~

~~(4) successful completion of the ODMHSAS Recovery Support Provider Training and Test.~~

(~~f~~e) **Family Support and Training Provider (FSP).** FSPs are defined as follows:

(1) Have a high school diploma or equivalent;

(2) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(3) successful completion of ODMHSAS Family Support Training;

(4) pass background checks; and

(5) ~~treatment~~service plans must be overseen and approved by a LBHP; and

(6) must function under the general direction of a LBHP or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

(~~g~~f) **Behavioral Health Aide (BHA).** BHAs are defined as follows:

(1) Behavioral Health Aides must have completed 60 hours or equivalent of college credit; or

(2) may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience; and

(3) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(4) must be supervised by a bachelor's level individual with a minimum of two years case management or care coordination experience; and

(5) ~~treatment~~service plans must be overseen and approved by a LBHP; and

(6) must function under the general direction of a LBHP and/or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

317:30-5-241. Covered Services

(a) Outpatient behavioral health services are covered for adults and children as set forth in this Section ~~unless specified otherwise, and~~ when provided in accordance with a documented individualized service plan, developed to treat the identified behavioral health and/or substance ~~abuse~~use disorder(s), unless specified otherwise.

(b) All services are to be for the goal of improvement of functioning, independence, or well-being of the member. The services and ~~treatment~~service plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(c) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current

CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Behavioral Health Provider Manual.

(d) All outpatient BH services must be provided following established medical necessity criteria. Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Behavioral Health Provider Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(e) Services to nursing facility residents. Reimbursement is not allowed for outpatient behavioral health services provided to members residing in a nursing facility. Provision of these services is the responsibility of the nursing facility and reimbursement is included within the rate paid to the nursing facility for the member's care.

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in this Section.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population.** This service is compensable only on behalf of a member who is under a PACT program.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP. ~~CADCs are permitted to provide Drug and Alcohol assessments through June 30, 2010. Effective July 1, 2010 all assessments must be provided by LBHPs.~~

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.

(D) **Target population and limitations.** ~~This service~~The Behavioral Health Assessment by a Non-Physician, moderate complexity, is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(E) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include ~~a~~at least one DSM ~~multi-axial~~ diagnosis ~~completed for all five axes~~ from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent of guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance abuse; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, include Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;
(IX) Cultural and religious orientation;
(X) Vocational, occupational and military history;
(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;
(XII) Marital or significant other relationship history;
(XIII) Recreation and leisure history;
(XIV) Legal or criminal record, including the identification of key contacts, (~~i.e.~~e.g., attorneys, probation officers, etc.);
(XV) Present living arrangements;
(XVI) Economic resources;
(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding:
(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
(II) Affective process, such as mood, affect, manner and attitude, etc.;
(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.; and
(IV) Full ~~Five Axes~~ DSM diagnosis.

(xvi) Pharmaceutical information to include the following for both current and past medications;
(I) Name of medication;
(II) Strength and dosage of medication;
(III) Length of time on the medication; and
(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;
(xviii) Signature and credentials of LBHP who performed the face-to-face behavioral assessment;
(xix) Client Data Core Elements reported into designated OHCA representative.

~~(F) **Service Plan Development, Low Complexity.** A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.~~

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized ~~rehabilitation~~ plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. ~~BH~~Behavioral Health Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.

(B) **Qualified professional.** This service is performed by an LBHP.

(C) **Time requirements.** Service Plan updates must be conducted face-to-face and are required every six months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the LBHP and member.

(D) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:
(i) member strengths, needs, abilities, and preferences(SNAP);
(ii) identified presenting challenges, problems, needs and diagnosis;
(iii) specific goals for the member;
(iv) objectives that are specific, attainable, realistic, and time-limited;
(v) each type of service and estimated frequency to be received;
(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;
(vii) any needed referrals for service;
(viii) specific discharge criteria;
(ix) description of the member's involvement in, and responses to, the ~~treatment~~service plan, and his/her signature and date;
(x) service plans are not valid until all signatures are present (signatures are required from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP; and
(xi) all changes in service plan must be documented in a service plan update (low complexity) or within the service plan until time for the update (low complexity). Any changes to the existing service plan must be signed and dated by the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the lead LBHP.
(xii) Updates to goals, objectives, service provider, services, and service frequency, must

be documented within the service plan until the six month review/update is due.

(xiii) Service plan updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis service plan goals and/ or objectives;

(II) progress, or lack of, on previous service plan goals and/or objectives;

(III) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the ~~treatment~~service plan, and his/her signature and date; and

(IX) service plans are not valid until all signatures are present. The required signatures are: from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP.

(E) **Service limitations**:

(i) Behavioral Health Service Plan Development, Moderate complexity (i.e., pre-admission procedure code group) are limited to 1 per member, per provider, unless more than a year has passed between services, then another one can be requested and may be authorized by OHCA or its designated agent.

(ii) Behavioral Health Service Plan Development, Low Complexity: Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member. The date of service is when the ~~treatment~~service plan is complete and the date the last required signature is obtained. Services should always be age, developmentally, and clinically appropriate.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified professionals.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Each qualified professional must have a current contract with the Oklahoma Health Care Authority.

(C) **Documentation requirements.** All psychological services must be reflected by documentation in the member's record. All assessment, testing, and treatment services/units billed must include the following:

(i) date;

(ii) start and stop time for each session/unit billed and physical location where service was provided;

(iii) signature of the provider;

(iv) credentials of provider;

(v) specific problem(s), goals and/or objectives addressed;

(vi) methods used to address problem(s), goals and objectives;

(vii) progress made toward goals and objectives;

(viii) patient response to the session or intervention; and

(ix) any new problem(s), goals and/or objectives identified during the session.

(D) **Service Limitations.** Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Evaluation and testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Eight hours/units of testing per patient over the age of two, per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting are performed. A maximum of 12 hours of therapy and testing, per day per rendering provider are allowed. A child who is being treated in an acute inpatient setting can receive separate psychological services by a physician or psychologist as the inpatient per diem is for "non-physician" services only. A child receiving Residential level treatment in either ~~an~~a therapeutic foster care home, or group home may not receive additional individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent. Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. For assessment conducted in a school setting the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Individuals who qualify for Part B of

Medicare: Payment is made utilizing the SoonerCare allowable for comparable services. Payment is made to physicians, LBHPs or psychologists with a license to practice in the state where the services is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed.

317:30-5-241.2. Psychotherapy

(a) **Psychotherapy.**

(1) **Definition.** Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. The therapy must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.

(2) ~~**Definition**~~**Interactive Complexity.** Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the LBHP. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e. related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with implementation of the ~~treatment~~service plan.

(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e. abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.

(D) Use of play equipment, physical devices, interpreter or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.

(3) **Qualified professionals.** Psychotherapy must be provided by a Licensed Behavioral Health Professional (LBHP) in a setting that protects and assures confidentiality. ~~Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.~~

(4) **Limitations.** A maximum of 6 units per day per member is compensable. Except for psychotherapy involving interactive complexity as described in this Section, only the member and the Licensed Behavioral Health Professional (LBHP) should be present during the session. Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.

(b) **Group Psychotherapy.**

(1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the interaction between the LBHP and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under Behavioral Health Rehabilitation Services.

(2) **Group sizes.** Group Psychotherapy is limited to a total of eight adult (18 and over) individuals except when the individuals are residents of an ~~ICF/MR~~ICF/IID where the maximum group size is six. For all children under the age of 18, the total group size is limited to six.

(3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight families/units. Billing is allowed once per family unit, though units may be divided amongst family members.

(4) **Qualified professionals.** Group psychotherapy will be provided by a LBHP. Group Psychotherapy must take place in a confidential setting limited to the LBHP, an assistant or co-therapist, if desired, and the group psychotherapy participants.

(5) **Limitations.** A maximum of 12 units per day per member is compensable. Group Psychotherapy for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual.

(c) **Family Psychotherapy.**

(1) **Definition.** Family Psychotherapy is a face-to-face psychotherapeutic interaction between a LBHP and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member

to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the Evidence Based Practice titled Family Psychoeducation.

(2) **Qualified professionals.** Family Psychotherapy must be provided by a LBHP.

(3) **Limitations.** A maximum of 12 units per day per member/family unit is compensable. The provider may not bill any time associated with note taking and/or medical record upkeep. The provider may only bill the time spent in direct face-to-face contact. Provider must comply with documentation requirements listed in OAC 317:30-5-248.

(d) **Multi-Systemic Therapy (MST).**

(1) **Definition.** MST intensive outpatient program services are limited to children within an Office of Juvenile Affairs (OJA) MST treatment program which provides an intensive, family and community-based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, antisocial, and/or substance abusing behaviors, and are at risk for out of home placement. Case loads are kept low due to the intensity of the services provided.

(2) **Qualified professionals.** Masters level professionals who work with a team that may include bachelor level staff.

(3) **Documentation requirements.** Providers must comply with documentation requirements in 317:30-5-248.

(4) **Service limitations.** Partial billing is not allowed, when only one service is provided in a day, providers should not bill for services performed for less than 8 minutes.

(e) **Children/Adolescent Partial Hospitalization Program (PHP).**

(1) **Definition.** Partial hospitalization services are services that (1) Are reasonable and necessary for the diagnosis or active treatment of the member's condition; (2) Are reasonably expected to improve the member's condition and functional level and to prevent relapse or hospitalization and (3) Include the following:

(A) Assessment, diagnostic and ~~treatment~~service plan services for mental illness and/or substance ~~abuse~~use disorders provided by LBHPs.

(B) Individual/Group/Family (primary purpose is treatment of the member's condition) psychotherapies provided by LBHPs.

(C) Substance ~~abuse~~use disorder specific services are provided by LBHPs qualified to provide these services.

(D) Drugs and biologicals furnished for therapeutic purposes.

(E) Family counseling, the primary purpose of which is treatment of the member's condition.

(F) Behavioral health rehabilitation ~~training and education~~ services to the extent the ~~training and educational~~ activities are closely and clearly related to the member's care and treatment, provided by a ~~Behavioral Health Rehabilitation Specialist (BHRS)~~Certified Behavioral Health Case Manager II, Certified Alcohol and Drug Counselor (CADC)or LBHP who meets the professional requirements listed in 317:30-5-240.3 ~~or a Certified Behavioral Health Case Manager II~~.

(G) Care Coordination of behavioral health services provided by certified behavioral health case managers.

(2) **Qualified professionals.**

(A) All services in the PHP are provided by a clinical team, consisting of the following required professionals:

(i) A licensed physician;

(ii) Registered nurse; and

(iii) One or more of the licensed behavioral health professionals (LBHP) listed in 30-5-240.3(a).

(B) The clinical team may also include ~~any of the following paraprofessionals:~~a Certified Behavioral Health Case Manager.

~~(i) Behavioral Health Rehabilitation Specialist; or~~

~~(ii) Certified Behavioral Health Case Manager.~~

(C) The ~~treatment~~service plan is directed under the supervision of a physician and the number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program.

(3) **Qualified providers.** Provider agencies for PHP must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA) for partial hospitalization and enrolled in SoonerCare. Staff providing these services are employees or contractors of the enrolled agency.

(4) **Limitations.** Services are limited to children 0-20 only. Children under age 6 are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity. Services must be offered at a minimum of 3 hours per day, 5 days per week. Therapeutic services are limited to 4 billable hours per day. PHP services are all inclusive with the exception of physician services and drugs that cannot be self-administered, those services are separately billable. Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning. Occupational, Physical and Speech therapy will be provided by the Independent School District (ISD). Academic instruction, meals, and transportation are not covered.

(5) **Service requirements.**

(A) Therapeutic Services are to include the following:

(i) Psychiatrist/physician face-to-face visit 2 times per month;

(ii) Crisis management services available 24 hours a day, 7 days a week;

(B) Psychotherapies to be provided a minimum of four (4) hours per week and include the following:

(i) Individual therapy - a minimum of 1 session per week;

(ii) Family therapy - a minimum of 1 session per week; and

(iii) Group therapy - a minimum of 2 sessions per week;

(C) Interchangeable services which include the following:

(i) Behavioral Health Case Management (face-to-face);

(ii) Behavioral health rehabilitation services/alcohol and other drug abuse education (except for children under age 6, unless a prior authorization has been granted for children ages 4 and 5);

(iii) Medication Training and Support; and

(iv) Expressive therapy.

(6) **Documentation requirements.** Documentation needs to specify active involvement of the member's family, caretakers, or significant others involved in the individual's treatment. A nursing health assessment must be completed within 24 hours of admission. A physical examination and medical history must be coordinated with the Primary Care Physician. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to Section OAC 317:30-5-248.

(7) **Staffing requirements.** Staffing requirements must consist of the following:

(A) RN trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available onsite during program hours to provide necessary nursing care and/or psychiatric nursing care (1 RN at a minimum can be backed up by an LPN but an RN must always be onsite). Nursing staff administers medications, follows up with families on medication compliance, and restraint assessments.

(B) Medical director must be a licensed psychiatrist.

(C) A psychiatrist/physician must be available 24 hours a day, 7 days a week.

(f) **Children/Adolescent Day Treatment Program.**

(1) **Definition.** Day Treatment Programs are for the stabilization of children and adolescents with severe emotional and/or behavioral disturbances. Treatment is designed for children who have difficulty functioning in mainstream community settings such as classrooms, and who need a higher intensity of services than outpatient counseling provides. Treatment is time limited and includes therapeutically intensive clinical services geared towards reintegration to the home, school, and community.

(2) **Qualified professionals.** All services in Day Treatment are provided by a team, which must be composed of one or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP), a case manager, or other certified Behavioral Health/Substance Abuse paraprofessional staff. Services are directed by an LBHP.

(3) **Qualified providers.** Provider agencies for Day Treatment must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA).

(4) **Limitations.** Services must be offered at a minimum of 4 days per week at least 3 hours per day. Behavioral Health Rehabilitation Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning. Children under age 6 are not eligible for behavioral health rehabilitation services, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity.

(5) **Service requirements.** On-call crisis intervention services must be available 24 hours a day, 7 days a week (When members served have psychiatric needs, psychiatric services are available which include the availability of a psychiatrist 24 hours a day, 7 days a week. A psychiatrist can be available either on site or on call but must be available at all times). Day treatment program will provide assessment and diagnostic services and/or medication monitoring, when necessary.

(A) Treatment activities are to include the following every week:

(i) Family therapy at least one hour per week (additional hours of FT may be substituted for other day treatment services);

(ii) Group therapy at least two hours per week; and

(iii) Individual therapy at least one hour per week.

(B) Additional services are to include at least one of the following services per day:

(i) Medication training and support (nursing) once monthly if on medications;

(ii) Behavioral health rehabilitation services to include alcohol and other drug education if clinically necessary and appropriate (except for children under age 6, unless a prior authorization has been granted for children ages 4 and 5);

(iii) Behavioral health case management as needed and part of weekly hours for member;

(iv) Occupational therapy as needed and part of weekly hours for member; and

(v) Expressive therapy as needed and part of weekly hours for the member.

(6) **Documentation requirements.** Service plans are required every three (3) months.

317:30-5-241.3. Behavioral Health Rehabilitation (BHR) services

(a) **Definition.** Behavioral Health Rehabilitation (BHR) services are goal oriented outpatient interventions that target the maximum reduction of mental and/or behavioral health

impairments and strive to restore the members to their best possible mental and/or behavioral health functioning. BHR services must be coordinated in a manner that is in the best interest of the member and may be provided in a variety of community and/or professional settings that protect and assure confidentiality. For purposes of this Section, BHR includes Psychosocial Rehabilitation, Outpatient Substance Abuse Rehabilitation, and Medication Training and Support.

(b) **Psychosocial Rehabilitation (PSR).**

(1) **Definition.** PSR services are face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of curriculum based education and skills training.

(2) **Clinical restrictions.** This service is generally performed with only the members and the qualified provider, but may include a member and the member's family/support system ~~group~~when providing educational services from a curriculum that focuses on the member's diagnosis, symptom management, and recovery ~~based curriculum~~. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance abuse, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires a licensed provider.

(3) **Qualified providers.** A ~~BHRS~~Certified Behavioral Health Case Manager II (CM II), CADC, and LBHP may perform PSR, following development of a service plan and treatment curriculum approved by a LBHP. ~~PSR staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE or trauma informed methodology~~. The ~~BHRS~~CM II and CADC must have immediate access to a fully licensed LBHP who can provide clinical oversight ~~of the BHRS~~ and collaborate with the ~~BHRS~~qualified PSR provider in the provision of services. A minimum of one monthly face-to-face consultation with a fully licensed LBHP is required for PSR providers regularly rendering services in an agency setting. A minimum of one face-to-face consultation per week with a fully licensed LBHP is required for PSR providers regularly rendering services away from the outpatient behavioral health agency site.

(4) **Group sizes.** The maximum staffing ratio is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(5) **Limitations.**

(A) **Transportation.** Travel time to and from PSR treatment is not compensable. Group PSR services do not qualify for the OHCA transportation program, but OHCA will arrange for transportation for those who require specialized transportation equipment.

(B) **Time.** Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time.

(C) **Location.** In order to develop and improve the member's community and interpersonal functioning and self care abilities, PSR services may take place in settings away from the outpatient behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(D) **Eligibility for PSR services.** PSR services are intended for adults with Serious Mental Illness (SMI), children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. The following members are not eligible for PSR services:

(i) Residents of ~~ICF/MR~~ICF/IID facilities, unless authorized by OHCA or its designated agent;

(ii) children under age 6, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity;

(iii) children receiving RBMS in a group home or therapeutic foster home, unless authorized by OHCA or its designated agent;

(iv) inmates of public institutions;

(v) members residing in inpatient hospitals or IMDs; and

(vi) members residing in nursing facilities.

(E) **Billing limits.** PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to compliment more intensive behavioral health therapies. Service limits are based on the member's needs according to the CAR or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation diminishing return by remaining within reasonable age and developmentally appropriate daily limits. PSR services authorized under this Section are separate and distinct from, but should not duplicate the structured services required for children residing in group home or therapeutic foster care settings, or receiving services in Day Treatment or Partial Hospitalization Programs. Children under an ODMHSAS Systems of Care program and adults residing in residential care facilities may be prior authorized additional units as part of an intensive transition period. PSR is billed in unit increments of 15 minutes with the following limits:

(i) **Group PSR.** The maximum is 24 units per day for adults and 16 units per day for children.

(ii) **Individual PSR.** The maximum is six units per day.

(iii) **Per-Member service levels and limits.** Unless otherwise specified, group and/or individual PSR services provided in combination may not exceed the monthly limits established in the individual's prior authorization. Limits on PSR services are established based on the level for which the member has been approved. ~~There are no limits on PSR services for individuals determined to be Level 4.~~

(iv) **EPSDT.** Pursuant to OAC 317:30-3-65 et seq., billing limits may be exceeded or may not apply if documentation demonstrates that the requested services are medically necessary and are needed to correct or ameliorate defects, physical or behavioral illnesses or conditions discovered through a screening tool approved by OHCA or its designated agent. The OHCA has produced forms for documenting an EPSDT child health checkup screening which the provider can access on the OHCA website.

(F) **Progress Notes.** In accordance with OAC 317:30-5-241.1, the behavioral health service plan developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level. Progress notes for ~~intensive and skills training mental health, substance abuse or integrated~~PSR day programs may be in the form of daily summary or weekly summary notes. Progress notes for all Behavioral Health Rehabilitation services~~and~~ must include the following:

(i) Curriculum sessions attended each day and/or dates attending during the week;

(ii) Start and stop times for each day attended and the physical location in which the service was rendered;

(iii) Specific goal(s) and objectives addressed during the week;

(iv) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(v) Member satisfaction with staff intervention(s);

(vi) Progress, or barrier to, made towards goals, objectives;

(vii) New goal(s) or objective(s) identified;

(viii) Signature of the lead qualified provider; and

(ix) Credentials of the lead qualified provider;

(G) **Additional documentation requirements.**

(i) a list/log/sign in sheet of participants for each Group rehabilitative session and facilitating qualified provider must be maintained; and

(ii) Documentation of ongoing consultation and/or collaboration with a LBHP related to the provision of PSR services.

(H) **Non-Covered Services.** The following services are not considered BHR and are not reimbursable:

(i) Room and board;

(ii) educational costs;

(iii) supported employment; and

(iv) respite.

(c) **Outpatient Substance Abuse Rehabilitation Services.**

(1) **Definition.** Covered outpatient substance abuse rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance abuse rehabilitation services is to begin, maintain, and/or enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of curriculum based education and skills training.

(2) **Limitations.** Group sessions may not be provided in the home.

(3) **Eligibility.** Members eligible for substance abuse rehabilitation services must meet the criteria for ASAM PCC Treatment Level 1, Outpatient Treatment.

(4) **Qualified providers.** ~~BHRS~~CM II, CADC or LBHP.

(5) **Billing limits.** Group rehabilitation is limited to two (2) hours per session. Group and/or individual outpatient substance abuse rehabilitation services provided in combination may not exceed the monthly limits established in the individual's prior authorization. Limits on services are established based on the level for which the member has been approved. There are no limits on substance abuse rehabilitation services for individuals determined to be Level 4.

(6) **Documentation requirements.** Documentation requirements are the same as for PSR services as set forth in 30-5-241.3(b)(5)(F).

(d) **Medication training and support.**

(1) **Definition.** Medication Training and Support is a documented review and educational session by a registered nurse, advanced practice nurse, or physician assistant focusing on a member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and

medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the medical or clinical record. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization.

(2) **Limitations.**

(A) Medication Training and Support may not be billed for SoonerCare members who reside in ~~ICF/MR~~ICF/IID facilities.

(B) Two units are allowed per month per patient.

(C) Medication Training & Support is not allowed to be billed on the same day as an evaluation and management (E/M) service provided by a psychiatrist.

(3) **Qualified professionals.** Must be provided by a licensed registered nurse, an advanced practice nurse, or a physician assistant as a direct service under the supervision of a physician.

(4) **Documentation requirements.** – Medication Training and Support documented review must focus on:

(A) a member's response to medication;

(B) compliance with the medication regimen;

(C) medication benefits and side effects;

(D) vital signs, which include pulse, blood pressure and respiration; and

(E) documented within the progress notes/medication record.

317:30-5-241.5. Support services

(a) **Program of Assertive Community Treatment (PACT) Services.**

(1) **Definition.** PACT is provided by an interdisciplinary team that ensures service availability 24 hours a day, seven days a week and is prepared to carry out a full range of treatment functions wherever and whenever needed. An individual is referred to the PACT team service when it has been determined that his/her needs are so pervasive and/or unpredictable that it is unlikely that they can be met effectively by other combinations of available community services, or in circumstances where other levels of outpatient care have not been successful to sustain stability in the community.

(2) **Target population.** Individuals 18 years of age or older with serious and persistent mental illness and co-occurring disorders. PACT services are those services delivered within an assertive community-based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self-contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services.

(3) **Qualified professionals.** Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and certified by the ODMHSAS in accordance with 43A O.S. 319 and OAC 450:55. The team leader must be an LBHP.

(4) **Limitations.** PACT services are billable in 15 minute units. A maximum of 105 hours per member per year in the aggregate is allowed. All PACT compensable SoonerCare services are required to be face-to-face. ~~SoonerCare members who are enrolled in this service may not receive other outpatient behavioral health services except for FBCS and CM.~~The following services are separately billable: Case management, facility-based crisis stabilization, physician and medical services.

(5) **Service requirements.** PACT services must include the following:

(A) PACT assessments (initial and comprehensive);

(i) **Initial assessment**- is the initial evaluation of the member based upon available information, including self-reports, reports of family members and other significant parties, and written summaries from other agencies, including police, court, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive initial assessment. Member assessment information for admitted members shall be completed on the day of admission to the PACT. The start and stop times for this service should be recorded in the chart.

(ii) **Comprehensive assessment**- is the organized process of gathering and analyzing current and past information with each member and the family and/or support system and other significant people to evaluate: 1) mental and functional status; 2) effectiveness of past treatment; 3) current treatment, rehabilitation and support needs to achieve individual goals and support recovery; and 4) the range of individual strengths (e.g., knowledge gained from dealing with adversity or personal/professional roles, talents, personal traits) that can act as resources to the member and his/her recovery planning team in pursuing goals. Providers must bill only the face-to-face service time with the member. Non-face to face time is not compensable. The start and stop times for this service should be recorded in the chart.

(B) Behavioral health service plan (moderate and low ~~complexityby~~complexity by a non-physician ~~(~~treatment planning and review) is a process by which the information obtained in the comprehensive assessment, course of treatment, the member, and/or treatment team meetings is evaluated and used to develop a service plan that has individualized goals, objectives, activities and services that will enable a member to improve. The initial assessment serves as a guide until the comprehensive assessment is completed. It is to focus on recovery and must include a discharge plan. It is performed with the direct active participation by the member. SoonerCare compensation for this service includes only the face to face

time with the member. The start and stop times for this service should be recorded in the chart.

(C) Treatment team meetings (team conferences with the member present) is a billable service. This service is conducted by the treatment team, which includes the member and all involved practitioners. For a complete description of this service, see OAC 450:55-5-6 Treatment Team Meetings. This service can be billed to SoonerCare only when the member is present and participating in the treatment team meeting. The conference starts at the beginning of the review of an individual member and ends at the conclusion of the review. Time related to record keeping and report generation is not reported. The start and stop should be recorded in the member's chart. The participating psychiatrist/physician should bill the appropriate CPT code; and the agency is allowed to bill one treatment team meeting per member as medically necessary.

(D) Individual and family psychotherapy;

(E) Individual rehabilitation;

(F) Recovery support services;

(G) Group rehabilitation;

(H) Group psychotherapy;

(I) Crisis Intervention;

(J) Medication training and support services;

(K) Blood draws and /or other lab sample collection services performed by the nurse.

(b) **Behavioral Health Aide Services.**

(1) **Definition.** Behavioral Health Aides provide behavior management and redirection and behavioral and life skills remedial training. The behavioral health aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(2) **Target population.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program, or are under OKDHS or OJA custody residing within a RBMS level of care, who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes.

(3) **Qualified professionals.** Behavioral Health Aides must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The Behavioral Health Aide cannot bill for more than one individual during the same time period.

(5) **Documentation requirements.** Providers must follow requirements listed in OAC 317:30-5-248.

(c) **Family Support and Training.**

(1) **Definition.** This service provides the training and support necessary to ensure engagement and active participation of the family in the ~~treatment planning~~service plan development process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. Child Training is provided to family members to increase their ability to provide a safe and supportive environment in the home and community for the child. Parent Support ensures the engagement and active participation of the family in the ~~treatment planning~~service plan development process and guides families toward taking a proactive role in their child's treatment. Parent Training is assisting the family with the acquisition of the skills and knowledge necessary to facilitate an awareness of their child's needs and the development and enhancement of the family's specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management.

(2) **Target population.** Family Support and Training is designed to benefit the SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody, are residing within a RBMS level of care or are at risk for out of home placement, and who without these services would require psychiatric hospitalization.

(3) **Qualified professionals.** Family Support Providers (FSP) must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The FSP cannot bill for more than one individual during the same time period.

(5) **Documentation requirements.** Providers must comply with requirements listed in OAC 317:30-5-248.

(d) **~~Community~~Peer Recovery Support Services~~(CRS)~~(PRSS).**

(1) **Definition.** ~~CRS (or Peer Recovery Support)~~Peer recovery support services are an EBP model of care which consists of a qualified peer recovery support specialist provider ~~(RSS)~~PRSS who assists individuals with their recovery from behavioral health disorders. Recovery Support is a service delivery role in the ODMHSAS public and contracted provider system throughout the behavioral health care system where the provider understands what creates recovery and how to support environments conducive of recovery. The role is not interchangeable with traditional staff members who usually work from the perspective of their training and/or their status as a licensed behavioral health provider; rather, this provider works from the perspective of their experimental expertise and specialized credential training. They lend unique insight into mental illness and what makes recovery possible because they are in recovery.

(2) **Target population.** ~~Adults~~Children 16 and over with SED and/or substance use disorders and adults 18 and over with SMI and/or ~~AOD~~substance use disorder(s).

(3) **Qualified professionals.** Peer Recovery Support Specialists ~~(RSS)~~PRSS must be ~~trained/credentialed~~certified through ODMHSAS pursuant to OAC 450:53.

(4) **Limitations.** The ~~RSS~~PRSS cannot bill for more than one individual during the same time period. This service can be an individual or group service. Groups have no restriction on size.

(5) **Documentation requirements.** Providers must comply with requirements listed in OAC 317:30-5-248.

(6) **Service requirements.**

(A) ~~CRS/RSS~~PRSS staff utilizing their knowledge, skills and abilities will:

(i) teach and mentor the value of every individual's recovery experience;

(ii) model effective coping techniques and self-help strategies;

(iii) assist members in articulating personal goals for recovery; and

(iv) assist members in determining the objectives needed to reach his/her recovery goals.

(B) ~~CRS/RSS~~PRSS staff utilizing ongoing training must:

(i) proactively engage members and possess communication skills/ability to transfer new concepts, ideas, and insight to others;

(ii) facilitate peer support groups;

(iii) assist in setting up and sustaining self-help (mutual support) groups;

(iv) support members in using a Wellness Recovery Action Plan (WRAP);

(v) assist in creating a crisis plan/Psychiatric Advanced Directive;

(vi) utilize and teach problem solving techniques with members;

(vii) teach members how to identify and combat negative self-talk and fears;

(viii) support the vocational choices of members and assist him/her in overcoming job-related anxiety;

(ix) assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(x) assist other staff in identifying program and service environments that are conducive to recovery; and

(xi) attend treatment team and program development meetings to ensure the presence of the member's voice and to promote the use of self-directed recovery tools.

317:30-5-248. Documentation of records

All outpatient behavioral health services must be reflected by documentation in the member's records.

(1) For Behavioral Health Assessments (see OAC 317:30-5-241), no progress notes are required.

(2) For Behavioral Health Services Plan (see OAC 317:30-5-241), no progress notes are required.

(3) Treatment Services must be documented by progress notes.

(A) Progress notes shall chronologically describe the services provided, the member's response to the services provided and the member's progress, or lack of, in treatment and must include the following:

(i) Date;

(ii) Person(s) to whom services were rendered;

(iii) Start and stop time for each timed treatment session or service;

(iv) Original signature of the therapist/service provider; in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or photocopied signatures are allowed. Electronic signatures are acceptable following OAC 317:30-3-4.1 and 317:30-3-15;

(v) Credentials of therapist/service provider;

(vi) Specific service plan need(s), goals and/or objectives addressed;

(vii) Services provided to address need(s), goals and/or objectives;

(viii) Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;

(ix) Member (and family, when applicable) response to the session or intervention;

(x) Any new need(s), goals and/or objectives identified during the session or service.

(4) In addition to the items listed above in this subsection:

(A) Crisis Intervention Service notes must also include a detailed description of the crisis and level of functioning assessment;

(B) a list/log/sign in sheet of participants for each Group rehabilitative or psychotherapy session and facilitating qualified provider must be maintained; and

(C) for medication training and support, vital signs must be recorded in the medical record, but are not required on the behavioral health services plan;

(5) Progress notes for ~~intensive and skills training behavioral health, substance abuse, or integrated BHR~~PSR day programs may be in the form of daily or weekly summary notes and must include the following:

(A) Curriculum sessions attended each day and/or dates attended during the week;

(B) Start and stop times for each day attended;

(C) Specific goal(s) and/or objectives addressed during the week;

(D) Type of Skills Training provided each day and/or during the week including the specific curriculum used with the member;

(E) Member satisfaction with staff intervention(s);

(F) Progress or barriers made toward goals, objectives;

(G) New goal(s) or objective(s) identified;

(H) Signature of the lead qualified provider; and

(I) Credentials of the lead qualified provider.

(6) Concurrent documentation between the clinician and member can be billed as part of the treatment session time, but must be documented clearly in the progress notes ~~and signed by the member (or note if the member is unable/refuses to sign)~~.

317:30-5-249. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage. Work and education services:

(1) Talking about the past and current and future employment goals, going to various work sites to explore the world of work, and assisting client in identifying the pros and cons of working.

(2) Development of an ongoing educational and employment rehabilitation plan to help each individual establish job specific skills and credentials necessary to achieve ongoing employment. Psycho-social skills training however would be covered.

(3) Work/school specific supportive services, such as assistance with securing of appropriate clothing, wake-up calls, addressing transportation issues, etc. These would be billed as Case Management following ~~317:30-5-285~~317:30-5-595 through ~~317:30-5-285~~317:30-5-599.

(4) Job specific supports such as teaching/coaching a job task.

[OAR Docket #14-582; filed 6-30-14]

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

[OAR Docket #14-570]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-42.19. [NEW]
Part 5. Pharmacies
317:30-5-87. [NEW]
Part 35. Rural Health Clinics
317:30-5-363. [NEW]
Part 75. Federally Qualified Health Centers
317:30-5-664.6. [AMENDED]
(Reference APA WF # 13-11)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; 42 U.S.C.256b (a) (i) and Sec.340B Public Health Act
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed 340B Drug Discount program rules are implemented to comply with a Federal Mandate. The 340B mandate requires states to include their 340B Drug Discount program rules in their State Plan and Medicaid policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-42.19. 340B Drug Discount Program

For 340B Drug Discount Program guidelines refer to section 317:30-5-87.

PART 5. PHARMACIES

317:30-5-87. 340B Drug Discount Program

(a) The purpose of this Section is to provide special provisions for providers participating in the 340B Drug Discount program. The 340B Drug Discount program special provisions apply to a provider that has asserted it is a "covered entity" or a contract pharmacy for a covered entity under the provisions of 42 U.S.C. § 256b of the United States Code (otherwise known as the 340B Drug Discount Program).

(b) Covered Entities.

(1) The covered entity must notify OHCA in writing within 30 days of any changes in 340B participation, as well as any changes in name, address, NPI number, etc.

(2) The covered entity must maintain their status on the HRSA Medicaid exclusion file and report any changes to OHCA within 30 days.

(3) The covered entity must execute a contract addendum with OHCA in addition to their provider contract.

(4) To prevent a duplicate discount, quarterly adjustments will be made to all pharmacy or medical claims for drugs submitted by the covered entity. OHCA will adjust each claim by subtracting the Unit Rebate Amount multiplied by the quantity submitted. All drugs shall be adjusted by the URA whether purchased through the 340B program or otherwise when billed using the registered

SoonerCare NPI number on the HRSA Medicaid Exclusion File. OHCA will use the Unit Rebate Amount applicable to the quarter in which the claim is submitted to OHCA for payment.

(c) Contract pharmacies for covered entities may be permitted to bill drug products purchased under the 340B Drug Discount Program to the Oklahoma Medicaid Program when certain conditions are met and an agreement is in place between OHCA, the contract pharmacy and the covered entity.

PART 35. RURAL HEALTH CLINICS

317:30-5-363. 340B Drug Discount Program

For 340B Drug Discount Program guidelines, refer to section 317:30-5-87.

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-664.6. ~~Prescription drugs provided by Health Centers~~ Prescription drugs purchased under the 340B Drug Discount Program provided by Health Centers

~~(a) Eligible Health Centers may elect to participate in the 340B prescription drug program which limits the purchase cost of covered outpatient drugs.~~

~~(b) Centers that are eligible for participation in the 340B program must submit a request to participate to the Office of Pharmacy Affairs which includes their SoonerCare billing information. On an annual basis, a copy of the completed 340B participation form from the Office of Pharmacy Affairs must also be submitted to OHCA's Pharmacy Unit. Additionally, the Center must notify OHCA in writing of any changes in participation as well as any changes in name, address, or the addition of any satellite facilities.~~

~~(c) For purposes of SoonerCare reimbursement, Health Centers participating in the 340B program may only dispense 340B drugs to the members who meet the definition of patient as defined by the Office of Pharmacy Affairs and outlined in this subsection:~~

~~(1) The Health Center has established a relationship with the member, such that the Center maintains records of the individual's health care; and~~

~~(2) The individual receives health care services from a health care professional who is either employed by the Center or provides health care under contractual or other arrangements (e.g., referral for consultation) such that responsibility of the care provided remains with the Center; and~~

~~(3) The individual receives a health care service or range of services from the Center which is consistent with the service or range of services for Health Centers.~~

~~(d) An individual will not be considered a "patient" of the Center for purposes of 340B funding if the only health care service received by the individual from the Center is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting.~~

~~(e) If the Center subcontracts for pharmacy services, the Center must have a written contract which includes the reimbursement methodology for the subcontractor. The Health Center must be the entity purchasing any 340B drugs and must be the entity billing SoonerCare for any 340B drugs.~~

~~(f) Health Centers participating in the 340B program must maintain a separate accounting system for their 340B drugs and any other drugs which were not purchased through the 340B program.~~

~~(g) On an annual basis, the Center must submit to OHCA a description of their inventory system and accounting system for both their 340B drugs and any drugs purchased and dispensed outside the 340B program.~~

~~(h) Health Centers participating in the 340B prescription drug program can only bill SoonerCare for their acquisition cost plus dispensing fee for drugs purchased through the 340B program.~~

~~(i) Health Centers that purchase drugs outside of the 340B program can bill SoonerCare at the SoonerCare fee schedule for those drugs.~~

For 340B Drug Discount Program guidelines, refer to section 317:30-5-87.

[OAR Docket #14-570; filed 6-30-14]

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

[OAR Docket #14-572]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47 [AMENDED]
(Reference APA WF # 13-13)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is amended to allow reimbursement for Long Acting Reversible Contraceptive (LARC) devices to hospitals outside of the Diagnosis Related Group (DRG) methodology.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-47. Reimbursement for inpatient hospital services

Reimbursement will be made for inpatient hospital services rendered on or after October 1, 2005, in the following manner:

(1) Covered inpatient services provided to eligible SoonerCare members admitted to in-state acute care and critical access hospitals will be reimbursed at a prospectively set rate which compensates hospitals an amount per discharge for discharges classified according to the Diagnosis Related Group (DRG) methodology. For each SoonerCare member's stay, a peer group base rate is multiplied by the relative weighting factor for the DRG which applies to the hospital stay. In addition to the DRG payment, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if the DRG payment is less than a threshold amount of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier payment. Payment is equal to a percentage of the cost after the threshold is met.

(2) The DRG payment and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

(A) laboratory services;

(B) prosthetic devices, including pacemakers, lenses, artificial joints, cochlear implants, implantable pumps;

(C) technical component on radiology services;

(D) transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;

(E) pre-admission diagnostic testing performed within 72 hours of admission; and

(F) organ transplants.

(3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.

(4) Covered inpatient services provided to eligible members of the Oklahoma SoonerCare program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals.

(5) Cases which indicate transfer from one acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.

(6) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.

(7) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed 100% of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by SoonerCare members and the provider will not accept the DRG payment rate. Prior authorization is required.

(8) New providers entering the SoonerCare program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment methodology or the statewide median rate for per diem methods.

(9) When services are delivered via telemedicine to hospital inpatients, the originating site facility fee will be paid outside the DRG payment.

(10) All inpatient services are reimbursed per the DRG methodology described in this section and/or as approved under the Oklahoma State Medicaid Plan.

[OAR Docket #14-572; filed 6-30-14]

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

[OAR Docket #14-589]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 7. Certified Laboratories
317:30-5-106 [AMENDED]
(Reference APA WF # 13-53)
AUTHORITY:
The Oklahoma Health Care Authority Board; the Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; CFR 440.30
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014

ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clarify clinical laboratory services will be reimbursed in accordance with methodology approved under the State Plan.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 7. CERTIFIED LABORATORIES

317:30-5-106. Payment rates

Payment will be made for covered clinical laboratory services~~ at 95 percent of the HCFA National Laboratory Fee Schedule, or 95 percent of the local Medicare Carrier's allowable charge for procedures not included in the National Laboratory Fee Schedule, or in instances where no national or local fee has been established, an interim fee will be established by the Procedure Rate Review Committee of the Oklahoma Health Care Authority.~~in accordance with methodology approved under the Oklahoma Medicaid State Plan.

[OAR Docket #14-589; filed 6-30-14]

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

[OAR Docket #14-583]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 25. Psychologists
317:30-5-276 [AMENDED]
Part 26. Licensed Behavioral Health Providers
317:30-5-281 [AMENDED]
(Reference APA WF # 13-47)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, 42 CFR 440.230, and CFR 447.253(b)(iii)(A), 483.15(g), and 483.20
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's psychologists and licensed behavioral health provider rules are revised to add coverage for bio-psychosocial assessments for adults when required by OCHA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures. Revisions are also made to clarify that payment for behavioral health services are not separately reimbursable for members residing in a nursing facility.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 25. PSYCHOLOGISTS

317:30-5-276. Coverage by category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered ~~for children~~ as set forth in this Section, ~~unless specified otherwise, and~~ when provided in accordance with a documented individualized service plan medical record, developed to treat the identified behavioral health and/or substance ~~abuse~~use disorder(s), unless specified otherwise.

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and

short-term memory to derive a reasonable benefit from the treatment.

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Prior Authorization Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Prior Authorization Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** ~~There is no coverage for adults for services by a psychologist.~~Coverage for adults by a psychologist is limited to Bio-Psycho-Social Assessments when required by OHCA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures.

(1) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary. The pre-op evaluation should aim to assess the member's psychological well-being, ability to make informed decisions, and willingness to participate actively in postoperative treatment.

(2) For bariatric preoperative assessments, issues to address include, but are not limited to: Depression, self-esteem, stress management, coping skills, binge eating, change in eating habits, other eating disorders, change in social roles, changes associated with return to work/school, body image, sexual function, lifestyle issues, personality factors that may affect treatment and recovery, alcohol or substance use disorders, ability to make lasting behavior changes, and need for further support and counseling.

(c) **Children.** Coverage for children includes the following services:

(1) Bio-Psycho-Social Assessments. Psychiatric Diagnostic Interview Examination (PDIE) initial assessment or Level of Care Assessment. The interview and assessment is defined as a face-to-face interaction with the member. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider per member. If there has been a break in service over a six month period, then an additional unit of PDIE can be prior authorized by OHCA, or their designated agent.

(2) Psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the psychologist. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e. related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with implementation of the treatment plan.

(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e. abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.

(D) Use of play equipment, physical devices, interpreter or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a SoonerCare eligible child as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes.

All group therapy records must indicate group size. Maximum total group size is six patients for children four years of age up to the age of 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of a SoonerCare eligible child four years of age or older as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of two), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Prior Authorization Manual. Test results must be reflected in the service plan or medical record. The service must clearly document the need for the testing and what the testing is expected to achieve. Testing for a child younger than three must be medically necessary and meet established criteria as set forth in the Prior Authorization Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Health and Behavior codes - behavioral health services are available only to chronically and severely medically ill children.

(7) Crisis intervention services for the purpose of stabilization and hospital diversion as clinically appropriate.

(8) Payment for therapy services provided by a psychologist to any one member is limited to eight sessions/units per month. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(9) A child who is being treated in an acute psychiatric inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only.

(10) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent.

(d) **Home and Community Based Waiver Services for the Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

(f) **Nursing Facilities.** Services provided to members residing in nursing facilities may not be billed to SoonerCare.

PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

317:30-5-281. Coverage by Category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered ~~for children~~ as set forth in this Section, ~~unless specified otherwise,~~ and when provided in accordance with a documented individualized service plan and/or medical record, developed to treat the identified behavioral health and/or substance ~~abuse~~use disorder(s), unless specified otherwise.

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Prior Authorization Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Prior Authorization Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** ~~There is no coverage for adults for services by a LBHP.~~Coverage for adults by a LBHP is limited to Bio-Psycho-Social Assessments when required by OHCA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures.

(1) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent

medical information, and medical/clinical consultations as necessary. The pre-op evaluation should aim to assess the member's psychological well-being, ability to make informed decisions, and willingness to participate actively in postoperative treatment.

(2) For bariatric preoperative assessments, issues to address include, but are not limited to: depression, self-esteem, stress management, coping skills, binge eating, change in eating habits, other eating disorders, change in social roles, changes associated with return to work/school, body image, sexual function, lifestyle issues, personality factors that may affect treatment and recovery, alcohol or substance use disorders, ability to make lasting behavior changes, and need for further support and counseling.

(c) **Children.** Coverage for children includes the following services:

(1) Bio-Psycho-Social and Level of Care Assessments.

(A) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary.

(B) Assessments for Children's Level of Care determination of medical necessity must follow a specified assessment process through OHCA or their designated agent. Only one assessment is allowable per provider per member. If there has been a break in service over a six month period, or the assessment is conducted for the purpose of determining a child's need for inpatient psychiatric admission, then an additional unit can be authorized by OHCA, or their designated agent.

(2) Psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the LBHP. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e. related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with implementation of the treatment plan.

(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e. abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.

(D) Use of play equipment, physical devices, interpreter or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in an office, clinic, or other confidential setting. Group therapy is a face-to-face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six for ages four up to 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of two), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Prior Authorization Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Test results must be reflected in the service plan or medical record. The service plan must clearly document the need for the testing

and what the testing is expected to achieve. Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Prior Authorization Manual. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Crisis intervention services for the purpose of stabilization and hospitalization diversion as clinically appropriate.

(7) Payment for therapy services provided by a LBHP to any one member is limited to eight sessions/units per month. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(8) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or testing unless allowed by the OHCA or their designated agent.

(d) **Home and Community Based Waiver Services for the Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

(f) **Nursing Facilities.** Services provided to members residing in nursing facilities may not be billed to SoonerCare.

[OAR Docket #14-583; filed 6-30-14]

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

[OAR Docket #14-584]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 26. Licensed Behavioral Health Providers
317:30-5-280 [AMENDED]
(Reference APA WF # 13-48)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, 42 CFR 440.230
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's licensed behavioral health provider rules are revised to eliminate reimbursement for services provided by behavioral health professionals under supervision for licensure if they work under the direction of an individually contracted LBHP, outside of an agency setting. The additional oversight requirements imposed upon agencies provide a better training ground for individuals under supervision and afford OHCA and the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) better opportunity to ensure the quality of services being provided to SoonerCare members.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

317:30-5-280. Eligible Providers

~~(a)~~ Licensed Behavioral Health Professionals (LBHP) are defined as follows:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided.

~~(A) Psychologist,~~

(~~B~~A) Social Worker (clinical specialty only),

(~~C~~B) Professional Counselor,

(~~D~~C) Marriage and Family Therapist,

(~~E~~D) Behavioral Practitioner, or

(~~F~~E) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

~~(b) Practitioners who have completed education requirements to begin an internship or a post-doctoral fellowship in an accredited clinical academic training program and are under current board approved supervision toward licensure. Each supervising LBHP must have a current contract with the Oklahoma Health Care Authority (OHCA).~~

~~(c) For those LBHP candidates who are actively and regularly receiving a LBHP board approved supervision, or extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in 2 (A) through (F) above.~~

~~(d) In order for services provided by clinical academic interns completing required internships and LBHP candidates completing required supervision for licensure to be reimbursed, the following conditions must be met:~~

~~(1) The licensed LBHP practitioner billing SoonerCare must have a letter on file covering the dates of services of the internship or LBHP board approved supervision;~~

~~(2) The academic intern or LBHP candidate must be under the direct supervision of the licensed professional responsible for the member's care;~~

~~(3) The supervising licensed professional responsible for the member's care must:~~

~~(A) staff the member's case with the academic intern or LBHP candidate,~~

~~(B) actively direct the services,~~

~~(C) be available to the intern or LBHP candidate for in-person consultation while they are providing services,~~

~~(D) agree with the current plan for the member, and~~

~~(E) confirm that the service provided by the intern or LBHP candidate was appropriate; and~~

~~(4) The member's medical record must show that the requirements for reimbursement were met and the licensed professional responsible for the member's care has reviewed, countersigned, and dated the notes in the medical record at least every week so that it is documented that the licensed professional is responsible for the member's care.~~

[OAR Docket #14-584; filed 6-30-14]

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

[OAR Docket #14-567]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 63. Ambulatory Surgical Centers (ASC)
317:30-5-565. [AMENDED]
Part 79. Dentists
317:30-5-696. [AMENDED]
317:30-5-697. [AMENDED]
317:30-5-698. [AMENDED]
317:30-5-699. [AMENDED]
317:30-5-700. [AMENDED]
317:30-5-700.1. [AMENDED]
317:30-5-704. [AMENDED]
317:30-5-705. [AMENDED]
(Reference APA WF # 13-39)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; Title 63 Okla. Stat. § 2657
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-696. [AMENDED]
GUBERNATORIAL APPROVAL:
July 1, 2014
REGISTER PUBLICATION:
31 Ok Reg 665
DOCKET NUMBER:
14-702
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to clarify documentation and prior authorization requirements for dental services and to clarify coverage for adult extractions, radiographs (x-rays) and endodontics procedures, among other services. Rules are further revised to remove the two tier orthodontic services and clarify treatment year is determined by the date of banding and clarify that reimbursement for orthodontic services is limited to authorized general dentist or orthodontist. Finally, rules are revised to align ambulatory surgical center (ASC) policy with Oklahoma Statute Title 63 § 2657. This law allows certified dental facilities to be recognized as ambulatory surgical centers.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 63. AMBULATORY SURGICAL CENTERS (ASC)

317:30-5-565. Eligible providers

An ambulatory surgical center (ASC) or dental ambulatory surgical center (DASC) is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients. All eligible ambulatory surgical center providers must be certified by Medicare or certified through Centers for Medicare and Medicaid Services (CMS) approved accreditor for ASC and have a current contract with the Oklahoma Health Care Authority.

PART 79. DENTISTS

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) **Adults.**

(A) Dental coverage for adults is limited to:

(i) ~~emergency~~medically necessary extractions; and approved boney adjustments. Surgical tooth extraction must have medical need documented if not apparent on images of tooth. In the SoonerCare program, it is usually performed for those teeth which are damaged to such extent that no tooth is visible above the gum line, the tooth fractures, the tooth is impacted, or tooth can't be grasped with forceps.

(ii) Smoking and Tobacco Use Cessation Counseling; and

(iii) medical and surgical services performed by a dentist~~,~~ or physician to the extent such services may be performed under State law ~~either by a doctor of dental surgery or dental medicine,~~ when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for ~~the Mentally Retarded~~Individuals with Intellectual Disabilities (ICF/~~MR~~IID) and who have been approved for ICF/MR level of care, similar to the scope of services available to individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4)of this Section).

(2) **Home and community based waiver services (HCBWS) for the intellectually disabled.** All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. ~~ALL OTHER DENTAL SERVICES MUST BE PRIOR AUTHORIZED~~All other dental services must be prior authorized. Anesthesia services are covered for children in the same manner as adults. All providers performing preventive services must be available to perform needed restorative services for those members receiving any evaluation and preventive services.

(A) **Comprehensive oral evaluation.** This procedure is performed for any member not seen by any dentist for more than 12 months.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if ~~she or he has~~ not ~~been~~ seen by any dentist for more than six months.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint. This procedure is only compensable to the same dentist or practice for two visits prior to an examination being completed.

(D) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be of diagnostic quality and medically necessary. A clinical examination must precede any radiographs, and chart documentation must include member history, prior radiographs, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Periapical radiograph must include at least 3 millimeters beyond the apex of the tooth being x-rayed. Panoramic films and full mouth radiographs (minimum of 12 periapical films and two posterior bitewings) are allowable once in a three year period and must be of diagnostic quality. Individually listed intraoral radiographs by the same dentist/dental office are considered a complete series if the fee for individual radiographs equals or exceeds the fee for a complete series. Panoramic films are only compensable when chart documentation clearly indicates the test is being performed to rule out or evaluate non-caries related pathology discovered by prior examination. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of age and is compensable only once per lifetime. Replacement of sealants is not a covered service under the SoonerCare program.

(F) **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

(G) **Composite restorations.**

(i) This procedure is compensable for primary incisors as follows:

(I) tooth numbers O and P to age 4 years;

(II) tooth numbers E and F to age 6 years;

(III) tooth numbers N and Q to 5 years; and

(IV) tooth numbers D and G to 6 years.

(ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.

(iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

(H) **Amalgam.** Amalgam restorations are allowed in:

(i) posterior primary teeth when:

(I) 50 percent or more root structure is remaining;

(II) the teeth have no mobility; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) any permanent tooth, determined as medically necessary by the treating dentist.

(I) **Stainless steel crowns for primary teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are allowed if:

(I) the child is five years of age or under;

(II) 70 percent or more of the root structure remains; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) Stainless steel crowns are treatment of choice for:

(I) primary teeth with pulpotomies or pulpectomies, if the above conditions exist;

(II) primary teeth where three surfaces of extensive decay exist; or

(III) primary teeth where cuspal occlusion is lost due to decay or accident.

(iii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iv) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(J) **Stainless steel crowns for permanent teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are the treatment of choice for:

(I) posterior permanent teeth that have completed endodontic therapy if three or more surfaces of tooth is destroyed;

(II) posterior permanent teeth that have three or more surfaces of extensive decay; or

(III) where cuspal occlusion is lost due to decay prior to age 16 years.

(ii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iii) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(K) **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre and ~~post-operative~~post-operative periapical x-rays must be available for review, if requested.

(I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;

(II) Tooth numbers O and P before age 5 years;

(III) Tooth numbers E and F before 6 years;

(IV) Tooth numbers N and Q before 5 years; and

(V) Tooth numbers D and G before 5 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(L) **~~Anterior root canals~~Endodontics.** Payment is made for the services provided in accordance with the following:

(i) This procedure is ~~done for permanent teeth~~allowed when there are no other missing anterior teeth in the same arch requiring replacement.

(ii) ~~Acceptable ADA filling materials must be used.~~The provider documents history of member's improved oral hygiene and flossing ability in records.

(iii) ~~Preauthorization is required if the member's treatment plan involves more than four anterior root canals.~~Prior authorization is required for members who have a treatment plan requiring more than two anterior and/or two posterior root canals.

(iv) Teeth with less than ~~50~~60 percent of clinical crown should not be treatment-planned for root canal therapy.

(v) Pre and post-operative periapical x-rays must be available for review.

(vi) Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA.

(vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.

(viii) ~~Endodontic~~Endodontically treated teeth should be restored to limited occlusal function and

all contours should be replaced. These teeth are not automatically approved for any type of crown.

~~(ix) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.~~

(M) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

(I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.

(II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.

(III) If there are missing posterior teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.

(IV) The teeth numbers shown on the claim should be those of the missing teeth.

(V) Post-operative bitewing x-rays must be available for review.

(VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.

(ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:

(I) Lingual arch bar is used when permanent incisors are erupted and ~~multiple missing teeth exist~~the second primary molar (K or T) is missing in the same arch.

(II) The requirements are the same as for band and loop space maintainer.

(III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age ~~6~~4 years to prevent abnormal swallowing habits.

(IV) Pre and post-operative x-rays must be available.

(iii) **Interim partial dentures.** This service is for anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16 years.

(N) **Analgesia.** Analgesia services are reimbursable in accordance with the following:

(i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation or general anesthesia. The medical need for this service must be documented in the member's record. ~~This procedure is not covered when it is the dentist's usual practice to offer it to all patients.~~

(ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and /or the dentist, it must be medically necessary.

(O) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted calcium hydroxide or Mineral Trioxide Aggregate materials, not a cavity liner or chemical used for dentinal hypersensitivity. Indirect and direct pulp cap codes require specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect or direct pulp cap. Utilization of these codes is verified by post payment review.

(P) **~~Sedative~~Protective restorations.** ~~Sedative restorations include~~This restoration includes removal of decay, if present, and are reimbursable for the same tooth on the same date of service with a direct or indirect pulp cap, if needed. ~~These services are reimbursable for the same tooth on the same date of service.~~ Permanent restoration of the tooth is allowed after ~~30~~60 days unless the tooth becomes symptomatic and requires pain relieving treatment.

(Q) **History and physical.** Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.

(R) **Local anesthesia.** This procedure is included in the fee for all services.

(S) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, nurse midwives,

~~and~~ Oklahoma State Health Department and FQHC nursing staff, and Maternal/Child Health Licensed Clinical Social Workers with a certification as a Tobacco Treatment Specialist certification (CTTS) in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(4) **Pregnant Women.** Dental coverage for this special population is provided regardless of age.

(A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).

(B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.

(C) In addition to dental services for adults, other services available include:

(i) Comprehensive oral evaluation must be performed and recorded for each new member, or established member not seen for more than 24 months;

(ii) Periodic oral evaluation as defined in OAC 317:30-5-696(3)(B);

(iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same member, or if the member is under active treatment;

(iv) Radiographs as defined in OAC 317:30-5-696(3)(D);

(v) Dental prophylaxis as defined in OAC 317:30-5-696(3)(F);

(vi) Composite restorations:

(I) Any permanent tooth that has an opened lesion seen on radiograph or that is a documented food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.

(II) ~~Class I~~One and two surface posterior composite resin restorations are allowed in ~~posterior~~ teeth that qualify;

(vii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and

(viii) Analgesia. Analgesia services are reimbursable in accordance with OAC 317:30-5-696(3)(N).

(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).

(E) Periodontal scaling and root planing. ~~Required that 50% or more of six point measurements be 5 millimeters or greater. This procedure is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism and requires anesthesia and some soft tissue removal.~~Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 30 or more of the 6 point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under age 10. This procedure is not allowed in conjunction with any other periodontal surgery.

(5) **Individuals eligible for Part B of Medicare.**

(A) Payment is made based on the member's coinsurance and deductibles.

(B) Services which have been denied by Medicare as non-compensable should be filed directly with the OHCA with a copy of the Medicare EOB indicating the reason for denial.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis (See OAC 317:30-5-695(d)(2). Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. X-rays, six point periodontal charting and comprehensive treatment plans are required. Study models and narratives may be requested by OHCA or representatives of OHCA. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense. Submitted documentation used to base a decision will not be returned.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under 21 and eligible ICF/~~MR~~IID residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be submitted with ~~x-ray~~film mounts and each film or print must be of ~~good readable~~diagnostic quality. X-rays must be identified by ~~left and right sides with~~ the tooth number and include date of exposure, member name, member ID, provider name, and provider ID. All x-rays, regardless of the media, must be ~~placed~~submitted together ~~in the same envelope~~ with a completed and signed comprehensive treatment plan that details all needed treatment at the time of examination, and a completed current ADA form

requesting all treatments requiring prior authorization. The film, digital media or printout must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Root canal therapy is not considered an emergency procedure unless due to trauma to an anterior tooth. Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics.

(A) ~~**Anterior root canals.** This procedure~~Prior authorization is required for members who have a treatment plan requiring more than ~~four~~two anterior and/or two posterior root canals. Payment is made for services provided in accordance with the following:

(i) Permanent teeth ~~numbered 6, 7, 8, 9, 10, 11, 22, 23, 24, 25, 26 and 27 are eligible for therapy if there are no other missing teeth in the same arch requiring replacement, unless numbers 6 , 11 , 22, or 27 are abutments for prosthesis~~only.

(ii) Accepted ADA materials must be used.

(iii) Pre and post-operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

~~(vii) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be authorized.~~

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider documents that the member has improved oral hygiene and flossing ability in this member's records.

(ii) Teeth that would require pre-fabricated post and cores to retain a restoration due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and ~~post-operative~~post-operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure ~~is limited to a maximum of five teeth. A request~~ may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

~~(I) there are missing teeth in the same arch requiring replacement;~~

(~~II~~I) an opposing tooth has super erupted;

(~~III~~II) loss of tooth space is one third or greater;

(~~IV~~III) opposing second molars are involved unless prior authorized; or

(~~V~~IV) the member has multiple teeth failing due to previous inadequate root canal therapy or follow-up.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

~~(x) a failing root canal is determined not medically necessary for re-treatment.~~

(2) **Crowns for permanent teeth.** Crowns are compensable for restoration of natural teeth for members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for ~~the Mentally Retarded~~Individuals with Intellectual Disabilities(ICF/~~MR~~IID) and who have been approved for (ICF/~~MR~~IID) level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) The tooth must be decayed to such an extent to prevent proper cuspal or incisal function.

(ii) The clinical crown is fractured or destroyed by one-half or more.

(iii) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered.

(B) The conditions listed in (A)(i) through (A)(iii) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown. Non authorized restorative codes may be used if available.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Provider is responsible for replacement or repair of all crowns if failure is caused by poor laboratory processes or procedure by provider for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of ~~three or more~~ missing anterior permanent teeth or two or more missing posterior teeth in the same arch for members 16 through 20 years of age. Provider must indicate ~~tooth number to~~which teeth will be replaced ~~and teeth to be clasped~~. Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up for a period of two years post insertion.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of ~~missing anterior permanent teeth or~~ three or more missing teeth in the same arch for members 12 through 16 years of age~~ and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care~~. Provider must indicate tooth numbers to be replaced~~ and teeth to be clasped~~. This appliance includes all necessary clasps and rests.

(5) **Occlusal guard.** Narrative of ~~clinical findings~~medical necessity must be sent with prior authorization~~ request~~. Model should not be made or sent unless requested.

(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members 17 through 20 years of age ~~where the biterelationship precludes the use of removable partial dentures are considered~~will be considered for this treatment. Destruction of healthy teeth to replace a single missing tooth is not considered medically necessary. Members must have excellent oral hygiene documented for at least 18 months in the requesting provider's records and submitted with prior authorization request to be considered. Provider is responsible for any needed follow up ~~for a period of five years post insertion~~ until member loses eligibility.

(7) **Periodontal scaling and root planing.** ~~This procedure requires that 50% or more of the six point measurements be five millimeters or greater and must involve two or more teeth per quadrant for consideration. This procedure is allowed on members 12 to 20 years of age and requires anesthesia and some soft tissue removal. The procedure is not allowed in conjunction with any other periodontal surgery. Allowance may be made for submission of required authorization data post treatment if the member has a medical or emotional problem that requires sedation.~~Procedure is designed for the removal of calculus or tissue that is contaminated and requires anesthesia and some soft tissue removal. This procedure requires that each tooth have 3 or more of the six point measurements 5 millimeters or greater, or have multiple areas of radiographic bone loss and subgingival calculus and must involve two or more teeth per quadrant for consideration. This procedure is not allowed on members under the age 10. This procedure is not allowed in conjunction with any other periodontal surgery.

~~(8) **Additional prophylaxis.** The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a member for one additional prophylaxis per year:~~

~~(A) dilantin hyperplasia;~~

~~(B) cerebral palsy;~~

~~(C) intellectual disabilities;~~

~~(D) juvenile periodontitis.~~

317:30-5-699. Restorations

(a) **Use of posterior composite resins.** Payment is not made for certain restorative services when posterior composite resins are used in restorations involving:

(1) replacement of any occlusal cusp or

(2) sub-gingival margins

(b) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 18 months. Additional restorations may be authorized upon approval of OHCA in cases of trauma. Teeth receiving a restoration are eligible within three months for consideration of single crown if endodontically treated. Providers must document use of rubber dam isolation in daily treatment progress notes. The provider is responsible for follow-up or any required replacement of a failed restoration, if the member is currently SoonerCare eligible. Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.

(c) **Coverage for dental restorations.** Restoration of incipent lesions is not considered medically necessary treatment. Any diagnosis not supported by radiographs requires documentation of the medical need on which the diagnosis was made. Services for dental restorations are covered as follows:

(1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one surface restoration.

(2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.

(3) If any three separate surfaces on a posterior tooth are restored at the same appointment, it is a three surface restoration.

(4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four surface restoration.

(5) If any two separate surfaces on an anterior tooth are restored at the same appointment, it is a two surface restoration.

(6) If any three separate surfaces on an anterior tooth are restored at the same appointment, it is a three surface restoration.

(7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

(8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.

(9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well as either the buccal groove pit or buccal surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

~~(d) **Sedative restorations.** Sedative restorations include removal of decay, if present, and direct or indirect pulp cap, if needed. These two codes are the only codes that may be used for the same tooth on the same date of service. Permanent restoration of the tooth is allowed after 30 days unless the tooth becomes symptomatic and requires pain relieving treatment.~~

~~(e) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted materials, not a cavity liner. Indirect pulp cap code requires specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect pulp cap. Utilization of these codes are verified on a post payment review.~~

317:30-5-700. Orthodontic services

(a) In order to be eligible for SoonerCare Orthodontic services, members must be referred through a primary care dentist; a member can receive a referral from a primary care dentist to the orthodontist only after meeting the following:

(1) the member has had a caries free initial visit; or

(2) has all decayed areas restored and has ~~received a six month hygiene evaluation indicating the member remains~~remained caries free for 6 months; and

(3) has demonstrated competency in maintaining an appropriate level of oral hygiene.

(b) Member with cleft palate can be referred directly by their treating physician without a dental referral and are exempt from above requirements.

(c) The Oklahoma SoonerCare Orthodontic Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. The orthodontic provider has the ability to determine if members may qualify with a visual screening. Diagnostic record accumulation and/or submission should only occur for members with high potential for acceptance. These orthodontic services include the following:

(1) a handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HLD) with a minimum score of 30;

(2) any classification secondary to cleft palate or other maxillofacial deformity;

(3) if a single tooth or anterior crossbite is the only medical need finding, service will be limited to interceptive treatment;

(4) fixed appliances only; and

(5) permanent dentition with the exception of cleft defects.

(d) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

(2) General or Pediatric dental practitioners who have completed at least 200 certified hours of continuing education in the field of orthodontics practice and submit for review at least 25 successfully completed comprehensive cases. Of these 25 comprehensive cases, ten or more must be extraction cases. An applicant for this certification must practice in an OHCA deemed under served area. The comprehensive cases submitted should be of a complexity consistent with type of handicapping Malocclusion likely to be treated in the SoonerCare program.

(A) Cases submitted must include at least one of each of the following types:

(i) deep overbite where multiple teeth are impinging upon the soft tissue of the palate;

(ii) impacted canine or molar requiring surgical exposure;

(iii) bilateral posterior crossbite requiring fixed rapid palatal expansion; and

(iv) skeletal class II or III requiring orthognathic surgery.

(B) As with all dental or orthodontia treatment performed and reimbursed by SoonerCare, all pre and post orthodontic records must be available for review.

(C) The Oklahoma Health Care Authority requires all General dentists providing comprehensive orthodontic care to submit a copy of the Oklahoma Board of Dentistry continuing education report and verification that at least 20 continuing education hours in the field of orthodontics has been completed per reporting period. All verification reports must be submitted to OHCA Dental unit every three years, no later than August 30. In addition, verification of adequate progress for all active orthodontic cases will be reviewed by the OHCA Dental Unit upon completion of 24 months of therapy.

(e) The following limitations apply to orthodontic services:

(1) Cosmetic orthodontic services are not a covered benefit of the SoonerCare Program and no requests should be submitted;

(2) All orthodontic procedures require prior authorization for payment;

(3) Prior authorization for orthodontic treatment is not a notification of the member's eligibility and does not guarantee payment. Payment for authorized services depends on the member's eligibility at the beginning of

each treatment year~~;~~. Treatment year is determined by date of banding;

(4) The member must be SoonerCare-eligible and under 18 years of age at the time the request for prior authorization for treatment is received by the OHCA. Services cannot be added or approved after eligibility has expired~~:~~. It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age 18.

~~(A) Members receive a permanent Medical Identification Card;~~

~~(B) It is the orthodontist's responsibility to verify that the member has current SoonerCare eligibility and the date of birth indicates the member is under age 18.~~

(f) Orthodontic services are an elective procedure. The orthodontist must interview the prospective member as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(g) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA members is equivalent to that of private pay patients.

(h) Providers are not obligated to accept a member when it appears that the member will not cooperate in the orthodontic hygiene treatment program, does not return to the general dentist for preventive visits or is not willing to keep eligibility for SoonerCare current.

317:30-5-700.1. Orthodontic prior authorization

(a) The following records and documentation, plainly labeled with the member's full name, recipient identification number (RID), and the orthodontist's name are required for prior authorization of orthodontic services and must be submitted to the Dental Unit of the OHCA when the member has a total score of not less than 30 points or meets other eligibility criteria in paragraph (d).

(1) Completed currently approved ADA dental claim form;

(2) Complete and scored Handicapping Labio-Lingual Deviations
Index with Diagnosis of Angle's classification;

(3) Detailed description of any oral maxillofacial anomaly;

(4) Estimated length of treatment;

(5) Intraoral photographs showing teeth in centric occlusion and/or photographs of trimmed anatomically occluded diagnostic casts. A lingual view of casts may be included to verify impinging overbites;

(6) Cephalometric x-rays with tracing, and panoramic film, with a request for prior authorization of comprehensive orthodontic treatment;

(7) If diagnosed as a surgical case, submit an oral surgeon's written opinion that orthognathic surgery is indicated and the surgeon is willing to provide this service;

(8) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA.

(b) All images, x-rays, and required documentation must be submitted in one package. OHCA is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment are reviewed by the OHCA Orthodontic Consultant for compensability and length of treatment. Any documentation on which a decision is made will not be returned.

(d) Some children not receiving a minimum score of 30 on the Handicapping Labio-Lingual Deviation Index (HLD) may have other conditions to be considered. In the event an orthodontist believes there are other medical, social, or emotional conditions impacting the general health of the child, he/she refers to the conditions listed on the EPSDT exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other medical, social, or emotional conditions are limited to those conditions that affect the medical, social or emotional function of the child.

(2) Other medical, social, or emotional conditions are not scored if the sole condition sought to be improved is the cosmetic appearance of the child.

(3) Such other medical, social, or emotional conditions must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (i.e., a child's teacher, primary care physician, behavioral health provider, school counselor).

(4) Objective evidence must be submitted with the HLD.

(5) When such other medical, social, or emotional conditions are reflected on the HLD, the OHCA Orthodontic Consultant must review the data and use his or her professional judgment to score the value of the conditions.

(6) The OHCA Orthodontic Consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the member's age precludes approval, a computer generated notice is issued to the provider and member with notice of the denial, the reason for the denial, and appeal rights (see OAC 317:2-1 for grievance procedures and process).

(f) Orthodontic treatment and payment for the services are approved within the scope of SoonerCare. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year includes the placement of appliances, arch wires, and a minimum of six adjustments. It is expected that orthodontic members be seen every four to eight weeks for the duration of active treatment.

(B) Subsequent adjustments will be authorized in one year intervals and the treating orthodontist must provide a comprehensive progress report at the 24 month interval.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for ~~the first year of~~comprehensive treatment includes the banding, wires, and adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers.

(B) Payment is not made for comprehensive treatment beyond 36 months.

(g) If the member moves from the geographic area or shows a need to change their provider, then the provider who received the yearly payment is financially responsible until completion of that member's orthodontic treatment for the current year.

(h) If the provider who received yearly payment does not agree to be financially responsible, then the Oklahoma Health Care Authority will recoup funds paid for the member's orthodontic treatment.

(i) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials are returned to the orthodontist.

(j) Study models must be diagnostic and meet the following requirements:

(1) Study models must be properly poured and adequately trimmed without large voids or positive bubbles present.

(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.

(3) 3-D model images are preferred.

(4) Study models not in compliance with the above described diagnostic guidelines are not accepted. The provider may send new images that meet these requirements. If the provider does not respond, the request for treatment is denied.

(5) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

317:30-5-704. Billing instructions

(a) **HCPCS Codes.** The Oklahoma Health Care Authority utilizes the Medicare Level II HCPCS Codes. All claim submissions must be in compliance with this coding system.

(b) **Prior authorization.** Where applicable, the appropriate surface and tooth number must be included on the claim.

(c) **X-rays.** ~~X-rays~~Any type of film or prints submitted ~~with the claim form cannot~~will not be returned. ~~Those submitted with a request for prior authorization will be returned.~~ All x-rays must be dated, mounted and have patient's name, recipient identification number (RID), provider name and provider number.

317:30-5-705. Billing

Billing for dental services ~~is done on the claim form developed by the American Dental Association~~ may be submitted on the currently approved version of the American Dental Association (ADA) claim form. ~~Paper claims must be submitted on the currently approved version of the ADA Claims forms.~~ Electronic submission must be made on the HIPPA compliant Form 837D.

[OAR Docket #14-567; filed 6-30-14]

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

[OAR Docket #14-585]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 67. Behavioral Health Case Management Services
317:30-5-595 [AMENDED]
317:30-5-596 [AMENDED]
(Reference APA WF # 13-49)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes, 42 CFR 440.230, and CFR 447.253(b)(iii)(A), 483.15(g), and 483.20
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's behavioral health case management rules are revised to ensure consistency with changes in case manager provider requirements made in Title 450 of the Oklahoma Administrative Code, by the certifying agency, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS). Provider qualifications are being revised in order to reflect the legislature's intent, as expressed during the 2013 legislative session. Case management reimbursement rules are also being revised in order to allow reimbursement for transitional case management provided during the last 30 days of an inpatient stay. This change will ensure successful integration back into the community upon discharge from the inpatient facility.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES

317:30-5-595. Eligible providers

Services are provided by outpatient behavioral health agencies established for the purpose of providing behavioral health outpatient and case management services.

(1) **Provider agency requirements.** Services are provided by outpatient behavioral health agencies contracted with OHCA that meet the requirements under OAC 317:30-5-240. The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

(A) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(B) Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals must be community based.

(C) The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes.

(D) An agency must agree to follow the Oklahoma Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.

(E) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

(F) Each site operated by a behavioral health outpatient and case management facility must have a separate provider number, per OAC 317:30-5-240.2.

(2) **Provider Qualifications.** For behavioral health case management services to be compensable by SoonerCare, the provider performing the service must be a LBHP, CADC, or have and maintain a current certification as a Case Manager II (CM II) or Case Manager I (CM I) from the ODMHSAS. ~~Case Manager Certifications issued prior to July 1, 2013 will continue to be recognized in addition to the certifications noted above until June 30, 2014.~~ The requirements for obtaining these certifications are as follows:

(A) Certified Behavioral Health Case Manager II (CM II) must meet the requirements in (i), (ii) or (iii) below:

(i) Possess a Bachelor's or Master's degree in a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE) or a Bachelor's or Master's degree in education ~~with at least nine (9) hours of college credit in a behavioral health field~~; and complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; and complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams in behavioral health case management and behavioral health rehabilitation.

(ii) Possess a current license as a registered nurse in the State of Oklahoma with experience in behavioral health care; complete web-based training for behavioral health case management and behavioral health rehabilitation as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training and two days of face-to-face behavioral health rehabilitation training as specified by ODMHSAS; and pass web-based competency exams for behavioral health case management and behavioral health rehabilitation.

(iii) Possess a Bachelor's or Master's degree in any field earned from a regionally accredited college or university recognized by the USDE and a current certification~~as a Certified Psychiatric Rehabilitation Practitioner (CPRP)~~or Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association (USPRA); complete the behavioral health case management web-based training as specified by ODMHSAS; complete one day of face-to-face behavioral health case management training; and pass web-based competency exams for behavioral health case management. Applicants who have not received a certificate in children's psychiatric rehabilitation from the US Psychiatric Association (USPRA) must also complete the behavioral health rehabilitation web-based training as specified by ODMHSAS.

(iv) Possess a Bachelor's or Master's degree in any field and proof of active progression toward obtaining a clinical licensure Master's or Doctoral degree at a regionally accredited college or university recognized by the USDE.

(B) Certified Behavioral Health Case Manager I meets the requirements in either(i) or (ii), and(iii):

(i) completed 60 college credit hours; or

(ii) has a high school diploma with 36 total months of experience working with persons who have a mental illness and/or substance abuse. Documentation of experience on file with ODMHSAS; and

(iii)Completes two days of ODMHSAS specified behavioral health case management training and passes a web-based competency exam for behavioral health case management.

(C) **Wraparound Facilitator Case Manager.** LBHP, CADC, or meets the qualifications for CM II and has the following:

(i) Successful completion of the ODMHSAS training for wraparound facilitation within six months of employment; and

(ii) Participate in ongoing coaching provided by ODMHSAS and employing agency; and

(iii) Successfully complete wraparound credentialing process within nine months of beginning process; and

(iv) Direct supervision or immediate access and a minimum of one hour weekly clinical consultation with a Qualified Mental Health Professional, as required by ODMHSAS;

(D) **Intensive Case Manager.** LBHP, CADC or meets the provider qualifications of a Case Manager II and has the following:

(i) A minimum of two years Behavioral Health Case Management experience, crisis diversion experience, and

(ii) must have attended the ODMHSAS six hours Intensive case management training.

(E) All certified case managers must fulfill the continuing education requirements as outlined under OAC 450:50-5-4.

317:30-5-596. Coverage by category

Payment is made for behavioral health case management services as set forth in this Section.

(1) Payment is made for services rendered to SoonerCare members as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be subject to medical necessity criteria.

(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the member and family (if applicable) by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the member/family requests case management services. For member's discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care than outpatient back to the community, within 72 hours of discharge, and then conduct a follow-up appointment/contact within seven days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. Case Managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home

based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.

(iv) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the member's (and family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian (if the member is under 18), the behavioral health case manager, and a Licensed Behavioral Health Professional as defined in OAC 317:30-5-240(d).

(v) SoonerCare reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.

(II) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.

(IV) Supportive activities such as non face-to-face communication with the member and/or parent/guardian/family member.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.

(VI)Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.

(VII) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.

(VIII) Transitioning from institutions to the community. ~~Individuals~~Behavioral Health Case Management is available to individuals transitioning from institutions to the community (except individuals ages 22 to 64 who reside in an institution for mental diseases (IMD) or individuals who are inmates of public institutions) ~~may be considered to be transitioning to the community during the last 60 consecutive days of a covered, long-term, institutional stay that is 180 consecutive days or longer in duration. For a covered, short term, institutional stay of less than 180 consecutive days, individuals may be considered to be transitioning to the community during the last 14 days before discharge~~.Individuals are considered to be transitioning to the community during the last 30 consecutive days of a covered institutional stay.~~These~~This time ~~requirementsare~~is to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community. Transition services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(B) **~~Levels of Case Management~~Levels of Case Management.**

(i) Basic Case Management/Resource Coordination. Resource coordination services are targeted to adults with serious and persistent mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an individual's strengths and meet needs in order to achieve stability in the community. Standard managers have with caseloads of 30 - 35 members.

(ii) Intensive Case Management (ICM)/Wraparound Facilitation Case Management (WFCM). Intensive Case Management is targeted to adults with serious and persistent mental illness (including members in PACT programs) and Wraparound Facilitation Case Management is targeted to children with serious mental illness and emotional disorders (including members in a System of Care Network) who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support,

training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate between 8 and 10 families. To ensure that these intense needs are met, case manager caseloads are limited between 10-15 caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of 2 years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS 6 hours ICM training, and 24 hour availability is required.

(C) **Excluded Services.** SoonerCare reimbursable behavioral health case management does not include the following activities:

(i) Physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment; or

(ii) Managing finances; or

(iii) Providing specific services such as shopping or paying bills; or

(iv) Delivering bus tickets, food stamps, money, etc.; or

(v) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(vi) Filling out forms, applications, etc., on behalf of the member when the member is not present; or

(vii) Filling out SoonerCare forms, applications, etc.;

(viii) Mentoring or tutoring;

(ix) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies;

(x) Non face-to-face time spent preparing the assessment document and the service plan paperwork;

(xi) monitoring financial goals;

(xii) services to nursing home residents;

(xiii) psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or

(xix) services to members residing in ~~ICF/MR~~ICF/IID facilities.

(D) **Excluded Individuals.** The following SoonerCare members are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;

(ii) Members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;

(iii) Residents of ~~ICF/MR~~ICF/IID and nursing facilities unless transitioning into the community;

(iv) Members receiving services under a Home and Community Based services (HCBS) waiver program.

(E) Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.

(F) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the participation by, as well as, reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional as defined at OAC 317:30-5-240.3(a). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

(i) date;

(ii) person(s) to whom services are rendered;

(iii) start and stop times for each service;

(iv) original signature or the service provider (original signatures for faxed items must be added to the clinical file within 30 days);

(v) credentials of the service provider;

(vi) specific service plan needs, goals and/or objectives addressed;

(vii) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;

(viii) progress and barriers made towards goals, and/or objectives;

(ix) member (family when applicable) response to the service;

(x) any new service plan needs, goals, and/or objectives identified during the service; and

(xi) member satisfaction with staff intervention.

(G) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

[OAR Docket #14-585; filed 6-30-14]

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

[OAR Docket #14-588]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 73. Early Intervention Services
317:30-5-640 [AMENDED]
317:30-5-641 [AMENDED]
317:30-5-644 [AMENDED]
Part 103. Qualified Schools as Providers of Health Related Services
317:30-5-1020 [AMENDED]
317:30-5-1021 [AMENDED]
317:30-5-1022 [AMENDED]
317:30-5-1023 [AMENDED]
317:30-5-1025 [AMENDED]
317:30-5-1027 [AMENDED]
Part 104. School-Based Case Management Services
317:30-5-1030 [AMENDED]
317:30-5-1031 [AMENDED]
317:30-5-1032 [AMENDED]
317:30-5-1033 [AMENDED]
317:30-5-1034 [AMENDED]
(Reference APA WF # 13-52)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes; Medicaid School-Based Administrative Claiming Guide, May 2003; The Code of Federal Regulations Title 34 Public Health, Part 300, Section 300.142; The Individuals with Disabilities Act, Pub.L. 94-142
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
OHCA rules related to IDEA and School Based services are revised for clarity and consistency. Revisions include removing references to outdated terms and/or policy, and adding guidelines for school-based services and evaluations as it relates to the Individual Education Plan/ Individual Family Service Plan (IEP/IFSP) for clarity and consistency.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 73. EARLY INTERVENTION SERVICES

317:30-5-640. General provisions and eligible providers

(a) **General provisions.**

(1) Payment is made to eligible providers certified by the Oklahoma State Department of Education (OSDE) or the Oklahoma State Department of Health (OSDH) for the delivery of Early Periodic Screening, Diagnosis and Treatment (EPSDT) services to infants and toddlers from birth up to their third birthday with developmental disabilities, pursuant to the requirements of the Individuals with Disabilities Education Improvement Act (IDEIA) of 2004, Public Law 108-446 Part C, and subsequent amendments.

(2) EPSDT services are comprehensive child-health services, designed to ensure the availability of, and access to, required health care resources and to help parents and guardians of ~~Medicaid~~SoonerCare eligible children use these resources. Effective EPSDT services assure that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The OSDE and the OSDH play a significant role in educating parents about EPSDT services.

(3) An Individualized Family Services Plan (IFSP) entitles the ~~Medicaid~~SoonerCare eligible child to medically necessary and appropriate health related EPSDT treatment services. Such services must be allowable under federal Medicaid regulations and must be necessary to ameliorate or correct defects of physical or mental illnesses or conditions.

(4) Federal regulations require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals that meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical and mental illnesses or conditions. ~~Medicaid~~SoonerCare providers who offer EPSDT screenings must assure that the screenings they provide meet the minimum standards for those services in order to be reimbursed at the level established for EPSDT services.

(b) **Eligible providers.** Eligible providers are state education and health departments and their contract agencies as designated in the State's Plan for Early Intervention Services, developed in response to the requirements of Part C of the IDEIA and who are enrolled as eligible ~~Medicaid~~SoonerCare providers. A completed contract to provide EPSDT health related services must be submitted to the Oklahoma Health Care Authority (OHCA). Providers must have a ~~Medicaid~~SoonerCare provider agreement in order to receive ~~Medicaid~~ reimbursement.

317:30-5-641. Coverage by category

Payment is made for early intervention services as set forth in this Section.

(1) **Adults.** There is no coverage for services rendered to adults.

(2) **Children.** Payment is made for compensable services rendered by the OSDH and its contractors, pursuant to the State's plan for Early Intervention services required under Part C of the IDEIA.

(A) **Child health screening examination.** An initial screening may be requested by the family of an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination - referral is made to the SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening.

(B) **Child health encounter (EPSDT partial screen).** The child health encounter (the EPSDT partial screen) may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A child health encounter may include:

(i) child health history,

(ii) physical examination,

(iii) developmental assessment,

(iv) nutrition assessment and counseling,

(v) social assessment and counseling,

(vi) indicated laboratory and screening tests,

(vii) screening for appropriate immunizations,

(viii) health counseling, and

(ix) treatment of common childhood illness and conditions.

(C) **Hearing and Hearing Aid evaluation.** Hearing evaluations must meet guidelines found at OAC 317:30-5-675 and OAC 317:30-5-676.

(D) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from the American Speech-Language Hearing Association~~ASHA~~(ASHA); or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(E) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of client's ear and providing a finished earmold which is used with the client's hearing aid provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from ASHA; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(F) **Speech language evaluation.** Speech language evaluation must be provided by a ~~state licensed~~state licensed speech language pathologist~~who meets the guidelines found at OAC 317:30-5-675~~.

(G) **Physical therapy evaluation.** Physical therapy evaluation must be provided by a State licensed physical therapist.

(H) **Occupational therapy evaluation.** Occupational therapy evaluation must be provided by a State licensed occupational therapist.

(I) **Psychological evaluation and testing.** Psychological evaluation and testing must be provided by State-licensed, board certified, psychologists.

(J) **Vision testing.** Vision ~~**testing**~~testing examination must be provided by a State licensed Doctor of Optometry (O.D.) or licensed physician specializing in ~~**ophthalmology**~~ophthalmology (M.D. or D.O.). At a minimum, vision services include diagnosis and treatment for defects in vision.

(K) **Treatment encounter.** A treatment encounter may occur through the provision of individual, family or group treatment services to infants and toddlers who are identified as having specific disorders or delays in development, emotional or behavioral problems, or disorders of speech, language, vision, or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of the Individual Family Services Plan (IFSP), and may include the following:

(i) **Hearing and Vision Services.** These services include assisting the family in managing the child's vision and/or hearing disorder such as auditory training, habilitation training, communication management, orientation and mobility, and counseling the family. This encounter is designed to assist children and families with management issues that arise as a result of hearing and/or vision loss. These services are usually provided by vision impairment teachers or specialists and orientation specialists, and mobility specialists. These services may be provided in the home or community setting, such as a specialized day care center. Hearing services must be provided by:

(I) a State licensed, Master's Degree, ASHA certified audiologist; or

(II) a State licensed, Master's degree, ASHA certified speech language pathologist; or

~~(III) a speech therapist working under the direction of a State licensed ASHA certified speech language pathologist; or~~

(~~IV~~III) an audiologist or speech language pathologist who has completed the equivalent educational requirements and work experience necessary for the certificate~~;~~ or has completed

the academic program and is acquiring supervised work experience to qualify for the certificate.

~~(V) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

(ii) **Speech language therapy services.** Speech language therapy services must be provided by a State licensed, speech language pathologist who:

(I) holds a certificate of clinical competence from ASHA; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(iii) **Physical therapy services.** Physical therapy services must be provided by a State licensed physical therapist.

(iv) **Occupational therapy services.** Occupational therapy may include provision of services to improve, develop or restore impaired ability to function independently and must be provided by a State licensed occupational therapist.

(v) **Nursing services.** Nursing services may include the provision of services to protect the health status of infants and toddlers, correct health problems, and assist in removing or modifying health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services may include medically necessary procedures rendered in the child's home.

(vi) **Psychological services.** Psychological and counseling services are planning and managing a program of psychological services, including the provision of counseling or consultation to the family of the infant or toddler, when the service is for the direct benefit of the child and assists the family to better understand and manage the child's disabilities. Psychological services must be provided by a State-licensed psychologist.

(vii) **Psychotherapy counseling services.** Psychotherapy counseling services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy counseling services must be provided by a State licensed Social Worker, a State Licensed Professional Counselor, a State licensed Psychologist, State licensed Marriage and Family Therapist, or a State licensed Behavioral Practitioner, or under Board Supervision to be licensed in one of the above stated areas.

(viii) **Family Training and Counseling for Child Development.** Family Training and Counseling for Child Development services are the provision of training and counseling regarding concerns and problems in development. Services integrate therapeutic intervention strategies into the daily routines of a child and family in order to restore or maintain function and/or to reduce dysfunction resulting from a mental or physical disability or developmental delay. All services must be for the direct benefit of the child. Family Training and Counseling for Child Development services must be provided by a Certified Child Development Specialist.

(L) **Immunizations.** Immunizations must be coordinated with the Primary Care Physician for those infants and toddlers enrolled in SoonerCare. An administration fee, only, can be paid for immunizations provided by the OSDH.

(M) **Assistive Technology.** Assistive technology is the provision of services that help to select a device and assist a student with a disability(ies) to use an Assistive Technology device including coordination with other therapies and training of the child and caregiver. Services must be provided by a:

(i) State licensed Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) State licensed Physical Therapist; or

(iii) State licensed Occupational Therapist.

317:30-5-644. Documentation of records

All early intervention services rendered must be reflected by documentation in the records. Documentation of records must include the provider's signature or identifiable initials for every prescription or treatment. Documentation of records may be completed manually or electronically in accordance with guidelines found at OAC 317:30-3-15. Each required element of the age specific screening must be documented with a description of any noted problem anomaly or concern. In addition, a plan for following necessary diagnostic evaluations, procedures and treatments, must be documented. ~~The OHCA Child Health Provider Manual contains forms that may be used for this purpose.~~

PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH RELATED SERVICES

317:30-5-1020. General provisions

(a) Payment is made to eligible qualified school providers for delivery of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services to eligible individuals under the

age of 21. School-based services must be medically necessary and have supporting documentation to be considered for reimbursement. In addition, services provided in the school setting are only compensable when provided to eligible SoonerCare members pursuant to an Individual Education Plan (IEP).

(b) EPSDT services are comprehensive child-health services, designed to ensure the availability of, and access to, required health care resources and to help parents and guardians of ~~Medicaid~~SoonerCare eligible children use these resources. Effective EPSDT services assure that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The Schools play a significant role in educating parents and guardians about all services available through the EPSDT program.

(c) The receipt of an identified EPSDT screening makes the ~~Medicaid~~SoonerCare child eligible for all necessary follow-up care that is within the scope of the ~~Medicaid~~SoonerCare Program. An Individualized Education Program (IEP) or Individual Family Services Plan (IFSP) entitles the ~~Medicaid~~SoonerCare eligible child to medically necessary and appropriate health related EPSDT treatment services. For reimbursement purposes, prior to rendering a medically related evaluation and/or service pursuant to an eligible SoonerCare child's IEP or IFSP, either through an IEP/IFSP addendum or a new IEP/IFSP, parental consent must be obtained. An IEP or IFSP serves as the plan of care for consideration of reimbursement for health related EPSDT treatment services. The IEP or IFSP may not serve as an evaluation. Services that require prior authorization will need to be authorized prior to the development of the IEP or IFSP. The IEP/IFSP must be completed and signed during the meeting by all required providers and individuals and must include the type, frequency, and duration of the service(s) provided, the signatures, including credentials, of the provider(s) and the direct care staff delivering services under the supervision of the professional, and the specific place of services if other than the school (e.g., field trip, home). The IEP/IFSP must also contain measurable goals for each of the identified needs. Goals must be updated to reflect the current therapy, evaluation, or service that is being provided and billed to SoonerCare. In order to bill SoonerCare for services rendered in the school, including evaluations, these services must result in or be identified in the IEP. Federal regulations require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under federal Medicaid regulations and must be necessary to ameliorate or correct defects of physical or mental illnesses/conditions.

(d) Federal regulations require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals which meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical and mental illnesses or conditions. ~~Medicaid~~SoonerCare providers who offer EPSDT screenings must assure that the screenings they provide meet the minimum standards for those services in order to be reimbursed at the level established for EPSDT services.

(e) To assure full payment for the EPSDT screening, providers must perform and document all necessary components of the screening examination~~ as defined under Child Health Centers at OAC 317:30-5-198~~. Documentation of screening services performed must be retained for future review.

(f) Evaluations must be prior authorized when medically necessary and/or required and prescribed or referred by a treating physician or other practitioner of the healing arts with supporting medical documentation. Initial evaluations (e.g. initial physical therapy evaluation) that do not require a prior authorization and that are performed as part of the IEP development process are compensable when the appropriate documented referral and supporting medical documentation are in place. Evaluations completed for educational purposes only are not compensable. All evaluations must be medically necessary and support the services billed to SoonerCare. The evaluations must be included in the IEP for reimbursement consideration. A diagnosis alone is not sufficient documentation to support the medical necessity of services. The child's diagnosis must clearly establish and support that the prescribed therapy is medically necessary. Evaluations must be completed annually and updated to accurately reflect the participant's current status. Evaluations include but are not limited to hearing and speech services, physical therapy, occupational therapy, and psychological evaluations and must include the following information:

(1) Medical documentation that supports why the member was referred for evaluation;

(2) Diagnosis;

(3) Member's strengths, needs, and interests;

(4) Recommended interventions for identified needs, including outcomes and goals;

(5) Recommended units and frequency of services; and

(6) Dated signature and credentials of professional completing the evaluation.

(g) Annual evaluations/re-evaluations are required prior to each annual IEP.

(h) No more than five SoonerCare members can be present during a group therapy session. A daily log/list must be maintained and must identify the participants for each group session.

317:30-5-1021. Eligible providers

(a) Eligible providers are local, regional, and state educational services agencies as defined by State law and the Individuals with Disabilities Education Act (IDEA), as amended in 1997. A completed contract to provide EPSDT services through the schools must be submitted to the Oklahoma Health Care Authority (OHCA). The OHCA must approve the contract in order for eligible school providers to receive reimbursement.

(b) Qualified Schools must notify OHCA of all subcontractors performing IEP related evaluations and services in the school setting prior to services being rendered. The notification must include a copy of the agreement between the school

and subcontractor and must reflect the start and ending dates of the agreement for services. OHCA may request that schools enroll with SoonerCare all entities and individuals that provide SoonerCare services in the school setting and may require that the rendering provider be included on any claim for payment by the school.

317:30-5-1022. Periodicity schedule

(a) The Oklahoma ~~Medicaid~~SoonerCare Program adopted the recommendations of the American Academy of Pediatrics for services, which include at least the following:

(1) Six screenings during the first year of life;

(2) Two screenings in the second year;

(3) One screening yearly for ages two through five years;

(4) One screening every other year for ages six through 20 years.

(b) ~~Medicaid-eligible children enrolled in~~Children enrolled in~~*SoonerCare*~~SoonerCare are referred to their ~~*SoonerCare*~~SoonerCare provider for services. In cases where the ~~*SoonerCare*~~SoonerCare provider authorizes the School to perform the screen or fails to schedule an appointment within three weeks and a request has been made and documented by the School, the School may then furnish the EPSDT child health screening and bill it as a fee-for-service activity. Results of the child health screening are forwarded to the child's ~~*SoonerCare*~~SoonerCare provider.

317:30-5-1023. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults.

(b) **Children.** Payment is made for compensable services rendered by local, regional, and state educational services agencies as defined by IDEA:

(1) **Child health screening.** An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination referral is made to the SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening. Child Health screening must adhere to the following requirements:

(A) Children enrolled in SoonerCare must be referred to their SoonerCare provider for child health screenings. In cases where the SoonerCare provider authorizes the school to perform this screen or fails to schedule an appointment within three weeks and a request has been made and documented by the school, the school may then furnish the EPSDT child health screening. Written notification must be mailed to the Soonercare member's PCP prior to the school's intent to furnish and bill for the screen. Results of this screening must be forwarded to the child's SoonerCare provider.

(B) Child health screenings must be provided by a state licensed physician (M.D. or D.O.), state licensed nurse practitioner with prescriptive authority, or state licensed physician assistant. Screening services must include the following:

(i) Comprehensive health and developmental history, including assessment of both physical and mental health development;

(ii) Comprehensive unclothed physical exam;

(iii) Appropriate immunizations according to the age and health history;

(iv) Laboratory test, including blood level assessment; and

(v) Health education, including anticipatory guidance.

(C) Mass screenings for any school-based service are not billable to SoonerCare, nor are screenings that are performed as a child find activity pursuant to an IDEA requirement. There must be a documented referral in place that indicates the child has an individualized need that warrants a screening to be performed.

(2) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include any of the following:

(A) vision

(B) hearing

(C) dental

(D) a child health history

(E) physical examination

(F) developmental assessment

(G) nutrition assessment and counseling

(H) social assessment and counseling

(I) genetic evaluation and counseling

(J) indicated laboratory and screening tests

(K) screening for appropriate immunizations

(L) health counseling and treatment of childhood illness and conditions

(3) **Diagnostic encounters.** Diagnostic encounters are defined as those services necessary to fully evaluate defects, physical or behavioral health illnesses or conditions discovered by the screening. Approved diagnostic encounters may include the following:

(A) **Hearing and Hearing Aid evaluation.** Hearing evaluation includes pure tone air, bone and speech audiometry. Hearing evaluations must adhere to guidelines found at OAC 317:30-5-676 and must be provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(B) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and

reflex studies (when appropriate) provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(C) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a member's ear and providing a finished earmold which is used with the member's hearing aid provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(D) **Vision Screening.** Vision screening in ~~school children~~schools includes application of tests and examinations to identify visual defects or vision disorders. The vision screening may be performed by a Registered Nurse (RN) or Licensed Practical Nurse (LPN) under the supervision of an RN, or State Certified Vision Impairment Teacher. The service can be billed when a SoonerCare member has an individualized documented concern that warrants a screening. A vision examination ~~and~~ must be provided by a state licensed Doctor of Optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). This vision examination, at ~~At~~ a minimum, ~~vision servicesinclude~~includes diagnosis and treatment for defects in vision.

(E) **Speech Language evaluation.** Speech Language evaluation is for the purpose of identification of children with speech or language disorders and the diagnosis and appraisal of specific speech and language services. Speech Language evaluations must adhere to guidelines found at OAC 317:30-5-676 and must be provided by state licensed speech language pathologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(F) **Physical Therapy evaluation.** Physical Therapy evaluation includes evaluating the student's ability to move throughout the school and to participate in classroom activities and the identification of movement dysfunction and related functional problems and must be provided by a state licensed physical therapist. Physical Therapy evaluations must adhere to guidelines found at OAC 317:30-5-291.

(G) **Occupational Therapy evaluation.** Occupational Therapy evaluation services include determining what therapeutic services, assistive technology, and environmental modifications a student requires for participation in the special education program and must be provided by a state licensed occupational therapist. Occupational Therapy evaluations must adhere to guidelines found at OAC 317:30-5-296.

(H) **Psychological Evaluation and Testing.** Psychological Evaluation and Testing are for the purpose of diagnosing and determining if emotional, behavioral, neurological, or developmental issues are affecting academic performance and for determining recommended treatment protocol. Evaluation/testing for the sole purpose of academic placement (e.g. diagnosis of learning disorders) is not a compensable service. Psychological Evaluation and Testing must be provided by state licensed, Board Certified, Psychologist or School Psychologist certified by State Department of Education (SDE). Psychological evaluations and testing services must adhere to guidelines found at OAC 317:30-5-241.1 and 317:30-5-241.2.

(4) **Child guidance treatment encounter.** A child guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an IEP or IFSP and may include the following:

(A) **Hearing and Vision Services.** Hearing and vision services must adhere to guidelines found at OAC 317:30-5-676 and may include provision of habilitation activities, such as auditory training, aural and visual habilitation training, including Braille, and communication management, orientation and mobility, counseling for vision and hearing losses and disorders. Services must be provided by or under the direct guidance of one of the following individuals practicing within the scope of his or her practice under State law:

(i) state licensed, Master's Degree Audiologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed, Master's Degree Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

~~(iii) state certified Speech Therapist working under the direction of a state licensed Speech Language Pathologist;~~

(~~iv~~iii) state certified deaf education teacher;

(~~v~~iv) certified orientation and mobility specialists; and

(~~vi~~v) state certified vision impairment teachers.

(B) **Speech Language Therapy Services.** Speech Language Therapy Services include provisions of speech and language services for the habilitation or prevention of communicative disorders. Speech Language Therapy services must adhere to guidelines found at OAC 317:30-5-676 and must be provided by or under the direct guidance and supervision of a state licensed Speech Language Pathologist within the scope of his or her practice under State law who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate; or

~~(iv) a Speech Therapy Assistant who has been authorized by the Board of Examiners, working under the direction of a state licensed speech language pathologist. The licensed Speech Language Pathologist may not supervise more than two Speech Therapy assistants, and must be on site.~~

(C) **Physical Therapy Services.** Physical Therapy Services are provided for the purpose of preventing or alleviating movement dysfunction and related functional problems that adversely affects the child's education. Physical Therapy services must adhere to guidelines found at OAC 317:30-5-291 and must be provided by or under the direct guidance and supervision of a state licensed physical therapist ~~or~~;services may also be provided by a Physical Therapy Assistant who has been authorized by the Board of Examiners working under the supervision of a licensed Physical Therapist. The licensed Physical Therapist may not supervise more than three Physical Therapy Assistants.

(D) **Occupational Therapy Services.** Occupational therapy may include provision of services to improve, develop or restore impaired ability to function independently. Occupational Therapy services must adhere to guidelines found at OAC 317:30-5-296 and must be provided by or under the direct guidance and supervision of a state licensed Occupational Therapist ~~or~~;services may also be provided by an Occupational Therapy Assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed Occupational Therapist.

(E) **Nursing Services.** Nursing Services may include provision of services to protect the health status of children, correct health problems and assist in removing or modifying health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, tube feeding, and administration and monitoring of medication.

(F) **Psychotherapy Services.** Psychotherapy services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy services must be provided by a state licensed Social Worker, a state Licensed Professional Counselor, a State licensed Psychologist or School Psychologist certified by the SDE, a State licensed Marriage and Family Therapist or a State licensed Behavioral Practitioner, or under Board supervision to be licensed in one of the above stated areas. Psychotherapy services must adhere to guidelines found at OAC 317:30-5-241.1 and 317:30-5-241.2.

(G) **Assistive Technology.** Assistive technology are the provision of services that help to select a device and assist a student with disability(ies) to use an Assistive technology device including coordination with other therapies and training of child and caregiver. Services must be provided by a:

(i) state licensed, Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed Physical Therapist; or

(iii) state licensed Occupational Therapist.

(H) **Personal Care.** Provision of personal care services allow students with disabilities to safely attend school; includes, but is not limited to assistance with toileting, oral feeding, positioning, hygiene, and riding school bus to handle medical or physical emergencies. Services must be provided by registered paraprofessionals/assistants that have completed training approved or provided by SDE, or Personal Care Assistants, including Licensed Practical Nurses, who have completed on-the-job training specific to their duties. Personal Care services do not include behavioral monitoring. Paraprofessionals are not allowed to administer medication, nor are they allowed to assist with or provide therapy services to SoonerCare members. Tube feeding of any type may only be reimbursed if provided by a registered nurse or licensed practical nurse. Catheter insertion and Catheter/Ostomy care may only be reimbursed when done by a registered nurse or licensed practical nurse.

(I) **Therapeutic Behavioral Services.** Therapeutic behavioral services are interventions to modify the non-adaptive behavior necessary to improve the student's ability to function in the community as identified on the plan of care. Medical necessity must be identified and documented through assessment and ~~evaluation.~~annual evaluations/re-evaluations. Services encompass behavioral management, redirection, and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills. This service must be provided by a Behavioral Health School Aide (BHSA) who has a high school diploma or equivalent and has successfully completed the paraprofessional training approved by the State Department of Education and a training curriculum in behavioral interventions for Pervasive Developmental Disorders as recognized by OHCA. BHSA must be supervised by a bachelors level individual with a special education certification. BHSA must have CPR and First Aid certification. Six additional hours of related continuing education are required per year.

(J) **Immunization.** Immunizations must be coordinated with the Primary Care Physician for children enrolled in SoonerCare. An administration fee, only, can be paid for immunizations provided by the schools.

(c) **Individuals eligible for Part B of Medicare.** EPSDT school health related services provided to Medicare eligible members are billed directly to the fiscal agent.

317:30-5-1025. Interperiodic screening examination

Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. They may include physical, mental or dental conditions. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the child outside of the formal health care system. ~~Medicaid eligible children enrolled in ***SoonerCare***~~Children enrolled in SoonerCareare referred to their ~~***SoonerCare***~~SoonerCare provider for these services. In cases where the ~~***SoonerCare***~~SoonerCare provider authorizes the School to perform the screen or fails to schedule an appointment within three weeks and a request has been made and documented by the School, the School may then furnish the EPSDT child health screening and bill it as a fee-for-services activity. Results of this interperiodic screening are forwarded to the child's ~~***SoonerCare***~~SoonerCare provider.

317:30-5-1027. Billing

(a) Each service has a specified unit of service (unit) for billing purposes which represents the actual time spent providing a direct service. Direct service must be face-to face with the child. There is no reimbursement for time reviewing/completing paperwork and/or documentation related to the service or for staff travel to/from the site of service, unless otherwise specified.

(1) Most units of service are time-based, meaning that the service must be of a minimum duration in order to be billed. A unit of service that is time-based is continuous minutes; the time cannot be aggregated throughout the day.

(2) There are no minimum time requirements for evaluation services, for which the unit of service is generally a completed evaluation. The only exception is the Psychological Evaluation, which is billed in hourly increments.

(b) The following units of service are billed on the appropriate claim form:

(1) Service: Child Health Screening; Unit: Completed comprehensive screening.

(2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.

(3) Service: Child Health Encounter; Unit: per encounter; limited to 3 encounters per day.

(4) Service: Individual Treatment Encounter; Unit: 15 minutes, unless otherwise specified.

(A) Hearing and Vision Services.

(B) Speech Language Therapy; Unit: per session, limited to one per day.

(C) Physical Therapy.

(D) Occupational Therapy.

(E) Nursing Services; Unit: up to 15 minutes; maximum 32 units per day.

(F) Psychotherapy Services; maximum 8 units per day.

(G) Assistive Technology.

(H) Therapeutic Behavioral Services.

(5) Service: Group Treatment Encounter; ~~No~~no more than 5 members per group, Unit: 15 minutes, unless otherwise specified. A daily log/list must be maintained and must identify the SoonerCare participants for each group therapy session.

(A) Hearing and Vision Services.

(B) Speech Language Therapy; Unit: per session, limited to one per day.

(C) Physical Therapy.

(D) Occupational Therapy.
(E) Psychotherapy Services; maximum 8 units per day.
(6) Service: Administration only, Immunization; Unit: one administration.
(7) Service: Hearing Evaluation; Unit: Completed Evaluation.
(8) Service: Hearing Aid Evaluation; Unit: Completed Evaluation.
(9) Service: Audiometric Test (Impedance); Unit: Completed Test (Both Ears).
(10) Service: Tympanometry and acoustic reflexes.
(11) Service: Ear Impression Mold; Unit: 2 molds (one per ear).
(12) Service: Vision Screening; Unit: one examination, by state licensed O.D., M.D., or D.O.
(13) Service: Speech Language Evaluation; Unit: one evaluation.
(14) Service: Physical Therapy Evaluation; Unit: one evaluation.
(15) Service: Occupational Therapy Evaluation; Unit: one evaluation.
(16) Service: Psychological Evaluation and Testing; Unit: one hour.
(17) Service: Personal Care Services; Unit: 10 minutes, 32 units yearly.
(18) Service: Nursing Assessment/Evaluation (Acute episodic care); Unit: one assessment/evaluation, 18 yearly.
(19) Service: Psychological Evaluation and Testing; Unit: per hour of psychologist time, 8 hours yearly.

PART 104. SCHOOL-BASED CASE MANAGEMENT SERVICES

317:30-5-1030. Eligible providers

(a) **Case management providers.** Services are provided by case managers certified by the State Department of Education as meeting the requirements for providing case management. ~~Medicaid~~SoonerCare School-Based Targeted Case Management (SBTCM) services must be made available to all eligible ~~recipients~~members and must be delivered on a statewide basis with procedures that ensure continuity of service without duplication and in compliance with federal and state mandates and regulations related to servicing the targeted population in a uniform and consistent manner. The case managers must be certified by the single state Medicaid agency as meeting the following:

(1) a minimum of five (5) years experience in meeting the case management and service needs of the target population.
(2) a minimum of five (5) years experience in providing all core elements of case management services, including:
(A) individualized strengths and needs assessment;
(B) needs-based service planning;
(C) service coordination, monitoring and advocacy;
(D) service plan review; and
(E) crisis assistance planning.
(3) a minimum of five (5) years experience in developing and implementing Individualized Education Programs (IEP) and/or Individualized Family Service Plans (IFSP) and in meeting the requirements of the IDEA, in accordance with State and Federal law. Each IEP and/or IFSP is ~~dependant~~dependent upon the needs of the individual student as determined by consultation that may include any or all of the professions in (A) through (F) of this paragraph. Those providing input must meet state or national licensure, registration or certification requirements of the profession in which they practice and include:
(A) special education,
(B) school psychologist,
(C) occupational therapist,
(D) physical therapist,
(E) speech language specialist, or
(F) school counselor and other specialists as identified.
(4) a demonstrated ability to collaborate with public and private services providers.
(5) experience in providing and coordinating education support services, including but not limited to Student Assistance, Special Education, Psychology and Counseling Services.
(6) adequate administrative capacity to fulfill state and federal requirements.
(7) a financial management capacity and system that provides documentation of services and costs.
(8) a capacity to document and maintain individual case records in accordance with state and federal requirements.
(9) a demonstrated ability to meet all state and federal laws governing participation of providers in the ~~State Medicaid~~SoonerCare program including, but not limited to, the ability to meet federal and state requirements for documentation, billing and audits.

(b) **Provider agreement.** A Provider Agreement between the Oklahoma Health Care Authority and the providers for case management services must be in effect before reimbursement can be made for compensable services.

(c) **Qualifications of individual case managers.** A targeted case manager for the SBTCM program must:

(1) be employed by the school or their contractor;
(2) possess an appropriate certificate, or meet other comparable requirements as applicable to the profession or discipline in which a person is providing special education, early intervention or related services, in accordance with the requirements of the Oklahoma State Department of Education; or
(3) be licensed, certified or registered as a health care professional in the State, and meet the qualifications for related services staff under the most current provisions of Part B or Part C of the Individuals with Disabilities Education Act.

(d) **Provider selection.** Provision of case management services must not restrict an individual's free choice of providers.

Eligible ~~recipients~~members must have free choice of the providers of other medical care under the plan.

317:30-5-1031. Coverage by category

(a) Payment is made for case management services to children as set forth in this Section.

(1) **Description of case management services.** The target group for case management services is individuals 0-21 who are receiving services pursuant to an Individualized Education Program (IEP), an Individualized Family Service Plan (IFSP), a Section 504 Accommodation Plan, or an Individualized Health Service Plan (IHSP), and who have a disability or are medically at risk. A disability is defined as a physical or mental impairment that substantially limits one or more major life activities. Medically at risk refers to individuals who have a diagnosable physical or mental condition that has a high probability of impairing cognitive, emotional, neurological, social or physical development.

(A) Services are provided to assist the target population in gaining access to needed medical, social, educational, and other services. Major components of the service include:

(i) Individualized needs assessment

(ii) Needs-based service planning;

(iii) Service coordination, monitoring and advocacy;

(iv) Services plan review; and

(v) Crisis assistance planning.

(B) Case record documentation of the service components listed in (1) of this subsection is included as a case management activity. The client has the right to refuse case management and cannot be restricted from services because of a refusal for Case Management Services.

(C) Case management does not include:

(i) Program activities of the agency itself that do not meet the definition of case management.

(ii) Administrative activities necessary for the operation of the agency providing case management services other than the overhead costs directly attributable to targeted case management.

(iii) Diagnostic, treatment or instructional services, including academic testing.

(iv) Services that are an integral part of another service already reimbursed by ~~Medicaid~~SoonerCare.

(v) Activities that are an essential part of ~~Medicaid~~SoonerCare administration, such as outreach, intake processing, eligibility determination or claims processing.

(2) **Non-duplication of services.** To the extent any eligible ~~recipients~~members in the identified targeted population are receiving TCM services from another provider agency as a result of being members of other covered targeted groups, the providers assures that case management activities are coordinated to avoid unnecessary duplication of service. To the extent any of the services required by the ~~client~~member are a ~~Medicaid~~SoonerCare covered benefit of a managed care organization of which the client is a member, the provider will assure that timely referrals are made and that coordination of care occurs.

(3) **Providers.** Case management services must be provided by the schools or their contractors.

(b) **Individuals eligible for Part B of Medicare.** Case Management Services provided to Medicare eligible ~~recipients~~members are filed directly with the fiscal agent.

317:30-5-1032. Reimbursement

(a) Reimbursement for SBTCM services is a unit rate based on the analysis of the average annual costs of providing case management services by participating providers. A unit of service is defined as each completed 10 minute increment that meets the description of case management activity with, or on behalf of the individual, his or her parent(s) or legal guardian.

(b) Payment will be made on the basis of claims submitted for payment. The provider will bill for the unit rate for each documented unit of ~~Medicaid~~SoonerCare SBTCM service provided to each ~~Medicaid~~SoonerCare eligible individual.

317:30-5-1033. Billing

Claims should not be submitted until ~~Medicaid~~SoonerCare eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after 10 months from the date of service, a claim should be submitted in order to assure that the claim is filed and reimbursement ~~from Medicaid funds~~ can be made should the individual be determined eligible at a later date.

317:30-5-1034. Documentation of records

All case management services rendered must be reflected ~~bydocumentation~~by documentation in the records. The case manager documents all units of ~~Medicaid~~SoonerCare SBTCM services provided on the service record form.

[OAR Docket #14-588; filed 6-30-14]

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

[OAR Docket #14-564]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 5. Pharmacies

317:30-5-70.3. [AMENDED]

317:30-5-72. [AMENDED]

317:30-5-77. [AMENDED]

317:30-5-77.3. [AMENDED]

(Reference APA WF # 13-21)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Pharmacy rules are revised to update and make general clean up changes and to comply with Federal Law on claims for covered over-the counter (OTC) products, which must be prescribed by a health care professional with prescriptive authority. Additional revisions include removing hard coded dates that no longer apply, removing the "Upper limit" reference from brand necessary certification product policy, and clarifying the product-based prior authorization for tier one and tier two products.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 5. PHARMACIES

317:30-5-70.3. Prescriber identification numbers

(a) Pharmacies must use the prescriber's National Provider Identification (NPI) number to identify the prescribing provider.

(b) To comply with Federal law,~~Claims~~claims for covered over-the-counter products ~~may~~must be prescribed by a health care professional with prescriptive authority. The claim should be submitted using the prescriber name ~~"OTC"~~and NPI number ~~referenced on the OHCA's public website~~.

317:30-5-72. Categories of service eligibility

(a) **Coverage for adults.** Prescription drugs for categorically needy adults are covered as set forth in this subsection.

(1) With the exception of (2) and (3) of this subsection, categorically needy adults are eligible for a maximum of six covered prescriptions per month with a limit of two brand name prescriptions. A prior authorization may be granted for a third brand name if determined to be medically necessary by OHCA and if the member has not already utilized their six covered prescriptions for the month.

(2) Subject to the limitations set forth in OAC 317:30-5-72.1, OAC 317:30-5-77.2, and OAC 317:30-5-77.3, exceptions to the six medically necessary prescriptions per month limit are:

(A) unlimited monthly medically necessary prescriptions for categorically related individuals who are residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded; and

(B) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the 1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the two brand name or thirteen total prescriptions will be covered with prior authorization.

(3) Drugs exempt from the prescription limit include: Antineoplastics, anti-retroviral agents for persons diagnosed with Acquired Immune Deficiency Syndrome (AIDS) or who have tested positive for the Human Immunodeficiency Virus (HIV), certain prescriptions that require frequent laboratory monitoring, birth control prescriptions, over the counter contraceptives, hemophilia drugs, compensable smoking cessation products, low-phenylalanine formula and amino acid bars for persons with a diagnosis of PKU, certain carrier or diluent solutions used in compounds (i.e. sodium chloride, sterile water, etc.), and drugs used for the treatment of tuberculosis. For purposes of this Section, exclusion from the prescription limit means claims filed for any of these prescriptions will not count toward the prescriptions allowed per month.

(b) **Coverage for children.** Prescription drugs for SoonerCare eligible individuals under 21 years of age are not limited in number per month, but may be subject to prior authorization, quantity limits or other restrictions.

(c) **Individuals eligible for Part B of Medicare.** Individuals eligible for Part B of Medicare are also eligible for the Medicare Part D prescription drug benefit. Coordination of benefits between Medicare Part B and Medicare Part D is the responsibility of the pharmacy provider. The SoonerCare pharmacy benefit does not include any products which are available through either Part B or Part D of Medicare.

(d) **Individuals eligible for a prescription drug benefit through a Prescription Drug Plan (PDP) or Medicare Advantage - Prescription Drug (MA-PD) plan as described in the Medicare Modernization Act (MMA) of 2003.** Individuals who qualify for enrollment in a PDP or MA-PD are specifically excluded from coverage under the SoonerCare pharmacy benefit. This exclusion applies to these individuals in any situation which results in a loss of Federal Financial Participation for the SoonerCare program.~~ The exclusion will become effective January 1, 2006, or the date Medicare Part D is implemented for dual eligible individuals, whichever is~~

~~later.~~ This exclusion shall not apply to items covered at OAC 317:30-5-72.1(2) unless those items are required to be covered by the prescription drug provider in the MMA or subsequent federal action.

317:30-5-77. Brand necessary certification

(a) When a product is available in both a brand and generic form, a prior authorization is required before the branded product may be dispensed. The prescribing provider must certify the brand name drug product is medically necessary for the well being of the patient, otherwise a generic must be substituted for the name brand product.

(1) The certification must be written in the physician's or other prescribing provider's handwriting.

(2) Certification must be written directly on the prescription blank or on a separate sheet which is attached to the original prescription.

(3) A standard phrase indicating the need for a specific brand is required. The OHCA recommends use of the phrase "Brand Necessary".

(4) It is unacceptable to use a printed box on the prescription blank that could be checked by the physician to indicate brand necessary, or to use a hand-written statement that is transferred to a rubber stamp and then stamped onto the prescription blank.

(5) If a physician phones a prescription to the pharmacy and indicates the need for a specific brand, the physician should be informed of the need for a handwritten certification. The pharmacy can either request that the certification document be given to the patient who then delivers it to the pharmacy upon receipt of the prescription, or request the physician send the certification through the mail.

(b) The Brand Necessary Certification applies to ~~CMS Federal Upper Limit and~~ State Maximum Allowable Cost (SMAC) products.

(c) For certain narrow therapeutic index drugs, a prior authorization will not be required. The DUR Board will select and maintain the list of narrow therapeutic index drugs.

(d) Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/U) facilities are exempt from prior authorization requirements for brand name drugs.

317:30-5-77.3. Product-Based Prior Authorization

~~(a)~~ The Oklahoma Health Care Authority utilizes a prior authorization system subject to their authority under 42 U.S.C. 1396r-8 and 63 O.S. 5030.3(B). The prior authorization program is not a drug formulary which is separately authorized in 42 U.S.C 1396r-8. Drugs are placed into two or more tiers based on similarities in clinical efficacy, side-effect profile and cost-effectiveness after recommendation by the Drug Utilization Review Board and approved by the OHCA Board of Directors~~approval~~. Drugs placed in tier number one generally require no prior authorization. Drugs placed in any tier other than tier number one may require prior authorization.

(1) Three general exceptions exist to the requirement of prior authorization:

(A) inadequate response to one or more tier one products,

(B) a clinical exception for a certain product in the particular therapeutic category, or

(C) the manufacturer or labeler of a product may opt to participate in the state supplemental drug rebate program to move a product from a higher tier to a lower tier which will remove or reduce the prior authorization requirement for that product.

(i) After a drug or drug category has been added to the Prior Authorization program, OHCA or its contractor may establish a cost-effective benchmark value for each therapeutic category or individual drug. The benchmark value may be calculated based on an average cost, an average cost per day, a weighted average cost per day or any other generally accepted economic formula. A single formula for all drugs or drug categories is not required. Supplemental rebate offers from manufacturers which are greater than the minimum required supplemental rebate will be accepted and may establish a new benchmark rebate value for the category.

(ii) Manufacturers of products assigned to tiers number two and higher may choose to pay a supplemental rebate to the state in order to ~~avoid~~remove or reduce a prior authorization requirement on their product or products assigned to the higher tier.

(iii) Supplemental rebate agreements shall be in effect for one year and may be terminated at the option of either party with a 60 day notice. Supplemental rebate agreements are subject to the approval of CMS. Termination of a Supplemental Rebate agreement will result in the specific product reverting to the previously assigned higher tier in the PBPA program.

(iv) The supplemental unit rebate amount for a tier two or higher product will be calculated by subtracting the federal rebate amount per unit from the benchmark rebate amount per unit.

(v) Supplemental rebates will be invoiced concurrent with the federal rebates and are subject to the same terms with respect to payment due dates, interest, and penalties for non-payment as specified at 42 U.S.C. Section 1396r-8. All terms and conditions not specifically listed in federal or state law shall be included in the supplemental rebate agreement as approved by CMS.

(vi) Drugs or drug categories which are not part of the Product Based Prior Authorization program as outlined in 63 O.S. Section 5030.5 may be eligible for supplemental rebate participation. The OHCA Drug Utilization Review Board shall ~~determine~~recommend supplemental rebate eligibility for drugs or drug categories after considering clinical efficacy, side effect profile, cost-effectiveness and other applicable criteria.

(2) All clinical exceptions are recommended by the Drug Utilization Review Board and demonstrated by documentation sent by the prescribing physician and/or pharmacist.

~~(b) Additional therapeutic categories of drugs will be subject to subsection (a) of this Section if recommended by the Drug Utilization Review Board, considered by the Medical Advisory Committee and approved by the OHCA Board.~~

[OAR Docket #14-564; filed 6-30-14]

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

[OAR Docket #14-586]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-740.1 [AMENDED]
317:30-5-741 [AMENDED]
317:30-5-742.2 [AMENDED]
(Reference APA WF # 13-50)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's therapeutic foster care (TFC) rules are being revised to allow for the completion of assessments and treatment plans from 14 days to 30 days. This change aligns with current practice that mandates when provisional diagnosis documentation must be submitted. All documentation will now be due to the OHCA within 30 days of admission to a TFC facility. The Agency is also proposing rule revisions to disallow coverage of Psychosocial Rehabilitation (PSR) services for children below age 6 unless services are medically necessary and required pursuant to Federal Early and Periodic Screening Diagnosis and Treatment (EPSDT) laws. Additionally, the agency is proposing to add detail language requirements for developing and rendering assessments, service plans, and PSR services. Other revisions are also made to make minor "cleanup" changes to terminology, which include changes mandated by the Diagnostic and Statistical Manual (DSM) V.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-740.1. Provider qualifications and requirements

(a) **Therapeutic foster care model.** Children in the TFC environment receive intensive individualized behavioral health and other support services from qualified staff. Because TFC children require exceptional levels of skill, time and supervision, the number of unrelated children placed per home is limited; no more than two TFC children in a home at any one time unless additional cases are specifically authorized by OKDHS, Division of Children and Family Services or OJA.

(b) **Treatment team.** TFC agencies are primarily responsible for treatment planning and coordination of the child's treatment team. This team is typically composed of an OKDHS or OJA caseworker, the child, the child's parents, others closely involved with the child and family. It also includes the following:

(1) **~~Behavioral Health Rehabilitation Specialist (BHRS)~~Certified Behavioral Health Case Manager II (CM).** A bachelors level team member that may provide support services and case management. In addition to the minimum requirements at OAC 317:30-5-240.3 (c), the ~~BHRS~~CM must have:

(A) a minimum of one year of experience in providing direct care and/or treatment to children and/or families, and

(B) have access to weekly consultation with a licensed behavioral health professional.

(C) CM must also follow requirements at OAC 317:30-5-241.3 for providing psychosocial rehabilitation services.

(2) **Licensed Behavioral Health Professional (LBHP).** A masters level professional that provides treatment and supervision for the treatment staff to maintain clinical standards of care and provide direct clinical services. In addition to the requirements at OAC 317:30-5-240.3(a), the LBHP in a TFC setting must demonstrate a general processional or educational background in the following areas:

(A) case management, assessment and treatment planning;

(B) treatment of victims of physical, emotional, and sexual abuse;

(C) treatment of children with attachment disorders;

(D) treatment of children with hyperactivity or attention deficit disorders;
(E) treatment methodologies for emotionally disturbed children and youth;
(F) normal childhood development and the effect of abuse and/or neglect on childhood development;
(G) anger management;
(H) crisis intervention; and
(I) trauma informed methodology.

(3) **Licensed Psychiatrist and/or psychologist.** TFC agencies must provide staff with access to professional psychiatric or psychological consultation as deemed necessary for the planning, implementation and appropriate management of the resident's treatment. See OAC 317:30-5-240.3(a) and OAC 317:25-275.

(4) **Treatment Parent Specialist (TPS).** The TPS serve as integral members of the team of professionals providing services for the child. The TPS receives special training in mental health issues, behavior management and parenting techniques; and implements the in-home portion of the treatment plan with close supervision and support. They provide services for the child, get the child to therapy and other treatment appointments, write daily notes about interventions and attend treatment team meetings. The TPS must be under the supervision of a licensed behavioral health professional of the foster care agency and meet the following criteria:
(A) have a high school diploma or equivalent;
(B) be employed by the foster care agency as a foster parent complete with OSBI and OKDHS background screening;
(C) completion of therapeutic foster parent training outlined in this section;
(D) have a minimum of twice monthly face to face supervision with the licensed, or under-supervision for licensure, LBHP, independent of the child's family therapy;
(E) have weekly contact with the foster care agency professional staff; and
(F) complete required annual trainings.

(c) **Agency assurances.** The TFC agency must ensure that each individual that renders treatment services (whether employed by or contracted by the agency) meets the minimum provider qualifications for the service. Individuals eligible for direct enrollment must have a contract on file with the Oklahoma Health Care Authority.

(d) **Policies and Procedures.** Eligible TFC agency providers that are defined in section OAC 317:30-5-740(a) shall have written policies and procedures for the orientation of new staff and foster parents which is reviewed and updated annually, for the following:
(1) pre-service training of foster parents in treatment methodologies and service needs of emotionally and behaviorally disturbed children;
(2) treatment of victims of physical, emotional, and sexual abuse;
(3) treatment of children with attachment disorders;
(4) treatment of children with hyperactive or attention deficit disorders;
(5) normal childhood development and the effect of abuse and/or neglect on childhood development;
(6) treatment of children and families with substance ~~abuse and chemical dependency~~use disorders;
(7) the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
(8) anger management;
(9) inpatient authorization procedures;
(10) crisis intervention;
(11) grief and loss issues for children in foster care;
(12) the significance/value of birth families to children receiving outpatient behavioral health services in a foster care setting; and
(13) trauma informed methodology.

317:30-5-741. Coverage by category

(a) **Adults.** Outpatient Behavioral Health Services in Therapeutic Foster settings are not covered for adults.

(b) **Children.** Outpatient behavioral health services are allowed in therapeutic foster care settings for certain children and youth as medically necessary. The children and youth receiving services in this setting have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this setting.

(c) **Medical necessity criteria.** Medical necessity criteria is delineated as follows:
(1) ~~An Axis I primary~~A diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Licensed Behavioral Health Professional (LBHP) as defined in OAC 317:30-5-240.3(a) within the 30 day period resulting in ~~an~~a~~Axis I primary~~ diagnosis from the most recent edition of "the Diagnostic and Statistical Manual of Mental Disorders"(DSM) ~~primary diagnosis~~ with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.
(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.
(3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.
(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour

crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal guardian/parent of the child (OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

317:30-5-742.2. Individual plan of care and prior authorization of services

(a) All outpatient behavioral health services must be prior authorized by the designated agent of the Oklahoma Health Care Authority before the service is rendered by an eligible service provider. Without prior authorization, payment is not authorized.

(b) All outpatient behavioral health services in a foster care setting are provided as a result of an individual assessment of the members needs and documented in the individual plan of care.

(1) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by a LBHP.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the child and parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include all related diagnoses from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance use; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, including Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (e.g. attorneys, probation officers, etc.);

(XV) Present living arrangements;

(XVI) Economic resources;

(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;

(II) Affective process, such as mood, affect, manner and attitude, etc.;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc.; and

(IV) All related diagnoses from the most recent addition of the DSM.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;

(xviii) Signature and credentials of LBHP who performed the face-to-face behavioral assessment.

(~~1~~2) **Individual plan of care requirement.**

(A) A written individual plan of care following a comprehensive evaluation for each member must be formulated by the provider agency staff within ~~14~~30 days of admission with documented input from the member, legal guardian (OKDHS/OJA) staff, the foster parent (when applicable) and the treatment provider(s). It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and have them fax back their signature; however, the provider must obtain the original signature for the clinical file within 30 days. No stamped or photocopied signatures are allowed. This plan must be revised and updated each 90 days with documented involvement of the legal guardian and resident.

(B) The individual plan of care must be individualized and take into account the member's age, history, diagnosis, assessed functional levels, culture, and the effect of past and current traumatic experiences in the life of the member. It includes the member's documented ~~full five axis DSM-IV~~ diagnosis, appropriate goals, and corresponding reasonable and attainable objectives and action steps within the expected time lines. Each member's individual plan of care is to also address the provider agency's plans with regard to the provision of services. Each plan of care must clearly identify the type of services required to meet the child's treatment needs and frequency over a given period of time.

(C) Requests for outpatient behavioral services in a foster care setting will be approved for a maximum of three months.

(D) Qualified professional. This service is performed by a LBHP.

(E) Time requirements. Individual plan of care updates must be conducted face-to-face and are required every three months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the LBHP and member.

(F) Documentation requirements. Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(x) updates to goals, objectives, service provider, services, and service frequency, must be documented within the individual plan of care until the review/update is due.

(xi) individual plan of care updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis, individual plan of care goals and/ or objectives;

(II) progress, or lack of, on previous individual plan of care goals and/or objectives;

(III) a statement documenting a review of the current individual plan of care and an explanation if no changes are to be made to the individual plan of care and a statement addressing the status of identified problem behaviors that lead to placement must be included;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date.

(~~2~~3) **Description of Services.** Agency services include:

(A) **Individual, family and group therapy.** See OAC 317:30-5-241.2(a), (b), and (c).

~~(B) **Substance abuse/chemical dependency therapy.** Substance abuse/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance abuse and/or chemical dependency. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction.~~

~~(C) **Psychosocial rehabilitation (PSR).**~~

~~(i) **Basic living skills redevelopment.** Daily activities that are age appropriate and relevant to the goals of the individual plan of care. This may include, but is not limited to, food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community~~

~~awareness and familiarization with community resources, mobility skills, and job application and retention skills.~~

~~(ii) **Social skills redevelopment.** Goal directed activities for each member to restore, retain and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age-appropriate, culturally sensitive and relevant to the goals of the individual plan of care. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development.~~

~~(iii) **Crisis/behavior management and redirection.** The provider agency must provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize members' behavior and prevent placement disruption.~~

~~(iv) **Discharge planning.** The provider agency must develop a discharge plan for each member. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care and outlines plans that are in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Oklahoma Department of Human Services or the Office of Juvenile Affairs must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.~~

(B) **Crisis/behavior management and redirection.** The provider agency must provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The agency must ensure staff availability to respond to the residential foster parents in a crisis to stabilize members' behavior and prevent placement disruption. This service is to be provided to the member by a LBHP.

(C) **Discharge planning.** The provider agency must develop a discharge plan for each member. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the member's needs, identifies the member's needs, includes specific recommendations for follow-up care and outlines plans that are in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Oklahoma Department of Human Services or the Office of Juvenile Affairs must be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan is to include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

(D) **Substance use /chemical dependency use therapy.** Substance use/chemical dependency therapy can be provided if a member is identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance use and/or chemical dependency. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, addiction or nicotine use and addiction. This service is to be provided to the member by a LBHP.

(E) **Substance Use Rehabilitation Services.** Definition. Covered outpatient substance use rehabilitation services are provided in non-residential settings in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimes. The purpose of substance use rehabilitation services is to begin, maintain, and/or enhance recovery from alcoholism, problem drinking, drug use, drug dependency addiction or nicotine use and addiction. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training. This service is to be provided to the member by a CM II.

(F) **Psychosocial rehabilitation (PSR).**

(i) Definition. PSR services are face-to-face Behavioral Health Rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. Rehabilitation services may be provided individually or in group sessions, and they take the format of an agency approved curriculum based education and skills training.

(ii) Clinical restrictions. This service is generally performed with only the members and the qualified provider, but may include a member and

the member's family/support system group that focuses on the member's diagnosis, symptom management, and recovery based curriculum. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service. Family involvement is allowed for support of the member and education regarding his/her recovery, but does not constitute family therapy, which requires a licensed provider.

(iii) Qualified providers. CM II and LBHP may perform PSR, following development of an individual plan of care curriculum approved by a LBHP. PSR staff must be appropriately and currently trained in a recognized behavioral/ management intervention program such as MANDT or CAPE or trauma informed methodology. The CM II must have immediate access to a fully licensed LBHP who can provide clinical oversight of the CM II and collaborate with the CM II in the provision of services. A minimum of one monthly face-to-face consultation with a fully licensed LBHP is required.

(iv) Group sizes. The maximum staffing ratio is eight to one for children under the age of eighteen.

(v) Limitations.

(I) Location. In order to develop and improve the member's community and interpersonal functioning and self-care abilities, PSR services may take place in settings away from the outpatient behavioral health agency site as long as the setting protects and assures confidentiality. When this occurs, the qualified provider must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(II) Eligibility for PSR services. PSR services are intended for children with Serious Emotional Disturbance (SED), and children with other emotional or behavioral disorders. Children under age 6, unless a prior authorization for children ages 4 and 5 has been granted by OHCA or its designated agent based on a finding of medical necessity, are not eligible for PSR services.

(III) Billing limits. PSR services are time-limited services designed to be provided over the briefest and most effective period possible and as adjunct (enhancing) interventions to compliment more intensive behavioral health therapies. Service limits are based on the member's needs according to the CAR or other approved tool, the requested placement based on the level of functioning rating, medical necessity, and best practice. Service limitations are designed to help prevent rehabilitation diminishing return by remaining within reasonable age and developmentally appropriate daily limits.

(vi) Progress Notes. In accordance with OAC 317:30-5-241.1, the behavioral health individual plan of care developed by the LBHP must include the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time-limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. When PSR services are prescribed, the plan must address objectives that are specific, attainable, realistic, measurable, and time-limited. The plan must include the appropriate treatment coordination to achieve the maximum reduction of the mental and/or behavioral health disability and to restore the member to their best possible functional level.

(I) Start and stop times for each day attended and the physical location in which the service was rendered;

(II) Specific goal(s) and objectives addressed during the session/group;

(III) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(IV) Member satisfaction with staff intervention(s);

(V) Progress, or barriers made towards goals, objectives;

(VI) New goal(s) or objective(s) identified;

(VII) Signature of the qualified provider; and

(VIII) Credentials of the qualified provider;

(vii) Additional documentation requirements. Documentation of ongoing consultation and/or collaboration with a LBHP related to the provision of PSR services.

(viii) Non-Covered Services. The following services are not considered PSR and are not reimbursable:

(I) room and board;

(II) educational costs;

(III) supported employment; and

(IV) respite.

(G) **Social skills redevelopment.** Goal directed activities for each member to restore, retain and improve the self-help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual plan of care. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development. This service is to be provided to the member by the Treatment Parent Specialist (TPS).

[OAR Docket #14-586; filed 6-30-14]

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

[OAR Docket #14-561]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Program Waiver Services
317:30-5-763. [AMENDED]
(Reference APA WF # 13-19A)
AUTHORITY:
1915(C) statutes, The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGEMCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is revised to provide clarification that ADvantage program residential units are deemed to be rental units and that members in the program are to be provided with a lockable compartment within each member's rental unit for valuables. Additionally, minor grammatical changes will be made through the policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet ADvantage Program minimum requirements for qualification and training prior to providing services to ADvantage members. Prior to providing services to members receiving Consumer-Directed Personal Assistance Services and Supports (CD-PASS), Case Managers are required to receive training and demonstrate knowledge regarding CD-PASS service delivery model, "Independent Living Philosophy" and demonstrate competency in Person-centered planning.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in Oklahoma Department of Human Services/Aging Services Division (OKDHS/ASD) identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(3) **Adult Day Health Care.**

(A) Adult Day Health Care is furnished on a regularly scheduled basis for one or more days per week in an outpatient setting. It provides both health and social services which are necessary to ensure the optimal functioning of the member. Physical, occupational, and/or speech therapies may only be provided as an enhancement to the basic Adult Day Health Care service when authorized by the plan of care and billed as a separate procedure. Meals provided as part of this service do not constitute a full nutritional regimen. Personal Care service enhancement in Adult Day Health Care is assistance in bathing and/or hair washing authorized by the plan of care and billed as a separate procedure. Most assistance with activities of daily living, such as eating, mobility, toileting and nail care, are services that are integral to the Adult Day Health Care service and are covered by the Adult Day Health Care basic reimbursement rate. Assistance with bathing, hair care or laundry is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing, hair care or laundry will be authorized when an ADvantage waiver member who uses adult day health care requires assistance with bathing, hair care or laundry to maintain health and safety.

(B) Adult Day Health Care is a 15-minute unit. No more than 8 hours (32 units) are authorized per day. The number of units of service a member may receive is limited to the number of units approved on the member's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a maximum one session per day unit of service.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing, hair care or laundry service.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for waiver services, continues to reside in the home and is not institutionalized in a hospital, skilled nursing facility or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the the SoonerCare

rate if established, to the Medicare rate or to actual acquisition cost plus 30 percent. All services must be prior authorized.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services may be provided on an intermittent or part time basis or may be comprised of continuous care. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the ADvantage Program case manager in accordance with review schedule determined in consultation between the Case Manager and the Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The ADvantage Program case manager may recommend authorization of Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is

denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Skilled Nursing Services.**

(A) Skilled Nursing Services listed in the plan of care which are within the scope of the State's Nurse Practice Act and are ordered by a licensed medical physician, osteopathic physician, physician assistant or advanced practice nurse and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Skilled Nursing services provided in the member's home or other community setting are services requiring the specialized skills of a licensed nurse. The scope and nature of these services are for treatment of a disease or a medical condition and are beyond the scope of ADvantage Nursing Services. These intermittent nursing services are targeted toward a prescribed treatment or procedure that must be performed at a specific time or other predictable rate of occurrence. It is the responsibility of the RN to contact the member's physician to obtain any necessary information or orders pertaining to the care of the member. If the member has an ongoing need for service activities, which require more or less units than authorized, the RN shall recommend, in writing, that the Plan of Care be revised.

(B) Skilled Nursing services are provided on an intermittent or part-time basis, and billed in units of 15 minute increments. ADvantage Skilled Nursing services are provided when nursing services are not available through Medicare or other sources or when nursing services furnished under SoonerCare plan limits are exhausted. Amount, frequency and duration of services are prior authorized in accordance with member's service plan.

(9) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(10) **Occupational Therapy Services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(11) **Physical Therapy Services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based

on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(12) **Speech and Language Therapy Services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice care. ADvantage Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period, additional periods of ADvantage Hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family. The maximum total annual reimbursement for a member's Hospice care within a twelve month period is limited to an amount equivalent to 85% of the Medicare Hospice Cap payment.

(14) **ADvantage Personal Care.**

(A) ADvantage Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) ADvantage Home Care Agency Skilled Nursing staff working in coordination with an ADvantage Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) ADvantage Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the ADvantage approved plan of care.

(15) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an ADvantage Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the ADvantage approved plan of care.

(16) **Consumer-Directed Personal Assistance Services and Support (CD-PASS).**

(A) Consumer-Directed Personal Assistance Services and Supports are Personal Services Assistance and Advanced Personal Services Assistance that enable an individual in need of assistance to reside in their home and in the community of their choosing rather than in an institution and to carry out functions of daily living, self care, and mobility. CD-PASS services are delivered as authorized on the service plan. The member employs the Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from ADvantage Program Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member may designate an adult family member or friend, an individual who is not a PSA or APSA to the member, as an "authorized representative" to assist in executing these employer functions. The member:

(i) recruits, hires and, as necessary, discharges the PSA or APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Consumer Directed Agent/Case Manager to obtain ADvantage skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the ASPA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(B) The service Personal Services Assistance may include:

(i) assistance with mobility and with transfer in and out of bed, wheelchair or motor vehicle, or both;

(ii) assistance with routine bodily functions that may include:

(I) bathing and personal hygiene;

(II) dressing and grooming;

(III) eating including meal preparation and cleanup;

(iii) assistance with homemaker type services that may include shopping, laundry, cleaning and seasonal chores;

(iv) companion type assistance that may include letter writing, reading mail and providing escort or transportation to participate in approved activities or events. "Approved activities or events" means community civic participation guaranteed to all citizens including but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the member that may include shopping for food, clothing or other necessities, or for participation in other activities or events that are specifically approved on the service plan.

(C) Advanced Personal Services Assistance are maintenance services provided to assist a member with a stable, chronic condition with activities of daily living when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the individual were physically capable, and the procedure

may be safely performed in the home. Advanced Personal Services Assistance is a maintenance service and should never be used as a therapeutic treatment. Members who develop medical complications requiring skilled nursing services while receiving Advanced Personal Services Assistance should be referred to their attending physician who may, if appropriate, order home health services. The service of Advanced Personal Services Assistance includes assistance with health maintenance activities that may include:

(i) routine personal care for persons with ostomies (including tracheotomies, gastrostomies and colostomies with well-healed stoma) and external, indwelling, and suprapubic catheters which includes changing bags and soap and water hygiene around ostomy or catheter site;

(ii) remove external catheters, inspect skin and reapplication of same;

(iii) administer prescribed bowel program including use of suppositories and sphincter stimulation, and enemas (Pre-packaged only) with members without contraindicating rectal or intestinal conditions;

(iv) apply medicated (prescription) lotions or ointments, and dry, non-sterile dressings to unbroken skin;

(v) use lift for transfers;

(vi) manually assist with oral medications;

(vii) provide passive range of motion (non-resistive flexion of joint) delivered in accordance with the plan of care, unless contraindicated by underlying joint pathology;

(viii) apply non-sterile dressings to superficial skin breaks or abrasions; and

(ix) use Universal precautions as defined by the Center for Disease Control.

(D) The service Financial Management Services are program administrative services provided to participating CD-PASS employer/members by the OKDHS/ASD. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Personal Services Assistant or Advanced Personal Services Assistant; and

(v) for making available Hepatitis B vaccine and vaccination series to PSA and APSA employees in compliance with OSHA standards.

(E) The service of Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.

(F) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

(17) **Institution Transition Services.**

(A) Institution Transition Services are those services that are necessary to enable an individual to leave the institution and receive necessary support through ADvantage waiver services in their home and/or in the community.

(B) Institution Transition Case Management Services are services as described in OAC 317:30-5-763(1) required by the individual's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or to enable the individual to function with greater independence in the home, and without which, the individual would continue to require institutionalization. ADvantage Transition Case Management Services assist institutionalized individuals that are eligible to receive ADvantage services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist in the transition, regardless of the funding source for the services to which access is gained. Transition Case Management Services may be authorized for periodic monitoring of an ADvantage member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the service plan, including necessary Institution Transition Services to prepare services and supports to be in place or to start on the date the member is discharged from the institution. Transition Case Management Services may be authorized to assist individuals that have not previously received ADvantage services but have been referred by the OKDHS/ASD to the Case Management Provider for assistance in transitioning from the institution to the community with ADvantage services support.

(i) Institution Transition Case Management services are prior authorized and billed per 15-minute unit of service using the appropriate HCPC and modifier associated with the location

of residence of the member served as described in OAC 317:30-5-763(1)(C).

(ii) A unique modifier code is used to distinguish Institution Transition Case Management services from regular Case Management services.

(C) Institutional Transition Services may be authorized and reimbursed under the following conditions:

(i) The service is necessary to enable the individual to move from the institution to their home;

(ii) The individual is eligible to receive ADvantage services outside the institutional setting;

(iii) Institutional Transition Services are provided to the individual within 180 days of discharge from the institution;

(iv) Transition Services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(D) If the member has received Institution Transition Services but fails to enter the waiver, any Institution Transition Services provided are not reimbursable.

(18) **Assisted Living Services.**

(A) Assisted Living Services are personal care and supportive services that are furnished to waiver members who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security. Services also include social and recreational programming and medication assistance (to the extent permitted under State law). The assisted living services provider is responsible for coordinating services provided by third parties to ADvantage members in the assisted living center. Nursing services are incidental rather than integral to the provision of assisted living services. ADvantage reimbursement for Assisted Living Services includes services of personal care, housekeeping, laundry, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities and exercise and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the participant as determined through individualized assessment and documented on the participant's service plan.

(B) The ADvantage Assisted Living Services philosophy of service delivery promotes service member choice, and to the greatest extent possible, service member control. Members have control over their living space and choice of personal amenities, furnishing and activities in their residence. The Assisted Living Service provider's documented operating philosophy, including policies and procedures, must reflect and support the principles and values associated with the ADvantage assisted living philosophy and approach to service delivery that emphasizes member dignity, privacy, individuality, and independence.

(C) ADvantage Assisted Living required policies for Admission/Termination of services and definitions.

(i) ADvantage-certified Assisted Living Centers (ALCs) are required to accept all eligible ADvantage members who choose to receive services through the ALC subject only to issues relating to:

(I) rental unit availability;

(II) the compatibility of the participant with other residents; and

(III) the center's ability to accommodate residents who have behavior problems, wander, or have needs that exceed the services the center provides.

(ii) The ALC may specify the number of rental units the provider is making available to service ADvantage participants. The number of rental units available to service ADvantage participants may be altered based upon written request from the provider and acceptance by the ADvantage Administration (AA).

(iii) Mild or moderate cognitive impairment of the applicant is not a justifiable reason to deny ALC admission. Centers are required to specify whether they are able to accommodate individuals who have behavior problems or wander. Denial of admission due to a determination of incompatibility must be approved by the case manager and the ADvantage Administration (AA). Appropriateness of placement is not a unilateral determination by the ALC. The ADvantage Case Manager, the member and/or member's designated representative and the ALC in consultation determine the appropriateness of placement.

(iv) The ALC is responsible for meeting the member's needs for privacy and dignity. Inability to meet those needs will not be recognized as a reason for determining that an ADvantage participant's placement is inappropriate. The ALC agrees to provide or arrange and coordinate all of the services listed in the description of assisted living center services in the Oklahoma State Department of Health regulations (OAC 310:663-3-3) except for specialized services.

(v) In addition, the ADvantage participating ALC agrees to provide or coordinate the following services:

(I) Provide an emergency call system for each participating ADvantage member;

(II) Provide up to three meals per day plus snacks sufficient to meet nutritional requirements, including modified special diets, appropriate to members' needs and choices; and

(III) Arrange or coordinate transportation to and from medical appointments.

(vi) The provider may offer any specialized service or rental unit for residents with Alzheimer's disease and related dementias, physical disabilities or other special needs that the facility intends to market.

(vii) If the provider arranges and coordinates services for members, the provider is obligated to assure the provision of those services.

(viii) Under OAC 310:663-1-2, "personal care" is defined as "assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person". For ADvantage Assisted Living Services, assistance with "other personal needs" in this definition includes assistance with toileting, grooming and transferring and the term "assistance" is clarified to mean hands-on help in addition to supervision.

(ix) The specific Assisted Living Services assistance provided along with the amount and duration of each type of assistance is based upon the individual member's assessed need for service assistance and is specified in the ALC's service plan which is incorporated as supplemental detail into the ADvantage comprehensive service plan. The ADvantage Case Manager in cooperation with the Assisted Living Center professional staff develops the service plan to meet member needs. As member needs change, the service plan is amended consistent with the assessed, documented need for change in services.

(x) Definition of Inappropriate ALC Placement. Placement or continued placement of an ADvantage member in an ALC is inappropriate if any one or more of the following conditions exist:

(I) The member's needs exceed the level of services the center provides. Documentation must support ALC efforts to provide or arrange for the required services to accommodate participant needs;

(II) The member exhibits behavior or actions that repeatedly and substantially interferes with the rights or ~~well-being~~well-being of other residents and the ALC has documented efforts to resolve behavior problems including medical interventions, behavioral interventions and increased staffing interventions. Documentation must support that ALC attempted interventions to resolve behavior problems;

(III) The member has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed and implemented in the assisted living environment. Documentation must support that ALC attempted to obtain appropriate care for the member; or

(IV) The member fails to pay room and board charges and/or the OKDHS determined vendor payment obligation.

(xi) Termination of residence when inappropriately placed. Once a determination is made that a member is inappropriately placed, the assisted living center must inform the member and/or the member's representative, if any, and the member's ADvantage Case Manager. The ALC must develop a discharge plan in consultation with the member, the member's support network,~~and~~ the ADvantage Case Manager, and the AA. The ALC and Case Manager must ensure that the discharge plan includes strategies for providing increased services, when appropriate to minimize risk and meet the higher care needs of members awaiting a move out of the ALC, if reason for discharge is inability to meet member needs. If voluntary termination of residency is not arranged, the ALC must provide written notice to the member and to the member's representative, with a copy to the member's ADvantage Case Manager, giving the member 30 days notice of the ALC's intent to terminate the residency agreement and move the member to a more appropriate care provider. The 30 day requirement shall not apply when emergency termination of the residency agreement is mandated by the member's immediate health needs or when termination of the residency agreement is necessary for the physical safety of the member or other residents of the ALC. The written notice of involuntary termination of residency for reasons of inappropriate placement must include:

(I) a full explanation of the reasons for the termination of residency;

(II) the date of the notice;

(III) the date notice was given to the member and the member's representative, the ADvantage Case Manager, and the AA;

(IV) the date by which the member must leave the ALC; and

(V) notification of appeal rights and process for submitting appeal of termination of Medicaid Assisted Living services to the OHCA.

(D) ADvantage Assisted Living Services provider standards in addition to licensure standards.

(i) Physical environment

(I) The ALC must provide lockable doors on the entry door of each rental unit and a lockable compartment within each member unit for valuables. Member residents must have exclusive rights to their units with lockable doors at the entrance of their individual and/or shared

rental unit and to a lockable compartment within each member's rental unit for valuables except in the case of documented contraindication. ~~Units~~Rental units may be shared only if a request to do so is initiated by the member resident.

(II) The ALC must provide each rental unit with a means for each member resident to control the temperature in the individual living unit through the use of a damper, register, thermostat, or other reasonable means that is under the control of the resident and that preserves resident privacy, independence and safety, provided that the Oklahoma State Department of Health may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each member who has an alternate temperature control.

(III) For ALCS built prior to January 1, 2008, each ALC individual ~~residential~~rental unit must have a minimum total living space (including closets and storage area) of 250 square feet; for ALCs built after December 31, 2007, each ALC individual residential unit must have a minimum total living space (including closets and storage area) of 360 square feet.

(IV) The ALC shall provide a private bathroom for each living unit which must be equipped with one lavatory, one toilet, and one bathtub or shower stall.

(V) The ALC must provide at a minimum a kitchenette, defined as a space containing a refrigerator, cooking appliance (microwave is acceptable), and adequate storage space for utensils.

(VI) The member is responsible for furnishing their rental unit. If a member is unable to supply basic furnishings defined as a bed, dresser, nightstand, chairs, table, trash can and lamp, or if the member supplied furnishings pose a health or safety risk, the member's Case Manager in coordination with the ALC must assist the member in obtaining basic furnishings for the rental unit.

(VII) The ALC must meet the requirements of all applicable federal and state laws and regulations including, but not limited to, the state and local sanitary codes, state building and fire safety codes and laws and regulations governing use and access by persons with disabilities.

(VIII) The ALC must ensure the design of common areas accommodates the special needs of their resident population and that the ~~residential~~rental unit accommodates the special needs of the individual in compliance with ADA Accessibility Guidelines (28 CFR Part 36 Appendix A) at no additional cost to the member.

(IX) The ALC must provide adequate and appropriate social and recreational space for residents and the common space must be proportionate to the number of residents and appropriate for the resident population.

(X) The ALC must provide appropriately monitored outdoor space for resident use.

(ii) Sanitation

(I) The ALC must maintain the facility, including its individual rental units, that is clean, safe, sanitary, insect and rodent free, odorless, and in good repair at all times.

(II) The ALC must maintain buildings and grounds in a good state of repair and in a safe and sanitary condition, and in compliance with the requirements of applicable regulations, bylaws and codes.

(III) The ALC stores clean laundry in a manner that prevents contamination and changes linens at time intervals necessary to avoid health issues.

(IV) The ALC must provide housekeeping in member rental units that maintains a safe, clean and sanitary environment.

(V) The ALC must have policies and procedures for members' pets.

(iii) Health and Safety

(I) The ALC must provide building security that protects residents from intruders with security measures appropriate to building design, environment risk factors and the resident population.

(II) The ALC must respond immediately and appropriately to missing residents, accidents, medical emergencies or deaths.

(III) The ALC must have a plan in place to prevent, contain and report any diseases that are considered to be infectious and/or are listed as diseases that must be reported to the Oklahoma State Department of Health.

(IV) The ALC must adopt policies for prevention of abuse, neglect and exploitation that include screening, training, prevention, investigation, protection during investigation and reporting.

(V) The ALC must provide services and facilities that accommodate the needs of resident to safely evacuate in the event of fires or other emergencies.

(VI) The ALC must ensure that staff ~~are~~is trained to respond appropriately to emergencies.

(VII) The ALC staff must ensure that fire safety requirements are met.

(VIII) The ALC must offer meals that provide balanced and adequate nutrition for residents.

(IX) The ALC must adopt safe practices for the preparation and delivery of meals;

(X) The ALC must provide a 24-hour response to personal emergencies that is appropriate to the needs of the resident population.

(XI) The ALC must provide safe transportation to and from ALC sponsored social/recreational outings.

(iv) Staff to resident ratios

(I) The ALC must ensure that a sufficient number of trained staff ~~be~~are on duty, awake, and present at all times, 24 hours a day, seven days a week, to meet the needs of residents and to carry out all the processes listed in the ALC's written emergency and disaster preparedness plan for fires and other natural disasters.

(II) The ALC must ensure that staffing is sufficient to meet the needs of the ADvantage Program residents in accordance with each individual's ADvantage Service Plan.

(III) The ALC must have plans in place to address situations where there is a disruption to the ALC's regular work force.

(v) Staff training and qualifications

(I) The ALC must ensure that all staff have qualifications consistent with their job responsibilities.

(II) All staff assisting in, or responsible for, food service must have attended a food service training program offered or approved by the Oklahoma Department of Health;

(III) The ALC must provide staff orientation and ongoing training to develop and maintain the knowledge and skills of staff. All direct care and activity staff receive at least eight hours of orientation and initial training within the first month of their employment and at least four hours annually thereafter. Staff providing direct care on a dementia or Memory Care unit must receive four additional hours of dementia specific training. Annual first aid and CPR certification do not count towards the four hours of annual training.

(vi) Staff supervision

(I) The ALC must ensure delegation of tasks to non-licensed staff must be consistent and in compliance with all applicable State regulations including, but not limited to, the Oklahoma Nurse Practice Act and the OSDH Nurse Aide Certification rules.

(II) The ALC must ensure that, where the monitoring of food intake or therapeutic diets is provided at the prescribed services level, a registered dietitian monitors the member's health and nutritional status.

(vii) Resident rights

(I) The ALC must provide to each member and member's representative, at the time of admission, a copy of the resident statutory rights listed in O.S. 63-1-1918 amended to include additional rights and clarification of rights as listed in the ADvantage ~~Consumer~~Assisted Living Member Assurances. A copy of the resident rights must be posted in an easily accessible, conspicuous place in the facility. The facility must ensure that its staff is familiar with, and observes, the resident rights.

(II) The ALC must conspicuously post for display in an area accessible to residents, employees and visitors, the assisted living center's complaint procedures and the name, address and telephone number of a person authorized to receive complaints. A copy of the complaint procedure must also be given to each resident, the resident's representative, or where appropriate, the court appointed guardian. The ALC must ensure that all employees comply with the ALC's complaint procedure.

(III) The ALC must provide to each member and member's representative, at the time of admission, information about Medicaid grievance/appeal rights including a description of the process for submitting a grievance/appeal of any decision that decreases Medicaid services to the member.

(viii) Incident reporting

(I) The ALC must maintain a record of incidents that occur and report incidents to the member's ADvantage Case Manager~~,~~and to the ~~ADvantage Program AA and to other entities as required by law or regulation~~AA utilizing the AA Critical Incident Reporting form. Incident reports are also to be made to Adult Protective Services (APS) and to the Oklahoma State Department of Health (OSDH), as appropriate, in accordance with the ALC's licensure rules, utilizing the specific reporting forms required.

(II) Incidents requiring report by licensed Assisted Living Centers are those defined by the Oklahoma State Department of Health (OSDH) in OAC 310:663-19-1 and listed on the Critical Incident Reporting Form.

(III) Reports of incidents must be made to the member's ADvantage Case Manager and to the AA via facsimile ~~or by telephone~~ within one business day of the reportable incident's discovery utilizing the AA Critical Incident Reporting form. ~~A~~If required, a follow-up report of the incident ~~must~~will be submitted via facsimile or mail to the member's ADvantage Case Manager. The follow-up report must be submitted within five business days after the incident. The final report must be filed with the member's ADvantage Case Manager and to the

ADvantage Administration when the full investigation is complete not to exceed ten business days after the incident.

(IV) Each ALC having reasonable cause to believe that a member is suffering from abuse, neglect, exploitation, or misappropriation of member property must make a report to either the Oklahoma Department of Human Services, the office of the district attorney in the county in which the suspected abuse, neglect, exploitation, or property misappropriation occurred or the local municipal police department or sheriff's department as soon as the person is aware of the situation, in accordance with Section 10-104.A of Title 43A of Oklahoma Statutes. Reports should also be made to the OSDH, as appropriate, in accordance with the ALC's licensure rules.

(V) The preliminary incident report must at the minimum include who, what, when and where and the measures taken to protect the resident(s) during the investigation. The follow-up report must at the minimum include preliminary information, the extent of the injury or damage, if any, and preliminary findings of the investigation. The final report at the minimum includes preliminary and follow-up information, a summary of investigative actions representing a thorough investigation, investigative findings and conclusions based on findings; and corrective measures to prevent future occurrences. If necessary to omit items, the final report must include why items were omitted and when they will be provided.

(ix) Provision of or arrangement for necessary health services

(I) The ALC must arrange or coordinate transportation for members to and from medical appointments.

(II) The ALC must provide or coordinate with the member and the member's ADvantage Case Manager for delivery of necessary health services. The ADvantage Case Manager is responsible for monitoring that all health-related services required by the member as identified through assessment and documented on the service plan are provided in an appropriate and timely manner. The member has the freedom to choose any available provider qualified by licensure or certification to provide necessary health services in the ALC.

(E) Assisted Living Services are billed per diem of service for days covered by the ADvantage member's service plan and during which the Assisted Living Services provider is responsible for providing Assisted Living serviced as needed by the member. The per diem rate for the ADvantage assisted living services for a member will be one of three per diem rate levels based upon individual member's need for service - type intensity and frequency to address member ADL/IADL and health care needs. The rate level is based upon UCAT assessment by the member's ADvantage Case Manager employed by a Case Management agency that is independent of the Assisted Living Services provider. The determination of the appropriate per diem rate is made by the AA clinical review staff.

[OAR Docket #14-561; filed 6-30-14]

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

[OAR Docket #14-581]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.29 [AMENDED]
317:30-5-95.30 [AMENDED]
317:30-5-95.34 [AMENDED]
317:30-5-95.39 [AMENDED]
317:30-5-95.42 [AMENDED]
(Reference APA WF # 13-45)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 441.154 through 441.156; 42 CFR 456
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Agency's inpatient psychiatric hospital rules are revised to establish medical necessity criteria specific for admission and continued stays in community based transitional (CBT) programs as these facilities are a lower level of care than psychiatric residential treatment facilities (PRTF) and acute residential treatment facilities. Changes are also being proposed to the rules regarding "active treatment" requirements for children under the age of 18. The change will allow providers flexibility to better tailor treatment to the individual needs of the child. Additional proposed changes include: revisions to Inspection of Care (IOC) rules, clarifying which types of facilities will be still receive on-site inspections, allowing psychosocial evaluations or admission assessments to substituted for the first therapy session, and allowing

the use of mechanical restraints for children 18-20 since they are treated on the adult care unit. Other revisions are also made to make minor "cleanup" changes to terminology, which include changes mandated by the Diagnostic and Statistical Manual (DSM) V.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.29. Medical necessity criteria for admission - psychiatric residential treatment for children

(a) Psychiatric Residential Treatment facility admissions for children must meet the terms and conditions in (1), (2), (3), (4), (6) and one of (5)(A) through (5)(D) of this subsection.

(1) ~~An Axis I~~A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. ~~In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder.~~Children 18-20 years of age may have a diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary ~~Axis I~~ diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior or status offenses).

(3) Patient has either received treatment in an acute care setting or it has been determined by the OHCA designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(4) Child must be medically stable.

(5) Within the past 14 calendar days, the patient has demonstrated an escalating pattern of self-injurious or assaultive behaviors as evidenced by any of (A) through (D) below. Exceptions to the 14 day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within 14 days (~~i.e.~~e.g., sexual offenses).

(A) Suicidal ideation and/or threat.

(B) History of or current self-injurious behavior.

(C) Serious threats or evidence of physical aggression.

(D) Current incapacitating psychosis or depression.

(6) Requires 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

(b) Community Based Transitional Residential Treatment (CBT) facility admissions for children must meet the terms and conditions in (1) through (6) of this subsection.

(1) A primary diagnosis from the most recent edition of the DSM with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavioral or status offenses).

(3) Patient has either received treatment in an acute, RTC or children's crisis unit care setting or it has been determined by OHCA or its designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(A) Patient must have tried and failed a lower level of care or is stepping down from a higher level of care.

(B) Clinical documentation must support need for CBT, rather than facility based crisis stabilization, therapeutic foster care, or intensive outpatient services.

(C) There is clear evidence to support a reasonable expectation that stepping down to a lower level of care would result in rapid and marked deterioration of functioning in at least 2 of the 5 critical areas, listed below, placing the member at risk of need for acute stabilization/inpatient care.

(i) Personal safety.

(ii) Cognitive functioning.

(iii) Family relations.

(iv) Interpersonal relations.

(v) Educational/vocational performance.

(4) Child must be medically stable and not require 24 hour on-site nursing or medical care.

(5) Within the past 14 calendar days, the patient must have demonstrated an escalating pattern of self-injurious or assaultive behavior as evidenced by any of (a)(5)(A) through (D) above. Exceptions to the 14 day requirement may be made in instances when evidence of the behavior could not have reasonably been discovered within 14 days (e.g., sexual offenses).

(6) Within the past 14 calendar days, the patient's behaviors have created significant functional impairment.

317:30-5-95.30. Medical necessity criteria for continued stay - psychiatric residential treatment center for children

(a) For continued stay Psychiatric Residential Treatment Facilities for children, admissions must meet the terms and conditions contained in (1), (2), (5), (6), and either (3) or (4) of this subsection.

(1) ~~An Axis I~~A primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V codes, adjustment disorders, and substance abuse related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying ~~Axis I~~primary diagnosis, children 18-20 years of age may have ~~an Axis II~~a secondary diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses).

(3) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.

(A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) Patient has made gains toward social responsibility and independence.

(C) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.

(D) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.

(4) Child's condition has remained unchanged or worsened.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.

(5) There is documented continuing need for 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

(6) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.

(b) For continued stay Community Based Transitional Residential Treatment (CBT), children must meet the terms and conditions found in (1) through (5) of this subsection.

(1) A primary diagnosis from the most recent DSM with the exception of V codes, adjustment disorders, and substance use disorders, accompanied by detailed symptoms supporting the diagnosis. Children 18-20 years of age may have a diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses, etc.).

(3) There is documented continued need for 24 hour observation and treatment as evidenced by:

(A) Patient making measurable progress toward the treatment objectives specified in the treatment plan.

(B) Clinical documentation clearly indicates continued significant functional impairment in two of the following five critical areas, as evidenced by specific clinically relevant behavior descriptors:

(i) Personal safety.

(ii) Cognitive functioning.

(iii) Family relations.

(iv) Interpersonal relations.

(v) Educational/vocational performance.

(4) Clinical documentation includes behavioral descriptors indicating patient's response to treatment and supporting patient's ability to benefit from continued treatment at this level of care.

(5) Documented, clear evidence of consistent, active involvement by patient's primary caregiver(s) in the treatment process.

317:30-5-95.34. Active treatment for children

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

(1) **"Discharge/Transition Planning"** means a patient-centered, interdisciplinary process that begins with an initial assessment of the patient's potential needs at the time of admission and continues throughout the patient's stay. Active collaboration with the patient, family and all involved outpatient practitioners and agencies should be ongoing throughout treatment so that effective connections remain intact. Needed services may consist of the Wraparound process through Systems of Care, counseling, case management and other supports in their community. The linkages with these supports should be made prior to discharge to allow for a smooth transition.

(~~1~~2) **"Expressive group therapy"** means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies that encourage the member to express themselves emotionally and psychologically.

(~~2~~3) **"Family therapy"** means interaction between a LBHP, member and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.

(~~3~~4) **"Group rehabilitative treatment"** means behavioral health remedial services, as specified in the individual care plan which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living.

(~~4~~5) **"Individual rehabilitative treatment"** means a face to face, one on one interaction which is performed to assist members who are experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living.

(~~5~~6) **"Individual therapy"** means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between a LBPH and a member to promote emotional or psychological change to alleviate disorders.

(~~6~~7) **"Process group therapy"** means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between a LBHP as defined in OAC 317:30-5-240.3, and two or more members to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "Active Treatment". Active Treatment involves the member and their family or guardian from the time of an admission throughout the treatment and discharge process. Families and/or guardians must be notified of the dates and times of treatment team meetings and be welcomed to attend. Family members must attend family therapy weekly for continued SoonerCare reimbursement. Reasons for exceptions to this requirement must be well documented in the member's treatment plan. For individuals in the age range of 18 up to 21, it is understood that family members and guardians will not always be involved in the member's treatment. Active Treatment also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. Evidence based practices such as trauma informed methodology should be utilized to minimize the use of seclusion and restraint.

(c) For individuals age 18 up to 21, the Active Treatment program must be appropriate to the needs of the member and be directed toward restoring and maintaining optimal levels of physical and psychiatric-social functioning. The services and individual plan of care must be recovery focused, trauma informed, specific to culture, age and gender, and provided face-to-face. Services, including type and frequency, will be specified in the Individual Plan of Care.

(d) For individuals under age 18, the components of Active Treatment consist of face-to-face integrated therapies that are provided on a regular basis and will remain consistent with the member's ongoing need for care. The services and individual plan of care must be recovery focused, trauma informed, and specific to culture, age, and gender. Individuals in acute care must receive seventeen (17) hours of documented active treatment services each week, with seven (7) of those hours being dedicated to core services as described in (1) below. Individuals in PRTFs must receive fourteen (14) hours of documented active treatment services each week, with four and a half (4.5) of those hours being dedicated to core services as described in (1) below. Individuals in Community Based Transitional (CBT) must receive ten (10) hours of documented active treatment services each week, with 4 of those hours being dedicated to core services as described in (1) below. The remainder of the active treatment services may include any or all of the elective services listed in (2) below or additional hours of any of the core services. Sixty minutes is the expectation to equal one hour of treatment. When appropriate to meet the needs of the child, the 60 minute timeframe may be split into sessions of no less than 15 minutes each on the condition that the Active Treatment requirements are fully met by the end of the treatment week. The following components meet the minimum standards required for Active Treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) **Core Services.**

(~~1~~A) **Individual treatment provided by the physician.** Individual treatment provided by the physician is required three times per week for acute care and one time a week in Residential Treatment Facilities. Individual treatment provided by the physician will never exceed ten calendar days between sessions in PRTFs, never exceed seven calendar days in a specialty PRTF and never exceed 30 calendar days in CBTs. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(~~2~~B) **Individual therapy.** LBHPs performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual member's plan of care and the member's developmental and cognitive abilities. Individual therapy must be provided two hours per week in acute care and one hour per week in residential treatment by a LBHP as described in OAC 317:30-5-240.3. One hour of family therapy may be substituted for one hour of individual therapy at the treatment team's discretion.

(~~3~~C) **Family therapy.** The focus of family therapy must be directly related to the goals and objectives on the individual member's plan of care. Family therapy must be provided one hour per week for acute care and residential. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by a LBHP as described in OAC 317:30-5-240.3.

(~~4~~D) **Process group therapy.** The focus of process group therapy must be directly related to goals and objectives on the individual member's plan of care. The individual member's behavior and the focus of the group must be included in each member's medical record. This service does not include social skills

development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by a LBHP as defined in OAC 317:30-5-240.3. In lieu of one hour of process group therapy, one hour of expressive group therapy provided by a LBHP or Licensed Therapeutic Recreation Specialist may be substituted.

(E) **Transition/Discharge Planning.** Transition/discharge planning must be provided one hour per week in acute care and thirty minutes per week in residential and CBT. Transition/Discharge planning can be provided by any level of inpatient staff.

(2) **Elective services.**

(~~5~~A) **Expressive group therapy.** Through active expression, inner-strengths are discovered that can help the member deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual member's plan of care. Documentation must include how the member is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy. ~~Expressive group therapy must be provided four hours per week in acute care, three hours per week in residential treatment and twice a week in CBT. In lieu of one hour of expressive group therapy, one hour of process group therapy may be substituted.~~

(~~6~~B) **Group rehabilitative treatment.** Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care. ~~Group rehabilitative treatment services will be provided two hours each day for all inpatient psychiatric care with the exception of CBT. Individuals in CBT must receive a total of 6 hours of group rehabilitative treatment per week provided at a frequency of no less than 6 times a week. In lieu of two hours of group rehabilitative services per day, one hour of individual rehabilitative services per day may be substituted.~~

(~~7~~C) **Individual rehabilitative treatment.** Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the member's diagnosis. ~~One hour of individual rehabilitative treatment service may be substituted daily for the two hour daily group rehabilitative services requirement.~~

(D) **Recreation therapy.** Services will be provided to reduce psychiatric and behavioral impairment as well as to restore, remediate and rehabilitate an individual's level of functioning and independence in life activities. Services will also be provided in such a way as to promote health and wellness as well as reduce or eliminate the activity limitations and restrictions to participation in life situations caused by an illness or disabling condition. Recreational therapy can be provided in an individual or group setting. If the only activities prescribed for the individual are primarily diversional in nature, (i.e. to provide some social or recreational outlet for the individual), it will not be regarded as active treatment. If provided, recreational therapy must be a planned therapeutic activity, facilitated by a Licensed Therapeutic Recreation Specialist.

(E) **Occupational therapy.** Services will be provided to address developmental and/or functional needs related to the performance of self-help skills, adaptive behavioral, and/or sensory, motor and postural development. Services include therapeutic goal-directing activities and/or exercises used to improve mobility and activities of daily living (ADL) functions when such functions have been impaired due to illness or injury. Services must be provided by an occupational therapist appropriately licensed in the state in which they practice.

(F) **Wellness resource skills development.** Services include providing direction and coordinating support activities that promote good physical health. The focus of these activities should include areas such as nutrition, exercise, support with averting or managing physical health concerns like heart disease, diabetes, and cholesterol, and support regarding the effects of medications have on physical health. Services can include support groups, exercise groups, and individual physical wellness plan development, implementation assistance and support.

(~~8~~3) **Modifications to active treatment.** When a member is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

(e) The expectation is that active treatment will occur regularly throughout the treatment week. A treatment week in Acute is based on the number of days of acute service, beginning the day of admission (day 1). Required active treatment components will be based upon the length of stay as described below. A treatment week in RTC, PRTF and CBT is considered to be a calendar week (i.e. Sunday through Saturday). When a

child is admitted to RTC, PRTF or CBT level of care on a day other than Sunday, or discharges on a day other than Saturday, the week will be considered a partial week and services will be required as described below. Active treatment components do not include assessments/evaluations. Active treatment begins the day of admission. Days noted are calendar days.

(1) **Individual treatment provided by the physician.**

(A) In acute, by day two, 1 visit is required. By day 4, 2 visits are required. By day 7, 3 visits are required.

(B) In RTC, PRTF or CBT, one visit during admission week is required. In RTCs, 1 visit during the admission week is required, then once a week thereafter. In PRTFs, one visit during the admission week is required, then once a week thereafter. In CBT, 1 visit is required within 7 days of admission. Individual treatment provided by the physician will never exceed 10 days between sessions in PRTFs, never exceed 7 days in a specialty PRTF and never exceed 30 days in CBTs. These visits do not include the Psychiatric Evaluation or History and Physical unless personally rendered by the physician. If the member is admitted on the last day of the admission week, then the member must be seen by a physician within 24 hours of admission time.

(2) **Individual therapy.**

(A) In acute, by day 3, 30 minutes of treatment are required. By day 5, 1 hour of treatment is required. Beginning on day 7, 2 hours of treatment are required each week. This does not include admission assessments/evaluations or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admission assessment/ evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP.

(3) **Family therapy.**

(A) In acute, by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admission assessments/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP and the assessments/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement.

(B) In residential treatment (including PRTF and CBT), by day 6, 30 minutes of treatment must be documented. Beginning on day 7, 1 hour of treatment is required each week. This does not include admissions assessment/evaluation or Psychosocial Evaluations unless personally (face to face) rendered by the LBHP and the assessment/evaluation or Psychosocial Evaluation has not been used to substitute the initial individual therapy requirement.

~~(4) Process group therapy.~~

~~(A) In acute, by day 3, 1 hour of treatment is required. By day 5, 2 hours of treatment are required. Beginning day 7, 3 hours of treatment are required each week.~~

~~(B) In residential treatment (including PRTF and CBT) by day 5, 1 hour of treatment must be documented. Beginning on day 7, 2 hours of treatment are required each week.~~

~~(5) Expressive group therapy.~~

~~(A) In acute by day 2, 1 hour of treatment is required. By day 4, 2 hours of treatment are required. By day 6, 3 hours of treatment are required. Beginning day 7, 4 hours of treatment are required each week.~~

~~(B) In residential treatment (including PRTF) by day 3, 1 hour of treatment is required. By day 5, 2 hours of treatment are required. Beginning day 7, 3 hours of treatment are required each week.~~

~~(C) In CBT, by day 4, 1 hour of treatment is required. Beginning day 7, 2 hours of treatment are required each week.~~

~~(6) Rehabilitative treatment.~~

~~(A) In acute and RTC (including PRTF and specialty) on day 1, safety and unit orientation are required. Beginning day 2, 2 hours of Group Rehabilitation or 1 hour of Individual Rehabilitation is required.~~

~~(B) In CBT, by day 7, 6 hours of treatment are required.~~

(f) When an individual is determined to be too ill to participate in treatment, as determined by medical/nursing staff (RN/LPN), documentation must be in the record clearly indicating the reason, limitations, and timeframe for those services to be excused without penalty.

317:30-5-95.39. Seclusion, restraint, and serious incident reporting requirements for children

(a) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the member, a staff member or others from harm and may only be imposed to ensure the immediate physical safety of the member, a staff member or others. The use of restraint or seclusion must be in accordance with a written modification to the member's individual plan of care. The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the member or others from harm. Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order. Mechanical restraints will not be used on children under age 18.

(1) Each facility must have policies and procedure to describe the conditions, in which seclusion and restraint would be utilized, the behavioral/management intervention program followed by the facility and the documentation required. Each order by a physician or Licensed Independent Practitioner (LIP) may authorize the RN to continue or terminate the restraint or seclusion based on the member's face to face evaluation. Each

order for restraint or seclusion may only be renewed in accordance with the following limits for up to a total of 24 hours:

(A) four hours for children 18 to 20 years of age;

(B) two hours for children and adolescents nine to 17 years of age; or

(C) one hour for children under nine years of age.

(2) The documentation required to ~~insure~~ensure that seclusion and restraint was appropriately implemented and monitored will include at a minimum:

(A) documentation of events leading to intervention used to manage the violent or self-destructive behaviors that jeopardize the immediate physical safety of the member or others;

(B) documentation of alternatives or less restrictive interventions attempted;

(C) an order for seclusion/restraint including the name of the LIP, date and time of order;

(D) orders for the use of seclusion/restraint must never be written as a standing order or on an as needed basis;

(E) documentation that the member continually was monitored face to face by an assigned, trained staff member, or continually monitored by trained staff using both video and audio equipment during the seclusion/restraint;

(F) the results of a face to face assessment completed within one hour by a LIP or RN who has been trained in accordance with the requirements specified at OAC 317:30-5-95.35 to include the:

(i) member's immediate situation;

(ii) member's reaction to intervention;

(iii) member's medical and behavioral conditions; and

(iv) need to continue or terminate the restraint or seclusion.

(G) in events the face to face was completed by a trained RN, documentation that the trained RN consulted the attending physician or other LIP responsible for the care of the member as soon as possible after the completion of the one-hour face to face evaluation;

(H) debriefing of the child within 24 hours by a LBHP;

(I) debriefing of staff within 48 hours; and

(J) notification of the parent/guardian.

(b) Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a member in restraint or seclusion before performing any of these actions and subsequently on an annual basis. The PRTF must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the member population in at least the following:

(1) techniques to identify staff and member behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;

(2) the use of nonphysical intervention skills;

(3) choosing the least restrictive intervention based on an individualized assessment of the member's medical behavior status or condition;

(4) the safe application and use of all types of restraint or seclusion used in the PRTF, including training in how to recognize and respond to signs of physical and psychological distress;

(5) clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary;

(6) monitoring the physical and psychological well-being of the member who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by the policy of the PRTF associated with the one hour face to face evaluation; and

(7) the use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including annual re-certification.

(c) Individuals providing staff training must be qualified as evidence by education, training and experience in techniques used to address members' behaviors. The PRTF must document in staff personnel records that the training and demonstration of competency were successfully completed.

(d) The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:

(1) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral Health Unit by phone no later than 5:00 p.m. on the business day following the incident.

(2) Information regarding the SoonerCare member involved, the basic facts of the incident, and follow-up to date must be reported. The agency will be asked to supply, at a minimum, follow-up information with regard to member outcome, staff debriefing and programmatic changes implemented (if applicable).

(3) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).

(4) Member death must be reported to the OHCA Behavioral Health Services Unit as well as to the Centers for Medicare and Medicaid Regional office in Dallas, Texas.

(5) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care see OAC 317:30-5-95.42, or using other methodologies.

317:30-5-95.42. ~~Inspection of care~~Service quality review of psychiatric facilities providing services to children

(a) The Service Quality Review conducted by OHCA or its designated agent meets the utilization control requirements as set forth in 42 CFR 456.

(~~a~~b) There will be an ~~on site~~on-site~~Inspection of Care (IOC)~~Service Quality Review (SQR) of each in-state psychiatric facility that provides care to SoonerCare eligible children which will be performed by the OHCA or its designated agent.

Out-of-state psychiatric facilities that provide care to SoonerCare eligible children will be reviewed according to the procedures outlined in the provider manual. The Oklahoma Health Care Authority will designate the members of the ~~Inspection of Care~~Service Quality Review team.

(~~b~~c) The ~~IOC~~SQR team will consist of one to three team members and will be comprised of Licensed Behavioral Health Professionals (LBHP) or Registered Nurses.

(~~c~~d) The ~~inspection~~review will include observation and contact with members. The ~~Inspection of Care~~Service Quality Review will consist of members present or listed as facility residents at the beginning of the ~~Inspection of Care~~Service Quality Review visit as well as members on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the services to be compensable.

(~~d~~e) Following the on-site inspection, the ~~Inspection of Care~~SQR Team will report its findings to the facility. The facility will be provided with written notification if the findings of the ~~inspection of care~~review have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.

(~~e~~f) Deficiencies found during the ~~IOC~~SQR may result in a partial per-diem recoupment or a full per-diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment, must be completed within the time lines designated in OAC 317:30-5-95.37, and cannot be substituted with any other evaluation/assessments not specifically mentioned:

(1) History and physical evaluation;
(2) Psychiatric evaluation;
(3) Psychosocial evaluation; and
(4) Individual Plan of Care.

(~~f~~g) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and/or Individual Plan of Care are not contained within the member's records, those days will warrant a ~~full~~partial per-diem recoupment ~~of the compensation received. Full per-diem recoupment will only occur for those documents~~. The total recoupment, however, will not exceed 10 percent of the total compensation received for the episode of care.

(~~g~~h) If the review findings have resulted in a partial per-diem recoupment of $50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per-diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.

(~~h~~i) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not compensable or billable to the member or the member's family.

[OAR Docket #14-581; filed 6-30-14]

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

[OAR Docket #14-569]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationship
317:35-5-7 [AMENDED]
Part 5. Countable Income and Resources
317:35-5-43 [AMENDED]
317:35-5-44 [AMENDED]
317:35-5-45 [AMENDED]
317:35-5-46 [AMENDED]
Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 1. General
317:35-6-1 [AMENDED]
Part 3. Application Procedures
317:35-6-15 [AMENDED]
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-35 [AMENDED]
317:35-6-36 [AMENDED]
317:35-6-37 [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-60.1 [AMENDED]
317:35-6-61 [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-48 [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 7. Determination of Financial Eligibility
317:35-9-67 [AMENDED]
Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women
Part 3. Resources
317:35-10-10 [AMENDED]
Part 5. Income
317:35-10-25 [AMENDED]
317:35-10-26 [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-6 [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-20 [AMENDED]
(Reference APA WF # 13-08)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationship
317:35-5-7 [AMENDED]
Part 5. Countable Income and Resources
317:35-5-43 [AMENDED]
317:35-5-44 [AMENDED]
317:35-5-45 [AMENDED]
317:35-5-46 [AMENDED]
Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 1. General
317:35-6-1 [AMENDED]
Part 3. Application Procedures
317:35-6-15 [AMENDED]
Part 5. Determination of Eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children
317:35-6-35 [AMENDED]
317:35-6-36 [AMENDED]
317:35-6-37 [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-6-60.1 [AMENDED]
317:35-6-61 [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-48 [AMENDED]
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 7. Determination of Financial Eligibility
317:35-9-67 [AMENDED]
Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women
Part 3. Resources
317:35-10-10 [AMENDED]
Part 5. Income
317:35-10-25 [AMENDED]
317:35-10-26 [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-6 [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-20 [AMENDED]
(Reference APA WF # 13-08)
Gubernatorial approval:
September12, 2013
Register publication:
31 OkReg 73
Docket number:
13-1221
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Eligibility policy is amended to implement Systems Simplification Implementation rules effective October 1, 2013, instead of January 1, 2014. Rules are also revised to delay periodic renewals that would fall during the period January - March, 2014 until April, 2014, and to delay the effective date of terminations of SoonerCare eligibility for reasons related to changes in household composition or income until April, 2014 when the agency is redetermining eligibility based on changes in circumstances from January to March, 2014.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIP

317:35-5-7. Determining categorical relationship to the children and parent and caretaker relative groups

(a) **Categorical relationship.** All individuals under age 19 are automatically related to the children's group and further determination is not required. Adults age 19 or older are related to the parent and caretaker relative group when there is a minor dependent child(ren) in the home and the individual is the parent, or is the caretaker relative other than the parent who meets the proper degree of relationship. A minor dependent child is any child who meets the AFDC eligibility requirements of age and relationship.

(b) **Grandfathered CHIP children.** As provided in OAC 317:35-6-1, the MAGI methodology is not applied to determine eligibility for children who are enrolled in SoonerCare on December 31, 2013 until March 31, 2014 or the child's next regularly scheduled renewal, whichever is later.

(1) The MAGI methodology eliminates the following income disregards, which are subtracted from gross income under the TANF methodology prior to ~~January~~October 1, ~~2014~~2013:

(A) The $240 work related expense deduction from earned income per employed household member;

(B) The disregard of the first $50 of child support received by a household; and

(C) The deduction for child support expenses paid by an employed parent or caretaker who needs child care in order to work, in the amount of the actual expense paid up to a maximum of $200 per month for children under 2 years of age and up to a maximum of $175 per month for children 2 years of age or older.

(2) If the elimination of the disregards listed in (1) when the MAGI methodology is applied to a child who was enrolled in SoonerCare on December 31, 2013 makes the child financially ineligible, the child is related to the Grandfathered CHIP children group.

(3) The following children are not eligible for the Grandfathered CHIP Children group:

(A) Children who are eligible for SoonerCare through another eligibility group;

(B) Children who have other creditable health insurance coverage;

(C) Children who are inmates of public institutions or are patients in institutions for mental disease; or

(D) Children who are eligible for coverage under a health plan offered to employees of the State of Oklahoma.

(4) If a child's eligibility in this group is redetermined during his/her certification period and the child is financially ineligible without regard to elimination of the

disregards in (1), the child's benefits are closed using normal procedures.

(5) Eligibility for children in this group expires on the date of the child's next regularly scheduled recertification after the recertification for which the MAGI methodology was first used. This eligibility group terminates for all children December 31, 2015.

(c) **Requirement for referral to the Oklahoma Child Support Services Division (OCSS).** As a condition of eligibility, when both the parent or caretaker and minor child(ren) are receiving SoonerCare and a parent is absent from the home, the parent or caretaker relative must agree to cooperate with OCSS. However, federal regulations provide for a waiver of this requirement when cooperation with OCSS is not in the best interest of the child. OCSS is responsible for making the good cause determination. If the parent or caretaker relative is claiming good cause, he/she cannot be certified for SoonerCare in the parent and caretaker relative group unless OCSS has determined good cause exists. There is no requirement of cooperation with OCSS for child(ren) or pregnant women to receive SoonerCare.

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-43. Third party resources; insurance, workers' compensation and Medicare

Federal Regulations require that all reasonable measures to ascertain legal liability of third parties to pay for care and services be taken. In instances where such liability is found to exist after SoonerCare has been made available, reimbursement to the extent of such legal liability must be sought. The applicant or member must fully disclose to OHCA that another resource may be available to pay for care. If OKDHS obtains information regarding other available resources from a third party, the worker must complete OKDHS Form 08AD050E, and submit to OHCA, Third Party Liability Unit. Certification or payment in behalf of an eligible individual may not be withheld because of the liability of a third party when such liability or the amount cannot be currently established or is not currently available to pay the individual's medical expense. The rules in this Section also apply when an individual categorically related to pregnancy-related services plans to put the child up for adoption. Any agreement with an adoption agency or attorneys shall include payment of medical care and must be considered as a possibly liable third party, regardless of whether agreement is made during prenatal, delivery or postpartum periods.

(1) **Insurance.**

(A) **Private insurance.** An individual requesting SoonerCare is responsible for identifying and providing information on any private medical insurance. He/she is also responsible for reporting subsequent changes in insurance coverage.

(B) **Government benefits.** Individuals requesting SoonerCare who are also eligible for Civilian Health and Medical Programs for Uniformed Services (CHAMPUS), must disclose that the coverage is available. They are considered a third party liability source.

(2) **Workers' Compensation.** An applicant for SoonerCare or a SoonerCare member that requires medical care because of a work injury or occupational disease must notify OHCA/TPL immediately and assist OHCA in ascertaining the facts related to the injury or disease (such as date, details of the accident, etc.). The OHCA periodically matches data with the Worker's Compensation Court on all cases under its jurisdiction. When any information regarding an applicant for SoonerCare or a SoonerCare member is obtained, the member must assist OHCA with the subrogation claim with the employer/insurer.

(3) **Third party liability (accident or injury).** When medical services are required for an applicant of SoonerCare or a SoonerCare member as the result of an accident or injury known to the worker, the member is responsible for reporting to OHCA/TPL the persons involved in the accident, date and details of the accident and possible insurance benefits which might be made available. If an automobile accident involves more than one car it is necessary to report liability insurance on all cars involved.

(A) If OKDHS receives information regarding a SoonerCare member or applicant seeking medical services due to an accident, the worker submits any information available to OHCA/TPL.

(B) If OHCA receives a claim for payment from SoonerCare funds and the diagnosis indicates the need for services may have resulted from an accident or injury involving third party liability, OHCA will attempt to contact the member to obtain details of the incident. If additional contact is necessary with the member, the local OKDHS office or OHCA representative may be requested by the OHCA/TPL Unit to submit the appropriate information.

(4) **Medicare eligibility.** If it appears the applicant may be eligible for Medicare but does not have a Medicare card or other verification, the information is cleared with the Social Security Office and the findings entered with the date of the verification in the record. If the applicant did not enroll for Part A or Part B at the time he/she became eligible for Medicare and is now subject to pay an escalated premium for Medicare enrollment, he/she is required to do so. Payment can be made for services within the scope of SoonerCare.

(5) **Absent parent.**

(A) Applicants are required to cooperate with the Oklahoma Department of Human Services Oklahoma Child Support Services (OCSS) in the assignment of child/spousal support rights. The families involved are those with a minor child(ren) in the home. The child(ren) must be related to the children's, the blind, or the disabled groups and have a parent(s) absent from the home. Any support collected on behalf of these families will be paid to them as if they were receiving non-public assistance child support services,

with one exception. The exception is regarding child support collected for foster care child(ren) in OKDHS temporary custody. This support is paid to OKDHS Children and Family Services Division (CFSD). The child support income continues to be counted in determining SoonerCare eligibility if it is counted under the financial eligibility methodology used for the group for which eligibility is being determined. The rules in OAC ~~317:10~~317:35-10 are used, with the following exceptions:

(i) In the event the family already has an existing child support case, the only action required is a memo to the appropriate OCSS district office notifying them of the certification.

(ii) Prior to ~~January~~October 1, ~~2014~~2013, child/spousal support is always counted as income less any applicable income disregard. This income inclusion applies whether it is redirected to the CFSD or retained by the member. Effective ~~January~~October 1, ~~2014~~2013, see rules regarding financial eligibility for the individual's eligibility group to determine whether child/spousal support is counted as income.

(iii) Children who are in custody of OKDHS may be exempt from referral to OCSS. Should the pursuit of the OCSS services be determined to be detrimental to the OKDHS CFSD service plan, an exemption may be approved.

(B) Cash medical support may be ordered to be paid to the OHCA by the non-custodial parent if there is no access to health insurance at a reasonable cost or if the health insurance is determined not accessible to the child according to OCSS Rules. Reasonable is deemed to be 5% or less of the non-custodial parent's gross income. The administration and collection of cash medical support will be determined by OKDHS OCSS and will be based on the income guidelines and rules that are applicable at the time. However, at no time will the non-custodial parent be required to pay more than 5% of his/her gross income for cash medical support unless payment in excess of 5% is ordered by the Court. The disbursement and hierarchy of payments will be determined pursuant to OKDHS/OCSS guidelines.

317:35-5-44. Child/spousal support

The Omnibus Budget Reconciliation Act of 1987 requires the Oklahoma Department of Human Services to provide Child Support Services to certain families receiving SoonerCare benefits through the Oklahoma Child Support Services Division (OCSS). The families are required to cooperate in assignment of medical support rights. These families will not be required to cooperate with the OCSS in the assignment of child/spousal support rights. The families involved are those with a minor child(ren) in the home. The child(ren) must be related to the children's, the blind or the disabled groups and have a parent(s) absent from the home. Any support collected on behalf of these families will be paid to them as if they were receiving non-public assistance child support services, with one exception. The exception is regarding child support collected for foster care child(ren) in OKDHS temporary custody. This support is paid to OKDHS Children and Family Services Division (CFSD). The rules in OAC 317:10 are used, with the following exceptions:

(1) In the event the family already has an existing child support case, the only action required is a memo to the appropriate OCSS district office notifying them of the certification.

(2) Prior to ~~January~~October 1, ~~2014~~2013, child/spousal support is always counted as income less any applicable income disregard. This income inclusion applies whether it is redirected to the OCSS or retained by the member. Effective ~~January~~October 1, ~~2014~~2013, see rules regarding financial eligibility for the individual's eligibility group to determine whether child or spousal support is counted as income.

(3) Children who are in custody of OKDHS may be exempt from referral to OCSS. Should the pursuit of the OCSS services be determined to be detrimental to the OKDHS CFSD service plan, an exemption may be approved.

317:35-5-45. Determination of income and resources for children and parents and caretaker relatives

(a) **Prior to ~~January~~October 1, ~~2014~~2013.** Income is determined in accordance with OAC 317:35-10 for individuals categorically related to AFDC. Unless questionable, the income of categorically needy individuals who are categorically related to AFDC does not require verification. Individuals categorically related to AFDC are excluded from the AFDC resource test. Certain AFDC rules are specific to money payment cases and are not applicable when only SoonerCare services are requested. Exceptions to the AFDC rules are:

(1) the deeming of the parent(s)' income to the minor parent;

(2) the deeming of the sponsor's income to the sponsored alien;

(3) the deeming of stepparent income to the stepchildren. The income of the stepparent who is not included for SoonerCare in a family case is not deemed according to the stepparent liability. Only the amount of the stepparent's contribution to the individual is considered as income. The amount of contribution is determined according to OAC 317:35-10-26(a)(8), Person acting in the role of a spouse;

(4) the AFDC lump sum income rule. For purposes of SoonerCare eligibility, a period of ineligibility is not computed;

(5) mandatory inclusion of minor blood-related siblings or minor dependent children. For SoonerCare purposes, the family has the option to exclude minor blood-related siblings and/or minor dependent children;

(6) the disregard of one half of the earned income;

(7) dependent care expense. For SoonerCare only, dependent care expenses may be deducted for an in-home

provider who, though not approved, would have qualified had the qualification process been followed;

(8) AFDC trust rule. The availability of trusts for all SoonerCare only cases is determined according to OAC 317:35-5-41.6;

(9) AFDC Striker rules. Striker status has no bearing on SoonerCare eligibility;

(10) ET&E Sanction rule. The ET&E status has no bearing on SoonerCare eligibility. However, a new SoonerCare application is required.

(b) **Effective ~~January~~October 1, ~~2014~~2013.** Income is determined in accordance with the Modified Adjusted Gross Income (MAGI) methodology for individuals related to the children and parent and caretaker relatives groups. See Subchapter 6 of this Chapter for MAGI rules.

317:35-5-46. Determination of income and resources for categorical relationship to pregnancy-related services

(a) **Prior to ~~January~~October 1, ~~2014~~2013.** Countable income for an individual categorically related to pregnancy-related services is determined in the same manner as for an individual categorically related to AFDC. (See OAC 317:35-5-45). Eligibility is based on the income received in the first month of certification with changes in income not considered after certification. Individuals categorically related to pregnancy-related services are excluded from a resource test.

(b) **Effective ~~January~~October 1, ~~2014~~2013.** Income is determined in accordance with the Modified Adjusted Gross Income (MAGI) methodology for individuals related to the pregnancy group. See Subchapter 6 of this Chapter for MAGI rules. Eligibility is based on the income received in the first month of certification with changes in income not considered after certification, and there is no resource test.

SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 1. GENERAL

317:35-6-1. Scope and applicability

(a) The rules in this Subchapter apply when determining financial eligibility for SoonerCare Health Benefits for groups whose eligibility is determined using Modified Adjusted Gross Income (MAGI). These rules apply to the following groups:

(1) Children,

(2) Grandfathered CHIP children,

(3) Pregnant women,

(4) Pregnancy-related services under Title XXI,

(5) Parents and caretaker relatives,

(6) SoonerPlan Family Planning program,

(7) Independent foster care adolescents,

(8) Inpatients in public psychiatric facilities under 21, and

(9) Tuberculosis.

(b) See 42 CFR 435.603 to determine whether MAGI applies to a group not specifically listed in this Section.

(c) ~~MAGI rules are not applied to members enrolled in SoonerCare on December 31, 2013 until March 31, 2014, or the date of their next regularly scheduled renewal, whichever is later.~~MAGI rules take effect on October 1, 2013.

~~(d) For new applicants or individuals who have had a break in eligibility and are not enrolled on December 31, 2013, MAGI rules take effect on January 1, 2014.~~

PART 3. APPLICATION PROCEDURES

317:35-6-15. Application for SoonerCare for Pregnant Women and Families with Children; forms

(a) **Application.** An application for pregnant women and families with children consists of the SoonerCare application. The application form is signed by the individual, parent, spouse, guardian, or someone else acting on the individual's behalf. An individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare. Effective October 1, 2013, individuals who wish to use a paper application form to apply for coverage under a MAGI eligibility group must submit the federal Single Streamlined Application to apply for SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility, Health Department, in the county OKDHS office, or online. A face to face interview is not required. Applications are mailed to the OHCA Eligibility Unit. When an individual indicates a need for SoonerCare, the physician or facility may forward an application to the OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application. Effective October 1, 2013, an application for SoonerCare may also be submitted through the Health Insurance Exchange.

(2) OKDHS form 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification of a need for medical services. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the SoonerCare Application form or OKDHS form 08MA005E constitutes an application for SoonerCare.

(4) If OKDHS form 08MA005E is received and a SoonerCare application cannot be completed, receipt of OKDHS form 08MA005E constitutes an application which must be registered and subsequently denied. The applicant and provider are notified by computer-generated notice.

(5) A hospital providing services may file an electronic Notification of Date of Service (NODOS) form with OHCA up to five days from the date services are rendered. The hospital, applicant, or someone acting on the applicant's behalf has fifteen days from the date

the NODOS form was received by OHCA to submit a completed SoonerCare application. Filing a Notification of Date of Service does not guarantee coverage and if a completed application is not submitted within fifteen days, the NODOS is void.

(b) **Date of application.** When an application is made online, the date of application is the date the application is submitted online. The date of application for a paper application is the date a signed application is received and stamped in by contracted agency partners or OHCA. When a request for SoonerCare is made orally, and that request is followed within 20 days by a signed application, the documented date of the oral request is the date of application. When OKDHS form 08MA005E is received by OKDHS, or received by OHCA and forwarded to OKDHS, the earliest of the date stamps is considered the date of request and should be honored when followed within 20 days by a signed application for SoonerCare.

(c) **Other application and signature requirements.** For additional rules regarding other application and eligibility determination procedures, see Part 7 of Subchapter 5 of this Chapter.

PART 5. DETERMINATION OF ELIGIBILITY FOR SOONERCARE HEALTH BENEFITS FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

317:35-6-35. General eligibility consideration

(a) **Prior to ~~January~~October 1, ~~2014~~2013.** Financial eligibility for SoonerCare Health Benefits for Pregnant Women and Families with Children is determined using the rules on income according to the category to which the individual is related. (See Part 5, Subchapter 5 of this Chapter.) Unless questionable, the income of categorically needy individuals who are categorically related to AFDC does not require verification. There is not a resource test for individuals categorically related to AFDC or pregnancy related services.

(b) **Effective ~~January~~October 1, ~~2014~~2013.** Financial eligibility for SoonerCare Health Benefits for MAGI eligibility groups is determined using the MAGI methodology. Unless questionable, the income of individuals who are related to a MAGI eligibility group does not require verification. There is no resource test for individuals related to any of the MAGI groups (see Part 1 of this Subchapter for a list of the MAGI groups).

(c) When medical assistance is requested on behalf of any individual, eligibility is determined for that individual as well as all other individuals in the family unit who meet basic criteria for a SoonerCare eligibility group.

(d) Income is evaluated on a monthly basis for all individuals included in the case for Health Benefits.

317:35-6-36. Financial eligibility of individuals categorically related to AFDC or pregnancy-related services

(a) **Prior to ~~January~~October 1, ~~2014~~2013.** In determining financial eligibility for an individual related to AFDC or pregnancy-related services, the income of the following persons (if living together or if living apart as long as there has been no break in the family relationship) are considered. These persons include:

(1) the individual;

(2) the spouse of the individual;

(3) the biological or adoptive parent(s) of the individual who is a minor dependent child. For Health Benefits only, income of the stepparent of the minor dependent child is determined according to OAC 317:35-5-45;

(4) minor dependent children of the individual if the children are being included in the case for Health Benefits. If the individual is 19 years or older and not pregnant, at least one minor dependent child must be living in the home and included in the case for the individual to be related to AFDC;

(5) blood related siblings, of the individual who is a minor child, if they are included in the case for Health Benefits;

(6) a caretaker relative and spouse (if any) and minor dependent children when the caretaker relative is to be included for coverage.

(b) **Prior to ~~January~~October 1, ~~2014~~2013.** The family has the option to exclude minor dependent children or blood related siblings [OAC 317:35-6-36(a)(4) and (5)] and their income from the eligibility process. However, for the adult to be eligible, at least one minor child and his/her income must be included in the case. The worker has the responsibility to inform the family of the most advantageous consideration in regard to coverage and income.

(c) **Effective ~~January~~October 1, ~~2014~~2013.** The MAGI methodology is used to determine eligibility for MAGI eligibility groups. See OAC 317:35-6-39 through OAC 317:35-6-54.

(d) **Effective ~~January~~October 1, ~~2014~~2013.** Individuals who are determined to be part of a MAGI household cannot be excluded from the household; likewise, income of individuals determined to be part of a MAGI household cannot be excluded unless the exclusion is expressly required under MAGI rules.

(e) When determining financial eligibility for an individual related to the children, parent or caretaker relative, or pregnancy groups, consideration is not given to income of any person who is aged, blind or disabled and receives SSI or is determined to be categorically needy.

317:35-6-37. Financial eligibility of categorically needy individuals related to AFDC or pregnancy-related services

Individuals whose income is less than the standards on DHS Appendix C-1 for the applicable eligibility group are financially eligible for SoonerCare.

(1) **Categorically needy standards/categorically related to pregnancy-related services.** For an individual related to pregnancy-related services to be financially

eligible, the countable income must be less than the appropriate standard according to the family size on DHS Appendix C-1. In determining the household size, the pregnant woman and her unborn child(ren) are included.

(2) **Categorically needy standards/categorically related to children's and parent/caretakers' groups.**

(A) **Categorical relationship.** For the individual related to AFDC to be considered categorically needy, the standards on DHS Appendix C-1 schedules must be used.

(i) **DHS Appendix C-1, Schedule X.** Individuals age 19 years or older, other than pregnant women, are determined categorically needy if countable income is less than the Categorically Needy Standard, according to the family size. ~~In-come standards are 73.1% of the AFDC Need Standard.~~

(ii) **DHS Appendix C-1, Schedule I.A.** All individuals under 19 years of age are determined categorically needy if countable income is equal to or less than the Categorically Needy Standard, according to the size of the family. ~~Income standards are 185% of Federal Poverty Level.~~

(B) **Families with children.** Individuals who meet financial eligibility criteria for the children's and parent/caretakers' groups are:

(i) All persons included in an active TANF case.

(ii) Individuals related to the children's or parent/caretakers' groups whose countable income is within the current appropriate income standard, but who do not receive TANF assistance.

(iii) All persons in a TANF case in Work Supplementation status who meet TANF eligibility conditions other than earned income.

(iv) Those individuals who continue to be eligible for Medicaid in a TANF case after they become ineligible for a TANF payment. These individuals will continue to be considered categorically needy if the TANF case was closed due to child or spousal support, the loss or reduction of earned income exemption by any member of the assistance unit, or the new or increased earnings of the caretaker relative.

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-6-60.1. Changes in circumstances

(a) **Reporting changes.** Members are required to report changes in their circumstances within 10 days of the date the member is aware of the change.

(b) **Agency action on changes in circumstances.** When the agency responsible for determining eligibility for the member becomes aware of a change in the member's circumstances, the agency will promptly redetermine eligibility for all household members whose eligibility is affected by the change.

(c) **Changes reported by third parties.** When the agency receives information regarding a change in the member's circumstances from a third party, such as the Oklahoma Employment Security Commission (OESC) or the Social Security Administration (SSA), the agency will determine whether the information received is reasonably compatible with the most recent information provided by the member.

(1) If the information received is reasonably compatible with the information provided by the member, the agency will use the information provided by the member for determinations and redeterminations of eligibility.

(2) If the information received is not reasonably compatible with the information provided by the member, the agency will determine whether the information received will have an effect on the eligibility of any member of the household.

(A) If the information received has no effect on the eligibility of any member of the household, including the benefit package the member is enrolled in, the agency will take no action.

(B) If the information received has an effect on the eligibility of a member of the household, the agency will request more information from the member, including, but not limited to, an explanation of the discrepancy or verification documenting the correct information regarding the factor of eligibility affected by the information received from a third party.

(C) The agency will give the member proper notice of at least 10 days to respond to the agency's request for information.

(D) If the member does not cooperate in resolving the discrepancy within the timeframe established by the notice, benefits will be terminated.

(d) **Exception January to March, 2014.** During the period January to March, 2014, redeterminations due to changes in circumstances will be processed, but the effective date of any termination action taken as a result of changes in household composition or income for individuals in MAGI eligibility groups will be April 1, 2014, or later.

317:35-6-61. Redetermination of eligibility for persons receiving SoonerCare

(a) A periodic redetermination of eligibility for SoonerCare is required for all members. The redetermination is made prior to the end of the initial certification period and each 12 months thereafter. A deemed newborn is eligible through the last day of the month the newborn child attains the age of one year, without regard to eligibility of other household members in the case.

(b) Effective January 1, 2014, when the agency has sufficient information available electronically to redetermine eligibility, eligibility will be redetermined on that basis and a notice will be sent to the household explaining the action taken by the agency. The member is responsible for notifying the agency if any information used to redetermine eligibility is incorrect. If the agency does not have sufficient information to redetermine eligibility, the agency will send notice to that effect, and the

member is responsible for providing the necessary information to redetermine eligibility.

(c) A member's case is closed if he/she does not return the form(s) and any verification necessary for redetermination timely. If the member submits the form(s) and verification necessary for redetermination within 90 days after closure of the case, benefits are reopened effective the date of the closure, provided the member is eligible and benefits were closed because the redetermination process was not completed.

(d) Periodic redeterminations scheduled for January to March, 2014 will be rescheduled for April, 2014.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-48. Eligibility for the SoonerPlan Family Planning Program

(a) Non-pregnant women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), (3), and (4) of this Subsection. This is regardless of pregnancy or paternity history and includes women who gain eligibility for SoonerCare family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The countable income is at or below the applicable standard on the OKDHS Appendix C-1. Prior to ~~January~~October 1, ~~2014~~2013, the standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member of the benefit group. Deductions for work related expenses for self-employed individuals are found at OAC 317:35-10-26(b)(1). Effective ~~January~~October 1, ~~2014~~2013, MAGI financial eligibility rules are used to determine eligibility for SoonerPlan.

(2) Prior to ~~January~~October 1, ~~2014~~2013, in determining financial eligibility for the SoonerPlan Family Planning program the income of the individual and spouse (if any) is considered. The individual has the option to include or exclude minor dependent children and their income in the eligibility process. ~~January~~October 1, ~~2014~~2013, MAGI household composition rules are used to determine eligibility for SoonerPlan.

(3) SoonerPlan members with minor dependent children and a parent absent from the home are required to cooperate with the Oklahoma Department of Human Services, Child Support Services Division (OCSS) in the collection of child support payments. Federal regulations provide a waiver of this requirement when cooperation is not in the best interest of the child.

(4) Individuals eligible for SoonerCare can choose to enroll only in the SoonerPlan Family Planning Program with the option of applying for SoonerCare at any time.

(5) Persons who have Medicare or creditable health insurance coverage are not precluded from applying for the SoonerPlan Family Planning program.

(b) All health insurance is listed on the OKDHS computer system in order for OHCA Third Party Liability Unit to verify insurance coverage. The OHCA is the payer of last resort.

(c) Income for the SoonerPlan Family Planning Program does not require verification, unless questionable. If the income is questionable the worker must verify the income.

(d) There is not an asset test for the SoonerPlan Family Planning Program.

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

317:35-9-67. Determining financial eligibility of categorically needy individuals

Financial eligibility for ICF/MR, HCBW/MR, and individuals age 65 or older in mental health hospitals medical care for categorically needy individuals is determined as follows:

(1) **Prior to ~~January~~October 1, ~~2014~~2013, financial eligibility/categorically related to AFDC.** In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own. Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule X.

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule I. A.

(2) **Effective ~~January~~October 1, ~~2014~~2013, financial eligibility in a Modified Adjusted Gross Income (MAGI) eligibility group.** In determining financial eligibility for an individual related to a group for whom the MAGI methodology is used, rules in Subchapter 6 of this Chapter are followed.

(3) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the individual's countable income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1,

Schedule VI. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering an ICF/MR, see OAC 317:35-9-68 (a)(3) to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI, is applicable for individuals related to ABD. If the individual is in an ICF/MR and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard on OKDHS Appendix C-1, Schedule VI, is used. The rules on determination of income and resources are applicable only when an individual has entered an ICF/MR and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends [Refer to OAC 317:35-9-68 (a)(3)(B)(x)]. An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(B) In determining eligibility for HCBW/MR services, refer to OAC 317:35-9-68(b).

(C) In determining eligibility for individuals age 65 or older in mental health hospitals, refer to OAC 317:35-9-68(c).

(4) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and are applying for or receiving NF, ICF/MR or HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for SoonerCare. Any subsequent transfer is also subject to this rule. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's child who is under 21 or who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to OKDHS State Office, FSSD, Health Related and Medical Services, for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF services and the continuance of eligibility for other SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual. The cost of care during the penalty period cannot be used to shorten or end the penalty period.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBW/MR, or ADvantage waiver services for a period of resource ineligibility.

(5) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look-back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months dropping any leftover portion) determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization;

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer;

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance;

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child;

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value;

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65; or

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for NF, ICF/MR, HCBW/MR, or ADvantage waiver services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated is considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(6) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) when there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant

or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse; or

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security; or

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purpose of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services or HCBW for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated is considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility

will be apportioned between the two institutionalized spouses.

(7) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 10. OTHER ELIGIBILITY FACTORS FOR FAMILIES WITH CHILDREN AND PREGNANT WOMEN

PART 3. RESOURCES

317:35-10-10. Capital resources

Capital resources are disregarded for individuals related to the children, parent and caretaker relative, former foster care children, SoonerPlan, or pregnancy eligibility groups, including pregnancies covered under Title XXI. Prior to ~~January~~October 1, ~~2014~~2013, the countable income generated from any resource is considered in accordance with Part 5 of this Subchapter. Effective ~~January~~October 1, ~~2014~~2013, countable income generated from any resource is considered in accordance with Part 6 of Subchapter 6 of this Chapter.

PART 5. INCOME

317:35-10-25. Income defined

Prior to ~~January~~October 1, ~~2014~~2013, income is defined as that gain, payment or proceed from labor, business, property, retirement and other benefits. Effective ~~January~~October 1, ~~2014~~2013, for MAGI eligibility groups as defined in OAC 317:35-6-1, income is defined by the Internal Revenue Code.

317:35-10-26. Income

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

(1) The income of categorically needy individuals who are related to the children, parent or caretaker relative, SoonerPlan, or Title XIX and XXI pregnancy eligibility groups does not require verification, unless questionable. If the income information is questionable, it must be verified. If there appears to be a conflict in the information provided, the worker must investigate the situation to determine if income verification is necessary.

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

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

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

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the Oklahoma Health Care Authority (OHCA). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within 10 days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC or Pregnancy related unit. Effective ~~January~~October 1, ~~2014~~2013, the MAGI methodology rules determine whose income is considered in a particular household for MAGI eligibility groups as defined in OAC 317:35-6-1.

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

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

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. If OHCA is unable to verify income through the Employment Securities Commission, then pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer

verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer and provided to OHCA within 10 days. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

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

(A) Prior to ~~January~~October 1, ~~2014~~2013, a non-recurring lump sum payment considered as income includes payments based on accumulation of income and payments which may be considered windfall in nature and may include but are not limited to TANF grant diversion, VA or Social Security lump sum payments, inheritance, gifts, worker's compensation payments, cash winnings, personal injury awards, etc. Retirement benefits received in a lump-sum are considered as unearned income. A non-recurring lump sum SSI retroactive payment, made to a member of the children, parent or caretaker relative, or pregnancy groups who is not currently eligible for SSI, is not counted as income. Effective ~~January~~October 1, ~~2014~~2013, whether a source of income is countable for MAGI eligibility groups is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(B) Prior to ~~January~~October 1, ~~2014~~2013, lump sum payments (minus allowable deductions related to establishing the lump sum payment) which are received by AFDC/Pregnancy related individuals or applicants are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose which may include, but are not limited to, attorney's fees and court costs that are identified in the lump sum settlement, medical or funeral expenses for the immediate family, etc. "Earmarked" means that such expense is specifically set forth in the settlement or award. Effective ~~January~~October 1, ~~2014~~2013, whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

(C) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy. Effective ~~January~~October 1, ~~2014~~2013, income received by a stepparent is considered in accordance with MAGI household and income counting rules.

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

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

(F) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six months, will be averaged and considered as income for the next six months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company. Effective ~~January~~October 1, ~~2014~~2013, whether a source of income is countable is determined in accordance with Part 6 of Subchapter 6 of this Chapter.

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

(6) Prior to ~~January~~October 1, ~~2014~~2013, a caretaker relative can only be included in the benefit group when the biological or adoptive parent is not in the home. A stepparent can be included when the biological or adoptive parent is either incapacitated or not in the home. Effective ~~January~~October 1, ~~2014~~2013, MAGI household rules are used to determine whether a caretaker relative or stepparent is included in a household.

(A) Prior to ~~January~~October 1, ~~2014~~2013, consideration is not given to the income of the caretaker relative or the income of his or her spouse in determining the eligibility of the children. However, if that person is the stepparent, the policy on stepparent liability is applicable. Effective ~~January~~October 1, ~~2014~~2013, MAGI household and income counting rules are used to determine whether a caretaker relative and his/her spouse or a stepparent are included in the household and whether their income is considered for the children.

(B) Prior to ~~January~~October 1, ~~2014~~2013, if a caretaker relative is married and living with the spouse who is an SSI or SSP recipient, the spouse or spouse's

income is not considered in determining the eligibility of the caretaker relative. The income of the caretaker relative and the spouse who is not an SSI or SSP recipient must be considered. Only one caretaker relative is eligible to be included in any one month. Effective ~~January~~October 1, ~~2014~~2013, MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted. If an individual is eligible in the parent or caretaker relative group, his/her spouse, if living with him/her, is also related to the parent or caretaker relative group.

(7) Prior to ~~January~~October 1, ~~2014~~2013, a stepparent can be included when the biological or adoptive parent is either incapacitated or not in the home. The income of the stepparent is counted if the stepparent's needs are being included. Effective ~~January~~October 1, ~~2014~~2013, a stepparent, if living with the parent or caretaker relative, can also be related to the parent or caretaker relative group, regardless of whether the parent is incapacitated or not in the home.

(8) Prior to ~~January~~October 1, ~~2014~~2013, when there is a stepparent or person living in the home with the biological or adoptive parent who is not a spouse by legal marriage to or common-law relationship with the own parent, the worker determines the amount of income that will be made available to meet the needs of the child(ren) and the parent. Only contributions made in cash directly to the benefit group can be counted as income. In-kind contributions are disregarded as income. When the individual and the member state the individual does not make a cash contribution, further exploration is necessary. This statement can only be accepted after clarifying that the individual's contributions are only in-kind. Effective ~~January~~October 1, ~~2014~~2013, MAGI household and income counting rules are used to determine whose income is considered and whether that income is counted.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Prior to ~~January~~October 1, ~~2014~~2013, payments made for accumulated annual leave/vacation leave, sick leave or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed. Income received as a one-time nonrecurring payment is considered as a lump sum payment. Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. Gross earned income is used to determine eligibility. Gross earned income is defined as the wage prior to payroll deductions and/or withholdings. Effective ~~January~~October 1, ~~2014~~2013, whether income is countable for MAGI eligibility groups is determined using MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(1) **Earned income from self-employment prior to ~~January~~October 1, ~~2014~~2013.** If the income results from the individual's activities primarily as a result of the individual's own labor from the operation of a business enterprise, the "earned income" is the total profit after deducting the business expenses (cost of the production). Money from the sale of whole blood or blood plasma is also considered as self-employment income subject to necessary business expense and appropriate earned income exemptions.

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

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

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

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

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

(i) The purchase price and/or payments on the principal of loans for capital assets, equipment, machinery, and other durable goods;(ii) Net losses from previous periods;(iii) Depreciation of capital assets, equipment, machinery, and other durable goods; and

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

expenses are accounted for by the work related expense deduction.

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

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

(2) **Earned income from self-employment effective ~~January~~October 1, ~~2014~~2013.** For MAGI eligibility groups, the calculation of countable self-employment income is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(3) **Earned income from wages, salary or commission.** Prior to ~~January~~October 1, ~~2014~~2013, if the income is from wages, salary or commission, the "earned income" is the gross income prior to payroll deductions and/or withholdings. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as any other earned income. Effective ~~January~~October 1, ~~2014~~2013, countable income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(4) **Earned income from work and training programs.** Prior to ~~January~~October 1, ~~2014~~2013,earned income from work and training programs such as the Job Training Partnership Act (JTPA) received by an adult as wages is considered as any other earned income. Also, JTPA earned income of a dependent child is considered when received in excess of six months in any calendar year. Effective ~~January~~October 1, ~~2014~~2013, countable income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(5) **Individual earned income exemptions prior to ~~January~~October 1, ~~2014~~2013.** Exemptions from each individual's earned income include a monthly standard work related expense and child care expenses the individual is responsible for paying. Expenses cannot be exempt if paid through state or federal funds or the care is not in a licensed facility or home. Exempt income is that income which by law may not be considered in determining need.

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

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

(i) Child care expense may be deducted when:

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

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

(ii) The actual amount paid for child care per month, up to a maximum of $200 for a child under the age of two or $175 for a child age two or older may be deducted.

(iii) Oklahoma law requires all child care centers and homes be properly approved or licensed; therefore, child care expenses can only be deducted if the child is in a properly licensed facility or receiving care from an approved in-home provider.

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

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

(6) **No individual earned income exemptions effective ~~January~~October 1, ~~2014~~2013.** No earned income exemptions are subtracted to determine countable income for MAGI eligibility groups. The only deduction applied to determine net countable income under the MAGI methodology is the deduction of 5% of the FPL for the individual's household size as defined in OAC 317:35-6-39.

(7) **Formula for determining the individual's net earned income prior to ~~January~~October 1, ~~2014~~2013.** Formulas used to determine net earned income to be considered are:

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

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

(8) **Formula for determining the individual's net earned income effective ~~January~~October 1, ~~2014~~2013 for MAGI eligibility groups.** To determine net income, see MAGI rules in OAC 317:35-6-39.

(c) **Unearned income prior to ~~January~~October 1, ~~2014~~2013.**

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

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

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

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

(5) **Retirement and disability benefits.** Income received monthly from retirement and disability benefits are considered as unearned income. Information as to receipt and amount of OASDI benefits is obtained, if necessary, from BENDEX, the member's award letter, or verification from SSA. Retirement benefits received as a lump sum payment at termination of employment are considered as income. Supplemental Security Income (SSI) does not fall under these types of benefits.

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

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

(8) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, e.g., Christmas, graduation and birthday gifts, not to exceed $30 per calendar quarter for each individual, are disregarded as income. The amount of the gifts are disregarded as received during the quarter until the aggregate amount has reached $30. At that time the portion exceeding $30 is counted as lump sum income. If the amount of a single gift exceeds $30, it is not inconsequential and the total amount is therefore counted. If the member claims that the gift is intended for more than one person in the family unit, it is allowed to be divided. Gifts between members of the family unit are not counted.

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

(d) **Unearned income effective ~~January~~October 1, ~~2014~~2013.** Countable earned and unearned income for MAGI eligibility groups is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

(e) **Income disregards prior to ~~January~~October 1, ~~2014~~2013.** Income that is disregarded in determining eligibility includes:

(1) Food Stamp benefits;

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

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

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

(5) Indian payments (including judgment funds or funds held in trust) which are distributed by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

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

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

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

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

(10) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (VISTA), unless the gross amount

of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) Wages paid by the Census Bureau for temporary employment related to Census activities.

(f) **Income disregards effective ~~January~~October 1, ~~2014~~2013.** For MAGI eligibility groups, whether a source of income is disregarded is determined in accordance with MAGI income counting rules in Part 6 of Subchapter 6 of this Chapter.

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

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

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

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

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

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-6. Determining financial eligibility of categorically needy individuals

Financial eligibility for Personal Care for categorically needy individuals is determined as follows:

(1) **Financial eligibility/categorically related to AFDC prior to ~~January~~October 1, ~~2014~~2013.** In determining income for the individual related to AFDC, all family income is considered. (See OAC 317:35-5-45 for Exceptions to AFDC rules.) The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS form 08AX001E (Appendix C-1), Schedule X.

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS form 08AX001E (Appendix C-1), Schedule I. A.

(2) **Financial eligibility for MAGI eligibility groups effective ~~January~~October 1, ~~2014~~2013.** See MAGI eligibility rules in Subchapter 6 of this Chapter to determine financial eligibility for MAGI eligibility groups.

(3) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the countable income must be less than the categorically needy standard as shown on the OKDHS form 08AX001E (Appendix C-1), Schedule VI (QMBP standard). If an individual and spouse cease to live together for reasons other than institutionalization or receipt of the ADvantage waiver or HCBW/MR services, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered.

(4) **Determining financial eligibility for Personal Care.** For individuals determined categorically needy for Personal Care, the member will not pay a vendor payment for Personal Care services.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-20. Determining financial eligibility of categorically needy individuals

Financial eligibility for NF medical care is determined as follows:

(1) **Financial eligibility/categorically related to AFDC prior to ~~January~~October 1, ~~2014~~2013.**

(A) In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(i) spouse; and

(ii) parent(s) and minor children of their own.

(I) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule X.

(II) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule I. A.

(B) Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(2) **Financial eligibility for MAGI eligibility groups effective ~~January~~October 1, ~~2014~~2013.** See MAGI eligibility rules in Subchapter 6 of this Chapter to determine financial eligibility for MAGI eligibility groups.

(3) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see paragraph (3) of OAC 317:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI., is applicable for individuals related to ABD. If the individual is in an NF and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B.1., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard in OKDHS Appendix C-1, Schedule VI., is used. The rules on determination of income and resources are applicable only when an individual has entered a NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(B) An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the

payments is intended for use of the member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(4) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF, ICF/MR, or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for SoonerCare. Any subsequent transfer is also subject to this policy. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's minor child who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, ICF/MR, HCBW/MR, or ADvantage waiver services for a period of resource ineligibility.

(5) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated is considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(6) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance. However, individuals that have purchased an Oklahoma Long-Term Care Partnership Program approved policy may be completely or partially exempted from this Section depending on the monetary extent of the insurance benefits paid.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; and

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated is considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(7) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

[OAR Docket #14-569; filed 6-30-14]

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

[OAR Docket #14-562]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. ADvantage Waiver Services
317:35-17-14. [AMENDED]
(Reference APA WF # 13-19B)
AUTHORITY:
1915(c) statutes, The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy will be revised to provide clarification regarding interdisciplinary team (IDT) meetings for case management services in the ADvantage Assisted Living waiver as well as other minor changes. Policy changes specify that IDT meetings, except for extraordinary circumstances, are to be held in the member's home.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-14. Case management services

(a) Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, member advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the ADvantage Administration (AA), the case management supervisor assigns a case manager to the member. The case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the member, service provider, case manager, and OKDHS in the program), review, update and complete the UCAT assessment, discuss service needs and ADvantage service providers. The Case Manager notifies in writing the member's UCAT identified primary physician that the member has been determined eligible to receive ADvantage services. The notification is via a preprint form that contains the member's signed permission to release this health information and requests physician's office verification of primary and secondary diagnoses and diagnoses code obtained from the UCAT.

(2) Within 14 calendar days of the receipt of an ADvantage referral, the case manager completes and submits to the AA an individualized care plan and service plan for the member, signed by the member and the case management supervisor. The case manager completes and submits to the AA the annual reassessment service plan documents no sooner than 60 days before the existing service plan end date but sufficiently in advance of the end date to be received by the AA at least 30 calendar days before the end date of the existing service plan. Within 14 calendar days of receipt of a Service Plan Review Request (SPR) from the AA, the Case Manager provides corrected care plan and service plan documentation. Within five calendar days of assessed need, the case manager completes and submits a service plan addendum to the AA to amend current services on the care plan and service plan. The care plan and service plan are based on the member's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the member. The case manager uses an interdisciplinary team (IDT) planning approach for care plan and service plan development. Except for extraordinary circumstances, the IDT meetings are to be held in the member's home. Variances from this policy must be presented to, and approved by, the AA in advance of the meeting. If in-home care is the primary service, the IDT includes, at a minimum, the member, a nurse from the ADvantage in-home care provider chosen by the member, and the case manager. Otherwise, the member and case manager constitute a minimum IDT.

(3) The case manager identifies long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected outcomes. The ADvantage case manager documents on the care plan the presence of two or more ADvantage members residing in the same household and/or when the member and personal care provider reside together. The case manager documents on the IVRA system in the member record any instance in which a member's health or safety would be "at risk" if even one personal care visit is missed. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The member signs and indicates review/agreement with the care plan and service plan by indicating acceptance or non-acceptance of the plans. The member, the member's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the member signs with a mark. If the member refuses to cooperate in development of the service plan, or, if the member refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the OKDHS nurse or AA may identify members that require AA intervention through referral to the AA's Escalated Issues unit.

(A) For members that are uncooperative or disruptive, the case manager develops an individualized plan to overcome challenges to receiving services focusing on behaviors, both favorable and those that jeopardize the member's well-being and includes a design approach of incremental plans and addenda that allow the member to achieve stepwise successes in the modification of their behavior.

(B) The AA may implement a service plan without the member's signature when, for these members,

the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the member from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may authorize the service plan if the case manager demonstrates effort to work with and obtain the member's agreement. Should negotiations not result in agreement with the care plan and service plan, the member may withdraw their request for services or request a fair hearing.

(4) CD-PASS Planning and Supports Coordination.

(A) The ADvantage Case Management provider assigns to the CD-PASS member a Case Manager that has successfully completed training on CD-PASS, Independent Living Philosophy, Person-Centered Planning and the individual budgeting process and process guidelines. Case Managers that have completed this specialized CD-PASS training are referred to as Consumer-Directed Agent/Case Managers (CDA/CM) with respect to their CD-PASS service planning and support role in working with CD-PASS members. The CDA/CM educates the member about their rights and responsibilities as well as about community resources, service choices and options available to the member to meet CD-PASS service goals and objectives.

(B) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the AA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Consumer-Directed Personal Assistance Services and Supports (CD-PASS) services to a member may not be designated the "authorized representative" for the member.

(iii) The case manager reviews the designation of Authorized Representative, Power of Attorney and Legal Guardian status on an annual basis and this is included in the reassessment packet to AA.

(C) The CDA/CM provides support to the member in the Person-Centered CD-PASS Planning process. Principles of Person-Centered Planning are as follows:

(i) The person is the center of all planning activities.

(ii) The member and their representative, or support team, are given the requisite information to assume a controlling role in the development, implementation and management of the member's services.

(iii) The individual and those who know and care about him or her are the fundamental sources of information and decision-making.

(iv) The individual directs and manages a planning process that identifies his or her strengths, capacities, preferences, desires, goals and support needs.

(v) Person-Centered Planning results in personally-defined outcomes.

(D) The CDA/CM encourages and supports the member, or as applicable their designated "authorized representative", to lead, to the extent feasible, the CD-PASS service planning process for Personal Services Assistance. The CDA/CM helps the member define support needs, service goals and service preferences including access to and use of generic community resources. Consistent with member-direction and preferences, the CDA/CM provides information and helps the member locate and access community resources. Operating within the constraints of the Individual Budget Allocation (IBA) units, the CDA/CM assists the member in translating the assessment of member needs and preferences into an individually tailored, personalized service plan.

(E) To the extent the member prefers, the CDA/CM develops assistance to meet member needs using a combination of traditional Personal Care and CD-PASS PSA services. However, the CD-PASS IBA and the PSA unit authorization will be reduced proportional to agency Personal Care service utilization.

(F) The member determines with the PSA to be hired, a start date for PSA services. The member coordinates with the CDA/CM to finalize the service plan. The start date must be after authorization of services, after completion and approval of the background checks and after completion of the member employee packets.

(G) Based on outcomes of the planning process, the CDA/CM prepares an ADvantage service plan or plan amendment to authorize CD-PASS Personal Service Assistance units consistent with this individual plan and notifies existing duplicative Personal Care service providers of the end date for those services.

(H) If the plan requires an APSA to provide assistance with Health Maintenance activities, the CDA/CM works with the member and, as appropriate, arranges for training by a skilled nurse for the member or member's family and the APSA to ensure that the APSA performs the specific Health Maintenance tasks safely and competently;

(i) If the member's APSA has been providing Advanced Supportive Restorative Assistance to

the member for the same tasks in the period immediately prior to being hired as the PSA, additional documentation of competence is not required;

(ii) If the member and APSA attest that the APSA has been performing the specific Health Maintenance tasks to the member's satisfaction on an informal basis as a friend or family member for a minimum of two months in the period immediately prior to being hired as the PSA, and no evidence contra-indicates the attestation of safe and competent performance by the APSA, additional documentation is not required.

(I) The CDA/CM monitors the member's well being and the quality of supports and services and assists the member in revising the PSA services plan as needed. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources to meet needs, the CDA/CM, based upon an updated assessment, amends the service plan to modify CD-PASS service units appropriate to meet additional member's need and forwards the plan amendment to the AA for authorization and update of the member's IBA.

(J) In the event of a disagreement between the member and CD-PASS provider the following process is followed:

(i) either party may contact via a toll free number the Member/Provider Relations Resource Center to obtain assistance with issue resolution;

(ii) if the issue cannot be resolved with assistance from the Member/Provider Relations Resource Center or from CD-PASS Program Management, the CD-PASS Program Management will submit the dispute to the ADvantage Escalated Issues Unit for resolution. The Escalated Issues Unit will work with the member and provider to reach a mutually agreed upon resolution;

(iii) if the dispute cannot be resolved by the ADvantage Escalated Issues Unit it will be heard by the Ethics of Care Committee. The Ethics of Care Committee will make a final determination with regard to settlement of the dispute;

(iv) at any step of this dispute resolution process the member may request a fair hearing, to appeal the dispute resolution decision.

(K) The CDA/CM and the member prepare an emergency backup/emergency response capability for CD-PASS PSA services in the event a PSA provider of services essential to the individual's health and welfare fails to deliver services. As part of the planning process, the CDA/CM and member define what failure of service or neglect of service tasks would constitute a risk to health and welfare to trigger implementation of the emergency backup. Any of the following may be used in planning for the backup:

(i) Identification of a qualified substitute provider of PSA services and preparation for their quick response to provide backup services when called upon in emergency circumstances (including execution of all qualifying background checks, training and employment processes); and/or,

(ii) Identification of one or more qualified substitute ADvantage agency service providers (Adult Day Care, Personal Care or Nursing Facility Respite provider) and preparation for their quick response to provide backup services when called upon in emergency circumstances.

(L) If the emergency backup fails, the CDA/CM is to request the AA to authorize and facilitate member access to Adult Day Care, Agency Personal Care or Nursing Facility Respite services.

(5) The case manager submits the care plan and service plan to the case management supervisor for review. The case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager forwards, via postal mail, a legible copy of the care plan and service plan to the AA. Case managers are responsible for retaining all original documents for the member's file at the agency. Only priority service needs and supporting documentation may be faxed to the AA with the word, "PRIORITY" being clearly indicated and the justification attached. "Priority" service needs are defined as services needing immediate authorization to protect the health and welfare of the member and/or avoid premature admission to the nursing facility. Corrections to service conditions set by the AA are not considered to be a priority unless the health and welfare of the member would otherwise be immediately jeopardized and/or the member would otherwise require premature admission to a nursing facility.

(6) Within one working day of notification of care plan and service plan authorization, the case manager communicates with the service plan providers and with the member to facilitate service plan implementation. Within five working days of notification of an initial service plan or a new reassessment service plan authorization, the case manager visits the member, gives the member a copy of the service plan or computer-generated copy of the service plan and evaluates the progress of the service plan implementation. The case manager evaluates service plan implementation on the following minimum schedule:

(A) within 30 calendar days of the authorized effective date of the service plan or service plan addendum amendment; and

(B) monthly after the initial 30 day follow-up evaluation date.

(b) **Authorization of service plans and amendments to service plans.** The ADvantage Administration (AA)

authorizes the individual service plan and all service plan amendments for each ADvantage member. When the AA verifies member ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage authorized and Sooner-Care contracted, and that the delivery of ADvantage services are consistent with the member's level of care need, the service plan is authorized.

(1) Except as provided by the process described in OAC 317:30-5-761(6), family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the member (spouse or parent of a minor child).

(2) The OKDHS/ASD may under criteria described in OAC 317:35-15-13 authorize personal care service provision by an Individual PCA (an individual contracted directly with OHCA). Legally responsible family members are not eligible to serve as Individual PCA's.

(3) If the service plan authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA authorizes or denies authorization within five working days of receipt of the request. If the service plan is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the member to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on authorization until the required additional documents are received from case management.

(4) The AA authorizes the service plan by entering the authorization date and assigning a control number that internally identifies the OKDHS staff completing the authorization. Notice of authorization and a computer-generated copy of the authorized plan or a computer-generated copy of the authorized plan are provided to case management. AA authorization determinations are provided to case management within one working day of the authorization date. A service plan may be authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval within 5 working days.

(5) For audit purposes (including Program Integrity reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the member's case manager.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the member's service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the member's case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA within five calendar days of assessed need. The AA authorizes or denies the care plan and service plan changes per 317:35-17-14.

(2) The member initiates the process for replacing Personal Care services with Consumer-Directed Personal Services and Supports (CD-PASS) in geographic areas in which CD-PASS services are available. The member may contact the AA or by calling the toll-free number established to process requests for CD-PASS services.

(3) A significant change in the member's physical condition or caregiver support, one that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week, requires an updated UCAT reassessment by the case manager. The case manager develops an amended or new service plan and care plan, as appropriate, and submits the new amended plans for authorization.

(4) One or more of the following changes or service requests require an Interdisciplinary Team review and service plan goals amendment:

(A) the presence of two or more ADvantage members residing in the same household, or

(B) the member and personal care provider residing together, or

(C) a request for a family member to be a paid ADvantage service provider, or

(D) a request for an Individual PCA service provider.

(5) Based on the reassessment and consultation with the AA as needed, the member may, as appropriate, be authorized for a new service plan or be eligible for a different service program. If the member is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the member's dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the member's consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the OKDHS area nurse initiate a reconsideration of level of care.

[OAR Docket #14-562; filed 6-30-14]

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

[OAR Docket #14-575]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. ADvantage Waiver Services
317:35-17-22 [AMENDED]
(Reference APA WF # 13-25)

AUTHORITY:
1915(c) of the Social Security Act, The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is amended to include information on rounding of billable time as per the Interactive Voice Response Authentication (IVRA) system. This change in policy will enforce compliance, clarify information for providers, and reflect practices already taking place. Additionally, minor policy revisions are made to the policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-22. Billing procedures for ADvantage services

(a) Billing procedures for long-term care medical services are contained in the Oklahoma Medicaid Management Information Systems(OKMMIS) Billing and Procedure Manual. Questions regarding billing procedures which cannot be resolved through a study of the manual should be referred to the Oklahoma Health Care Authority(OHCA).

(b) The ~~OKDHS/ASD~~Department of Human Services Aging Services (DHS/AS) approved ADvantage service plan is the basis for the Medicaid Management Information Systems(MMIS) service prior authorization, specifying:

(1) service;
(2) service provider;
(3) units authorized; and
(4) begin and end dates of service authorization.

(c) As part of ADvantage quality assurance, provider audits are used to evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision ~~will be~~are turned over to the OHCA Provider Audit Unit for follow-up investigation.

(d) Service time of Personal Care, Case Management, Case Management for transitioning, Nursing, Advanced Supportive/Restorative Assistance, In-Home Respite, CD-PASS Personal Services Assistance and Advanced Personal Services Assistance is documented solely through the Interactive Voice Response Authentication (IVRA) system when provided in the home. Providers are required to use the IVRA system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider ~~will document~~documents time in accordance with their agency backup plan~~. The agency's~~; however, backup procedures are only permitted when the IVRA system is unavailable.

(e) The provider must document the amount of time spent for each service, per OAC 317:30-5-763. For service codes that specify a time segment in their description, such as 15 minutes, each timed segment equals one unit. Only time spent fulfilling the service for which the provider is authorized, per OAC 317:30-5-763, shall be authorized for timed based services. Providers shall not bill for a unit of time when not more than one-half of a timed unit is performed. For example, if a unit is defined as 15 minutes, providers should not bill for services performed for less than 8 minutes. The rounding rules utilized by the IVRA and web-based billing system to calculate the billable amount of a unit are:

(1) services provided for a duration of less than 8 minutes cannot be rounded up and do not constitute a billable 15 minute unit; and
(2) services provided for a duration of 8 to 15 minutes are rounded up and do constitute a billable 15 minute unit.

[OAR Docket #14-575; filed 6-30-14]

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

[OAR Docket #14-574]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Advantage Waiver Services
317:35-17-25 [NEW]
(Reference APA WF # 13-24)
AUTHORITY:
Section 60.14 of Title 22 of the Oklahoma Statutes; The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act; Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014

PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is added to include information on the Address Confidentiality Program (ACP). The ACP provides victims of domestic violence, sexual assault, or stalking with a substitute address and mail forwarding service that can be utilized when victims interact with state and local agencies.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-25. Address Confidentiality Program

(a) ADvantage members who are victims of domestic violence, sexual assault, or stalking can enroll in the Address Confidentiality Program (ACP). The ACP maintains a confidential location by providing a substitute address and mail forwarding service when victims interact with state and local agencies as per Section 60.14 of Title 22 of the Oklahoma Statutes.

(b) The ADvantage Administration (AA), when appropriately notified by a currently enrolled ADvantage member or by their case manager of enrollment in the ACP, will:

(1) Confirm the member's ACP enrollment;

(2) Remove the member's physical address from the waiver management database;

(3) Notify the county worker and LTC RN of address change;

(4) Maintain a confidential file with the physical address of the member; and

(5) Provide the physical address to contracted providers when services must be provided to or in the home of the member.

[OAR Docket #14-574; filed 6-30-14]

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

[OAR Docket #14-563]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 18. Programs of All-Inclusive Care for the Elderly
317:35-18-5. [AMENDED]
317:35-18-6. [AMENDED]
317:35-18-7. [AMENDED]
317:35-18-9. [AMENDED]
317:35-18-12. [NEW]
(Reference APA WF # 13-20)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 thru 5016 of Title 63 of Oklahoma Statutes; 42 CFR Parts 460.2, 460.4 and 460.6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
PACE policy is revised to replace ADvantage policy references with a more precise ADvantage policy that defines the PACE eligibility criteria and the PACE eligibility determination for the PACE program. The proposed rule change to the PACE program will align rules to reflect the PACE model and PACE CFR Part 460.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 18. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

317:35-18-5. Eligibility criteria

(a) To be eligible for participation in PACE, the applicant must:

~~(1) meet categorical relationship to disability (reference OAC 317:35-5-4);~~

~~(2) meet medical and financial criteria for the ADvantage program (reference OAC 317:35-17-2, 317:35-17-10, and 317:35-17-11);~~

(~~3~~1) be age 55 years or older

(~~4~~2) live in a PACE service area;

(3) be determined by the state to meet nursing facility level of care.

(~~5~~4) be determined by the PACE Interdisciplinary team as able to be safely served in the community at the time of enrollment. If the PACE provider denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the PACE provider must:

(A) notify the applicant in writing of the reason for the denial;

(B) refer the applicant to alternative services as appropriate;

(C) maintain supporting documentation for the denial and notify CMS and OHCA of the denial and make the supporting documentation available for review; and

(D) advise the applicant orally and in writing of the grievance and appeals process.

(b) To be eligible for SoonerCare capitated payments, the individual must:

(1) meet categorical relationship to disability (reference OAC 317:35-5-4).

(~~1~~2) be eligible for Title XIX services if institutionalized as determined by the Oklahoma Department of Human Services;

(~~2~~3) be eligible for SoonerCare State Plan services;

(~~3~~4) ~~be~~ meet the same financial~~eligible~~eligibilitycriteria as set forth for the SoonerCare Advantage program per ~~OAC 317:35-17-3~~OAC 317:35-17-10 and ~~317:30-35-17-5~~ 317:30-17-11~~.~~;and

(5) meet appropriate medical eligibility criteria.

(c) Medical determination of Eligibility. The nurse designee makes the medical determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT) I, Part III, and other available medical information.

(1) When PACE services are requested:

(A) The PACE nurse or OKDHS nurse is responsible for completing the UCAT assessment.

(B) The PACE intake staff is responsible for aiding the PACE enrollee in contacting OKDHS to initiate the financial eligibility application process.

(2) The nurse completes the UCAT, Part III visit with the PACE enrollee within 10 days of receipt of the referral for PACE services.

(3) The nurse sends the UCAT, Part III to the designated OHCA nurse staff member for review and level of care determination.

(4) A new medical level of care determination may be required when a member requests any of the following changes in service programs:

(A) From PACE to Advantage.

(B) From Pace to State Plan Personal Care Services.

(C) From Nursing Facility to PACE.

(D) From Advantage to PACE if previous UCAT was completed more than 6 months prior to member requesting PACE enrollment.

(~~c~~d) To obtain and maintain eligibility, the individual must agree to accept the PACE providers and its contractors as the individual's only service provider. The individual may be held financially liable for services received without prior authorization except for emergency medical care.

317:35-18-6. PACE ~~Program~~ program benefits

(a) The PACE program offers a comprehensive benefit plan. A provider agency must provide a participant all the services listed in 42 CFR 460.92 that are approved by the IDT. The PACE benefit package for all participants, regardless of the source of payment, must include but is not limited to the following:

(1) All SoonerCare-covered services, as specified in the State's approved SoonerCare plan.

(2) Interdisciplinary assessment and treatment planning.

(3) Primary care, including physician and nursing services.

(4) Social work services.

(5) Restorative therapies, including physical therapy, occupational therapy, and speech-language pathology services.

(6) Personal care and supportive services.

(7) Nutritional counseling.

(8) Recreational therapy.

(9) Transportation.

(10) Meals.

(11) Medical specialty services including, but not limited to the following:

(A) Anesthesiology.

(B) Audiology.

(C) Cardiology.

(D) Dentistry.

(E) Dermatology.

(F) Gastroenterology.

(G) Gynecology.

(H) Internal medicine.

(I) Nephrology.

(J) Neurosurgery.

(K) Oncology.

(L) Ophthalmology.

(M) Oral surgery.

(N) Orthopedic surgery.

(O) Otorhinolaryngology.

(P) Plastic surgery.

(Q) Pharmacy consulting services.

(R) Podiatry.

(S) Psychiatry.

(T) Pulmonary disease.

(U) Radiology.

(V) Rheumatology.

(W) General surgery.

(X) Thoracic and vascular surgery.

(Y) Urology.

(12) Laboratory tests, x-rays and other diagnostic procedures.
(13) Drugs and biologicals.
(14) Prosthetics, orthotics, durable medical equipment, corrective vision devices, such as eyeglasses and lenses, hearing aids, dentures, and repair and maintenance of these items.
(15) Acute inpatient care, including the following:
(A) Ambulance.
(B) Emergency room care and treatment room services.
(C) Semi-private room and board.
(D) General medical and nursing services.
(E) Medical surgical/intensive care/coronary care unit.
(F) Laboratory tests, x-rays and other diagnostic procedures.
(G) Drugs and biologicals.
(H) Blood and blood derivatives.
(I) Surgical care, including the use of anesthesia.
(J) Use of oxygen.
(K) Physical, occupational, respiratory therapies, and speech-language pathology services.
(L) Social services.
(16) Nursing facility care including:
(A) Semi-private room and board;
(B) Physician and skilled nursing services;
(C) Custodial care;
(D) Personal care and assistance;
(E) Drugs and biologicals;
(F) Physical, occupational, recreational therapies, and speech-language pathology, if necessary;
(G) Social services; and
(H) Medical supplies and appliances.
(17) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.
(b) The following services are excluded from coverage under PACE:
(1) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.
(2) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and non-medical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).
(3) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy.
(4) Experimental medical, surgical, or other health procedures.
(5) Services furnished outside of the United States, except as follows:
(A) in accordance with 42 CFR 424.122 through 42 CFR 424.124, and
(B) as permitted under the State's approved Medicaid plan.
(c) In the event that a PACE participant is in need of permanent placement in a nursing facility, a Medicaid premium will be imposed. OKDHS will calculate a vendor co-payment for those participants using the same methodology as is used for any Oklahoma Medicaid member who is accessing nursing facility care. However, for a PACE participant, the participants responsibility will be to make payment directly to the PACE provider; the amount to be specified by the OKDHS worker. There are no other share of costs requirements for PACE.
(d) All PACE Program Benefits are offered through the duration of the PACE participant's enrollment in the PACE program. PACE enrollment does not cease once a participant's condition necessitates or the PACE IDT recommends that they be institutionalized.

317:35-18-7. Appeals process

(a) Internal appeals
(1) Any individual who is denied program services is entitled to an appeal through the provider.
(2) If the individual also chooses to file an external appeal, the provider must assist the individual in filing an external appeal.
(b) External appeals may be filed ~~by any individual covered by:~~
~~(1) SoonerCare through the OHCA legal division.~~
~~(2) Medicare but not SoonerCare through the Centers for Medicare and Medicaid Services hearing process~~through the OHCA legal division and follow the process outlined in 317:2-1-2.

317:35-18-9. Continuation of enrollment

(a) At least annually, OHCA must reevaluate whether a participant ~~needs~~continues to meet the level of care ~~for nursing facility services~~required for PACE eligibility.
(b) At least annually, OKDHS will reevaluate the participant's financial eligibility for SoonerCare.
(~~c~~1) Waiver of Annual level of Care Reassessment. If the individual meets the state's medical eligibility criteria and the individual has an irreversible or progressive diagnosis or a terminal illness that could reasonably be expected to result in death in the next six months, and OHCA determines that there is no reasonable expectation of improvement or significant change in the condition because of severity of a chronic condition or the degree of impairment of functional capacity, OHCA will permanently waive the annual recertification requirement and the participant will be deemed to be continually eligible for PACE. The assessment form must have sufficient documentation to substantiate the participant's prognosis and functional capacity.
(~~d~~2) Deemed Continued Eligibility. If ~~OHCA~~it is~~determines~~determined that a PACE participant no longer meets the medical criteria for nursing facility level of care, the participant will be deemed to continue to be eligible for PACE until the next annual reassessment, if,

in the absence of PACE services, it is reasonable to expect that the participant would meet the nursing facility level of care criteria within the next six months.

(~~e~~c) Participant enrollment continues when OHCA in consultation with the PACE organization, makes a determination of continued eligibility based on a review of the participant's medical record and plan of care. The participant's medical record and plan of care must support deemed continued eligibility.

317:35-18-12. Medicaid Payments

(a) The OHCA makes a prospective monthly payment to the PACE organization of a capitation amount for each Medicaid participant.

(b) The payment amount represents:

(1) is less than the amount that would otherwise have been paid under the State plan if the participants were not enrolled under the PACE program.

(2) Takes into account the comparative frailty of PACE participant.

(3) is a fixed amount regardless of changes in the participant's health status.

(c) The PACE organization must accept the capitation payment amount as payment in full for Medicaid participants.

[OAR Docket #14-563; filed 6-30-14]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #14-573]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:45-1-3 [AMENDED]
Subchapter 11. Insure Oklahoma IP
Part 3. Insure Oklahoma IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-11. [AMENDED]
317:45-11-12. [REVOKED]
317:45-11-13. [REVOKED]
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-20. [AMENDED]
317:45-11-21. [AMENDED]
317:45-11-21.1. [REVOKED]
317:45-11-24. [AMENDED]
Subchapter 13. Insure Oklahoma Dental Services
317:45-13-1. [REVOKED]
(Reference APA WF # 13-16)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 1115 Demonstration Project No. 11-W00048/6
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 23, 2013
COMMENT PERIOD:
January 15, 2014 through February 14, 2014
PUBLIC HEARING:
February 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 31, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 11. Insure Oklahoma IP
Part 3. Insure Oklahoma IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-11. [AMENDED]
317:45-11-12. [REVOKED]
317:45-11-13. [REVOKED]
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-20. [AMENDED]
317:45-11-21. [AMENDED]
317:45-11-21.1. [REVOKED]
317:45-11-24. [AMENDED]
Subchapter 13. Insure Oklahoma Dental Services
317:45-13-1. [REVOKED]
(Reference APA WF # 13-16)
Gubernatorial approval:
October 10, 2013
Register publication:
31 OkReg 147
Docket number:
13-1263
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Insure Oklahoma (IO) rules are revised to align with the Special Terms and Conditions of the Section 1115 Demonstration Waiver. In accordance with waiver special terms and conditions, the federal government has approved a one year (calendar) extension of the IO program. Rules are revised to remove Individual Plan children (while retaining Employer Sponsored Insurance (ESI) children) and limit adult Individual Plan enrollment to persons with household income at or below 100 percent of FPL. Revisions also include changes to the Individual Plan copayment structure; copayments cannot exceed current federal maximums with the exception of emergency room (ER) visits in which case the existing copay for ER visits will remain at $30.00. Additionally, rules are revised to remove references to eligibility income determinations.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law

which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employee" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"Employer" means the business entity that pays earned income to employees.

"Employer Sponsored Insurance" means the program that provides premium assistance to qualified businesses for approved applicants.

"EOB" means an Explanation of Benefits.

"Explanation of Benefit" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

"Gross Household Income" or "Annual Gross Household Income" means the countable income (earned or unearned) that is computed pursuant to OHCA's waiver~~ and/or state plan using rules found in OAC 317:35~~.

"Individual Plan" means the safety net program for those qualified individuals who do not have access to Insure Oklahoma ESI.

"In-network" means providers or health care facilities that are part of a health plan's network of providers with which it has negotiated a discount, and services provided by a physician or other health care provider with a contractual agreement with the insurance company paid at the highest benefit level.

"Insure Oklahoma" means a health plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

"Insure Oklahoma IP" means the Individual Plan program.

"Insure Oklahoma ESI" means the Employer Sponsored Insurance program.

"Member" means an individual enrolled in the Insure Oklahoma ESI or IP program.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCP" means Primary Care Provider.

"PEO" or "Professional Employer Organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et.seq.

"Primary Care Provider" means a provider under contract with the Oklahoma Health Care Authority to provide primary care services, including all medically necessary referrals.

"Premium" means a monthly payment to a carrier for health plan coverage.

"Qualified Health Plan(QHP)" means a health plan that has been approved by the OHCA for participation in the Insure Oklahoma program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group health plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's health plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority.

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 3. INSURE OKLAHOMA IP MEMBER HEALTH CARE BENEFITS

317:45-11-10. Insure Oklahoma IP adult benefits

(a) All IP adult benefits are subject to rules delineated in 317:30 except as specifically set out in this Section. The scope of IP adult benefits described in this Section is subject to specific non-covered services listed in 317:45-11-11.

(b) A PCP referral is required to see any other provider with the exception of the following services:

(1) behavioral health services;

(2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;

(3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;

(4) women's routine and preventive health care services;

(5) emergency medical condition as defined in 317:30-3-1; and

(6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

(c) IP covered adult benefits for in-network services~~,~~and limits~~, and applicable co-payments~~ are listed in this subsection. In addition to the benefit-specific limits, there is a maximum lifetime benefit of $1,000,000. ~~Dependent children coverage is found at 317:45-11-12. Children are not held to the maximum lifetime benefit.~~ Member cost sharing related to premium and co-payments cannot exceed federal maximums with the exception of emergency room visits, in which case the State establishes the maximum for member cost share. Native American adults providing documentation of ethnicity who receive items and services furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services are exempt from co-payments. Coverage for IP services includes:

(1) Anesthesia / Anesthesiologist Standby. Covered in accordance with 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA) or Anesthesiologist Assistant (AA).

(2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.

(3) Chelation Therapy. Covered for heavy metal poisoning only.

(4) Diagnostic X-ray, including Ultrasound. Covered in accordance with 317:30-5-22(b)(2). PCP referral is required. ~~Standard radiology (X-ray or Ultrasound): $0 co-pay. Specialized scanning and imaging (MRI, MRA, PET, or CAT Scan); $25 co-pay per scan.~~

(5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a $30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.

(6) Inpatient Hospital Benefits. Covered in accordance with 317:30-5-41, 317:30-5-47 and 317:30-5-95~~; $50 co-pay per admission~~.

(7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year~~ with a $10 co-pay~~. This visit counts as an office visit.

(8) Office Visits/Specialist Visits. Covered in accordance with 317:30-5-9, 317:30-5-10, and 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits~~; $10 co-pay per visit~~.

(9) Outpatient Hospital/Facility Services.

(A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures~~; $25 co-pay per visit~~.

(B) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections~~; $10 co-pay per visit~~.

(C) Physical, Occupational and Speech Therapy services. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year~~; $10 co-pay per visit~~.

(10) Maternity (Obstetric). Covered in accordance with 317:30-5-22. ~~Nursery care paid separately under eligible child; $50 inpatient hospital co-pay.~~

(11) Laboratory/Pathology. Covered in accordance with 317:30-5-20~~; $0 co-pay~~.

(12) Mammogram (Radiological or Digital). Covered in accordance with 317:30-5-901~~; $0 co-pay~~.

(13) Immunizations. Covered in accordance with 317:30-5-2.

(14) Assistant Surgeon. Covered in accordance with 317:30-5-8.

(15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility~~; $0 co-pay~~.

(16) Oral Surgery. Services are limited to the removal of tumors or cysts~~; Inpatient Hospital $50 or Outpatient Hospital/Facility; $25 co-pay applies~~.

(17) Behavioral Health (Mental Health and Substance Abuse) Treatment (Inpatient). Covered in accordance with 317:30-5-95.1~~; $50 co-pay per admission~~.

(18) Behavioral Health (Mental Health and Substance Abuse) Treatment (Outpatient). Outpatient benefits are limited to 48 visits per calendar year. Additional visits may be approved as medically necessary.

(A) Agency services. Covered in accordance with 317:30-5-241 and 317:30-5-596~~; $10 co-pay per visit~~.

(B) Individual provider services. Licensed Behavioral Health Professionals (LBHPs) are defined as follows for the purpose of Outpatient Behavioral Health Services and Outpatient Substance Abuse Treatment:

(i) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in 317:30-5-2.

(ii) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (I) through (VI) below. The exemptions from licensure under 59 Okla. Stat. § 1353(4) and (5), 59 § 1903(C) and (D), 59 § 1925.3(B) and (C), and 59 § 1932(C) and (D) do not apply to Outpatient Behavioral Health Services.

(I) Psychology,
(II) Social Work (clinical specialty only),
(III) Professional Counselor,
(IV) Marriage and Family Therapist,
(V) Behavioral Practitioner, or
(VI) Alcohol and Drug Counselor.

(iii) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(iv) A Physician's Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(v) LBHPs must have a valid Insure Oklahoma contract in order to bill for services rendered.

(vi) LBHP services require prior authorization and are limited to 8 therapy services per month per member and 8 testing units per year per member~~; $10 co-pay per visit~~.

(19) Durable Medical Equipment and Supplies. Covered in accordance with 317:30-5-210 through 317:30-5-218. A PCP referral and prior authorization is required for certain items. DME/Supplies are covered up to a $15,000 annual maximum; exceptions from the annual DME limit are diabetic supplies, oxygen, home dialysis, and parenteral therapy~~; $5 co-pay for durable/non-durable supplies and $25 co-pay for durable medical equipment~~.

(20) Diabetic Supplies. Covered in accordance with 317:30-5-211.15; not subject to $15,000 annual DME limit~~; $5 co-pay per prescription~~.

(21) Oxygen. Covered in accordance with 317:30-5-211.11 through 317:30-5-211.12; not subject to $15,000 annual DME limit~~; $5 co-pay per month~~.

(22) Pharmacy. Covered in accordance with 317:30-5-72.1 and 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits~~; $5/$10 co-pay per prescription~~.

(23) Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with 317:30-5-72.1~~; $5/$10 co-pay per product~~.

(24) Nutrition Services. Covered in accordance with 317:30-5-1076~~; $10 co-pay per visit~~.

(25) External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with 317:30-5-211.13~~; $25 co-pay per prosthesis~~.

(26) Surgery. Covered in accordance with 317:30-5-8~~; $50 co-pay per inpatient admission and $25 co-pay per outpatient visit~~.

(27) Home Dialysis. Covered in accordance with 317:30-5-211.13; not subject to $15,000 annual DME limit~~; $0 co-pay~~.

(28) Parenteral Therapy. Covered in accordance with 317:30-5-211.14; not subject to $15,000 annual DME limit~~; $25 co-pay per month~~.

(29) Family Planning Services and Supplies, including Sterilizations. Covered in accordance with 317:30-3-57~~; $0 co-pay~~.

(30) Home Health and Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with 317:30-5-211.15 and 317:30-5-42.16(b)(3).

(31) Fundus photography.

(32) Perinatal dental care for pregnant women. Covered in accordance with 317:30-5-696~~; $0 co-pay~~.

317:45-11-11. Insure Oklahoma IP adult non-covered services

Certain health care services are not covered in the Insure Oklahoma IP adult benefit package listed in 317:45-11-10. These services include, but are not limited to:

(1) services not considered medically necessary;

(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;

(3) organ and tissue transplant services;

(4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;

(5) procedures, services and supplies related to sex transformation;

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in 317:30-3-59(19);

(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in 317:30-5-696;

(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

(12) physical medicine including chiropractic and acupuncture therapy;
(13) hearing services;
(14) transportation [emergency or non-emergency (air or ground)];
~~(15) rehabilitation (inpatient);~~
~~(16) cardiac rehabilitation;~~
(~~17~~15) allergy testing and treatment;
~~(18) home health care with the exception of medications, intravenous (IV) therapy, supplies;~~
(~~19~~16) hospice regardless of location;
(~~20~~17) Temporomandibular Joint Dysfunction (TMD) (TMJ);
(~~21~~18) genetic counseling;
(~~22~~19) fertility evaluation/treatment/and services;
(~~23~~20) sterilization reversal;
(~~24~~21) Christian Science Nurse;
(~~25~~22) Christian Science Practitioner;
(~~26~~23) skilled nursing facility;
(~~27~~24) long-term care;
(~~28~~25) stand by services;
(~~29~~26) thermograms;
(~~30~~27) abortions (for exceptions, refer to 317:30-5-6);
(~~31~~28) services of a Lactation Consultant;
(~~32~~29) services of a Maternal and Infant Health Licensed Clinical Social Worker;
(~~33~~30) enhanced services for medically high risk pregnancies as found in 317:30-5-22.1;
(~~34~~31) ultraviolet treatment-actinotherapy; and
(~~35~~32) private duty nursing.

317:45-11-12. Insure Oklahoma IP children benefits [REVOKED]

~~(a) IP covered child benefits for in network services, limits, and applicable co-payments are listed in this Subsection. All IP benefits are subject to rules delineated in 317:30 except as specifically set out in this Section. All services provided must be medically necessary as defined in 317:30-3-1(f). The scope of IP child benefits described in this Section is subject to specific non-covered services listed in 317:45-11-13. Dependent children are not held to the maximum lifetime benefit of $1,000,000. Native American children providing documentation of ethnicity are exempt from co-payments.~~
~~Coverage includes:~~
~~(1) Ambulance services. Covered as medically necessary; $50 co-pay per occurrence; waived if admitted.~~
~~(2) Blood and blood products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.~~
~~(3) Chelation therapy. Covered for heavy metal poisoning only.~~
~~(4) Chemotherapy and radiation therapy. Covered as medically necessary; $10 co-pay per visit.~~
~~(5) Clinic services including renal dialysis services. Covered as medically necessary; $0 co-pay for dialysis services; $10 co-pay per office visit.~~
~~(6) Diabetic supplies. One glucometer, one spring-loaded lancet device, two replacement batteries per year - 100 glucose strips and lancets per month; not included in DME $15,000 max/year; $5 co-pay per billable service. Additional supplies require prior authorization.~~
~~(7) Diagnostic X-ray services. Covered as medically necessary; $25 co-pay per scan for MRI, MRA, PET, CAT scans only.~~
~~(8) Dialysis. Covered as medically necessary.~~
~~(9) Durable medical equipment and supplies. Covered as medically necessary with $15,000 annual maximum; $5 co-pay per item for durable/non-durable supplies; $25 co-pay per item for DME.~~
~~(10) Emergency department services. Covered as medically necessary; $30 co-pay per occurrence; waived if admitted.~~
~~(11) Family planning services and supplies. Birth control information and supplies; pap smears; pregnancy tests.~~
~~(12) Home health services. Home health visits limited to 36 visits per year, prior authorization required, includes medications IV therapy and supplies; $10 co-pay per visit, appropriate pharmacy and DME co-pays will apply.~~
~~(13) Hospice services. Covered as medically necessary, prior authorization required; $10 co-pay per visit.~~
~~(14) Immunizations. Covered as recommended by ACIP; $0 co-pay.~~
~~(15) Inpatient hospital services (acute care only). Covered as medically necessary; $50 co-pay per admission.~~
~~(16) Laboratory services. Covered as medically necessary.~~
~~(17) Psychological testing. Psychological, neurological and development testing; outpatient benefits per calendar year, prior authorization required issued in four unit increments not to exceed eight units/hours per testing set; $0 co-pay.~~
~~(18) Mental health/substance abuse treatment outpatient. All outpatient benefits require prior authorization. Outpatient benefits limited to 48 visits per calendar year. Additional units as medically necessary; $10 co-pay per outpatient visit.~~
~~(19) Mental health/substance abuse treatment inpatient. Acute, detox, partial, and residential treatment center (RTC) with 30 day max per year, 2 days of partial or RTC treatment equals 1 day accruing to maximum. Additional units as medically necessary; $50 co-pay per admission. Requires prior authorization.~~
~~(20) Nurse midwife services. Covered as medically necessary for pregnancy related services only; $0 co-pay.~~
~~(21) Nutrition services. Covered as medically necessary; $10 co-pay.~~
~~(22) Nutritional support. Covered as medically necessary; not included in DME $15,000 max/year. Parenteral nutrition covered only when medically necessary; $25 co-pay.~~
~~(23) Other medically necessary services. Covered as medically necessary.~~
~~(24) Oral surgery. Covered as medically necessary and includes the removal of tumors and cysts; $25 co-pay for outpatient; $50 co-pay for inpatient hospital.~~

~~(25) Outpatient hospital services. Covered as medically necessary and includes ambulatory surgical centers and therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for children with proven malignancies or opportunistic infections; $25 co-pay per visit; $10 co-pay per visit for therapeutic radiology or chemotherapy.~~

~~(26) Oxygen. Covered as medically necessary; not included in DME $15,000 max/year; $5 co-pay per month.~~

~~(27) PCP visits. Blood lead screen covered as medically necessary. Hearing services limited to one outpatient newborn screening. Well baby/well child exams follow recommended schedule to age 19; $0 co-pay for preventive visits and well baby/well child exams; $10 co-pay for all other visits.~~

~~(28) Physical, occupational, and speech therapy. Covered as medically necessary. $10 co-pay per visit.~~

~~(29) Physician services, including preventive services. Covered as medically necessary; $0 co-pay for preventive visits; $10 co-pay for all other visits.~~

~~(30) Prenatal, delivery and postpartum services. Covered as medically necessary; $0 co-pay for office visits; $50 co-pay for delivery.~~

~~(31) Prescription drugs and insulin. Limited to six per month; generic preferred. Prenatal vitamins and smoking cessation products do not count toward the six prescription limit; $5-$10 co-pay.~~

~~(32) Smoking cessation products. Limited coverage; 90-day supply; products do not count against prescription drug limit; $5-$10 co-pay.~~

~~(33) Specialty clinic services. Covered as medically necessary; $10 co-pay.~~

~~(34) Surgery. Covered as medically necessary; $25 co-pay for outpatient facility; $50 co-pay for inpatient hospital.~~

~~(35) Tuberculosis services. Covered as medically necessary; $10 co-pay per visit.~~

~~(36) Ultraviolet treatment actinotherapy. Covered as medically necessary; prior authorization required after one visit per 365 sequential days; $5 co-pay.~~

~~(b) A PCP referral is required to see any other provider with the exception of the following services:~~

~~(1) behavioral health services;~~

~~(2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;~~

~~(3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;~~

~~(4) women's routine and preventive health care services;~~

~~(5) emergency medical condition as defined in 317:30-3-1; and~~

~~(6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.~~

317:45-11-13. Insure Oklahoma IP children non-covered services [REVOKED]

~~Certain health care services are not covered in the Insure Oklahoma IP benefit package for children listed in 317:45-11-12. These services include, but are not limited to:~~

~~(1) services not considered medically necessary;~~

~~(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;~~

~~(3) organ and tissue transplant services;~~

~~(4) weight loss intervention and treatment including, but not limited to, bariatric surgical procedures or any other weight loss surgery or procedure, drugs used primarily for the treatment of weight loss including appetite suppressants and supplements, and/or nutritional services prescribed only for the treatment of weight loss;~~

~~(5) procedures, services and supplies related to sex transformation;~~

~~(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;~~

~~(7) cosmetic surgery, except as medically necessary and as covered in 317:30-3-59(19);~~

~~(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;~~

~~(9) experimental procedures, drugs or treatments;~~

~~(10) transportation [non-emergency (air or ground)];~~

~~(11) rehabilitation (inpatient);~~

~~(12) cardiac rehabilitation;~~

~~(13) allergy testing and treatment;~~

~~(14) Temporomandibular Joint Dysfunction (TMD) (TMJ);~~

~~(15) genetic counseling;~~

~~(16) fertility evaluation/treatment/and services;~~

~~(17) sterilization reversal;~~

~~(18) Christian Science Nurse;~~

~~(19) Christian Science Practitioner;~~

~~(20) skilled nursing facility;~~

~~(21) long-term care;~~

~~(22) stand-by services;~~

~~(23) thermograms;~~

~~(24) abortions (for exceptions, refer to 317:30-5-6);~~

~~(25) donor transplant expenses;~~

~~(26) tubal ligations and vasectomies; and~~

~~(27) private duty nursing.~~

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-20. Insure Oklahoma IP eligibility requirements

(a) ~~Working~~Oklahoma employed working adults not eligible to participate in an employer's qualified health plan, employees of non-participating employers, self-employed, unemployed seeking work, workers with a disability, and qualified college students may apply for the Individual Plan. Applicants cannot obtain IP coverage if they are eligible for

ESI. Applicants, unless a qualified college student, must be engaged in employment as defined under state law, must be considered self-employed as defined under federal and/or state law, or must be considered unemployed as defined under state law.

(b) The eligibility determination will be processed within 30 days from the date the complete application is received. The applicant will be notified in writing of the eligibility decision.

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

(1) choose a valid PCP according to the guidelines listed in 317:45-11-22, at the time they make application;

(2) be a US citizen or alien as described in 317:35-5-25;

(3) be an Oklahoma resident;

(4) provide social security numbers for all household members;

(5) be not currently enrolled in, or have an open application for SoonerCare or Medicare;

(6) be age 19 through 64 or an emancipated minor;

(7) make premium payments by the due date on the invoice;

(8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a) (1)-(2);

(9) be not currently covered by a private health insurance policy or plan; and

(10) provide in a timely manner any and all documentation that is requested by the Insure Oklahoma program by the specified due date.

(d) If employed and working for an approved Insure Oklahoma employer who offers a qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and:

(1) have annual gross household income at or below ~~250~~100 percent of the Federal Poverty Level. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~

(2) be ineligible for participation in their employer's qualified health plan due to number of hours worked.

(3) have received notification from Insure Oklahoma indicating their employer has applied for Insure Oklahoma and has been approved.

(e) If employed and working for an employer who does not offer a qualified health plan, the applicant must meet the requirements in subsection (c) of this Section and have an annual gross household income at or below ~~250~~100 percent of the Federal Poverty Level. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~ The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member.

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

(1) must have an annual gross household income at or below ~~250~~100 percent of the Federal Poverty Level. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~ No standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work may be made for self-employed individuals. Allowable Deductions for work related expenses for self-employed individuals, with the exception of the standard deduction, are found at 317:35-10-26(b)(1);

(2) verify self-employment and income by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; and

(3) must not have full-time employment with any employer who does not meet the eligible employer guidelines listed in 317:45-7-1(a)(1)-(2).

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

(1) Applicant must have an annual gross household income at or below ~~250~~100 percent of the Federal Poverty Level. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~ In determining income, payments of regular unemployment compensation in the amount of $25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, will not be counted, as authorized under the American Recovery and Reinvestment Tax Act of 2009.

(2) Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

(A) OESC eligibility letter,

(B) OESC weekly unemployment payment statement, or

(C) bank statement showing state treasurer deposit.

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

(1) Applicant must have an annual gross household income at or below ~~250~~100 percent of the Federal Poverty Level based on a family size of one. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~

(2) Applicant must verify eligibility by providing a copy of their:

(A) ticket to work, or

(B) ticket to work offer letter.

(i) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 30 calendar days of the change.

317:45-11-21. Dependent eligibility

(a) If the spouse of an Insure Oklahoma IP approved individual is eligible for Insure Oklahoma ESI, they must apply for Insure Oklahoma ESI. Spouses cannot obtain Insure Oklahoma IP coverage if they are eligible for Insure Oklahoma ESI.

(b) The employed or self-employed spouse of an approved applicant must meet the guidelines listed in 317:45-11-20 (a) through (g) to be eligible for Insure Oklahoma IP.

(c) The dependent of an applicant approved according to the guidelines listed in 317:45-11-20(h) does not become automatically eligible for Insure Oklahoma IP.

(d) The applicant and the dependents' eligibility are tied together. If the applicant no longer meets the requirements for Insure Oklahoma IP, then the associated dependent enrolled under that applicant is also ineligible.

(e) Dependent college students must enroll under their parents and all annual gross household income (including parent income) must be included in determining eligibility. Independent college students may apply on their own without parent income included in the household. College student status as dependent or independent is determined by the student's current Free Application for Federal Student Aid (FAFSA). College students
must also provide a copy of their current student schedule to prove full-time student status.

~~(f) Dependent children in families whose annual gross household income is from 185 up to and including 300 percent of the Federal Poverty Level may be eligible. The inclusion of children into the Insure Oklahoma program will be phased in over a period of time as determined by the OHCA. No other deductions or disregards apply.~~

~~(1) Children found to be eligible for SoonerCare may not receive coverage through Insure Oklahoma.~~

~~(2) Children are not eligible for Insure Oklahoma if they are a member of a family eligible for employer sponsored dependent health insurance coverage under any Oklahoma State Employee Health Insurance Plan.~~

~~(3) Children who already have coverage through another source must undergo, or be excepted from, a six month uninsured waiting period prior to becoming eligible for Insure Oklahoma. Exceptions to the waiting period may include:~~

~~(A) the cost of covering the family under the ESI plan meets or exceeds 10 percent of the annual gross household income. The cost of coverage includes premiums, deductibles, co-insurance, and co-payments;~~

~~(B) loss of employment by a parent which made coverage available;~~

~~(C) affordable ESI is not available; "affordable" coverage is defined by the OHCA annually using actuarially sound rates established by the Oklahoma State and Education Employee Group Insurance Board (OSEEGIB); or~~

~~(D) loss of medical benefits under SoonerCare.~~

(f) IP approved individuals must notify the OHCA of any changes, including household status and income, that might impact individual and/or dependent eligibility in the program within 30 calendar days of the change.

317:45-11-21.1. Certification of newborn child deemed eligible [REVOKED]

~~(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma IP and the annual gross household income does not exceed SoonerCare requirements. The newborn child is deemed eligible through the last day of the month the child attains the age of one year.~~

~~(b) The newborn child's eligibility is not dependent on the mother's continued eligibility in Insure Oklahoma IP. The child's eligibility is based on the original eligibility determination of the mother for Insure Oklahoma IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.~~

~~(c) The newborn child's certification period is shortened only in the event the child:~~

~~(1) loses Oklahoma residence; or~~

~~(2) expires.~~

~~(d) No other conditions of eligibility are applicable, including social security number enumeration and citizenship and identity verification. However, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.~~

317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for health plan premiums. The premiums are due, and must be paid in full, no later than the 15th day of the month prior to the month of IP coverage.

(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent of their monthly gross household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed four percent of their monthly gross household income, based on a family size of one and capped at ~~250~~100 percent of the Federal Poverty Level. ~~The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.~~

(3) Native Americans providing documentation of ethnicity are exempt from premium payments.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of Insufficient/Non-sufficient funds.

SUBCHAPTER 13. INSURE OKLAHOMA DENTAL SERVICES

317:45-13-1. Dental services requirements and benefits [REVOKED]

~~The Oklahoma Health Care Authority (OHCA) provides dental services to children who qualify for the Insure Oklahoma Individual Plan (IP). Dental coverage is obtained through direct purchase from the OHCA. The existing cost sharing requirements for IP qualified children apply. Native Americans children providing documentation of their ethnicity are exempt from dental co-pay requirements. Children obtaining medical coverage through IP receive Dental IP coverage. The OHCA contracts with Dental IP providers utilizing the SoonerCare~~

~~network. The Dental IP providers are reimbursed pursuant to the SoonerCare fee schedule for rendered services.~~

~~(1) The Dental IP program is covered as medically necessary and includes coverage for Class A, B, C, and orthodontia services. All coverage is provided as necessary to prevent disease, promote and restore oral health, and treat emergency conditions. Dental services follow the American Academy of Pediatric Dentistry (AAPD) periodicity schedule. Prior authorization is required for certain services.~~

~~(2) Class A services are covered as medically necessary and include preventive, diagnostic care such as cleanings, check-ups, X-rays, and fluoride treatments, no co-pay is required.~~

~~(3) Class B services are covered as medically necessary and include basic, restorative, endodontic, periodontic, oral and maxillofacial surgery care such as fillings, extractions, periodontal care, and some root canal, $10 co-pay is required.~~

~~(4) Class C services are covered as medically necessary and include major, prosthodontics care such as crowns, bridges and dentures, $25 co-pay is required.~~

~~(5) Class D services are covered as medically necessary and include orthodontic care. Orthodontic care is not covered for cosmetic purposes or any purposes which are not medical in nature, $25 co-pay is required.~~

~~(6) Emergency dental services are covered as medically necessary, no co-pay is required.~~

[OAR Docket #14-573; filed 6-30-14]

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

[OAR Docket #14-566]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. My Life, My Choice
317:50-3-14 [AMENDED]
Subchapter 5. Sooner Seniors
317:50-5-5 [AMENDED]
317:50-5-14 [AMENDED]
(Reference APA WF # 13-32)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 27, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Policy is amended to remove language regarding the Level of Care Evaluation Unit (LOCEU) and to state that only categorical relationship to age is necessary per SSA guidelines for Sooner Senior Waiver Services only. In addition, policy is amended to change the scope of waiver services regarding Pharmacological Evaluations for Sooner Seniors and My Life, My Choice Waivers. This service will be redefined as Pharmacological Therapy Management, and its scope of work will be changed to include a case management approach to reviewing medication profiles of qualified members who meet medication utilization criterion or if they are referred for this service by a care manager.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. MY LIFE, MY CHOICE

317:50-3-14. Description of services

Services included in the My Life, My Choice Waiver Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish Waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet My Life, My Choice Waiver Program

minimum requirements for qualification and training prior to providing services to members. Prior to providing services to members choosing to Self-Direct their services, Case Managers are required to receive training and demonstrate knowledge regarding the Self-Directed Service delivery model.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:50-3-14(1)(A) that only a My Life, My Choice case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in OHCA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Institutional Transition Services.**

(A) Institutional Transition Case Management Services are Services required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the member, or to enable the member to function with greater independence in the home, and without which, the member would continue to require institutionalization.

(B) Waiver Transition Case Management services assist institutionalized members that are eligible to receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist the transition, regardless of the funding source for the services which access is gained.

(C) Transition Case Management services may be authorized for periodic monitoring of a waiver member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the services plan, including preparing for necessary services and supports to be in place or to start on the date the member is discharged from the institution.

(3) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the Waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not

available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the Waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for Waiver services, continues to reside in the home and is not institutionalized in a hospital or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the SoonerCare rate, or actual acquisition cost plus 30 percent.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services include skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the My Life, My Choice Waiver case manager in accordance with review schedule determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The case manager may recommend authorization of Skilled Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the case manager may recommend authorization of Skilled Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic, who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services

or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation

potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(12) **Respiratory Therapy services.**

(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the member. Treatment involves use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice Care. My Life, My Choice Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period, additional periods of hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for My Life, My Choice Facility Based Extended Respite. Hospice provided as part of Facility Based Extended respite may not be reimbursed for more than five days during any 30 day period. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive My Life, My Choice Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family.

(14) **My Life, My Choice Waiver Personal Care.**

(A) My Life, My Choice Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal

suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) My Life, My Choice Home Care Agency Skilled Nursing staff working in coordination with a Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) My Life, My Choice Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the approved plan of care.

(15) **Assisted Living Services.**

(A) Assisted Living Services are personal care and supportive services that are furnished to the member who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security.

(B) Assisted Living Services includes services of personal care, housekeeping, laundry, meal preparation, periodic nursing evaluation, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities and exercise and for arranging or coordination of transportation to and from medical appointments.

(C) Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the member as determined throughout individualized assessment and documented on the member's service plan.

(D) Payment is not made for 24 hour skilled care.

(16) **Adult Day Health.** Adult Day Health services are scheduled for one or more days per week, in a community setting, encompassing both health and social services needed in order to provide optimal functioning of the member.

(17) **Assistive Technology.** Assistive technology enables the member to maintain or increase functional capabilities. Assistive technology devices are in addition to equipment and supplies readily available through traditional State Plan services and exclude items that are not of direct medical or remedial benefit to the member. Assistive technology includes the purchase, rental, customization, maintenance and repair of such devices.

(18) **Audiology Treatment and Evaluation.** Services include evaluation, treatment and consultation related to auditory functioning and are intended to maximize the member's hearing abilities.

(19) **Agency Companion.** Agency companion services provide a living arrangement developed to meet the specific needs of the member that include a live-in companion providing supervision, supportive assistance, and training in daily living skills provided in a shared home owned or rented by the member, companion, or in a mutually rented or owned home;

(20) **Dental services.** Dental services include maintenance or improvement of dental health as well as relief of pain and infection. Coverage of dental services may not exceed $1,000 per plan year of care. These services may include:

(A) oral examination;

(B) bite-wing x-rays;

(C) prophylaxis;

(D) topical fluoride treatment;

(E) development of a sequenced treatment plan that prioritizes:

(i) elimination of pain;

(ii) adequate oral hygiene; and

(iii) restoration or improved ability to chew;

(F) routine training of member or primary caregiver regarding oral hygiene; and

(G) preventive restorative, replacement and repair services to achieve or restore functionality are provided after appropriate review if applicable.

(21) **Family Training.** Family training services are for families of the member being served through the waiver. For purposes of this service, "family" is defined as the persons who live with or provide care to a waiver member and may include a parent, spouse, children relatives, foster family or in-laws. Training includes instruction for the family member in skills and knowledge pertaining to the support and assistance of the waiver member. This training is specific to an individual member's needs. It is intended to allow the member's family to become more proficient in meeting the needs of the member. Specific family training services are included in the member's service plan.

(22) **Family Counseling.** Family counseling helps to develop and maintain healthy, stable relationships among all family members in order to support meeting the needs of the member. Emphasis is placed on the acquisition of coping skills by building upon family strengths. Knowledge and skills gained through family counseling services increase the likelihood that the member remains in or returns to his or her own home. Services are intended to maximize the member/family's emotional/social adjustment and well-being. All family counseling needs are documented in the member's plan of care. Individual counseling cannot exceed 400, 15-minute units per plan of care year. Group counseling cannot exceed 225, 30-minute units per plan of care year. Case Managers assist the member to identity other alternatives to meet identified needs above the limit.

(23) **Nutritional Education services.** Nutritional Education services focus on assisting the member and/or primary caregiver with the dietary aspects of the member's disease management. These services include dietary evaluation and consultation with individuals or their care provider. Services are provided in the member's home or when appropriate in a class situation. Services are intended to maximize the individual's nutritional health. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness.

(24) **Vision services.** Vision services must be listed in the member's plan of care and include a routine eye examination for the purpose of prescribing glasses or visual aids, determination of refractive state, treatment of refractive errors or purchase of glasses to include lenses and frames; exceptions are made on the individual basis as deemed medically necessary. Amount, frequency and duration of services is prior authorized in accordance with the member's service plan, with a limit of one pair of glasses to include lenses and frames annually.

(25) **Independent Living Skills training.** Independent living skills training is a service to support the individual's self-care, daily living, adaptive skills and leisure skills needed to reside successfully in the community. Services are provided in community based settings in a manner that contributes to the individual's independence, self-sufficiency, community inclusion and well-being. This service is intended to train members with significant cognitive problems living skills such as selecting clothing, dressing, and personal shopping.

(26) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For a My Life, My Choice Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the Personal Emergency;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the My Life, My Choice approved plan of care.

(27) **Prescription drugs.** Members are eligible for a maximum of six prescriptions per month with a limit of three brand name prescriptions. Seven additional generic prescriptions per month are allowed if medically necessary. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization. More information on prescription drugs is provided at 317:30-5-72.

(28) **Psychiatry.** Psychiatry provides outpatient psychiatric services provided by a licensed psychiatrist and will be comprised of diagnosis, treatment and prevention of mental illness. These services will also include review, assessment and monitoring of psychiatric conditions, evaluation of the current plan of treatment and recommendations for a continued and/or revised plan of treatment and/or therapy, including required documentation. Psychiatrists may provide instruction and training to individuals, family members, case management staff and/or provider staff in recognition of psychiatric illness and adverse reactions to medications.

(29) **Psychological services.** Psychological services include evaluation, psychotherapy, consultation and behavioral treatment. Services are provided in any community setting as specified in the member's service plan. Services are intended to maximize the member's psychological and behavioral well-being. Services are provided in both individual and group (8 person maximum) formats. The OHCA Care Management Team will review service plans to ensure that duplication of services does not occur.

(30) **Pharmacological ~~Evaluations~~Therapy Management.** Pharmacological ~~evaluations are provided to waiver members to ensure proper management of medications. The evaluations consist of:~~Therapy Management will utilize individual case management techniques for qualifying waiver members. Medication profiles will be reviewed for therapeutic duplication, drug-drug interactions, drug-disease interactions, contraindications, appropriate dosing and other measures of therapeutic appropriateness using principles of evidence-based medicine from peer-reviewed literature. Members are selected for therapy management based on medication utilization, or if they are referred to the program by a care manager.

~~(A) An initial medication assessment performed in conjunction with the case manager and member.~~

~~(B) A written report after completion of both the initial visit and medication assessment to be provided to the case manager and prescribing physician(s). The report will contain the initial medication assessment and recommendations when appropriate.~~

~~(C) Follow up visit, assessments and reports will be arranged with the case manager every four months after the initial visits, assessment and report for the first year the member is in the community. This will result in a total of three follow up visits, assessments and reports per member~~.

(31) **Non-emergency Transportation.** Non-emergency, non-ambulance transportation services are available through the SoonerRide Non-Emergency Transportation (NET) program. SoonerRide NET is available on a statewide basis to all eligible members. SoonerRide NET includes non-emergency, non-ambulance transportation for members to and from SoonerCare providers of health care services. The NET must be for the purpose of accessing medically necessary covered services for which a member has available benefits. Additionally, SoonerRide NET may also be provided for eligible members to providers other than SoonerCare providers if the transportation is to access medically necessary services covered by SoonerCare. More information on SoonerRide NET services is located at 317:30-5-326.

(32) **Self-Direction.**

(A) Self-Direction is a method of service delivery that allows waiver members to determine supports and services they need to live successfully in a home or community based setting. A member choosing Self-Direction is the employer of record for his/her Personal Care and Advanced Supportive/Restorative Care service providers and must have an approved plan of care prior to initiation of any Self-Directed activities.

(B) The OHCA uses the following criteria to determine a member's service eligibility to participate in the Self-Directed Services program:

(i) residence in the Self-Directed services area;

(ii) member's health and safety with Self-Directed services can reasonably be assured based on a review of service history records and a review of member capacity and readiness to assume employer responsibilities under Self-Direction with any one of the following findings as basis to deny a request for Self-Direction due to inability to assure member health and safety;

(I) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Directed services responsibilities, or

(II) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the Personal Services Assistant (PSA) or Advanced Personal Services Assistant (APSA) service provider, or in monitoring and managing health or in preparation for emergency backup, or

(III) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention within the past 12 months and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities;

(C) The member voluntarily makes an informed choice to Self-Direct services. As part of the informed choice, decision making process for Self-Direction, the OHCA staff or the Case Manager provides consultation and assistance as the member completes a self-assessment of preparedness to assume the role of employer for their Personal Services Assistant. The orientation and enrollment process will provide the member with a basic understanding of what will be expected of them under Self-Direction, the supports available to assist them to successfully perform employer responsibilities and an overview of the potential risks involved.

(D) The OHCA uses the following criteria to determine that based upon documentation, a person is no longer allowed to participate in the Self-Directed Services option:

(i) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Direction responsibilities; or

(ii) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the PSA or APSA service providers, or in monitoring and managing health or in preparation for emergency backup; or

(iii) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities; or

(iv) the member abuses or exploits their employee; or

(v) the member falsifies time-sheets or other work records; or

(vi) the member, even with Case Manager and Financial Management Services assistance, is unable to operate successfully within their Individual Budget Allocation; or

(vii) inferior quality of services provided by member/employer's employee, or the inability of the member/employer's employee to provide the number of service units the member requires, jeopardizes the member's health and/or safety.

(E) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the OHCA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a member may not be designated the "authorized representative" for the member.

(F) Self-Directed Services are delivered as authorized on the service plan and are limited to Personal Care, Advanced Supportive/Restorative Care and Respite. The member employs the Respite or Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from the Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member:

(i) recruits, hires and, as necessary, discharges the PSA and APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Case Manager to obtain skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the APSA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(G) Financial Management Services are program administrative services provided to participating Self-Directed Service employer/members by agencies contracted with the OHCA. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Respite or Personal Services Assistant or Advanced Personal Services Assistant~~; and~~.

(H) The service of Respite Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.

(I) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

(J) Self-Directed Services rates are determined using the Individual Budget Allocation (IBA) Expenditure Accounts Determination process for each member. The IBA Expenditure Accounts Determination process includes consideration and decisions about the following:

(i) The Individual Budget Allocation (IBA) Expenditure Accounts Determination constrains total SoonerCare reimbursement for Self-Directed services to be less than expenditures for equivalent services using agency providers.

(ii) The PSA and APSA service unit rates are calculated by the OHCA during the Self-Directed service eligibility determination process. The OHCA sets the PSA and APSA unit rates at a level that is not less than 80 percent and not more than 95 percent of the comparable Agency Personal Care (for PSA) or Advanced Supportive/Restorative (for APSA) service rate. The allocation of portions of the PSA and/or APSA rate to cover salary, mandatory taxes, and optional benefits (including Worker's Compensation insurance, if available) is determined individually for each member using the Self-Directed Services Individualized Budget Allocation Expenditure Accounts Determination Process.

(iii) The IBA Expenditure Accounts Determination process defines the level of program financial resources required to meet the member's need for Self-Directed services. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources, the Case Manager, based upon an updated assessment, amends the

service plan to increase Self-Directed service units appropriate to meet additional member need. The OHCA, upon favorable review, authorizes the amended plan and updates the member's IBA. Service amendments based on changes in member need for services do not change an existing PSA or APSA rate. The member, with assistance from the FMS, reviews and revises the IBA Expenditure Accounts calculation annually or more often to the extent appropriate and necessary.

(33) **Self-Directed Goods and Services (SD-GS).**

(A) Self-Directed Goods and Services (SD-GS) are incidental, non-routine goods and services that promote the member's self-care, daily living, adaptive functioning, general household activity, meal preparation and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's plan of care.

(B) These goods and services are purchased from the self-directed budget.

SUBCHAPTER 5. SOONER SENIORS

317:50-5-5. Sooner Seniors Waiver program medical eligibility determination

A medical eligibility determination is made for Sooner Seniors Waiver program services based on the Uniform Comprehensive Assessment Tool (UCAT) III assessment, professional judgment and the determination that the member has unmet care needs that require Sooner Seniors Waiver Program, or NF level services to assure member health and safety. Sooner Seniors Waiver services are designed to be a continuation of support for the informal care that is being provided in the member's home. These services are not intended to take the place of regular care provided by family members and/or by significant others. When there is an informal (not paid) system of care available in the home, Sooner Seniors Waiver service provision will supplement the system within the limitations of Sooner Seniors Waiver Program policy.

(1) Categorical relationship to the Aged must be established for determination of eligibility for Sooner Seniors Waiver services. ~~If categorical relationship to disability has not already been established, the Level of Care Evaluation Unit (LOCEU) will render a decision on categorical relationship to the disabled using the same definition used by SSA. A follow-up is required with the Social Security Administration to be sure their disability decision agrees with the decision of LOCEU.~~

(2) Community agencies complete the UCAT, Part I and forward the form to the OHCA. If the UCAT, Part I indicates that the applicant does not qualify for SoonerCare long-term care services, the applicant is referred to appropriate community resources.

(3) If the UCAT indicates member qualification for SoonerCare services and the needs of the member require an immediate interdisciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the need is documented.

(4) If, based upon the information obtained during the assessment, the nurse determines that the member may be at risk for health and safety, OKDHS Adult Protective Services (APS) staff are notified immediately and the referral is documented on the UCAT.

(5) Within ten (10) working days of receipt of a complete Sooner Seniors Waiver application, medical eligibility is determined using level of care criteria and service eligibility criteria.

(6) Once eligibility has been established, notification is given to the member and the case management provider so that care plan and service plan development may begin. The member's case management provider is notified of the member's name, address, case number and social security number, the units of case management and, if applicable, the number of units of home health agency nurse evaluation authorized for care plan and service plan development, whether the needs of the member require an immediate IDT meeting with home health agency nurse participation and the effective date for member entry into the Sooner Seniors Waiver Program.

(7) If the member has a current certification and requests a change to Sooner Seniors Waiver services, a new UCAT is required. The UCAT is also updated when a member requests a change from Sooner Seniors Waiver services to State Plan Personal Care services. If a member is receiving Sooner Seniors Waiver services and requests to go to a nursing facility, a new medical level of care decision is not needed.

(8) When a UCAT assessment has been completed more than 90 days prior to submission for determination of a medical decision, a new assessment is required.

317:50-5-14. Description of services

Services included in the Sooner Seniors Waiver Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish Waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate,

periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet Sooner Seniors Waiver Program minimum requirements for qualification and training prior to providing services to members. Prior to providing services to members choosing to Self-Direct their services, Case Managers are required to receive training and demonstrate knowledge regarding the Self-Directed Service delivery model.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:50-5-14(1)(A) that only a Sooner Seniors case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in OHCA identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Institutional Transition Services.**

(A) Institutional Transition Case Management Services are services required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the member, or to enable the member to function with greater independence in the home, and without which, the member would continue to require institutionalization.

(B) Waiver Transition Case Management services assist institutionalized members that are eligible to receive waiver services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist the transition, regardless of the funding source for the services which access is gained.

(C) Transition case management services may be authorized for periodic monitoring of a waiver member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the services plan, including preparing for necessary services and supports to be in place or to start on the date the member is discharged from the institution.

(3) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the Waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their

abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the Waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for Waiver services, continues to reside in the home and is not institutionalized in a hospital or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the SoonerCare rate, or actual acquisition cost plus 30 percent.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services include skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the member and medical appropriateness of services. An assessment/evaluation visit report will be made to the Sooner Seniors Waiver case manager in accordance with review schedule determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The case manager may recommend authorization of Skilled Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the case manager may recommend authorization of Skilled Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic, who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or

other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation,

specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(12) **Respiratory therapy services.**

(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the member. Treatment ~~involved s~~involves use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(13) **Hospice services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice Care. Sooner Seniors Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period, additional periods of hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for Sooner Seniors Facility Based Extended Respite. Hospice provided as part of Facility Based Extended respite may not be reimbursed for more than five days during any 30 day period. A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive Sooner Seniors Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family.

(14) **Sooner Seniors Waiver Personal Care.**

(A) Sooner Seniors Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration.

Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) Sooner Seniors Home Care Agency Skilled Nursing staff working in coordination with a Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) Sooner Seniors Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the approved plan of care.

(15) **Assisted Living Services.**

(A) Assisted Living Services are personal care and supportive services that are furnished to the member who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security.

(B) Assisted Living Services includes services of personal care, housekeeping, laundry, meal preparation, periodic nursing evaluation, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization, activities and exercise and for arranging or coordination of transportation to and from medical appointments.

(C) Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the member as determined throughout individualized assessment and documented on the member's service plan.

(D) Payment is not made for 24 hour skilled care.

(16) **Adult Day Health.** Adult Day Health services are scheduled for one or more days per week, in a community setting, encompassing both health and social services needed in order to provide optimal functioning of the member.

(17) **Agency companion.** Agency companion services provide a living arrangement developed to meet the specific needs of the member that include a live-in companion providing supervision, supportive assistance, and training in daily living skills provided in a shared home owned or rented by the member, companion, or in a mutually rented or owned home;

(18) **Dental services.** Dental services include maintenance or improvement of dental health as well as relief of pain and infection. Coverage of dental services may not exceed $1,000 per plan year of care. These services may include:

(A) oral examination;

(B) bite-wing x-rays;

(C) prophylaxis;

(D) topical fluoride treatment;

(E) development of a sequenced treatment plan that prioritizes:

(i) elimination of pain;

(ii) adequate oral hygiene; and

(iii) restoration or improved ability to chew;

(F) routine training of member or primary caregiver regarding oral hygiene; and

(G) preventive restorative, replacement and repair services to achieve or restore functionality are provided after appropriate review if applicable.

(19) **Family training.** Family training services are for families of the member being served through the waiver. For purposes of this service, "family" is defined as the persons who live with or provide care to a waiver member and may include a parent, spouse, children relatives, foster family or in-laws. Training includes instruction for the family member in skills and knowledge pertaining to the support and assistance of the waiver member. This training is specific to an individual member's needs. It is intended to allow the member's family to become more proficient in meeting the needs of the member. Specific family training services are included in the member's service plan.

(20) **Nutritional Education services.** Nutritional Education services focus on assisting the member and/or primary caregiver with the dietary aspects of the member's disease management. These services include dietary evaluation and consultation with individuals or their care provider. Services are provided in the member's home or when appropriate in a class situation. Services are intended to maximize the individual's nutritional health. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness.

(21) **Vision services.** Vision services must be listed in the member's plan of care and include a routine eye examination for the purpose of prescribing glasses or visual aids, determination of refractive state, treatment of refractive errors or purchase of glasses to include lenses and frames; exceptions are made on the individual basis as deemed medically necessary. Amount, frequency and duration of services is prior authorized in accordance with the member's service plan, with a limit of one pair of glasses to include lenses and frames annually.

(22) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For a Sooner Seniors Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the Sooner Seniors approved plan of care.

(23) **Prescription drugs.** Members are eligible for a maximum of six prescriptions per month with a limit of three brand name prescriptions. Seven additional generic prescriptions per month are allowed if medically necessary. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization. More information on prescription drugs is provided at 317:30-5-72.

(24) **Pharmacological ~~Evaluations~~Therapy Management.** Pharmacological ~~evaluations are provided to waiver members to ensure proper management of medications. The evaluations consist of:~~Therapy Management will utilize individual case management techniques for qualifying waiver members. Medication profiles will be reviewed for therapeutic duplication, drug-drug interactions, drug-disease interactions, contraindications, appropriate dosing and other measures of therapeutic appropriateness using principles of evidence-based medicine from peer-reviewed literature. Members are selected for therapy management based on medication utilization, or if they are referred to the program by a care manager.

~~(A) An initial medication assessment performed in conjunction with the case manager and member.~~

~~(B) A written report after completion of both the initial visit and medication assessment to be provided to the case manager and prescribing physician(s). The report will contain the initial medication assessment and recommendations when appropriate.~~

~~(C) Follow-up visit, assessments and reports will be arranged with the case manager every four months after the initial visits, assessment and report for the first year the member is in the community. This will result in a total of three follow-up visits, assessments and reports per member.~~

(25) **Non-emergency Transportation.** Non-emergency, non-ambulance transportation services are available through the SoonerRide Non-Emergency Transportation (NET) program. SoonerRide NET is available on a statewide basis to all eligible members. SoonerRide NET includes non-emergency, non-ambulance transportation for members to and from SoonerCare providers of health care services. The NET must be for the purpose of accessing medically necessary covered services for which a member has available benefits. Additionally, SoonerRide NET may also be provided for eligible members to providers other than SoonerCare providers if the transportation is to access medically necessary services covered by SoonerCare. More information on SoonerRide NET services is located at 317:30-5-326.

(26) **Self-Direction.**

(A) Self-Direction is a method of service delivery that allows waiver members to determine supports and services they need to live successfully in a home or community based setting. A member choosing Self-Direction is the employer of record for his/her Personal Care and Advanced Supportive/Restorative Care service providers and must have an approved plan of care prior to initiation of any Self-Directed activities.

(B) The OHCA uses the following criteria to determine a member's service eligibility to participate in the Self-Directed Services program:

(i) residence in the Self-Directed services area;

(ii) member's health and safety with Self-Directed services can reasonably be assured based on a review of service history records and a review of member capacity and readiness to assume employer responsibilities under Self-Direction with any one of the following findings as basis to deny a request for Self-Direction due to inability to assure member health and safety;

(I) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Directed services responsibilities, or

(II) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the Personal Services Assistant (PSA) or Advanced Personal Services Assistant (APSA) service provider, or in monitoring and managing health or in preparation for emergency backup, or

(III) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention within the past 12 months and does not have an "authorized

representative" with capacity to assist with Self-Direction responsibilities;

(C) The member voluntarily makes an informed choice to Self-Direct services. As part of the informed choice, decision making process for Self-Direction, the OHCA staff or the Case Manager provides consultation and assistance as the member completes a self-assessment of preparedness to assume the role of employer for their Personal Services Assistant. The orientation and enrollment process will provide the member with a basic understanding of what will be expected of them under Self-Direction, the supports available to assist them to successfully perform employer responsibilities and an overview of the potential risks involved.

(D) The OHCA uses the following criteria to determine that based upon documentation, a person is no longer allowed to participate in the Self-Directed Services option:

(i) the member does not have the ability to make decisions about his/her care or service planning and the member's "authorized representative" is not willing to assume Self-Direction responsibilities; or

(ii) the member is not willing to assume responsibility, or to enlist an "authorized representative" to assume responsibility, in one or more areas of Self-Direction such as in service planning, or in assuming the role of employer of the PSA or APSA service providers, or in monitoring and managing health or in preparation for emergency backup; or

(iii) the member has a recent history of self-neglect or self-abuse as evidenced by Adult Protective Services intervention and does not have an "authorized representative" with capacity to assist with Self-Direction responsibilities; or

(iv) the member abuses or exploits their employee; or

(v) the member falsifies time-sheets or other work records; or

(vi) the member, even with Case Manager and Financial Management Services assistance, is unable to operate successfully within their Individual Budget Allocation; or

(vii) inferior quality of services provided by member/employer's employee, or the inability of the member/employer's employee to provide the number of service units the member requires, jeopardizes the member's health and/or safety.

(E) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the OHCA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a member may not be designated the "authorized representative" for the member.

(F) Self-Directed Services are delivered as authorized on the service plan and are limited to Personal Care, Advanced Supportive/Restorative Care and Respite. The member employs the Respite or Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from the Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member:

(i) recruits, hires and, as necessary, discharges the PSA and APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Case Manager to obtain skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the APSA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(G) Financial Management Services are program administrative services provided to participating Self-Directed Service employer/members by agencies contracted with the OHCA. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Respite or Personal Services Assistant or Advanced Personal Services Assistant~~; and~~.

(H) The service of Respite or Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.

(I) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

(J) Self-Directed Services rates are determined using the Individual Budget Allocation (IBA) Expenditure Accounts Determination process for each member. The IBA Expenditure Accounts Determination process includes consideration and decisions about the following:

(i) The Individual Budget Allocation (IBA) Expenditure Accounts Determination constrains total SoonerCare reimbursement for Self-Directed services to be less than expenditures for equivalent services using agency providers.

(ii) The PSA and APSA service unit rates are calculated by the OHCA during the Self-Directed service eligibility determination process. The OHCA sets the PSA and APSA unit rates at a level that is not less than 80 percent and not more than 95 percent of the comparable Agency Personal Care (for PSA) or Advanced Supportive/Restorative (for APSA) service rate. The allocation of portions of the PSA and/or APSA rate to cover salary, mandatory taxes, and optional benefits (including Worker's Compensation insurance, if available) is determined individually for each member using the Self-Directed Services Individualized Budget Allocation Expenditure Accounts Determination Process.

(iii) The IBA Expenditure Accounts Determination process defines the level of program financial resources required to meet the member's need for Self-Directed services. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources, the Case Manager, based upon an updated assessment, amends the service plan to increase Self-Directed service units appropriate to meet additional member need. The OHCA, upon favorable review, authorizes the amended plan and updates the member's IBA. Service amendments based on changes in member need for services do not change an existing PSA or APSA rate. The member, with assistance from the FMS, reviews and revises the IBA Expenditure Accounts calculation annually or more often to the extent appropriate and necessary.

(27) **Self-Directed Goods and Services (SD-GS).**

(A) Self-Directed Goods and Services (SD-GS) are incidental, non-routine goods and services that promote the member's self-care, daily living, adaptive functioning, general household activity, meal preparation and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's plan of care.

(B) These goods and services are purchased from the self-directed budget.

[OAR Docket #14-566; filed 6-30-14]

TITLE 318. HIGHWAY CONSTRUCTION MATERIALS TECHNICIAN CERTIFICATION BOARD
CHAPTER 10. EXAMINATION AND CERTIFICATION

[OAR Docket #14-521]

RULE MAKING ACTION:
PERMANENT final adoption.
RULES:
318:10-1-3. Areas of Certification [AMENDED]
318:10-1-4. Examination Criteria [AMENDED]
318:10-1-5. Certification [AMENDED]
318:10-1-6. Re-Certification [AMENDED]
AUTHORITY:
Highway Construction Materials Technician Certification Board; 69 O.S., § 1951 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
March 14, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
None held or requested.
ADOPTION:
March 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The revision to 10-1-3 makes editorial changes and removes the requirement for technicians to certify in Aggregates prior to obtaining certifications in other areas.

The revision to 10-1-4 removes ambiguous language regarding evaluators approved by the Board.

The revision to 10-1-5 stipulates the immediate revocation of a certification upon failure of a re-certification attempt.

The revision to 10-1-6 lowers the minimum duration of consecutive registration years to be eligible for the alternate re-certification method from 14 years to 9 years.

CONTACT PERSON

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 205.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

318:10-1-3. Areas of certification

(a) Applicants may apply for certification in various areas of construction material sampling and testing. Applicants may seek certification in one or more areas.

(b) The Board may offer training to applicants in the areas of certification. Applicants may attend the training in preparation for the certification examination(s).

(c) Applicants also may prepare for certification by sampling and/or testing construction materials under the direct guidance of certified construction materials technicians, through ~~a~~an~~temporary~~ apprentice ~~certification~~ program.

~~(d) Prior to obtaining certification in concrete, soil, or asphalt, applicants shall achieve a passing score on a written and practical examination in aggregates as prescribed by the Board.~~

318:10-1-4. Examination Criteria

(a) Applicants shall achieve passing scores on both written and practical examinations prescribed by the Board. On the written examination, a passing score shall consist of a minimum score of seventy percent (70%) on each section and a minimum average score of eighty percent (80%) on all sections combined. On the practical examination, a passing score shall consist of successful completion of a series of sampling and testing procedures.

(b) Examinations shall be administered by the Board or an evaluator approved by the Board. ~~Evaluators shall be construction materials technicians or persons approved by the Board to administer examinations.~~

(c) Applicants failing to achieve a passing score on the written examination may retake the examinations one (1) time within sixty (60) days after notification of the failing score. Applicants failing to achieve a passing score on the subsequent written examination shall not be considered for certification until re-satisfying all certification requirements.

(d) Applicants failing to achieve a passing score on any procedure in the practical examination will be given one opportunity to re-attempt that procedure between seven (7) and sixty (60) days after the notification of failing. Applicants failing to pass the procedure on the subsequent attempt shall not be considered for certification until re-satisfying all certification requirements.

318:10-1-5. Certification

(a) Applicants who achieve passing scores on both written and practical examinations and who satisfy all other certification requirements shall be construction material technicians qualified to use the title Registered Highway Construction Materials Technician or RHCMT. The title shall designate which area(s) the construction materials technician is certified to practice in the State of Oklahoma.

(b) Certification shall be effective for a ~~consecutive five (5) year period~~period of five (5) consecutive years or until a re-certification attempt is failed unless otherwise revoked or suspended by the Board.

318:10-1-6. Re-Certification

(a) Requirements for re-certification are the same as for original certification.

(b) Construction materials technicians may complete all re-certification requirements within one (1) year prior to the expiration of the current certification period. Recertification will become effective on the expiration date of the current certification period.

(c) Construction materials technicians who have maintained certification in a specific area of registration~~Materials Sampling & Testing, Asphalt, Concrete, or Aggregates~~ for a minimum of ~~14~~ 9 years with no more than twelve total months interruption of continuous certification shall have the option to omit the practical examination provided the construction materials technician has received, within the past 18 months, a satisfactory evaluation in that registration area from the Oklahoma Department of Transportation Independent Assurance Branch or its authorized representative(s).

[OAR Docket #14-521; filed 6-25-14]

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

[OAR Docket #14-738]

RULEMAKING ACTION:

PERMANENT final adoption

RULE:

325:45-1-28. Report of treatment: Procaine Penicillin administration [REVOKED]

AUTHORITY:

75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 2, 2013 to Governor; December 16, 2013 to Cabinet Secretary

COMMENT PERIOD:

December 16, 2013 through January 15, 2014

PUBLIC HEARING:

January 15, 2014

ADOPTION:
January 16, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
Rule 325:45-1-28 was added as a new rule in CY 2009 to assist Trainers in using Procaine Penicillin as a therapeutic medication. The Commission's Ad Hoc Committee on Medications, comprised of three Commissioners, representatives from the racetracks and representatives from the horsemen's organizations, recommended the repeal of the rule to make it clear that the use of Procaine Penicillin as a therapeutic medication includes an assumption of risk by Owners and Trainers as cited in the Commission's Directive on Commission-Sanctioned Thresholds. The risk is that, even if the drug is administered twenty-four (24) hours prior to post [racing] time, the concentration level of the medication in the horse's plasma or serum may, nevertheless, exceed the Commission-Sanctioned Threshold for the medication. If the concentration exceeds the threshold, then the Trainer may be found to be in violation of Rule 325:35-1-5, Trainer Responsibility, and Rule 325:45-1-4, Drugs or Medication, resulting in the following penalties: disqualification of the horse, listing of the horse as unplaced in the order of finish, loss of purse money as well as imposition of a fine to the Trainer and suspension of the Trainer's occupation license.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE AMENDMENT IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

325:45-1-28. Report of treatment: Procaine Penicillin administration [REVOKED]

~~The efficacious nature of Procaine Penicillin shall permit its use as a therapeutic medication. A Trainer or his Veterinarian shall submit, prior to post time of the first race on the day of the race, a report to the Official Veterinarian that the horse participating on that day's race card has been previously treated with a Procaine Penicillin administration. The report must contain the Procaine Penicillin administration, treatment dates, dosage, name and tattoo number of the horse, Trainer's name and race date. The presence of Procaine Penicillin in the post race sample of a participating horse is permitted under the following conditions:~~

~~(1) Report of treatment is properly filed with the Official Veterinarian.~~

~~(2) The treated horse is presented, prior to the first race, to the Official Veterinarian in order to draw an adequate blood sample for testing.~~

~~(3) The pre-race blood/serum sample shall be tested and compared to the post-race blood/serum sample. The pre-race sample shall not exceed the Commission sanctioned levels for thresholds. Should the pre-race sample levels be reported by the official testing laboratory as equal to or greater than the post-race levels, there shall be no positive affidavit filed by the laboratory.~~

~~(4) Should the post-race sample levels exceed the pre-race levels by an amount not sanctioned by the Commission, the sample shall be treated as being in violation of the rules of this Chapter. A positive affidavit will be issued by the laboratory. The Stewards may use mitigating factors in their decision to impose disciplinary action against the Trainer, horse or other parties found to have been in violation of this Chapter. The cost of pre-race testing shall be the responsibility of the Owner of the treated horse.~~

[OAR Docket #14-738; filed 7-17-14]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 65. PARI-MUTUEL WAGERING

[OAR Docket #14-739]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
Subchapter 1. General Provisions
325:65-1-44. Pools dependent upon betting interests [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013 to Governor; December 16, 2013 to Cabinet Secretary
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 15, 2014
ADOPTION:
January 16, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
Commission Staff recommended amending this rule to correct Option 7, in which the racetrack would be allowed to prohibit Trifecta wagering with six (6) or fewer betting interests scheduled to start, rather than six (6) or more interests.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE AMENDMENTS ARE CONSIDERED FINALLY ADOPTED AS SET FORTH

IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

325:65-1-44. Pools dependent upon betting interests

Unless the Commission otherwise provides, at the time the pools are opened for wagering, the Organization Licensee:

(1) may offer win, place, and show wagering on all contests with six (6) or more betting interests.

(2) may be allowed to prohibit show wagering on any contest with five (5) or fewer betting interests scheduled to start.

(3) may be allowed to prohibit place wagering on any contest with four (4) or fewer betting interests scheduled to start.

(4) may be allowed to prohibit Quinella wagering on any contest with three (3) or fewer betting interests scheduled to start.

(5) may be allowed to prohibit Quinella Double wagering on any contests with three (3) or fewer betting interests scheduled to start.

(6) may be allowed to prohibit Exacta wagering on any contest with three (3) or fewer betting interests scheduled to start.

(7) may be allowed to prohibit Trifecta wagering on any contest with six (6) or ~~more~~fewer betting interests scheduled to start.

(8) may be allowed to prohibit Superfecta wagering on any contest with seven (7) or fewer betting interests scheduled to start.

(9) may be allowed to prohibit Twin Quinella wagering on any contests with three (3) or fewer betting interests scheduled to start.

(10) shall prohibit Twin Trifecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.

(11) shall prohibit Tri-Superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.

(12) shall prohibit Twin Superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.

(13) may be allowed to prohibit Show Quinella wagering on any contest with four (4) or fewer betting interests scheduled to start.

(14) may be allowed to prohibit Exacta (n) wagering on any contest with three (3) or fewer betting interests scheduled to start.

[OAR Docket #14-739; filed 7-17-14]

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

[OAR Docket #14-740]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:75-1-2. Definitions [AMENDED]
325:75-1-3. Definition of accredited Oklahoma-Bred Thoroughbred [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013 to Governor; December 16, 2013 to Cabinet Secretary
COMMENT PERIOD:
December 16, 2013 through January 15, 2014
PUBLIC HEARING:
January 15, 2014
ADOPTION:
January 16, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
In CY 2009, the Commission adopted a new rule, Rule 325:75-1-12.1, Application Requirements, Categories and Fees for Thoroughbreds, Beginning with an Effective Date of January 1, 2010, that included a new fee, the yearly re-certification fee for Thoroughbred Stallions.

In November 2013, Ms. Tara Teel, Oklahoma-Bred Registrar, recommended amendments to the two cited rules to address the yearly re-certification of Thoroughbred Stallions as follows: (a) Add a definition for the re-certification of Thoroughbred stallions to Rule 325:75-1-2, Definitions, and (b) Add a new section regarding Thoroughbred Stallion Re-certification in Rule 325:75-1-3, Definition of Accredited Oklahoma-Bred Thoroughbred. The amendments in the two cited rules make it clear that the yearly re-certification of Thoroughbred stallions is required and set out the penalties if the horse is not recertified.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE AMENDMENTS ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

325:75-1-2. Definitions

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

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

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

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

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

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

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

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

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

"Breakage" means the net pool minus payout.

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

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

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

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

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

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

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

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

"Horse" means:

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

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

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

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

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

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

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

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

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

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

"Race" means a contest between horses.

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

"Races" mean:

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

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

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

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

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

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

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

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

post time of the day the race is originally scheduled to be run.

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

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

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

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

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

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

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

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

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

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

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

"Stallion Re-certification" means completing a re-certification application annually for Thoroughbred stallions that were previously accredited in the Stallion Registry.

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

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

"Unclaimed ticket" means:

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

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

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

"Year" means a calendar year.

325:75-1-3. Definition of Accredited Oklahoma-Bred Thoroughbred

As used in this Chapter, an accredited Oklahoma-Bred Thoroughbred horse shall mean a Thoroughbred horse which meets the requirements below:

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is domiciled in Oklahoma, stands for service in Oklahoma, and is enrolled in the Oklahoma-Bred stallion registry. An Oklahoma-Bred stallion that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. For resulting foals to be eligible for accreditation as Oklahoma-Bred racing stock, the stallion must be accredited in the Oklahoma-Bred stallion registry prior to the service that produces the resulting foal. Except for those foals eligible for accreditation that are sired by non-accredited stallions, any foals conceived prior to the stallion being accredited in the Oklahoma-Bred stallion registry will not be eligible for accreditation. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the stallion registry is submitted, at which time the stallion must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The stallion's application must be filed with the Oklahoma-Bred Registering Agency by February 1 of that breeding season. Late applications will be accepted after February 1 and through June 30 of that season. A stallion's accreditation shall not be forfeited if the stallion leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of a sale consignment, an accredited stallion returned to Oklahoma to resume his domicile within 30 days after the sale date is not required to become re-accredited. Foals conceived after sale date will be ineligible if the stallion fails to resume domicile within thirty (30) days. Should the stallion not meet the return period from the sale, the stallion must be re-accredited upon resuming his domicile in order to be eligible for breeder awards from foals conceived after the date of departure. The burden of proof relating to such race, performance, medical treatment, sale consignment or breeding shall be on the Owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

(A) **Stallions Leaving Oklahoma for Breeding Purposes in Another Hemisphere:** Approved departure for breeding purposes shall be granted by the Registering Agency upon written notification by the stallion Owner or manager as to the destination of the stallion, the anticipated date the stallion will be leaving and the anticipated date of return to Oklahoma. The stallion must re-establish his domicile in Oklahoma prior to servicing any mare for which subsequent foals conceived by service from that stallion are to be eligible for accreditation. The Owner or manager of the stallion must provide written notice

of the exact date of stallion's return and re-established domicile location in Oklahoma and the effective date for the stallion's eligibility to earn awards will be the date of return if notice is provided within 30 days of that date, or upon receipt of notice if longer than 30 days after the return of the Stallion.

(B) **Re-Accreditation of Stallions:** If a stallion leaves the State of Oklahoma for any reason other than breeding, sale consignment, performance, or medical treatment and terminates his domicile, that stallion will not be eligible to sire subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the stallion returns to Oklahoma to re-establish his domicile, pays the appropriate fees and meets all other qualifying requirements, the stallion may become re-accredited in the Oklahoma-Bred stallion registry. If a stallion stands for service outside of Oklahoma during the calendar year in which a foal(s) was conceived, any foal conceived after accreditation or re-accreditation in the Oklahoma-Bred stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise may be accredited in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The stallion shall be eligible for stallion awards only from those breedings that occurred while the accredited stallion was physically domiciled in Oklahoma. The Registering Agency may require an affidavit for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion Owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Registering Agency within thirty (30) days after written request. Further, foals conceived during that breeding season shall be ineligible for accreditation unless the required affidavit is received by the Registering Agency not later than thirty (30) days after written request. An accredited stallion who terminates his domicile in Oklahoma and later returns to Oklahoma to resume his domicile, prior to breeding, but fails to re-accredit in the Oklahoma-Bred stallion registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional $200.00 fee. All other qualifications and requirements of the Oklahoma-Bred stallion registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal by the stallion seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred stallion registry. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the stallion being enrolled under a hardship re-accreditation application in the Oklahoma-Bred stallion registry within sixty (60) days from receipt of notice by the stallion Owner that the stallion was not re-accredited in the Oklahoma-Bred stallion registry prior to breeding. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a stallion under a Hardship Application within sixty (60) days from receipt of notice that the stallion was not re-accredited prior to breeding will result in the rejection of any pending racing stock applications for foals by the stallion. The Owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the Owner or Lessee of record at the time the offspring is conceived.

(C) **Yearly Re-Certification Fee.** The Owner of the Stallion must pay a yearly re-certification fee. If paid prior to February 1, the fee is $25.00; after February 1 but before June 30, the fee is $50.00. If the yearly fee is paid after June 30, the yearly fee is $400.00. If the Stallion is not re-certified, the horse loses its accreditation in the Oklahoma-Bred Stallion Registry, and the Owner is ineligible for stallion awards for all foals resulting from that breeding season.

(2) **Broodmare.** An accredited Oklahoma- Bred broodmare is one that is domiciled in Oklahoma and is enrolled in the Oklahoma-Bred broodmare registry. An Oklahoma-Bred mare that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the broodmare registry is submitted, at which time the broodmare must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The broodmare's application must be filed with the Oklahoma-Bred Registering Agency by December 31 of the year prior to foaling. Late applications will be accepted after December 31, but must be prior to foaling. Hardship Applications are accepted at any time. A broodmare's accreditation shall not be forfeited if the broodmare leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred broodmare may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of sale consignment, an accredited broodmare returned to Oklahoma to resume her domicile within 30 days after the sale date is not required to become re-accredited. The burden of proof relating to such race, performance, medical treatment, sale consignment or breeding shall be on the Owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

(A) **Broodmares Serviced by Out-of-State Stallions:** An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be serviced by a non-accredited stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of the calendar year in which she is serviced. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall have two results: First, the broodmare loses her accreditation in the program; Second, the resultant foal is ineligible for accreditation in the Oklahoma-Bred Program, unless the broodmare resumes her domicile in Oklahoma and files for re-accreditation prior to the birth of the foal. In order for the broodmare to produce successive foals eligible for accreditation in the Oklahoma-Bred Program, beginning with foals born in 2011, she must produce a foal in Oklahoma in alternating years by an accredited stallion standing in Oklahoma.

(B) **Thoroughbred Broodmares Serviced by Non-Thoroughbred Stallions:** An accredited Oklahoma-Bred Thoroughbred broodmare that is serviced by a Non-Thoroughbred stallion shall be subject to the same regulations as Quarter Horse, Paint, or Appaloosa broodmares with regard to its accreditation and eligibility to produce accredited Oklahoma-Bred racing stock so long as the mare is serviced by a Quarter Horse, Paint, or Appaloosa stallion.

(C) **Re-accreditation Rule:** If a broodmare leaves the State of Oklahoma for any reason other than breeding, performance, sale consignment or medical treatment, the broodmare is deemed terminated and loses broodmare accreditation in the Oklahoma-Bred Program. Such broodmare will not be eligible to produce subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the broodmare returns to Oklahoma to re-establish her domicile, pays the appropriate fees and meets all other qualifying requirements, the broodmare may become re-accredited in the Oklahoma-Bred broodmare registry provided, however, a broodmare re-accredited in consecutive years shall not be eligible to produce accredited foals born in the second or subsequent, consecutive year of back to back re-accreditation, unless the application for re-accreditation includes a valid transfer of Ownership between individuals that are not related by blood or marriage, or that share the same physical address. In the event a re-accredited broodmare produces successive foals by non-accredited Oklahoma-Bred stallions, the broodmare Owner will not receive any breeder awards for the second foal. The Registering Agency may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. An accredited broodmare who terminates her domicile in Oklahoma and later returns to Oklahoma to resume her domicile, prior to foaling, but fails to re-accredit in the Oklahoma-Bred broodmare registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional $200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred broodmare registry provided however, a broodmare re-accredited in consecutive years shall not be eligible to produce accredited foals born in the second or subsequent, consecutive year of back to back re-accreditation, unless the application for re-accreditation includes a valid transfer of Ownership between individuals that are not related by blood or marriage, or that share the same physical address. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the broodmare being enrolled under a hardship re-accreditation application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare Owner that the broodmare was not re-accredited in the Oklahoma-Bred broodmare registry prior to foaling. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a broodmare under a Hardship Application within sixty (60) days from receipt of notice that the broodmare was not re-accredited prior to foaling will result in the rejection of any pending racing stock applications for foals out of that mare.

(D) Oklahoma broodmares are classified annually as one of the following and are eligible for awards from Oklahoma-Bred funds as defined, and must meet all other eligibility requirements:

(i) Category A - Accredited Oklahoma-Bred broodmare who is bred to an accredited Oklahoma-Bred stallion receives 100% of the available broodmare awards for that foal [Oklahoma conceived and foaled].

(ii) Category B - Accredited Oklahoma-Bred broodmare who is bred to a non-Oklahoma-Bred accredited stallion receives 50% of the available broodmare awards for that foal [Oklahoma foaled].

(iii) Category C - A broodmare who is accredited for the first time in the Oklahoma-Bred Program, whether or not bred to an accredited Oklahoma-Bred stallion, receives 100% of the available breeders awards for her first foal. [Re-accredited broodmares do not qualify for Category C.] All subsequent awards for the broodmare will be based upon the first two foal options listed above.

(E) **For Purposes of Qualifying for Broodmare Awards:** the Owner of an accredited Oklahoma-Bred Thoroughbred broodmare is the Owner or Lessee of record at the time of foaling.

(3) **Hardship Application.** Notwithstanding other provisions of this Section, a mare accredited in the Oklahoma-Bred Program as a racing stock (with the proper Oklahoma-Bred stamp) but which has not been accredited in the Oklahoma-Bred broodmare registry prior to producing a foal that would otherwise be eligible for accreditation in the Oklahoma-Bred Program may be accredited in the Oklahoma-Bred broodmare registry. In addition to the regular application fee, the applicant shall be charged an additional $200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon enrollment in the Oklahoma-Bred broodmare registry. Acceptance of a foal application under these circumstances by the official Registering Agency is subject to the broodmare being enrolled under a Hardship Application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare Owner that the broodmare was not accredited in the Oklahoma-Bred broodmare registry. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to enroll a broodmare under a Hardship Application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited in the Oklahoma-Bred racing stock registry and not in the Oklahoma-Bred broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) **Racing stock.** An accredited Oklahoma-Bred racehorse is one that foaled in Oklahoma, and meets the following requirements:

(A) Beginning with the foal crop of 2001 there will be two (2) classifications of Thoroughbred foals eligible for accreditation in the Oklahoma-Bred Program. The category for those foals out of an accredited Oklahoma-Bred broodmare and by an accredited Oklahoma-Bred Stallion shall be classified as Oklahoma-Bred Conceived and Foaled. The second category for foals out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion shall be classified as Oklahoma-Bred Foaled. A foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such an event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal accredited in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded [by year of birth] in the registry by an accredited foal sired by an accredited stallion. Re-accreditation shall not preclude the listed rule. Provided all other requirements are met, both classifications are eligible for accreditation and may compete in Oklahoma-Bred races.

(B) An Oklahoma-Bred that is accredited as racing stock is not accredited as breeding stock in the registry. The Owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the Owner or Lessee of record at the time of the race.

(5) **Late applications.**

(A) **Broodmare.** A broodmare may be accredited in the Oklahoma-Bred broodmare registry after December 31 of the year prior to foaling if the application for accreditation is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and the broodmare is otherwise in substantial compliance with the requirements of the registry. Domicile must be established in Oklahoma when the broodmare's application is filed with the Oklahoma-Bred Registering Agency.

(B) **Stallion.** A stallion may be accredited in the Oklahoma-Bred stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the requirements of the registry. Domicile must be established in Oklahoma when the stallion's application is filed with the Oklahoma-Bred Registering Agency.

(C) **Fee.** The fee to accredit a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the Registering Agency rejects the application but will be applied to accreditation of the horse for the next ensuing year.

(6) **Domicile exception.** An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race, performance or for medical treatment. The broodmare or stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment, and, if returned within thirty (30) days of sale date, is not required to become re-accredited. Should the broodmare or stallion not meet the return period from the sale, it must be re-accredited. The burden of proof shall be on the Owner to notify the Registering Agency of the intent to leave the state for any of the above reasons. The Registering Agency may further require verification of participation, treatment or consignment to a sale. Further, the Owner must report to the Oklahoma-Bred Registering

Agency the date the broodmare or stallion returned to Oklahoma.

[OAR Docket #14-740; filed 7-17-14]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY
CHAPTER 60. ~~OKLAHOMA~~ HOUSING TRUST FUND PROGRAM ~~RULES~~

[OAR Docket #14-696]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
360:60-1-1. [AMENDED]
360:60-1-2. [AMENDED]
360:60-1-3. [AMENDED]
360:60-1-4. [AMENDED]
360:60-1-6. [AMENDED]
360:60-1-7. [AMENDED]
Subchapter 3. Funds
360:60-3-1. [AMENDED]
360:60-3-2. [AMENDED]
360:60-3-3. [AMENDED]
360:60-3-4. [AMENDED]
360:60-3-5. [AMENDED]
360:60-3-6. [AMENDED]
360:60-3-7. [AMENDED]
360:60-3-8. [AMENDED]
Subchapter 5. Applications and Selection
360:60-5-1. [AMENDED]
360:60-5-2. [AMENDED]
360:60-5-3. [AMENDED]
360:60-5-4. [AMENDED]
Subchapter 7. Program Administration
360:60-7-1. [AMENDED]
360:60-7-2. [AMENDED]
360:60-7-3. [AMENDED]
360:60-7-4. [AMENDED]
360:60-7-5. [NEW]
AUTHORITY:
These Chapter 60 Rules are authorized by the Board of Trustees of OHFA, the Amended Trust Indenture, and the Bylaws of OHFA;
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
March 28, 2014
COMMENT PERIOD:
February 18, 2014 through March 21, 2014
PUBLIC HEARING:
March 20, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY RERFERENCE:
n/a
ANALYSIS:
These Chapter 60 Rules are intended to expand the supply of decent, safe, sanitary and affordable housing to the citizens of the State of Oklahoma.

Senate Bill 786 provided for and created the Oklahoma Housing Trust Fund (OHTF). House Bill 3065 initially capitalized the OHTF with $1 million in State appropriated funds. Through Senate Bill 786, OHFA was designated as the administrator of the OHTF for purposes of placing project funding with eligible recipients such as, for-profit and nonprofit developers, builders, units of local government, and political subdivisions.

The proposed amendments will provide clarity and additional guidance about the program. The amended rules will be more clear and concise outlining the forms of assistance, application selection, application packets, and conditions of financial assistance. The intent is to be more definitive and to structure the rules to provide consistency with other agency programs, which will ensure that diligence and stewardship is exercised. In addition, the application selection process will have more guidance which will improve the overall consistency of the program.
CONTACT PERSON:
Phillip Elzo, Agency Liaison, 100 Northwest 63rd, Suite 200, Oklahoma City, Oklahoma 73116,(405)419-8275.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

330:60-1-1. Purpose

The purpose of the Oklahoma Housing Trust Fund ("OHTF") is to address declining affordable housing resources at the federal, state, and local levels, which act as an impediment to economic development and business expansion within the state. The intent of the OHTF is to assist moderate and low-income people~~citizens~~ in obtaining safe, decent and affordable housing with priority for such housing being given to low-income households.~~citizensby the addition of new affordable housing units in accordance with local market-based demands.~~

330:60-1-2. Authority

The OHTF is authorized by Senate Bill number 786/74 O.S. Supp 1997, Sections 2901.1-2901.4,~~and 2901.2~~ as amended. Oklahoma Housing Finance Agency ("OHFA") has been designated as the State's administrative agency for purposes of administering the ~~State's~~ Housing Trust Fund. When a conflict exists between these Rules and the State Statute, the State Statute shall control.

330:60-1-3. Scope

During each year, funding~~financial assistance~~ will be made available to eligible Persons ~~persons and entitiesrepresenting project proposals~~which Apply to ~~the Housing Development Team at~~ Oklahoma Housing Finance Agency. ~~These eligible persons and entities include, but are not limited to for-profit and nonprofit developers, builders, Native American Tribes, units of local government, and political subdivisions.~~

330:60-1-4. Definitions

Masculine words, whenever used in this Chapter, shall include the feminine and neuter, and the singular includes the plural, unless otherwise specified. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. ~~Additional capitalized terms used in these Chapter 60 Rules are defined in Senate Bill number 786/74 O.S. Supp 1997, Sections 2901.1 and 2901.2, as amended. When a conflict exists between the following definitions and the State Statutes, the State Statutes shall control.~~

"Activity" means any Development or eligible funding activity allowed under this Chapter's Rules.

"Affiliate" means any Person that directly or indirectly through one (1) or more intermediaries, Controls, is Controlled By, or is Under Common Control With any other Person.

"Applicant" means any Person and each Affiliate of such Person, which has submitted an Application to OHFA seeking funding under this Chapter. Applicant includes the Owner, any other Person or entity having any right, title, or interest in the Development or Activity, and any other successors in interest.

"Application" means an Application, in the form prescribed by OHFA, from time to time, including all exhibits and other materials filed by an Applicant with OHFA in support, or in connection with funding under this Chapter. OHFA will solicit formal public input on the Application, and provide explanation of any significant changes. Staff will present the proposed Application to the Trustees for approval at a Trustee's meeting. An advisory committee shall be established by the Executive Director to assist in policy development for administration of the OHTF.

"~~Contractor~~Awardee" means any Person~~eligible entity or person~~ receiving OHTF funding ~~financial assistance~~ through OHFA.

"Development" means the Land and one (1) or more buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) building is to be part of the Development, each building must be financed under a common plan.

~~**"Eligible Applicants"** means political subdivisions (including, but not limited to, incorporated towns, cities, and counties, their trusts and authorities, and state trusts), nonprofit organizations, for-profit developers, and Native American Tribes.~~

"Extremely low-income" means a household whose total annual income does not exceed thirty percent (30%) of median household income for the area as determined by HUD, with adjustments for household size.

~~**"For-profit Developer or Builder"** means a legal entity or an individual in the business of residential housing construction or land preparation for such construction.~~

"Homeless and Chronically Homeless" means the definition(s) as set by HUD and which may be updated from time to time.

"Housing Trust Fund Documents" (including the terms **"Documents"**, and **"OHTF Documents"**) means and may include, but is not limited to, the written agreement, loan agreement, promissory note, and OHTF Application Packet.

"HUD" means the United States Department of Housing and Urban Development.

"Land" means the site(s) for each building in the Development.

"Low-income" means a ~~family or~~ household whose total annual income ~~from all sources~~ does not exceed eighty percent 80% of the ~~area~~ median household income for the area as determined by HUD~~set forth by the most recent U.S. Department of Housing and Urban Development (**"HUD"**) published income limits~~, with adjustments for household size.

"Moderate-income" means a ~~family or~~ household whose total annual income ~~from all sources~~ does not exceed one hundred percent 100% of the ~~area~~ median household income for the area as determined by HUD~~set forth by the most recent U.S. Department of Housing and Urban Development (**"HUD"**) published income limits~~, with adjustments for household size.

~~**"Non-profit Developer or Builder"** means an incorporated IRS recognized not-for-profit entity engaged in residential housing construction or land preparation for such construction.~~

"OHFA" means Oklahoma Housing Finance Agency, a State beneficiary public trust.

"OHTF Application Packet" means the annual application and accompanying forms developed annually by OHFA staff.

"Person" means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, association, cooperative, government, political subdivision (including, but not limited to, incorporated towns, cities, and counties, their trusts and authorities, and state trusts), agency or instrumentality, Community Housing Development Organization (CHDO), interlocal cooperative, nonprofit and for-profit organizations, Native American Tribes (including, but not limited to, housing authorities and trusts) or other organization of any nature whatsoever, and shall include any two or more Persons acting in concert toward a common goal, or any other legally recognized entity, or any combination of the foregoing acting in concert.

"State" means the State of Oklahoma.

"State Statute" means 74 O.S. Supp 1997, Sections 2901.1-2901.4,~~and 2901.2,~~ as amended.

~~**"Target Populations"** means moderate and low income families or households that are end users of assisted housing units. For rental projects, assisted units must serve target populations at or below eighty percent (80%) of the HUD published area median family income for the county in which the project is located. For home ownership projects, assisted units must serve target populations at or below one hundred percent (100%) of the area median family income for the county in which the project is located.~~

"Term of Affordability" means the length of time ~~assisted housing~~a Development or Activity must satisfy the OHTF requirements as determined in the annual OHTF Application Packet. ~~remain in service to meet the needs of target populations.~~

"Trustees" means the Board of Trustees of OHFA.

~~**"Unit of Local Government"** means an incorporated town, city, or county.~~

~~**"U.S. Department of Housing and Urban Development Published Income Limits"** means the family income limits derived from the U.S. Census and published annually by HUD.~~

"Very low-income" means a household whose total annual income does not exceed fifty percent (50%) of median household income for the area as determined by HUD, with adjustments for household size.

330:60-1-6. Technical assistance

OHFA will designate staff members who shall be available to provide general technical assistance regarding proposed ~~project~~Activity concepts and OHTF Program implementation. ~~The names of staff members designated to provide technical assistance may be obtained by contacting OHFA's Housing Development Team.~~

330:60-1-7. Compliance

~~The Applicant, the owners of the development, the Development Team, and~~All Persons, and the Affiliate ~~affiliate~~ of each must comply with all OHTF Documents, federal, State ~~state~~, and local laws, rules, regulations and ordinances, including but not limited to, State Statute, regulations promulgated there under, the Oklahoma Landlord Tenant Act, the Fair Housing Act, Titles VI and VII of the Civil Rights Act of 1964 as amended, and Title VIII of the Civil Rights Act of 1968 as amended. ~~OHFA will verify that the owner of the affordable housing project is maintaining records for each qualified affordable housing unit in the project. OHFA will inspect 100% of the OHTF projects according to HUD standards and will inspect the Copy of the HUD income limits used for selection of the occupant/buyer, copy of the deed restrictions, covenant running with land or other forms approved by an OHFA trustee signifying the five (5) year affordability period, documentation recognizing occupant/buyer income at time of selection, and copy of certificate of occupancy. For rental projects only, the owner must allow OHFA to perform an on-site inspection of any low-income building in the project through the end of the compliance period. OHFA will promptly notify the owner in writing if OHFA is not permitted to inspect and review, or if staff discovers that the project does not comply with the OHTF Rules. In such event, the owner will be allowed a correction period to supply missing documentation or to correct noncompliance.~~

SUBCHAPTER 3. FUNDS

330:60-3-1. Funds distribution

(a) ~~Allocation by~~ OHFA shall ~~be awarded~~award funds~~to eligible applicants~~ through a formal ~~application~~Application process. Submission requirements for Applications~~project applications~~ will be developed annually by OHFA and described in the published OHTF Application Packet.

(b) OHTF ~~Financial assistance~~funds will be awarded according to the State Statute, ~~Program~~this Chapter's Rules, and the OHTF Application Packet.

330:60-3-2. Funding activities

~~(a)~~ Eligible funding activities ~~shall~~may include, but is not limited to:

(1) New construction of rental and homeownership~~home ownership~~ units.

(2) Conversion of non-residential buildings or structures into rental or homeownership~~home ownership~~ units.

(3)Acquisition and/or rehabilitation of rental and homeownership units.

(4) Infrastructure development, when it is part of an~~atotal~~ affordable housing development. ~~project~~

(5) Rental assistance.

(6) Supportive services directly related to providing housing.

(7) Activities which make housing more accessible for Persons with disabilities.

(8) Down payment and/or closing costs assistance for eligible first time homebuyers.

(9) Other activities related to affordable housing.

330:60-3-3. ~~Allocation~~Award of funds

OHFA will make awards of OHTF Program funds to Activities located throughout the State. A minimum of sixty-five percent (65%), but not more than seventy-five percent (75%) of all ~~financial assistance~~ awards shall be made to ~~projects~~Activities located in counties with populations of less than four hundred ninety thousand (490,000)~~(490,0000)~~ according to the most recent U.S. Census.

330:60-3-4. Application fees

All ~~eligible applicants~~Applicants~~seeking financial assistance~~ shall be charged a non-refundable fee of $250.00. All ~~application~~Application fees will be used by OHFA to pay for overall program delivery and operation activities.

330:60-3-5. Forms of assistance

~~Financial assistance~~Funding may be in the form of either grants or collateralized below market rate loans. The maximum amounts will be established in the OHTF Application Packet.~~The maximum loan amount provided to any one multi-family rental application and/or project proposal shall not exceed twenty five percent (25%) of the total development costs, or five hundred thousand dollars ($500,000), whichever is less. In a home ownership project, OHTF may provide up to one hundred percent (100%) of the total development costs of the Development project. The maximum loan amount for homeownership shall not exceed five hundred thousand dollars ($500,000).~~ OHFA staff reserves the right to adjust loan maximums and terms based on the availability of funds and the most efficient and practical utilization of available resources.

330:60-3-6. ~~Maximum loan terms and interest rates~~Terms and Conditions

The ~~maximum term~~terms for all awards~~loans~~ made shall be subject to the specific requirements of any given Application~~project proposal~~. The terms will be established in the OHTF Application Packet.~~For rental projects, the term of any loan shall be fifteen (15) years, for housing infrastructure, seven (7) years, and for home ownership, three (3) years Interest rates shall be set at below market rates for a comparable period. Any requests for exceptions to the terms and conditions shall be reviewed on a case by case basis.~~ Requests for extensions and/or ~~loan~~ modifications shall be subject to a fee established at three percent (3%) of the award ~~total outstanding balance~~ at the time of request.

330:60-3-7. ~~Conditions of~~Affordability for OHTF~~funding~~~~financial assistance~~

~~Any housing unit receiving~~OHTF~~funding~~~~financial assistance~~ must remain affordable to ~~target populations~~ for a period established in the Application.~~of not less than five (5) years.~~ Affordability periods must be secured~~assured~~ by deed restrictions, covenants running with the land, or other forms ~~approved by the OHTF Program~~.

330:60-3-8. Reallocation of OHTF~~Trust~~ program funds

(a) From time to time funds may become available as the result of:

(1) ~~Project~~Activity cancellations;

(2) ~~Projects~~Activities completed under original cost estimates

(3) ~~loan~~Loan pay-offs;

(4) Other circumstances;

(b) In keeping with the State Statute, ~~Program~~this Chapter's rules, and the OHTF Application Packet, OHFA shall reallocate these funds to eligible Activity~~project~~ proposals.

SUBCHAPTER 5. APPLICATIONS AND SELECTION

330:60-5-1. ~~Project application cycle~~Application timing

Applications for funding~~financial assistance~~ shall be accepted on a continuous basis, subject to funds availability, ~~the time of financial needs,~~ and fully satisfying all key Application requirements~~evaluation criteria~~. The OHTF Program reserves the right to suspend acceptance of ~~applications~~ Applications at any time.

330:60-5-2. ~~Project applications~~Applications

Eligible ~~applicants~~Applicants seeking OHTF funds~~financial assistance~~ must submit an Application~~a written application~~ in the form prescribed in the OHTF Application Packet. Certain types of Persons may not be eligible for all Activities. All Applications~~applications~~ will be required to contain sufficient information to permit OHFA to conduct a review, assessment, and selection as described in the OHTF Application Packet~~application packet~~.

330:60-5-3. OHTF Application packets

(a) ~~Continually~~ OHFA will make available upon request, OHTF Application Packets,~~application packets,~~ which shall comply with the current State Statute~~Statutes~~ and these Chapter 60 Rules.

(b) The OHTF Application Packets~~application packets~~ shall provide information to assist Persons ~~applicants~~ in the preparation of Application submissions ~~for loan requests~~.

(c) OHTF Application Packets~~packets~~ shall include, but not be limited to, information such as ~~eligible project~~Activity descriptions, timelines and schedules~~required time frames~~, ~~project~~Activity evaluation criteria, and Activity~~project~~ budgets.

(d) Applications~~Applicationpackets~~ shall be required for all ~~financial assistance~~funding requests.

330:60-5-4. ~~Applicant~~Application selection

For the purpose of selecting Applications~~applicants~~ for ~~financial~~ assistance, OHFA shall use evaluation criteria established in the OHTF Application Packet. These evaluation criteria may include, but are not necessarily limited to the following:

(1) ~~Project~~Activity description~~: Clear and concise description of the project and its characteristics~~.

(2) Organizational Structure and Capacity. ~~Structure/Capacity: Loan applicants for OHTF assistance are required to demonstrate expertise related to the type of proposed housing activity.~~

(3) Financial Management~~: Detailed explanation of the overall financial management policies and procedures as they relate to any given project's financial management~~.

(4) Market Analysis.~~/Study: Projects consisting of twenty one (21) units or more must provide an independent third party market analysis that supports demand for the multi family project being proposed that is dated no later than twelve (12) months prior to the date of the application for assistance. Home ownership or multi family projects of less than twenty one (21) units, should provide a locally produced market study that supports demand for the single family or multi family project and must be dated no later than twelve (12) months prior to the date of application for assistance. Such studies must fully describe the methodology used and sources of all data and information.~~

(5) ~~Project~~Activity Management Control~~: Applicants are expected to provide production oversight that will ensure project completion~~.

(6) Financial Feasibility and Viability~~: Applicants must detail the exact activities and cost associated with each activity using OHTF funds. Applicant must provide a detail explanation regarding the method of repayment of the loan~~.

(7) Partnerships~~: Loan applicants are expected to describe all partners both financial and non-financial. Documentation should clearly identify the partners and the role(s) they will be assuming~~.

(8) ~~Project~~ Readiness~~: Projects must be ready to begin construction within one hundred and eighty (180) days of loan closing~~.

(9) Prior ~~Contract~~ Performance~~: Applicant's history and prior performance with public and private funding will be assessed over a period of twenty-four (24) months~~.

SUBCHAPTER 7. PROGRAM ADMINISTRATION

330:60-7-1. Program violations

The following are violations of the Housing Trust Fund Program policies and procedures:

(1) The filing of false information in an Application~~application~~ and/or ~~project~~ report;

(2) Failure of an Applicant and/or Awardee~~a contractor~~ to meet requirements of the State Statute, and/or Chapter 60 Rules;

(3) Deviation from any OHTF Documents;~~written agreement, loan agreement, and/or promissory note;~~

(4) Notice by OHFA that significant corrective actions are necessary ~~to protect the integrity of the project funds,~~ and that those corrective actions are not or cannot be affected~~effected~~ within a reasonable time, in the judgment of OHFA staff;

(5) An administrative or judicial determination that an Applicant and/or Awardee~~the contractor~~ has committed fraud, waste, or mismanagement in any current or prior activity, or federal or State program.

330:60-7-2. Corrective and remedial actions

(a) Under any of the circumstances previously described as violations during ~~the application~~any stage in the process~~or contract execution~~ OHFA may, but is not limited to, take the following actions:

(1) Condition OHTF Documents;~~written agreements and/or loan agreements;~~

(2) Withhold funds;

(3) Reduce the total amount of the ~~financial~~ award;

(4) Require immediate return of unexpended funds;

(5) Require immediate repayment of all funding~~financial assistance~~ provided by the OHTF Program;

(6) Cancel an award~~a contract~~ and recover all funds expended in an ineligible manner prior to the date of notice of cancellation;

(7) Deny future program Applications~~applications~~ and participation for a specified period of time as determined by OHFA;

(8) Debarment from program;

(b) Additionally, OHFA reserves the right under circumstances of possible program violations to request information regarding:

(1) The administrative, planning, budgeting, management, and evaluation function actions being taken to correct or remove the cause of the program violation(s);

(2) Any activities undertaken that were not in conformance with the approved program or Application~~application~~ process, or that are in non-compliance with applicable laws or rules;

(3) The ~~contractor's~~Applicant and/or Awardee capacity to carry out the approved or proposed program in a timely manner; and,

(4) Progress schedules for completing approved or proposed activities.

(c) Prior to OHFA taking any corrective and/or remedial actions, OHFA, may, in its sole discretion, issue a notice of show cause hearing.~~shall be issued by OHFA.~~ The ~~contractor~~Applicant and/or Awardee shall have thirty (30)~~ten (10) working~~business days to appear and show cause as to why the corrective and/or remedial actions should not be taken. This language shall not be construed as a limitation on the compliance monitoring and reporting requirements of the OHTF program and these Chapter 60 Rules.

330:60-7-3. ~~Contractor~~Awardee responsibilities

(a) ~~A contractor~~An Awardee under the OHTF Program shall be responsible to~~for~~:

(1) ~~Taking~~Take all actions necessary to enforce the terms of the OHTF Documents~~written agreement, loan agreement, and promissory note~~ against any private or public participant that fails to comply with applicable provisions of the OHTF Documents~~written agreement, loan agreement, promissory note~~, or any subcontract or documents resulting from them~~it~~, and to recover on behalf of OHFA, any liabilities that may arise as a result of a breach of the OHTF Documents~~written agreement, loan agreement, or promissory note~~ by any participant. Nothing in this sub section shall restrict OHFA's right to independently enforce the terms of any ~~contract agreement~~OHTF Document or any subcontracts or documents resulting from it, or to recover any sums that may become due as the result of a breach of such document ~~contract~~.

(2) ~~Complying~~Comply with all State Statutes, these OHTF rules, the OHTF Documents ~~written agreement, loan agreement, and promissory note between the contractor~~ may be released by OHFA from time to time.

(3) ~~Maintaining~~Maintain records and accounts, including, but not limited to property, personnel, and financial records that properly document and account for all ~~project~~ funds. OHFA may require specific types and forms of records. All such records and accounts shall be made available upon request by OHFA for the purpose of inspection and use in carrying out its responsibilities for administration of the funds.

~~(4) OHFA may require the contractor to provide special narrative and financial reports related to the elements of a written agreement in the forms and at such times as may be necessary or required by OHFA.~~

(~~5~~4) ~~Retaining~~Retain all books, documents, papers, records, and other materials involving all activities and

transactions related to the award of the OHTF funds~~its contract~~ for at ~~lease~~ least three (3) years from the date of the ~~final expenditure report,~~ end of the Term Affordability Period, or until any audit findings have been resolved, whichever is later. ~~Contractor shall, as~~As often as deemed necessary by OHFA, shall permit OHFA to ~~permit authorized representatives to~~ have full access to and the right to fully examine all such materials.

(~~6~~5) Promptly ~~returning~~return to OHFA, any funds received under its OHTF Documents ~~written agreement~~ that are not obligated as of the final date of the OHTF Documents~~contract period~~. Funds shall be obligated only if goods and services have been received as of the final date of the OHTF Document~~written agreement~~ period.

~~(7) Complying with OHFA's audit policy including the single audit Act of 1984 (P.L.98-502, 31 U.S.C., 7501 et seq.), as applicable to the contractor. Providing OHFA timely copies of reports on any audits that include funds received from OHFA.~~

~~(A) A public accountant or public accounting firm licensed no later than December 31, 1970, or a certified public accountant or certified public accounting firm shall perform audits.~~

~~(B) The audit shall be performed in accordance with Government Auditing Standards; Compliance Supplement for Single Audits or State and Local Governments; generally accepted auditing standards established by the American Institute of Certified Public Accountants; and OHFA.~~

(~~8~~6) ~~Complying~~Comply with all applicable State requirements.

(b) OHFA may require a special narrative and/or financial reports in the forms and at such times as may be necessary or required by OHFA. Also OHFA may require, audits pertaining to Awardee as necessary.

330:60-7-4. Review and appeals process

(a) Applicants for OHTF funding~~financial assistance~~ may review their Applications ~~applications~~ and OHFA's ~~application~~ review documents any time after OHFA has publicly released funding decisions.

(b) Appeals cannot introduce new documentation that would change the basis on which a funding decision was made. Additionally, requests for appeals shall be made within thirty (30) days after the Applicant~~applicant~~ has been notified that the Application~~application~~ was not funded.

(c) The Trustees may in their sole discretion allocate funds to an Activity if the Activity is determined by the Trustees to be in the interests of the State.

(d) A decision by the Trustees will constitute a final order.

330:60-7-5. OHFA's responsibilities

OHFA will review and verify, but is not limited to, the following duties:

(1) Maintenance of records for each Activity and/or unit.

(2) Certificate(s) of Occupancy.

(3) Physical inspection of 100% of the OHTF Developments/units according to HUD inspection standards. Owner must allow OHFA to perform inspections throughout the Term of Affordability.

(4) Correct income limits were used in selection and on-going compliance requirements.

(5) A copy of the deed restrictions, covenant running with land or other forms approved by OHFA ensuring the Term of Affordability.

(6) OHFA will notify in writing the Awardee if staff discovers that the Activity does not comply with the OHTF Rules. In such event, a correction period to supply missing documentation or to correct noncomplian

[OAR Docket #14-696; filed 7-8-14]

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

[OAR Docket #14-536]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-2 [AMENDED]
Part 3. Investigations
340:2-3-32 through 340:2-3-33 [AMENDED]
340:2-3-36 [AMENDED]
340:2-3-39 [NEW]
Part 5. Grievances
340:2-3-45 [AMENDED]
340:2-3-53 [AMENDED]
340:2-3-55 [AMENDED]
Part 7. Grievance and Abuse Review Committee
340:2-3-61 [AMENDED]
340:2-3-62 [AMENDED]
(Reference WF 13-08)
AUTHORITY:
Director of Human Services; O.S. 56 § 162; 10A O.S. § 162; 10A O.S. § 1-1-101 et seq.; 43A § 10-102 et seq.; and Section 5101 et seq. of Title 42 of the United States Code.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The proposed amendments to Chapter 2 Subchapter 3 amend the rules to: (1) comply with statutory changes effective January 1, 2013, created as a result of the child welfare lawsuit settlement, the 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code (U.S.C. 42 §§ 5101 et seq.), and related Oklahoma Department of Human Services (DHS) Pinnacle Plan; and (2) reflect clarification on programs reviews regarding the person responsible for the child of interest (PRFCI) and the vulnerable adult caretaker (VAC).

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

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

"Abandonment" means the willful intent by words, actions, or omissions of the person responsible for the child (PRFC) not to return for a child or as defined per Oklahoma Administrative Code (OAC) 340:75-3-120.

"Abuse" means, with regard to:

(A) children ~~and youth~~, harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to:

(i) non-accidental physical injury or mental injury;

(ii) sexual abuse; or

(iii) sexual exploitation; or

(B) vulnerable adults, causing or permitting the:

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

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

"Administrator" or designee means, with regard to:

(A) children in Oklahoma Department of Human Services (~~OKDHS~~DHS) custody living in a private residential facility, the chief administrative officer of the facility;

(B) children in ~~OKDHS~~DHS custody in ~~an OKDHS~~a DHS operated shelter or group home, the director of the shelter or group home;

(C) children in ~~OKDHS~~DHS custody ~~and youth in voluntary care of OKDHS~~ who live in any other setting, including any type of out-of-home placement, the applicable ~~OKDHS~~DHS district director;

(D) foster parents, the applicable ~~OKDHS~~DHS district director or deputy director;

(E) children ~~and youth~~ in residential care facilities operated by ~~Office of Juvenile Affairs (OJA) or~~the Oklahoma Department of Rehabilitation Services (ODRS), facilities that contract with or are licensed by OJA, with the exception of OJA operated secure facilities, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center~~,~~ or ~~OKDHS,~~ DHS and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs, the person charged with responsibility for administering the program;

(G) adults and children who are in Developmental Disabilities Services ~~Division (DDSD~~DDS) specialized foster care and ~~DDSD~~DDS specialized foster parents, the applicable ~~DDSD~~DDS area manager;

(H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" or **"APS"** means the DHS Adult Protective Services Unit ~~of OKDHS~~.

"Advocate" means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"Advocate general" means the OCA chief administrative officer designated in Section 1-9-112(A)(2) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(2)).

"Authorized use of physical force" by a PRFC of a child residing outside the child's home, other than a child in foster care means:

(A) the use of physical contact to control or contain a person when the PRFC reasonably considers that person to:

(i) pose a risk of inflicting harm to self or others; or

(ii) be in the process of leaving a facility without authorization; and

(B) when the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including the:

(i) grounds for belief that force was necessary;

(ii) age, gender, and strength of the parties involved;

(iii) nature of the force employed;

(iv) availability of alternative means of force or control; and

(v) extent of the harm inflicted.

"Behavioral health" means mental health, substance abuse, or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment.

"Caretaker" means, with regard to vulnerable adults, a person who has:

(A) the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

(B) assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

(C) been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act.

"Caretaker misconduct"means:

(A) ~~means~~ an act or omission that:

(i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(ii) is not found to be abuse or neglect; and

(iii) results in, or creates the risk of harm to a child, or a vulnerable adult residing at SORC, the NORCE, or Greer; and

~~(B)~~ includes, but is not limited to:

(~~i~~I) acts or omissions that contribute to the delinquency of a child;

(~~ii~~II) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(~~iii~~III) unintentionally causing mental anguish;

(~~iv~~IV) other acts exposing a client to harm or threatened harm to the health, safety, or welfare of the client; or

(~~v~~V) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by ~~DDSD~~DDS who has responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child" means any unmarried person under 18 years of age, except any person convicted of a crime specified in 10A O.S. § 2-5-101 or any person certified as an adult pursuant to 10A O.S. § 2-2-403 and convicted of a felony.

"Child placing agency" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Child with a disability" means any child who has a physical or mental impairment that substantially limits one or more of the major life activities of the child, or who is regarded as having such impairment by a competent medical professional.

"Client" means, with regard to OCA:

(A) investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) advocacy program, those individuals listed in OAC 340:2-3-71(b).

"Community-based services" or **"community-based programs"** means services or programs that maintain community participation or supervision in planning, operation, and evaluation. Community-based services and programs may include, but are not limited to:

(A) case supervision;

(B) consultation;

(C) counseling;

(D) crisis intervention;

(E) early intervention and diversionary substance abuse treatment;

(F) educational;

(G) emergency shelters;

(H) group work;

(I) home-based services;

(J) independent living;

(K) job placement;

(L) medical;

(M) sexual abuse treatment;

(N) training;

(O) transitional living;

(P) vocational, social, preventive, and psychological guidance;

(Q) volunteer recruitment and training; and

(R) other related services and programs.

"Community services worker" or **"CSW"** means any person:

(A) other than a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance ~~as defined in~~per 56 O.S. § 1025.1, to persons with developmental disabilities; or

(B) who contracts with the Oklahoma Health Care Authority to provide specialized foster care, habilitation training specialist services, or homemaker services~~,~~ to persons with developmental disabilities.

"Community Services Worker Registry" or **"CSW Registry"** means the Community Services Worker Registry established by ~~OKDHS~~DHS per 56 O.S. § 1025.3.

"Contractor's employee" means an employee of a contractor, provider, or facility when the employee is the accused person responsible for the child of interest (PRFCI) or the vulnerable adult caretaker (VAC) in an investigation opened by OCA.

"Custodian" means an individual other than a parent, legal guardian, or Indian custodian, to whom legal custody of the child has been awarded by the court. The term "custodian" does not mean ~~OKDHS~~DHS.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program where children are provided intensive services, such as psychiatric or psychological treatment.

"~~DDSD~~DDS" means ~~OKDHS~~DHS Developmental Disabilities Services ~~Division~~.

"DHS" or **"Department"**~~or "OKDHS"~~ means the Oklahoma Department of Human Services.

"Disposition" means with regard to OCA intake processes, the action taken by the OCA intake unit in response to a referral received, per OAC 340:2-3-35.

"DMHSAS" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"DRS" means the Oklahoma Department of Rehabilitation Services.

"Educational employee" means an employee of a school district, providing contract educational services on-site at a facility who is either a witness or the accused PRFCI or VAC in an OCA investigation.

"Email" means:

(A) with regard to the advocate general, an email sent to oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an email sent to oca.advocategeneral@okdhs.org;

(C) with regard to OCA investigation matters, an email sent to oca.advocategeneral@okdhs.org; and

(D) with regard to OCA intake matters, oca.advocategeneral@okdhs.org.

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

"Emergency custody" means court-ordered custody of a child prior to adjudication of the child.

"Excessive use of force" by a PRFCI, with regard to children ~~and youth~~ residing outside their homes, other than children ~~and youth~~ in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including the:

(A) grounds for belief that force was necessary;

(B) age, gender, and strength of the parties involved;

(C) nature of the force employed;

(D) availability of alternative means of force or control;

(E) extent of the harm inflicted; and

(F) method(s) of restraint and intervention approved for use with the person against whom the force was used.

"Exploitation" or **"exploit"**means with regard to vulnerable adults, ~~means~~ an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Facility" means:

(A) a public or private agency, corporation, partnership, or other entity that:

(i) operates a residential child care center; or

(ii) contracts with, or is licensed or funded by ~~OKDHS~~DHS, OJA, or ODMHSAS for the physical custody, detention, or treatment of children;

(B) ~~an OKDHS~~a DHS operated shelter;

(C) ~~an OKDHS~~a DHS, ~~OJA,~~ ODMHSAS, or DRS operated residential child care center;

(D) a community-based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for children;

(H) sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program; or

(I) SORC, NORCE, and Greer.

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

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

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

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

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for an individual in a foster placement including, but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means any person maintaining a therapeutic, emergency, specialized community ~~home~~, tribal, kinship, or foster family home, ~~who is~~ responsible for providing care, supervision, guidance, rearing, and other foster care services to a child.

"GARC" means the Grievance and Abuse Review Committee ~~described in~~per OAC 340:2-3-61.

"Group home for persons with developmental or physical disabilities" means any establishment:

(A) for not more than 12 residents who:

(i) are 18 years of age or older; and

(ii) have developmental or physical disabilities;

(B) that offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence of the residents and supportive assistance to any of the residents requiring supportive assistance; and

(C) that is not:

(i) a residential care home;

(ii) a nursing facility;

(iii) an assisted living facility;

(iv) a home in which agency companion services or specialized foster care is provided; or

(v) a home owned or leased by the service recipient or his or her legal guardian.

"Guardian" means a person appointed by a court to ensure ~~that~~ the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or **"GAL"** means a person appointed by a court, ~~pursuant to~~per 10 O.S. § 1415, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" means, with regard to children ~~and youth~~, any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including, but not limited to, sexual abuse, sexual exploitation, neglect, or dependency.

"Heinous and shocking abuse"~~includes, but is not limited to, aggravated physical abuse that results in serious bodily, mental, or emotional injury. "Serious bodily injury"~~ means ~~injury that involves~~any aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, but is not limited to, injury that involves:

(A) ~~a~~ substantial risk of death;

(B) extreme physical pain;

(C) ~~protracted~~ disfigurement;

(D) ~~a~~ loss or impairment of ~~the~~a function of a body member, organ, or mental faculty;

(E) an injury to an internal or external organ or the body;

(F) ~~a~~ bone ~~fracture~~fractures;

(G) sexual abuse or sexual exploitation;

(H) chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation that is repeated or continuing;

(I) torture ~~that includes~~including, but ~~is~~ not limited to, inflicting, participating in or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child or for the purpose of satisfying the craven, cruel, or prurient desires of the perpetrator or another person; or

(J) any other similar aggravated circumstance.

"Heinous and shocking neglect"means neglect that includes, but is not limited to:

(A) chronic neglect that includes, but is not limited to, a persistent pattern of ~~family~~ functioning in which the caregiver has not met or sustained the basic needs of a child that results in harm to the child;

(B) neglect that has resulted in a diagnosis of the child as ~~a~~an inorganic failure to thrive;

(C) an act or failure to act by a ~~parent~~person responsible for care that results in:~~the death or near death of a child or sibling, serious physical or emotional harm, sexual abuse, sexual exploitation, or presents an imminent risk of serious harm to a child;~~

(i) serious physical or emotional harm;

(ii) sexual abuse or sexual exploitation;

(iii) death or near death of a child or sibling;

(iv) presents an imminent risk of serious harm to a child; or

(D) any other similar aggravating circumstance.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, Inc., et al. vs. Hissom Memorial Center, et al., Case No. 85-CV-437-GKF.

"Hotline" means the statewide Oklahoma Abuse and Neglect Hotline, toll free telephone number, 1-800-522-3511, maintained by ~~OKDHS~~DHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, seven days a week.

"ICF/ID" or **"Intermediate Care Facility for the Intellectually Disabled,"** also known as a "specialized facility for the intellectually disabled," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for ~~mentally retarded~~intellectually disabled persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

(A) a person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, intellectual disability, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and communicate responsible decisions is impaired to such an extent ~~that~~ the person lacks the capacity to manage financial resources or meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant

to the Oklahoma Guardianship and Conservatorship Act (Title 30 of the Oklahoma Statutes).

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

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

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

"Infant" means a child 12 months of age or younger.

"In-home supports" or **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) ~~as defined in~~per Section 1915(c) of the Social Security Act and administered by ~~OKDHS DDSD~~DHS DDS~~that are~~ provided in the service recipient's home and are not residential services ~~as defined in~~per OAC 340:100-5-22.1 or group home services ~~as defined in~~per 10 O.S. § 1430.2.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Investigation" means, regarding a:

(A) child, a response to an allegation of abuse or neglect that involves a serious and immediate threat to the safety of a child or vulnerable adult, making it necessary to determine:

(i) the current safety of the child and the risk of subsequent abuse or neglect; and

(ii) whether abuse or neglect of the child occurred; or

(B) vulnerable adult, a response to an allegation of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult, making it necessary to determine whether maltreatment of the vulnerable adult occurred.

"Investigative results" means a written response stating one of the following findings:

(A) regarding a child:

(i) "substantiated" means OCA has determined, after an investigation of a report of child abuse or neglect of a child, and based upon some credible evidence, that child abuse or neglect occurred;

(ii) "unsubstantiated" means OCA has determined, after an investigation of a report of child abuse or neglect of a child, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(iii) "ruled out" means OCA has determined, after an investigation of a report of child abuse or neglect of a child that no child abuse or neglect occurred.

(B) regarding a vulnerable adult:

(i) "substantiated" means that the greater weight of the available evidence establishes the alleged maltreatment occurred;

(ii) "not substantiated" means the greater weight of the available evidence indicates the alleged maltreatment did not occur;

(iii) "ruled out" means no evidence was discovered that indicates the alleged maltreatment occurred; or

(iv) "defer" means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

"Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation or sexual exploitation of vulnerable adults ~~as defined in~~per 43A O.S. § 10-103; or abuse, neglect, sexual abuse or sexual exploitation of children as defined in 10A O.S. § 1-1-105.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward one's self or others.

"Mental health facility" means a mental health or substance abuse treatment facility as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act ~~as defined in~~per 43A O.S. § 5-502(10).

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury, such as~~,~~ a laceration, bruise, or burn, and an injury confirmed by a physician, dentist, nurse, or other health care professional.

"Multidisciplinary child abuse team" means any team established ~~pursuant to~~per 10A O.S. § 1-9-102 of three or more persons who are trained in the prevention, identification, investigation, prosecution, and treatment of physical and sexual child abuse and who are qualified to facilitate a broad range of prevention and intervention-related services and services related to child abuse. For purposes of this definition, "free-standing" means a team not used by a child advocacy center for ~~its~~ accreditation.

"Near death" means a child is in serious or critical condition as verified by a physician, ~~a~~ registered nurse, or other licensed health care provider. Verification of medical condition of a child may be given in person or by telephone, mail, ~~electronic mail~~email, or ~~facsimile~~fax.

"Neglect" means, with regard to:

(A) children ~~and youth~~is:

(i) the failure or omission to provide any of the following:

(I) adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education;

(II) medical, dental, or behavioral health care;

(III) supervision or appropriate caretakers; or

(IV) special care made necessary by the physical or mental condition of the child;

(ii) the failure or omission to protect a child from exposure to any of the following:

(I) the use, possession, sale, or manufacture of illegal drugs;

(II) illegal activities;

(III) sexual acts or materials that are not age-appropriate; or

(iii) abandonment; or

(B) vulnerable adults:

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

(ii) the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

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

"OCA" means the ~~OKDHS~~DHS Office of Client Advocacy.

"OCA intake" means the centralized intake system maintained by OCA that receives referrals of alleged abuse, neglect, verbal abuse, financial neglect, and financial exploitation involving vulnerable adults.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" or **"ombuds"**~~,~~ means "advocate," as defined in this Section.

"Person responsible for the ~~child~~child's health, safety, or welfare (PRFC)" means ~~a person responsible for a child's health, safety, or welfare who is~~ an agent or employee of:

(A) a public or private residential home, institution, or facility above the level of foster family care;

(B) a day treatment program per 10 O.S. § 175.20; or

(C) an owner, operator, or employee of a child care facility per 10 O.S. § 402~~.~~; or

(D) any other adult residing in the home of the child.

"Person responsible for the child of interest (PRFCI)" means a person responsible for the child who is the subject of an investigation involving allegations of abuse or neglect.

"Personal support team" or **"team"**, formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Preponderance of the evidence" means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof that is more probable than not.

"Problem resolution" means verbal or written communications that seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Protective custody" means custody of a child taken by law enforcement or designated employee of the court, without a court order.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, ~~OKDHS~~DHS to provide community-based residential or vocational services to persons with intellectual or developmental disabilities, or contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with intellectual disabilities through the Home and Community-Based Waiver.

"Referring party" means the individual who informs OCA,~~or~~calls the Hotline, ~~verbally~~ or reports in writing that an incident occurred.

"Reporting party" means the individual who initially tells someone verbally or in writing that an incident occurred.

"Residential child care facility" means a 24-hour-a-day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents.

"Risk" means the likelihood that an incident of child abuse or neglect will occur in the future.

"Safety analysis" means action taken by ~~OKDHS~~DHS in response to a report of alleged child abuse or neglect that may include an assessment or investigation based upon an analysis of the information received according to ~~OKDHS~~DHS adopted priority guidelines and other criteria.

"Safety evaluation" means an ~~OKDHS~~DHS evaluation of a child's situation using a structured, evidence-based tool to determine if the child is subject to a safety threat.

"Safety threat" means the threat of serious harm due to child abuse or neglect occurring in the present or in the very near future and without the intervention of another person, a child would likely or in all probability sustain severe or permanent disability or injury, illness, or death.

"Secure facility" means a facility that is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the juvenile being detained has freedom of movement within the perimeter of the facility, or a facility that relies on locked rooms and buildings, fences, or physical restraint in order to control resident behavior. This definition excludes OJA operated secure facilities.

"Self-neglect" means the action or inaction of a vulnerable adult that causes the person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Serious physical injury" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful~~;~~, near drowning, lacerations involving injuries to tendons or

organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks without a clear, known explanation.

"Sexual abuse" means, with regard to:

(A) children ~~and youth~~, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a person; or

(B) vulnerable adults:

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

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

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

"Sexual exploitation" ~~means,~~ with regard to:

(A) children,~~and youth~~includes, but is not limited to, allowing, permitting~~:~~, or encouraging a child to engage in:

(i) ~~encouraging a child or youth to engage in sexual acts with others or~~ prostitution, as defined by state law, by a person responsible for the child's ~~or youth's~~ health, safety, or welfare; or

(ii) ~~encouraging, or engaging in~~ the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child ~~or youth in those acts as defined by state law or~~ by a person responsible for the child's health, safety, or welfare; or

(B) vulnerable adults, includes, but is not limited to, a caretaker's causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by state law.

"Specialized foster care" means foster care provided to a child or adult in a ~~DDSD~~ DDS certified and monitored specialized foster or agency-contracted home, funded through the ~~DDSD~~DDS administered Home and Community Based Waiver~~HCBW~~ Services Program.

"State office" means the DHS administrative offices ~~of OKDHS~~ in Oklahoma City, Oklahoma.

"State office administrator" including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of children~~, youths,~~ and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of ~~OKDHS~~DHS or ~~an an OKDHS~~a DHS operated shelter or residential facility, or of an agent or ~~OKDHS~~DHS contractor or child placement agency, or the ~~OKDHS~~DHS Child Welfare Services (CWS) director;

(B) grievances regarding a decision, behavior, or action by ~~an OKDHS~~a DHS employee, agent, contractor, foster parent, or any person residing in the same placement setting, the ~~OKDHS~~DHS CWS director;

(C) ~~DDSD~~DDS clients and director; and

(D) other ~~OKDHS~~DHS clients, and the appropriate chief officer or director.

"Subpoena" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records or other designated items with them.

"Suspicious injury" means an injury that:

(A) includes, but is not limited to, an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior, or normal activities of daily living;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

"Unauthorized use of force" means, with regard to children ~~and youth~~ residing outside their homes, other than children ~~and youth~~ in foster care, a use of force that is not an authorized use of physical force as defined in this Section. It includes, unacceptable physical handling of, and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a chokehold, smothering, spitting, head butting, and tugging.

"Unexplained injury" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors, by a caretaker or other person providing services

to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to:

(A) provide adequately for the care or custody of him or herself;

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

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

(D) protect him or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

"Vulnerable adult caretaker" means a person responsible for a vulnerable adult's health, safety, or welfare including:

(A) Hissom class members;

(B) SORC, NORCE, and Greer residents; and

(C) vulnerable adults receiving services from a community services provider, community services worker, Medicaid personal care services provider, or Medicaid personal care assistant, as those terms are defined per 56 O.S. § 1025.1.

"Ward" means a person over whom a guardianship has been given by the court.

~~**"Youth"** means, with regard to:~~

~~(A) OCA investigation programs, a person over 18 years of age in OJA custody residing in an OJA operated facility or a facility that contracts with OJA; or~~

~~(B) OCA grievance programs, a person over 18 years of age in OJA custody or OKDHS voluntary care.~~

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigations

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 1-9-112(A)(3)(d) and (e) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(3)(d) and (e)) gives the Office of Client Advocacy (OCA) the responsibility to investigate allegations of abuse, neglect, sexual abuse, sexual exploitation, and misconduct by a person responsible for the child:

(i) residing outside their own homes regardless of custody, other than children in foster care;

(ii) receiving services from a community services provider or a community services worker, ~~as defined in~~per 56 O.S. § 1025.1;

(iii) in a day treatment program per 10 O.S. § 175.20; and

(iv) residing in a state institution ~~listed in~~per 10 O.S. § 1406.

(B) 43A O.S. § 10-105 gives the Oklahoma Department of Human Services (~~OKDHS~~DHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. ~~OKDHS~~DHS confers on OCA the responsibility to conduct ~~those~~ investigations that involve:

(i) Hissom class members;

(ii) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer); and

(iii) vulnerable adults receiving services from a community services provider, ~~a~~ community services worker, ~~a~~ Medicaid personal care services provider, or ~~a~~ Medicaid personal care assistant, as those terms are defined in 56 O.S. § 1025.1.

(C) OCA investigates, pursuant to Oklahoma Administrative Code (OAC)~~340:75-3-8.3(3)~~340:75-3-430, reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.

(2) **Scope.** OCA conducts ~~administrative~~ investigations of maltreatment allegations listed in this subsection. All of the individuals listed, who are clients of the facilities and providers that provide residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. Per 10A O.S. § 1-9-112, OCA investigates allegations of:

(A) abuse,~~and~~ neglect,~~of children by persons responsible for a child's health, safety, or welfare, and caretaker misconduct with regard to children in residential care above the level of foster care regardless of custody including, but not limited to children~~sexual abuse, sexual exploitation, and caretaker misconduct of children by persons responsible for a child regardless of custody residing outside their own homes, other than children in foster care or children in the custody of the Oklahoma Office of Juvenile Affairs (OJA) and placed in an OJA Secure facility as defined by Section 2-1-103 of Title 10A of the Oklahoma Statutes. These investigations include, but are not limited to:

(i) in ~~OKDHS~~DHS operated or licensed shelters and group homes;

(ii) and ~~youth~~children in facilities operated by, licensed by, or contracting with ~~the Office of Juvenile Affairs (~~OJA~~)~~;

(iii) in community-based youth services shelters and community intervention centers that contract with OJA ~~pursuant to~~per 10A O.S. § 2-7-305;

(iv) in facilities operated by or contracting with Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS);

(v) in facilities operated by the J.D. McCarty Center of Oklahoma;

(vi) residing in or attending educational classes at facilities operated by the Oklahoma Department

of Rehabilitation Services (ODRS), the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and

(vii) receiving services from a community services worker or ~~a~~ community services provider ~~as those terms are defined in~~per 56 O.S. § 1025.1;

(B) abuse and neglect of, and caretaker misconduct with regard to, children in day treatment programs per 10 O.S. § 175.20, including sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program;

(C) abuse, neglect, verbal abuse, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;

(D) abuse, neglect, verbal abuse, and exploitation of Hissom class members living in Oklahoma and who do not reside in a private intermediate care facility for the intellectually disabled (ICF/ID); and

(E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker, community services provider, Medicaid personal care services provider, or Medicaid personal care assistant, per 56 O.S. § 1025.1.

(3) **Purpose.** OCA conducts independent and objective ~~administrative~~ investigations of suspected maltreatment of clients by PRFCIs and vulnerable adult caretakers (VACs) in order to:

(A) protect clients from further maltreatment;

(B) deter and prevent maltreatment;

(C) provide relevant evidence in administrative and judicial proceedings;

(D) rule out unfounded allegations; and

(E) hold violators accountable.

(b) **Confidentiality of Office of Client Advocacy records.** State and federal statutes and regulations~~,~~ including, but not limited to, 10A O.S. § 1-9-112(C); 10A O.S. § 1-6-102; 56 O.S. § 183; 43A O.S. § 10-110; and OAC 340:65-1-2 require confidentiality for certain ~~OKDHS~~DHS records. Information regarding clients is confidential and protected from unauthorized use. Only authorized individuals are permitted access to case records or provided information from OCA case records.

(1) **OCA investigations involving children ~~and youth~~.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving children ~~and youth~~ include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.

(A) 10A O.S. §§ 2-6-102 through 106 apply to OCA investigations involving children ~~and youth~~ in OJA custody and in facilities that contract with OJA.

(B) 10A O.S. §§ 1-2-106, 1-2-107, 1-6-102 et seq., and 1-6-107 apply to investigations involving children, regardless of custody, residing outside their own homes.

(C) OAC 340:75-1-42 through 340:75-1-46 ~~apply~~applies to OCA investigations involving children in ~~OKDHS~~DHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving vulnerable adults include, but are not limited to, (A) through (C) of this paragraph.

(A) **Disclosure to meet client's protection and other needs.** When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

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

(ii) the attorney representing an alleged victim in the matter under investigation;

(iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;

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

(v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;

(vi) the provider for a vulnerable adult; and

(vii) other public or private agencies or persons authorized by ~~OKDHS~~DHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) **Disclosure to district attorney and law enforcement.** District attorneys~~,~~ their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) **Disclosure to others and the news media.** In other situations, OCA investigative information is considered confidential ~~under~~per 43A O.S. § 10-110(A) and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs administrator for investigations, or the ~~OKDHS~~DHS Office of Communications for a detailed explanation of ~~OKDHS~~ DHS confidentiality rules.

340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, ~~and~~or exploitation

(a) **Reporting abuse or neglect of a child under ~~the age of~~ 18 years of age.** Persons having reason to believe that a child under ~~the age of~~ 18 years of age is a victim of abuse or neglect are required ~~by~~per Section 1-2-101 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-2-101) to promptly report it to the Oklahoma Department of Human Services (~~OKDHS~~DHS) Abuse and Neglect Hotline (Hotline) at 1-800-522-3511. Any allegation of abuse or neglect reported in any manner to a DHS county office is immediately referred to the Hotline ~~by OKDHS~~, per Section 10A O.S. § 1-2-101.

(b) **Reporting abuse, neglect, verbal abuse, or exploitation of a vulnerable adult.** Any person having reasonable cause to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation ~~shall make a report as soon as the person is aware of the situation~~reports to ~~OKDHS~~DHS or the municipal police department or sheriff's office in the county where the suspected abuse, neglect, verbal abuse, or exploitation occurred as soon as the person is aware of the situation. The reporting requirement applies to providers, ~~as defined in~~per Oklahoma Administrative Code (OAC) 340:2-3-2, and the provider's employees and agents.

(c) **Reporting caretaker misconduct regarding a child ~~or youth~~.** ~~Persons who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, has occurred with regard to a child or youth, promptly refer the allegation to the OKDHS Abuse and Neglect Hotline. The Office of Client Advocacy (OCA) may conduct an investigation when~~When the ~~OKDHS~~DHS Specialized Placement Unit~~, OKDHS~~ Child Care Licensing office, the Office of Juvenile Affairs, or another source determines a:

(1) ~~a~~ pattern of misconduct exists by a facility or person responsible for the child of interest (PRFCI) ~~or a facility,~~; or

(2) facility administration fails to take appropriate corrective action in response to an investigation or written plan of compliance, a report should be made to the Hotline.

(d) **Reporting caretaker misconduct regarding a vulnerable adult.** Persons who have reason to believe caretaker misconduct, ~~as defined in~~per OAC 340:2-3-2, has occurred with regard to a vulnerable adult residing at the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), promptly ~~refer the allegation to OCA intake~~reports the allegation to DHS.

(e) **Reporting a vulnerable adult's death, serious physical injury, or sexual assault.** In addition to the mandatory reporting requirements per OAC:340:2-3-33(b) the events listed in (1) through (7) of this subsection are reported to OCA intake when a vulnerable adult's caretaker is alleged to be involved in the vulnerable adult's:

(1) violent death, whether apparently homicidal, suicidal, or accidental;

(2) death under suspicious, unusual, or unnatural circumstances;

(3) death when the vulnerable adult is a resident of SORC, ~~the~~ NORCE, or Greer;

(4) death when the vulnerable adult is a Hissom class member;

(5) serious physical injury, per OAC 340:2-3-2;

(6) physical injury when the injury is:

(A) unexplained; and

(B) suspicious; or

(7) rape, sodomy, or other sexual activity prohibited by state law.

(f) **Interference, retaliation, or discrimination related to the reporting obligations required by the Oklahoma Children's Code and the Protective Services for Vulnerable Adults Act prohibited.**

(1) Per 10A O.S. § 1-2-101, the reporting obligations under the Oklahoma Children's Code are individual and no employer, supervisor, or administrator interferes with the reporting obligations of any employee or other person or in any manner discriminate or retaliate against the employee or other person who in good faith reports suspected child abuse or neglect, or who provides testimony in any proceeding involving child abuse or neglect. Any employer, supervisor, or administrator who discharges, discriminates, or retaliates against the employee or other person is liable for damages, costs, and attorney fees.

(2) Per 43A O.S. § 10-104, no employer terminates the employment, prevents or impairs the practice, or occupation of, or imposes any other sanction on any employee solely for the reason the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act.

(g) **Immunity from liability for good faith report of abuse, neglect, or exploitation of a child or vulnerable adult.** Per 10A O.S. § 1-2-104, the Oklahoma Children's Code ~~(10A O.S. § 1-2-104)~~ and 43A O.S. § 10-104, the Oklahoma Protective Services for Vulnerable Adults Act ~~(43A O.S. § 10-104)~~, any person exercising good faith and due care in making a report of alleged abuse, neglect, or exploitation has immunity from any civil or criminal liability the person might otherwise incur. The person has the same immunity with respect to participation in any judicial proceeding resulting from the report.

(h) **Failure to report abuse, neglect, or exploitation of a child or vulnerable adult.** Any person who knowingly and willfully fails to promptly report abuse, neglect, or exploitation as required by the provisions of 10A O.S. § 1-2-101 and 43A O.S. § 10-104 may be subject to administrative action or criminal sanctions upon conviction. In addition, failure to report by ~~an OK~~a DHS employee may result in disciplinary action.

(i) **False report of abuse, neglect, or exploitation of a child or vulnerable adult.**

(1) Per 10A O.S. § 1-2-101, any person who knowingly and willfully makes a false report regarding alleged maltreatment of a child, or a report that the person knows lacks factual foundation, may be reported by ~~OKDHS~~DHS to local law enforcement for criminal investigation, and~~,~~ upon conviction, is guilty of a misdemeanor.

(2) Per 43A O.S. § 10-104, any person who willfully or recklessly makes a false report of abuse, neglect, or exploitation of a vulnerable adult may be liable in a civil action for ~~any~~ actual damages ~~suffered by the person reported~~ and for ~~any~~ punitive damages set by the court or jury regarding the reported party.

(j) **Method of reporting.**

(1) Each report alleging abuse or neglect of a child is screened by the ~~OKDHS~~DHS ~~Abuse and Neglect Hotline (~~Hotline~~)~~ in compliance with Child Welfare Services policies and procedures. Each accepted report of a child within Office of Client Advocacy (OCA) investigative authority and scope is assigned to OCA for possible investigation. Reports may be phoned to the Hotline at 1-800-522-3511, faxed to 405-936-0922, emailed to STO.Hotline.Referral@OKDHS.org, or mailed to Child Abuse and Neglect Hotline, ~~OKDHS~~DHS, PO Box 25352, Oklahoma City, Oklahoma 73125-0352.

(2) Reports of abuse, neglect, or exploitation of a Hissom ~~Class Member~~class member, resident of SORC, NORCE, or Greer, or other vulnerable adults receiving Developmental Disabilities Services ~~Division~~(DDS) services are reported to OCA except for weekends and after business hours when the reports are made to the Hotline at 1-800-522-3511. Reports to OCA may be phoned to 1-800-522-8014 or ~~405-525-4850~~405-522-2720, faxed to ~~405-525-4885~~405-522-2680, or emailed to oca.intake@okdhs.org.

(3) Reports of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult~~,~~ receiving services from a Medicaid personal care services provider are reported to the Adult Protective Services office, except for weekends and after business hours when the reports are made to the Hotline at 1-800-522-3511.

(4) Reports of allegations may be submitted by completing Form 15GN001E, Office of Client Advocacy-Intake Referral, and sent to the applicable intake unit.

(k) **Confidentiality of reporting party's identity.** The identity of the person who reports abuse or neglect of a child ~~or youth~~ per 10A O.S. § 1-6-102(H)(7), or abuse, neglect, or exploitation of a vulnerable adult per 43A O.S. § 10-105.1(C)(2), is kept confidential and is not disclosed. ~~Anonymous~~DHS accepts anonymous reports of abuse, neglect, or exploitation of a child or vulnerable adult ~~are accepted by OKDHS~~.

(l) **Staff training regarding reporting obligations.** Each administrator ensures the employee receives relevant training regarding the employee's responsibility to report a child or vulnerable adult's alleged abuse, neglect, or exploitation. Except for employees of a ~~Developmental Disabilities Services Division (DDSD~~DDS~~)~~ provider, the employee receives the training within 30 calendar days of the employee's initial employment and receives subsequent annual training ~~annually~~. ~~The training for the~~~~DDSD~~DDS provider employee training is as specified per OAC 340:100-3-38 et seq.

340:2-3-36. Office of Client Advocacy investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.**

(1) Per Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma Department of Human Services (~~OKDHS~~DHS) OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines per 10A O.S. §1-2-105 and Oklahoma Administrative Code (OAC) 340:75-3-130.

(2) Per 43A O.S. § 10-105 ~~OKDHS~~DHS OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult.

(b) **Joint investigations with law enforcement conducted when report regards a child.** Per 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

(1) whenever feasible for investigations involving cases of child sexual abuse, serious physical abuse, and serious neglect;

(2) to enhance the investigative process and maximize services provided to affected children and families; and

(3) to consult with other MDT team members, as appropriate.

(c) **Notice of investigation provided to person responsible for the child of interest (PRFCI).** Per 10A O.S. § 1-2-106, at initial contact with a (PRFCI who is the subject of an investigation pursuant to the Oklahoma Children's Code, ~~OKDHS~~DHS advises the PRFCI of the specific complaint or allegation made against him or her.

(d) **Written description of the investigation process provided to PRFCI.** When ~~OKDHS~~DHS is unable to locate the PRFCI who is the subject of an investigation, ~~OKDHS~~DHS as soon as possible after initiating the investigation of the person, provides the person a brief and easily understood written description of the investigation process that includes information detailed in 10A O.S. § 1-2-106.

(e) **Reportable incident regarding vulnerable adult reported by ~~OKDHS~~DHS to law enforcement.** Per 43A O.S. § 10-104, the investigation of a vulnerable adult by ~~OKDHS~~DHS includes notification of the allegation to the local law enforcement agency.

(f) **Notice of investigation provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**

(1) Per 43A O.S. § 10-105.1, as soon as possible after initiating an investigation of a referral regarding a vulnerable adult, ~~OKDHS~~DHS provides ~~to~~ the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and easily understood written description of the investigation process, whether or not the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult.

(2) If the vulnerable adult retains capacity to consent to voluntary services and does not wish for a caretaker

or next of kin to receive notification of the investigation, ~~OKDHS~~DHS abides by the vulnerable adult's wishes.

(g) **Facility or provider responsibility to arrange document production, visits, and interviews.** The applicable facility administrator or designee arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator who employed the accused PRFCI or VAC at the time of the alleged incident informs the employee of:

(A) the OCA investigator's name and telephone number;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (l) of this Section, using Form 15IV005E, ~~Investigations of Client Maltreatment -~~ Rights and Responsibilities of Accused Caretakers; Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused ~~OKDHS~~DHS Employees; Form 15IV004E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused ~~OKDHS~~DHS Employees; or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the PRFCI or VAC without divulging the identity of the reporting party or the substance of the evidence.

(2) When the PRFCI or VAC is subject to the Community Services Worker (CSW) Registry maintained by the ~~OKDHS office of General Counsel~~DHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant is found in OAC 340:100-3-39.

(A) The facility or provider administrator or designee promptly completes Form 06PE059E, Rights and Responsibilities of Community Services Worker in an Investigation of ~~Abuse, Neglect, or Exploitation~~Maltreatment, per OAC 340:100-3-39(e)(2)(C).

(B) The facility or provider administrator or designee mails Form 06PE059E to the worker when it is not possible to hand deliver it to the worker who is no longer employed by the provider.

(h) **OCA access to victims, employees, clients, facilities, files, and other records.**

(1) The applicable facility or provider administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.

(2) During an OCA investigation, ~~OKDHS~~DHS, Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(3) Denial of access may be grounds for a contract termination between ~~OKDHS~~ DHS and the contractor.

(i) **Court order allowing entry to premises, access to and exam of the child, and access to child's medical, psychological, or psychiatric records.** Per 10A O.S. § 1-2-105:

(1) the investigation may include a medical, psychological, or psychiatric examination of any child in the home or in out of home placement. When admission to the home, school, or any place where the child may be located cannot be obtained, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the PRFCI, or the person in charge of any place where the child may be located, to allow entrance for the interview, examination, and investigation;

(2) when the PRFCI does not consent to the ~~OKDHS~~DHS requested medical, psychological, or psychiatric examination of the child, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the examination to be made at the times and places designated by the court; and

(3) the investigation may include an inquiry into the possibility the child has a history of mental illness. When the PRFCI does not allow ~~OKDHS~~DHS access to requested behavioral health records or treatment plans that may be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, allows ~~OKDHS~~DHS by order, access to the records pursuant to terms and conditions prescribed by the court.

(j) **Court order allowing entry to premises, private access to the vulnerable adult, or records and documentation.**

(1) Per 43A O.S. § 10-105, the ~~OKDHS~~DHS investigation includes:

(A) a visit to the home or other place of residence of the person who is the subject of the report;

(B) a private interview with the person who is the subject of the report; and

(C) consultation with persons who have knowledge of the circumstances.

(2) When in the course of an investigation, ~~OKDHS~~DHS is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult, ~~OKDHS~~DHS may petition the court for an order allowing entry to the premises or private access to the vulnerable adult per 43A O.S. § 10-105.

(3) The court makes a finding of probable cause of the vulnerability of the adult before issuing the order.

(4) When documentation, or access to records, or other information relating to the alleged vulnerable person is denied, ~~OKDHS~~DHS may petition the court for an order allowing entry or access. The petition states the name and address of the person who is the subject of the report and alleges specific facts sufficient to show the circumstances of the person are in need of investigation.

(5) When it is necessary to forcibly enter the premises, ~~OKDHS~~DHS enters, accompanied by a peace officer per 43A O.S. §~~.~~10-105.

(k) **Discrimination, retaliation, or interference in an OCA investigation prohibited.**

(1) 10A O.S. § 1-2-101(B)(4) prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding.

(2) 21 O.S. § 455 makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation ~~under~~per 43A O.S. ~~An OKDHS~~A DHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104(K) states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. §§ 10-101 et seq.

(l) **Rights and responsibilities of accused PRFCI or VAC.** The rights and responsibilities of the accused PRFCI or VAC during an OCA investigation are outlined in this subsection, except when the accused is a community services worker ~~or a Medicaid personal care assistant~~, whose rights and responsibilities are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused PRFCI or VAC has the right to:

(A) be advised of the nature of each allegation made against him or her;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the allegation;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a PRFCI's or VAC's rights and responsibilities in OCA investigations, including the right to seek counsel;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation when the investigation involves a VAC; and

(I) be notified in writing by OCA of the outcome of the investigation when the investigation involves a PRFCI.

(2) **Responsibilities.** During the investigative process, the accused PRFCI or VAC has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling interviews;

(C) refrain from action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(m) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, ~~as defined in~~per OAC 340:2-3-2, who is either a witness or the accused PRFCI or VAC in an OCA investigation.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for client protection.

(3) OCA investigates educational employees who meet the definition of a caretaker ~~in~~per OAC 340:2-3-2.

(n) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused PRFCI or VAC in an investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(o) **Document collection and review.** The investigator gathers and reviews relevant documents including, but not limited to:

(1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(2) medical records;

(3) photos; and

(4) facility or provider logs, and activity and tracking documents.

(p) **Investigative interviews.** ~~If~~When an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person, other than the investigator and the person interviewed, is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the person interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee.

(q) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment.

(r) **Conducting the investigation.** OCA investigators conduct investigations in a professional manner.

(s) **Recording investigation interviews.** OCA interviews are audio recorded. To maintain information confidentiality provided in an interview, recording by the person interviewed or by anyone else in attendance is not permitted. Recordings of interviews remain with the OCA investigative file. OCA files and recordings are not public documents.

(t) **Presentation of the allegation.** If, during the course of an investigation, a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the administrator of the facility or provider of the new allegation and the new potential accused caretaker.

(u) **Opportunity for accused caretakers to respond.** Following the initial interview of the accused caretaker, if the investigator obtains information that the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(v) **Interpreter services for persons who are deaf or hard of hearing.** When the person who is deaf or hard of hearing is interviewed by OCA, the facility or provider agency that employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for ~~OKDHS~~DHS employees and clients are provided per OAC 340:1-11-10.

(w) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the facility, provider administrator, or designee that employs the caretaker. ~~If~~When a reasonable time has passed without being able to schedule an interview, the investigator contacts the facility or provider administrator to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker ~~that~~ the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the letter only requests their participation in an interview.

(x) **Exit notice.** Within 30 calendar days of assignment of a referral ~~to be investigated~~ for investigation, the assigned OCA investigator contacts ~~by email~~ the applicable facility or provider administrator or designee by email when the information gathering portion of the investigative process is completed. The investigator informs the facility or provider administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(y) **The written investigative report.** After completing the information-gathering portion of the investigative process, the investigator prepares a written investigative report containing:

(1) the allegation(s) in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney ~~whether~~ to consider further investigation;

(5) the applicable definition(s) of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) per this (t) - (v) of this Section;

(7) a list of the involved parties, their titles and roles in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter employed during the investigation;

(9) an explanation of the basis for the finding(s);

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) areas of concern relating to the referral identified during the investigation regarding facility, provider, or ~~OKDHS~~DHS practices or procedures that have implications for the safety, health, or welfare of clients, but do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report provided upon request; and

(14) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

(z) **OCA findings and completion time requirements regarding investigations involving a child in ~~OKDHS~~DHS custody.** Per 10A O.S. § 1-9-112.1, the OCA investigation of a report of abuse or neglect of a child in ~~OKDHS~~DHS custody results in a written report within 30 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

(1) "Substantiated" means OCA ~~OKDHS~~determined, after an investigation of a report of child abuse or neglect of a child in DHS custody and based upon some credible evidence, that child abuse or neglect occurred;

(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in ~~OKDHS~~DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child in ~~OKDHS~~DHS custody, that no child abuse or neglect occurred.

(aa) **OCA findings and completion time requirements regarding investigations involving a child not in ~~OKDHS~~DHS custody.** OCA investigations involving a child not in ~~OKDHS~~DHS custody results in a written report within 30 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

(1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in ~~OKDHS~~DHS custody and based upon some credible evidence, that child abuse or neglect occurred;

(2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in ~~OKDHS~~DHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or

(3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in ~~OKDHS~~DHS custody, that no child abuse or neglect occurred.

(bb) **OCA findings regarding investigations involving a vulnerable adult.** The OCA investigation of a report of abuse or neglect of a vulnerable adult results in a written response within 60 calendar days from the date of the referral stating one of the findings in (1) through (4) of this subsection. The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a greater weight of the evidence standard. The finding options are:

(1) **"Substantiated"~~which~~** means the greater weight of the available evidence establishes the alleged maltreatment occurred;

(2) **"Not substantiated"~~which~~** means the greater weight of the available evidence indicates the alleged maltreatment did not occur;

(3) **"Ruled out"~~which~~** means no evidence was discovered that indicates the alleged maltreatment occurred; or

(4) **"Defer"~~which~~** means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

(cc) **Identification of the responsible VAC.** Regarding investigations involving a vulnerable adult, when the evidence gathered during the investigation is sufficient to substantiate maltreatment of a vulnerable adult but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The administration may be named as responsible when the policies, procedures, or practices adopted by the administration of a facility or provider are the primary factor resulting in the maltreatment of individual clients.

(dd) **Notice of findings of child abuse or neglect.**

(1) After completion of the OCA investigation, a findings letter is mailed to the:

(A) alleged PRFCI; and

(B) facility administrator.

(2) When a facility administrator is named as an accused PRFCI, a findings letter is mailed to the chair of the board of directors of the facility, or to the director of the state agency operating the facility, as applicable.

(3) The OCA investigator verbally provides the findings to the child victim's parents or guardian.

(ee) **Appeal process for substantiated findings of child abuse or neglect.** The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires that ~~OKDHS~~DHS provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process is detailed in OAC 340:~~75-3-20~~2-3-39.

(ff) **OCA investigation report submitted to Child Welfare Services (CWS).** Per 10A O.S. § 1-9-112.1, in addition to the requirements of 10A O.S. § 1-9-112, the OCA investigation report concerning a report of abuse or neglect of the child in ~~OKDHS~~DHS legal custody ~~of OKDHS~~DHS is submitted to the CWS director or designee within 30 calendar days from the referral date.

(gg) **Dissemination of OCA investigative reports involving PRFCIs and VACs not subject to the Community Services Worker (CSW) Registry.**

(1) Except as provided in subsection (aa) of this Section, a copy of the final OCA investigation report involving a vulnerable adult client is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client of the OCA finding. OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the OCA finding.

(2) ~~If~~When the referral ~~alleged~~alleges abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy is sent to the applicable district attorney.

(3) A copy is sent to the appropriate ~~OKDHS~~DHS state office administrator, OJA executive director, ODRS director, ODMHSAS director, or the J.D. McCarty Center director, whichever is applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, OCA forwards the investigative report to the facility or provider agency chair of the board of directors, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) ~~if~~when the investigation involved a day treatment program.

(6) A copy of the OCA report is sent to the administrator of ~~an OKDHS~~a DHS operated facility and applicable ~~OKDHS~~DHS director or designee. The administrator provides the accused ~~OKDHS~~DHS employee who is a VAC a letter that summarizes the allegation and states the OCA finding. ~~If~~When an accused PRFCI is ~~an OKDHS~~a DHS employee who does not work at ~~an OKDHS~~a DHS operated facility, the applicable ~~OKDHS~~DHS director or designee is responsible for providing the employee with a letter that summarizes the allegation and states the OCA finding.

(7) ~~If~~When client maltreatment by a licensed nurse is substantiated, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused PRFCIs or VACs is a certified nurse aide (CNA).

(9) ~~If~~When maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by United States mail, fax, or email, whichever is appropriate.

(hh) **Dissemination of reports involving Hissom class members, PRFCIs, and VACs subject to the CSW Registry or the Child Care Restricted Registry.**

(1) All OCA investigations involving a substantiated finding against a community services worker, or ~~a~~ Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry per OAC 340:100-3-39 and 317:35-15.

(2) All OCA investigations involving a substantiated finding against a PRFCI while the child is in the care of a child care facility are processed for the Child Care Restricted Registry per OAC 340:110-1-10.1.

(3) A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E) when the victim is a child, or 43A O.S. § 10-104(I) when the victim is a vulnerable adult.

(4) In addition to (aa) of this Section, when the victim is a child receiving ~~DDSD~~DDS services, OCA sends a copy of the report to the ~~DDSD~~DDS director or designee.

(5) When the OCA finding substantiates an allegation against a PRFCI when the abuse or neglect occurred to a child in the care of a child care facility, OCA submits a copy of the report to ~~the Oklahoma~~ Child Care Services (~~O~~CCS) Licensing Records Office per OAC 340:110-1-10.1(f) for processing under the Child Care Restricted Registry.

(6) When the victim is a vulnerable adult, OCA sends the report to the facility or provider administrator, the ~~DDSD~~DDS director or designee, the ~~ASD~~Aging Services director or designees, or the Oklahoma Health Care Authority (OHCA) director or designee, whichever is applicable.

(7) OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the investigation finding. ~~If~~When the vulnerable adult is a Hissom class member, the class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the investigation finding.

(8) ~~If~~When maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(ii) **Confidentiality of OCA investigative reports.**

(1) Persons receiving copies of OCA investigative reports regarding a child are bound by the confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

(2) Persons receiving copies of OCA investigative reports regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(A) Pursuant to 43A O.S. § 110(A) of the Protective Services for Vulnerable Adults Act, all reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult are confidential, and can be disclosed only pursuant to rules promulgated by ~~OKDHS~~DHS, by court order, or as otherwise provided in the "Public Disclosure" provisions per 43A O.S § 10-110.1 when a VAC is charged with committing a crime that resulted in the death or near death of the vulnerable adult.

(B) Pursuant to 43A O.S. § 10-110(B), all reports, records, and working papers may be disclosed without a court order to:

(i) any district attorney and ~~the~~their staff ~~of an office of a district attorney~~ upon showing of proper credentials in the course of their official duties pursuant to this title or in the prosecution of crimes against a vulnerable adult;

(ii) the attorney representing a vulnerable adult in a proceeding under the Protective Services for Vulnerable Adults Act;

(iii) employees of a law enforcement agency of this or another state and employees of adult protective services agencies of this or another state;

(iv) a physician examining or treating a vulnerable adult who the physician suspects may have

been abused or neglected or any health care or mental health professional involved in the evaluation or treatment of the vulnerable adult;

(v) a caretaker, legal guardian, custodian or other family members of the vulnerable adult; provided, ~~OKDHS~~DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;

(vi) any public or private agency or person authorized by ~~OKDHS~~DHS to supervise or provide other services to a vulnerable adult who is the subject of a report or record of abuse or neglect; provided, ~~OKDHS~~DHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure; and

(~~vi~~vii) any person or agency for research purposes, ~~if~~when all of the following conditions are met:

(I) the person or agency conducting such research is employed by the State of Oklahoma or is under contract with ~~this state~~the State and is authorized by ~~OKDHS~~DHS to conduct such research; and

(II) the person or agency conducting the research ensures that all documents contained identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; and that all in identifying information is ~~deleted~~redacted from documents used in the research when the research is completed.

(C) A summary disclosed per 43A O.S. § 10-110(B) excludes:

(i) Social Security numbers and financial account numbers of the:

(I) alleged victim;

(II) alleged VAC;

(III) ~~OKDHS~~DHS caseworker;

(IV) other vulnerable adults identified in the investigation; and

(V) any other person identified in the record; and

(ii) all identifying information, including but not limited to, names, addresses, and phone numbers of the person(s) who reported the abuse, neglect, or exploitation, and all such identifying information of any other vulnerable adults in the home or facility.

(D) The OCA investigation report may be provided in lieu of a separately created summary and the identifying information found in this subsection is redacted.

(E) All investigative records received by ~~OKDHS~~DHS and created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(F) Persons seeking redacted identifying information listed in subparagraph (2)(C) ~~that is~~ contained in the OCA investigative report, in any summary, or other information contained in any other reports, records, or working papers used or developed in the investigation must obtain a court order authorizing release of such information.

(i) All reports, records, and working papers and all information contained therein remain confidential after the ~~OKDHS~~DHS release; and

(ii) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(jj) **Substantiated findings involving ~~OKDHS~~DHS operated facilities.** The OCA investigation report findings involving client maltreatment at ~~an OKDHS~~a DHS operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review ~~pursuant to~~per OAC 340:2-3-62(b) has expired and a review was not requested, or the review was timely requested and concluded.

(1) When CWS or ~~DDSD~~DDS receives a copy of a final OCA investigative report or notice that a review ~~pursuant to~~per OAC 340:2-3-62 is concluded, within ~~60 business~~30 calendar days, the applicable director notifies the advocate general in writing of:

(A) personnel action taken or to be taken with regard to each accused PRFCI or VAC named in the report;

(B) corrective action taken or to be taken regarding areas of concern noted in the report; and

(C) for each worker found to have engaged in maltreatment, whether there were prior OCA or facility confirmations for client maltreatment by the worker and, ~~if~~ when so, the basis for each such finding, and the personnel action taken in response.

(2) ~~If~~When personnel action was or will be taken, the applicable director also notifies the ~~OKDHS~~DHS Human ~~Resources~~Resource Management director. ~~If~~ When the final OCA finding does not substantiate maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused PRFCI or VAC.

(3) OCA reports information regarding substantiated findings to the ~~OKDHS~~DHS Director.

(kk) **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed an accused VAC named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the ~~DDSD~~ DDS director or designee notifies the advocate general in writing:

(A) ~~if~~when personnel action was or will be taken with regard to each accused VAC named in the report; and

(B) of corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding substantiated findings to the Commission during executive session.

340:2-3-39. Program Review process for substantiated findings of child abuse or neglect in Office of Client Advocacy Investigations

(a) **Purpose.** The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (DHS) to provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process:

(1) provides individuals with a substantiated finding of child abuse or neglect an opportunity for due process;

(2) serves as a quality assurance mechanism to assess findings compliance with Office of Client Advocacy (OCA) standards, per Oklahoma Administrative Code (OAC) 340:2-3-36; and

(3) provides substantiated findings review by a team of reviewers as designated by the advocate general.

(b) **Eligibility criteria.** An individual may request consideration through the program review process when:

(1) the person is a person responsible for the child of interest (PRFCI), per OAC 340:2-3-2 in an investigation involving abuse or neglect allegations; and

(2) the investigation results in a substantiated finding regarding the PRFCI; and

(3) there is no other court action or court order in regard to the alleged child abuse or neglect including pending or completed:

(A) protective order hearings;

(B) civil actions for monetary compensation; or

(C) criminal court proceedings.

(c) **Procedures for the program review process.** The procedures for the program review process are outlined in (1) through (4) of this subsection.

(1) **Notification to PRFCI.** Upon substantiation of abuse, neglect, or both, the OCA social services inspector notifies the PRFCI of the finding by mailing Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI079E, Request for Program Review, provided the criteria in OAC 340:2-3-39 is met. Forms 04KI077E and 04KI079E are:

(A) mailed by certified mail and regular mail within 10 calendar days of substantiation of abuse or neglect; and

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

(i) Form 04KI077E informs the PRFCI of:

(I) any substantiated child abuse or neglect finding in the investigation;

(II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party; and

(III) demographic information.

(ii) Form 04KI079E specifies:

(I) the PRFCI may request a program review by mailing a request to the OCA Program Review Committee within 45 calendar days from the date mailed or 15 calendar days from the date of signature on the green card of the certified mailing containing Form 04KI079E; Request for Program Review; and

(II) failure to submit the program review request within 15 calendar days from the postmark on the envelope containing Form 04KI079E results in the finding becoming final and the PRFCI waives any right to refute this finding in the future, unless good cause is established.

(2) **Conditions of good cause.** A PRFCI is granted a review despite failure to make a timely response, provided good cause is established, including, but not limited to, severe illness or other disabling condition.

(3) **Response to program review request from PRFCI.** When the PRFCI requests a review within the required time, the Program Review Committee chairperson responds to the PRFCI through written notice within 10 calendar days following receipt of the PRFCI's request for review. The Program Review Committee notifies the PRFCI:

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

(B) that failure to submit additional information within 30 calendar days results in a waiver of this right, unless good cause is established per OAC 340:3-2-39(c)(2); and

(C) that verification of legal representation must be established when the PRFCI requests an attorney be notified of the determination results. Verification is established by a statement of representation on official letterhead from the attorney.

(4) **Review Procedure.** Within 120 calendar days following acceptance of the PRFCI's timely request for a review, or a late request for a review when good cause was established per OAC 340:2-3-39, the OCA Program Review Committee determines whether the substantiated finding of abuse or neglect meets substantiation protocol per OAC 340:2-3-2. No individual with direct decision making regarding a case being reviewed will be authorized to vote to ensure that there is no conflict of interest.

(A) The decision to uphold, modify, or reverse the original finding of abuse or neglect is determined by reviewing:

(i) Form 04KI003E, Report to District Attorney, including attachments, and relevant OCA information including OCA history, child welfare history, and referrals; and

(ii) all written documents submitted by the PRFCI.

(B) When the Program Review Committee determines the finding failed to meet the criteria for substantiation per OAC 340:2-3-36, the committee:

(i) determines whether the preliminary decision was based upon lack of credible evidence to

support the allegations of child abuse, neglect, or both; or

(ii) determines whether the preliminary decision is based upon a lack of documentation by the OCA social service inspector.

(I) When a lack of documentation exists, the Program Review Committee sends notification to the programs administrator, programs manager and OCA social services inspector that information is missing and requests the information be added to the report or scanned into the KIDS file cabinet.

(II) After notification by the Program Review Committee, the programs manager reopens and reassigns the investigation.

(III) The assigned OCA social services inspector adds the additional information to the report within 15 calendar days of the reassignment and sends notification to the Program Review Committee upon completion.

(IV) The Program Review Committee reconsiders the PRFCI appeal with the additional information and modifies or upholds the finding as appropriate; and

(iii) modifies the finding, when appropriate, in KIDS.

(I) When the substantiation finding is appropriate, but the allegation in KIDS is incorrect, the chairperson of the Program Review Committee ensures the inappropriate allegation is marked as an improper entry and the correct allegation is added along with the substantiated finding; and

(II) Forms 04KI077E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI-079E, Request for Program Review, are mailed to the PRFCI with the corrected allegations.

(C) The Program Review Committee, provides written notification of the final determination of the finding within 120 calendar days following acceptance of the appellant's request for a review to the:

(i) appellant;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

(vi) district attorney's office in the county where the finding originated;

(vii) Specialized Placement and Partnership Unit, when applicable;

(viii) Child Care Services, when applicable;

(viv) Office of Juvenile Affairs, when applicable; and

(x) facility administrator.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112) confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in ~~the custody of the~~ Oklahoma Department of Human Services (~~OKDHS~~DHS) custody.

(B) 10 O.S. § 1415.1(A)(2) requires that ~~OKDHS~~DHS establish an ombudsman program for each institution and residential facility for the intellectually disabled operated by ~~OKDHS~~DHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and court-appointed guardians. ~~OKDHS~~DHS conferred this responsibility on OCA.

(C) ~~OKDHS~~DHS also conferred ~~on~~ OCA~~,~~with the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and Oklahoma Administrative Code (OAC) 340:2-3-46. Further detail about grievances for:

(A) ~~minors~~children who are in ~~OKDHS~~DHS custody regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) ~~youth~~children in ~~OKDHS voluntary~~DHS care, refer to OAC 340:2-3-49;

(C) ~~OKDHS~~DHS approved foster parents, refer to OAC 340:2-3-50;

(D) residents of the ~~SORC, NORCE, and the Greer~~Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Robert M. Greer Center (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from ~~OKDHS~~DHS Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS), refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability subject to 10 O.S. § 1430.1 et seq., refer to OAC 340:2-3-54; and

(H) clients receiving ~~OKDHS~~DHS services who want to file a grievance about a problem, concern, or complaint for which another grievance system within ~~OKDHS~~DHS does not exist, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access

to procedures where clients may obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances; however, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be resolved within the regular relationship between clients and ~~OKDHS~~DHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in Part 5, OAC 340:2-3-45 through 340:2-3-55, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Deputy director"** means, a director of one of the five regional delivery areas designated by ~~OKDHS~~DHS Child Welfare Services (CWS).

(2) **"Area manager"** means a manager of one of the three service delivery areas, designated by ~~OKDHS DDSD~~DHS DDS.

(3) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

(4) **"CWS"** means,~~OKDHS~~DHS Child Welfare Services.

(5) **"Client"** means any of the individuals listed in subsection (a) of this Section, on whose behalf OCA maintains a grievance system.

(6) **"Contested grievance"** means a grievance that was not resolved at the local level (first and second levels), and~~,~~ at the request of the grievant or decision maker, is submitted to a higher authority for response.

(7) **"Decision maker"** means the person with authority to decide whether to accept a proposed resolution at each level of the grievance process; typically, the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves, such as young children and persons with severe cognitive limitations, it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, the decision maker may be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to ~~DDSD~~DDS clients who are adults, the decision maker may be a guardian or the individual support team for the client.

(C) When the grievant is not the decision maker, the local grievance coordinator (LGC) does not inform the grievant when the proposed resolution is issued or whether it was accepted or rejected. The decision maker may share this information with the person grieving on behalf of the client.

(8) **"District director"** means a director of a district within one of the regional delivery areas, designated by ~~OKDHS~~DHS CWS.

(9) **"Due date"** means the date some response or action is required, such as the date a respondent must respond to a grievance. When calculating the due date, the first day of the period computed is not included and only business days are included. ~~If~~When the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(10) **"Email"** communication with OCA or with the advocate general means, an email sent to the email address: ~~*~~oca.grievances@okdhs.org.

(11) **"Facility grievance"** means, a grievance that involves:

(A) the substance or application of policy, rule, or regulation, written or unwritten, of a facility per OAC 340:2-3-2; or

(B) a decision, act, or omission by an employee, agent, or contractor of a facility.

(12) **"Grievance"** is defined in subsection (c) of this Section.

(13) **"Grievant"** means, a client or the person who files a grievance on behalf of a client.

(14) **"Local grievance coordinator"** or **"LGC"** means, with regard to:

(A) minors in ~~OKDHS~~DHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in ~~OKDHS~~DHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the ~~OKDHS~~DHS county office where the grievant resides;

(C) ~~DDSD~~DDS clients who are residents of SORC, NORCE, Greer, or the OCA advocate staff assigned to each facility;

(D) ~~OKDHS~~DHS approved foster parents, the district director in the ~~OKDHS~~ DHS county office where the grievant resides;

(E) ~~DDSD~~DDS clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) other ~~DDSD~~DDS clients, the applicable ~~DDSD~~DDS area manager, or designee.

(15) **"OCA grievance liaison"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances, and local grievance programs.

(16) **"~~OKDHS~~DHS grievance"** means, a grievance that involves:

(A) the substance or application of ~~OKDHS~~DHS policy, rule, or regulation, written or unwritten, other than ~~OKDHS~~DHS policies, rules, and regulations of operated shelters and residential facilities for minors; or

(B) a decision, act, or omission of an ~~OKDHS~~DHS employee, including, but not limited to, a ~~Child Welfare Services (~~CWS~~)~~ specialist, case manager, and ~~OKDHS~~DHS district directors, but not including an employee of ~~an OKDHS~~a DHS operated facility.

(17) **"Placement grievance"** means, a complaint about a present or proposed placement of a minor in ~~OKDHS~~DHS custody.

(18) **"Respondent"** means the person at each level in the grievance process, who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to ~~an OKDHS~~a DHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator for assistance.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:

(i) the substance or application of policy, rule, or regulation, written or unwritten, of ~~an OKDHS~~a DHS operated shelter or residential facility for minors, a facility, agency, or provider that contracts with ~~OKDHS~~DHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **~~OKDHS~~DHS grievances.** The subject of ~~an OKDHS~~a DHS grievance includes:

(i) the substance or application of policy, rule, or regulation, written or unwritten, of ~~OKDHS~~DHS, but does not include policies, rules, and regulations of ~~OKDHS~~DHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee in ~~an OKDHS~~a DHS operated facility; and includes case managers, a CW specialists, and county office employees; or

(iii) a facility grievance filed by a SORC, NORCE, or Greer resident.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** ~~If~~When a grievance is submitted and it falls into subparagraphs (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. ~~If~~When it is determined the client is asking to grieve a problem or concern covered by any of the categories in (A) through (K) of this paragraph, the LGC informs the client why the grievance is not being processed, using Form 15GR012E, Notice of Summary Disposition of Grievance - ~~OKDHS~~DHS County Offices, 15GR013E, Notice of Summary Disposition of Facility Grievance, 15GR014E, Notice of Summary Disposition of Grievance - Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) Clients, 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) Provider Grievance, or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form 15GR001P, Grievance Form, and then dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant, along with a copy of the grievance form, is sent within three business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. If the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.

(A) **Untimely grievances.** A grievance that is not timely filed per OAC 340:2-3-45(g) may be accepted and processed when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by ~~OKDHS DDSD~~DHS DDS.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** ~~If~~When a grievance alleges discrimination or other civil rights matters, the client is referred to the ~~OKDHS~~DHS Office for Civil Rights and the LGC immediately forwards the grievance to the ~~OKDHS~~DHS civil rights administrator and informs the grievant.

(C) **A problem that is moot.** A moot problem is one that has been decided or settled or one that has no practical resolution, such as, a placement grievance with regard to a child who is no longer in ~~OKDHS~~DHS custody~~;~~ or a grievance with regard to an event that was in future but is now in the past, or when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** A grievance that duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem is a duplicative grievance.

(E) **Requests ~~to~~that violate laws.** A grievance that requests an action, which ~~that~~ violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private~~,~~or public, individual, or an entity over which ~~OKDHS~~DHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using grievance or complaint systems that may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter that is the subject of a pending civil, criminal, or administrative proceeding, a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare Services investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved ~~per OAC 340:2-5-50~~.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** ~~If~~When a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form 15GR001P as received, and notes on the form the reason the LGC does not process it. The grievant is informed of the reason and decision. The grievance is logged in the grievance-tracking log and the form is filed in the client's grievance file. The LGC sends a copy of the Form 15GR001P and a copy of the applicable Notice of Summary Disposition to the advocate general or designee for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by, or on behalf of, a client, by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others including ~~OKDHS~~DHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may file a group grievance ~~together~~. At any time during the processing of a group grievance, an individual grievant may withdraw. When separate grievances are filed by two or more grievants, regarding an identical issue, the interests of each grievant are identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of a particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of the action. When a group grievance is filed, the LGC may ask the grievants to designate in writing, a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including, but not limited to, facts that constitute abuse, neglect, exploitation, or caretaker misconduct, per OAC 340:2-3-2~~,~~ the LGC immediately reports it to OCA intake per OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed, is held in abeyance pending the conclusion of the investigation. ~~If~~When the grievance alleges additional facts that do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and other law enforcement agencies investigating the matter to coordinate grievance processing.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma, is required to operate a system for grievance resolution by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to Part 5, OAC 340:2-3-45 through 340:2-3-55, ~~OKDHS~~DHS county office, and ~~DDSD~~DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and email address of its LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change by completing Form 15GR021E, Designation of Local Grievance Coordinator-Facilities and Provider Agencies, and submitting it to the Office of Client Advocacy. OCA advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

(i) implements grievance policies and procedures;

(ii) has experience with the programs and functions of the facility, provider, county office, or ~~DDSD~~DDS area office;

(iii) functions impartially and independently in grievance processing;

(iv) reports directly to the administrator with regard to the LGC grievance duties and functions;

(v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course;

(vi) ensures that client requests regarding how to file a grievance are responded to within two business days; and

(vii) is accessible and available to meet with grievants in person.

(B) Each facility, provider, ~~OKDHS~~DHS county office, and each ~~DDSD~~DDS area office subject to this Part, displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form 15GR017E, Grievance Poster - Child Welfare Contracted Facilities, Form 15GR018E, Grievance Poster - Oklahoma Department of Human Services (~~OKDHS~~DHS) County Offices, Form 15GR019E, Grievance Poster - Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) Providers, or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (~~OKDHS~~DHS) Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) Offices, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to Part 5, OAC 340:2-3-45 through 340:2-3-55, is subject to the approval of the advocate general. Each provider and facility other than ~~an OKDHS~~a DHS operated facility is required to submit to the advocate general for approval, its grievance policies, procedures, forms, and any revisions ~~which~~that are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 calendar days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to, and how to, access the grievance resolution procedures using Form 15GR004E, Notice of Grievance Rights - Minors in ~~OKDHS~~DHS Custody, Form 15GR005E, Notice of Grievance Rights - ~~Minors~~ Children in ~~OKDHS~~DHS Custody ~~- Youth in Voluntary OKDHS~~and Care, Form 15GR006E, Notice of Grievance Rights - ~~DDSD~~DDS Service Recipients (General), Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, or Form 15GR008E, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice ~~in accordance with~~per OAC 340:2-3-52. Each provider or facility annually notifies the client and the guardian when applicable in writing of the right to file a grievance and how to access the grievance resolution procedures. Providers or facilities ~~may~~ use applicable ~~form~~forms 15GR004E, 15GR006E, or develop an equivalent form. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-~~525-4850~~522-2720 or 1-800-522-8014, fax at 1-405-~~525-4855~~522-2680, or email.

(6) **Advocate general deficiency report.** ~~If~~When the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a deficiency report to the administrator and, when applicable, the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

(i) any aspect of the care of a client that effects the quality of the client's life;

(ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of ~~OKDHS~~DHS operated shelter or residential facility, or a facility or agency that contracts with ~~OKDHS~~DHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of ~~OKDHS~~DHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report that sets forth the inquiry subject matter, pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the ~~OKDHS~~DHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form 15GR001P, filling it out, and turning it in to the LGC or to the facility or ~~OK~~to DHS staff, who immediately transmits it to the LGC.

(1) ~~OKDHS~~DHS LGCs order this form from the ~~OKDHS~~DHS Warehouse. Private provider and facility LGCs obtain copies of this form from OCA at, 1-405-~~525-4850~~ 522-2720 or 1-800-522-8014.

(2) Those who need assistance completing the grievance form ~~is given assistance~~ are assisted by the LGC or ~~any~~ other staff ~~member~~members.

(3) A grievance received on paper other than Form 15GR001P, is attached to Form 15GR001P and filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance is retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance. All allegations of retaliation, discrimination, and harassment for filing a grievance, seeking advice, or inquiry about filing a grievance are reported to the OCA grievance unit~~, which~~and may result in an OCA investigation or an advocate general inquiry or grievance.

(g) **Grievance time limits.** Except for ~~DDSD~~DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program ~~as provided in~~per Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the grievance "administratively resolved." When a foster parent grieves, but has requested mediation of the dispute through the OCCY mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.

(1) Filing and other time requirements contained in this Section are counted in DHS business days unless otherwise specified. In computing any time requirement, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time requirement.

(2) ~~If~~When the LGC or a respondent fails to meet grievance processing time requirements without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the grievant's last known address. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. ~~If~~When a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified per OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed, as well as summary information about the number, nature, and outcome of all grievances filed. Grievance records are kept separate and apart from other client records and files. ~~Grievance records relating to DDSD clients are retained per OAC 340:100-3-40. OKDHS~~DHS grievance records and files are retained per state and federal laws governing record retention and destruction.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every OCA numbered grievance form issued. Form 15GR009E, Grievance Tracking Log, may be used for this purpose. For grievances submitted by a client, the tracking log includes the:

(A) grievance number;
(B) name of the grievant given the form;
(C) date the form was submitted by the grievant;
(D) nature and outcome of the grievance;
(E) date of final resolution; and
(F) level where it was resolved.

(2) ~~If~~When a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(3) Each LGC submits a quarterly grievance report, Form 15GR010E, Quarterly Grievance Report, to the advocate general. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or email. The email address is: ~~*~~oca.grievances@okdhs.org. When grievance activity did not occur or was pending during a particular fiscal year quarter, the LGC indicates it on Form 15GR010E.

(4) ~~If~~When a grievance becomes moot at any point during the local processing of the grievance, the LGC may stop the grievance process and declare the grievance, administratively resolved. The LGC informs the grievant, notes it on applicable Forms 15GR001P and 15GR009E, and sends a copy of Form 15GR001P to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form 15GR001P, the grievant submits the form directly to the LGC or other facility employee or ~~OKDHS~~DHS. Form 15GR001P is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form 15GR001P, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form 15GR001P, if the grievance was not resolved to the decision maker's satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For ~~OKDHS~~DHS grievances of children in ~~OKDHS~~DHS custody and ~~in voluntary OKDHS~~ care, the first level respondent may be the supervisor of the grievant's Child Welfare Services (CWS) specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by ~~Child Welfare Services (~~CWS~~)~~ placement services, the respondent is the applicable CWS programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable district director.

(D) ~~If~~When the minor is also ~~is~~ a ~~DDSD~~DDS client, this may be the ~~DDSD~~DDS case manager supervisor.

(E) For adults receiving services from ~~DDSD~~DDS, the first level respondent may be the ~~DDSD~~DDS case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches the corresponding Form 15GR001P, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form 15GR002E by completing the second box in the first level section on Form 15GR002E. ~~If~~When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant may contest the target date by taking the grievance to the next problem resolution level.

(4) The LGC monitors the timely response by the first level respondent. ~~If~~When a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E, and the grievance immediately proceeds to the second problem resolution level.

(5) Within three business days of receipt of the first level response, the LGC or designee contacts the decision maker to inform the decision maker of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the decision maker is satisfied with the proposed resolution. The first level respondent may meet with the decision maker with or without the LGC present. If the decision maker needs time to decide whether to accept the proposed resolution, the decision maker has three business days to make a decision. If a decision is not communicated to the LGC within three business days, the decision maker is deemed to have accepted the proposed resolution. The LGC is responsible for informing the decision maker that he or she has three business days to accept or appeal the respondent's proposed resolution.

(6) ~~If~~When the decision maker is satisfied with the proposed resolution, the LGC indicates his or her acceptance on Form 15GR002E, notifies those responsible for grievance resolution, and places the form in the appropriate grievance file.

(7) ~~If~~When the proposed resolution has been accepted by the decision maker, but involves a future target date, the LGC monitors compliance with the target date. If the LGC determines that the resolution was not achieved by the target date, the LGC immediately reopens the grievance and processes it for the second problem resolution level.

(8) ~~If~~When the decision maker does not accept the proposed resolution and elects to take the grievance to the second problem resolution level, the LGC processes the grievance for the second problem resolution level per subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution per subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form 15GR002E, ensures the corresponding Form 15GR001P and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For ~~OKDHS~~DHS grievances, the ~~OKDHS~~DHS district director or the ~~DDSD~~DDS area manager, whichever is applicable, is the second level respondent. However, if the district director was the first level respondent, then the second level respondent would be the applicable deputy director. If the provider administrator or ~~DDSD~~DDS~~—~~area manager is the first level respondent the second level review is skipped and processed as a contested grievance per OAC 340:2-3-46.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section on Form 15GR002E. ~~If~~When the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable deputy director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E and the grievance immediately is processed as a contested grievance. A contested ~~OKDHS~~DHS grievance is processed ~~in accordance with~~per OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within three business days of receipt of the second level response, the LGC contacts the decision maker to inform him or her of the proposed resolution and the right to contest the response to the grievance~~,~~ and determines if the decision maker is satisfied with the proposed resolution. If the decision maker needs time to decide whether to accept the proposed resolution, the grievant has three business days to make a decision. If no decision is communicated to the LGC within three business days, the grievant is deemed to have accepted the proposed resolution.

(7) ~~If~~When the decision maker is satisfied with the proposed resolution, the LGC documents the decision maker's acceptance on Form 15GR002E, notifies those responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) ~~If~~When the proposed resolution has been accepted by the decision maker, but involves a future target date, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) ~~If~~When the decision maker does not accept the proposed resolution and elects to contest the response, a contested ~~OKDHS~~DHS grievance is processed in per OAC 340:2-3-46. Contested facility grievances are processed per subsection (m) of this Section.

(m) **Contested facility or provider grievances.** ~~If~~When the decision maker does not accept the proposed resolution or the target date of the second level proposed resolution, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hissom class members or individuals who previously resided at NORCE or SORC after November 1, 2012. Grievances at ~~OKDHS~~DHS operated facilities are appealed as a contested grievance ~~in accordance with~~per OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of notice that the decision maker does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to conduct an evidentiary hearing or hear argument. In the event the board determines evidentiary hearing evidence would assist in resolving the grievance, the board has the option of conducting an informal hearing.

(3) Within ~~ten~~10-business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds by submitting a written decision to the LGC.

(4) Within three business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the decision maker of the decision and provides the decision maker with a copy of the board's decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of ~~an OKDHS~~a DHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison may shorten the response time as circumstances warrant.

(o) **Communications with OCA.** Any notices, forms, or other information that facilities, providers, or ~~OKDHS~~DHS county offices are required to submit to OCA or the advocate general can be submitted by email, using the email address ~~*~~oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 calendar days of their appointments, and annually thereafter.

340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS)

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) who are not residing in an Oklahoma Department of Human Services (~~OKDHS~~DHS) operated facility and are not Hissom class members. This Section includes minors and adults in specialized foster care. Subsections (h) through (k) apply to clients who were former residents of NORCE or SORC, upon the Oklahoma Commission for Human Services resolution to close the state operated resource centers November 1, 2012.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The ~~DDSD~~DDS case manager gives Form 15GR006E, Notice of Grievance Rights - ~~DDSD~~DDS Clients (General), to the service recipient, or guardian ~~if~~when applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. If the service recipient does not have a ~~DDSD~~ DDS case manager, the provider gives Form 15GR006E to the service recipient within 30 calendar days of service initiation and annually thereafter. Form 15GR006E is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** Provider and ~~OKDHS~~DHS grievances are filed and processed ~~in accordance with~~per OAC 340:2-3-45. ~~If~~When a grievance involves a decision of an individual's team, the first level respondent is the supervisor of the client's case manager unless the case manager participated in making or approved the decision being grieved.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of these clients.

(f) **Contested grievances.** When a grievant asks to appeal ~~an OKDHS~~a DHS grievance, the appeal is processed ~~in accordance with~~per OAC 340:2-3-46.

(g) **Monitoring grievance programs.** In order to avoid unnecessary duplication, the Office of Client Advocacy (OCA), in cooperation with other monitoring entities, ~~to avoid unnecessary duplication,~~ monitors provider grievance programs ~~in accordance with~~per OAC 340:2-3-45(d) through (m).

(h) **Provider grievances of DDS clients who were former residents at NORCE or SORC as of November 1, 2012.**

(1) Each residential and vocational provider that contracts with DDS to provide services to DDS clients

has a grievance system for resolution of grievances. The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the DDS client, the assigned OCA advocate, or a person interested in the welfare of the client by using Form 15GR001P or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a DDS client by anyone other than the OCA advocate or the DDS case manager for the client, the LGC promptly informs the DDS case manager and the advocate assigned to the client by email, fax, or phone. When a DHS employee initiates a grievance on behalf of a client, at the time the grievance is filed the employee sends a copy to the DDS case manager and the OCA advocate assigned to the client.

(3) If the subject matter of a grievance can be submitted for resolution as a provider grievance or a DHS grievance, the DDS client has the option to file it as a provider grievance, an DHS grievance, or both.

(i) **Contested grievances.** When the response to a DHS or provider grievance is contested by a DDS client or a grievant on behalf of a client, the contested grievance is processed per OAC 340:2-3-46 unless otherwise provided in this Section. The DDS director is the state office administrator responsible for responding to DDS client contested grievances.

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a DDS client requests review by GARC of the DDS director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using the format prescribed by OCA that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to:

(1) the treatment of a client;

(2) the substance or application of any DHS policy, rule, or regulation, written or unwritten, of DHS or an agent or contractor of DHS; or

(3) any decision, behavior or action of a DHS employee, agent or contractor, or of another client;

(A) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the DDS director. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(B) When the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(C) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator when applicable, and the state office administrator. A copy is submitted to the DHS Director.

340:2-3-55. ~~Grievances of OKDHS clients~~DHS client grievances not covered by another grievance system

(a) **Application.** This Section describes the grievance policy for persons receiving Oklahoma Department of Human Services (~~OKDHS~~DHS) services not covered by another grievance system or issues not specifically addressed by ~~OK~~the DHS fair hearing process. A grievance or complaint is not processed under this Section if ~~OKDHS~~DHS has a formal administrative appeal or review process in place ~~which~~that addresses the grievance or complaint.

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of client bill of rights.** The ~~OKDHS~~DHS Client Bill of Rights poster, ~~OKDHS~~DHS Pub. No. 92-06, is posted in conspicuous view of the public in all ~~OKDHS~~ offices and facilities. Applicants and recipients of benefits and services administered by ~~OKDHS~~DHS have the right to:

(1) be treated with courtesy and dignity;

(2) receive prompt service;

(3) receive clear explanations of the laws and rules ~~which~~that determine eligibility for benefits and services;

(4) have benefits and services explained in native language, ~~if not able~~when unable to understand English;

(5) have benefits and services explained by an interpreter for the deaf, ~~if~~when unable to hear well;

(6) have forms read and explained, ~~if~~when unable to read forms because of limited eyesight, or other inability to read;

(7) receive fair and consistent consideration of any application for benefits or services;

(8) have the opportunity for an appeal and a fair hearing in case of denial or reduction of benefits or services;

(9) discuss with a local ~~OKDHS~~DHS supervisor any complaint regarding ~~OKDHS~~ DHS benefits or services or treatment by ~~OKDHS~~DHS staff;

(10) contact the ~~OKDHS~~DHS Office of Client Advocacy (OCA) at 1-800-522-8014, regarding any complaint that has been discussed with, but not resolved by, the local office supervisory staff; and

(11) receive, upon request, a further explanation of applicant or client rights.

(d) **Filing a grievance.** Recipients of benefits and services administered by ~~OKDHS~~ DHS, and persons acting on behalf of recipients, have the right to talk with a local ~~OKDHS~~DHS supervisor if they have a complaint about the way they were treated by ~~OKDHS~~DHS staff. Supervisory staff promptly ~~seek~~seeks to resolve the matter with the client. Clients have the right to contact OCA, Attn. Grievance Liaison, P~~.~~O~~.~~ Box 25352, Oklahoma City, OK 73125 (1-405~~-525-4850~~522-2720 or 1-800-522-8014, fax 1-405~~-525-4855~~522-2680) regarding any complaint ~~which~~that has been discussed with, but not resolved by, the local office supervisory staff.

(e) **Allegations of discrimination.** ~~If~~When a grievance or complaint alleges discrimination based on sex, age, national origin, religion, color, or disability, the client is referred to the ~~OKDHS~~DHS Office for Civil Rights for appropriate handling

and resolution of the complaint. The local grievance coordinator immediately forwards the grievance to the ~~OKDHS~~DHS civil rights administrator and so informs the grievant.

(f) **Processing a grievance.** When a client contacts OCA for assistance in resolving a complaint, OCA contacts ~~OKDHS~~DHS supervisory staff who have the authority to resolve the grievance to request a response to the grievance within seven business days.

(1) The advocate general may grant an extension for good cause, such as an unusually complex matter.

(2) ~~If~~When a complete response is not timely received by OCA, the grievance may be considered unresolved and processed as a contested grievance.

(3) After receiving a response to the grievance, OCA contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance. ~~If~~When the grievant is not satisfied with the outcome and requests to appeal the decision, the grievance is processed as a contested grievance. ~~If~~When OCA does not obtain a reply from the grievant within ~~ten~~10 business days of actual notice to the grievant of the proposed response, the grievance may be deemed resolved.

(g) **Contested grievances.** Contested grievances of clients are processed ~~in accordance with~~per OAC 340:2-3-46.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-61. Grievance and Abuse Review Committee (GARC)

(a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section ~~7004-3.4~~1-9-112 of Title ~~10~~10A of the Oklahoma Statutes (O.S. 10A § 1-9-112).

(b) **Definitions.** The definitions in Oklahoma Administrative Code (OAC) 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this Part unless the context clearly states otherwise.

(c) **Purpose.** This Section establishes an administrative review committee to review:

(1) findings regarding allegations of abuse, neglect, verbal abuse, ~~caretaker misconduct,~~ and exploitation investigated by the Office of Client Advocacy (OCA) ~~in accordance with~~per OAC 340:2-3-32 through 340:2-3-37;

(2) findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to ~~Section 7204.1 of Title 10 of the Oklahoma Statutes~~O.S. 10A § 1-9-117 and investigated by OCA ~~in accordance with~~per OAC 340:2-3-38;

(3) unresolved contested grievances of Oklahoma Department of Human Services (~~OKDHS~~DHS) clients listed in OAC 340:2-3-45(a)(2) and processed ~~in accordance with~~per OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;

(4) unresolved grievances of foster parents filed ~~pursuant to Sections 7213 of Title 10 of the Oklahoma Statutes~~per O.S. 10A § 1-9-120 and processed ~~in accordance with~~per OAC 340:2-3-50; and

(5) an issue affecting the care and treatment of:

(A) a client in ~~an OKDHS~~a DHS operated facility; or

(B) a minor in ~~OKDHS~~DHS custody placed in a private facility, a public facility not operated by ~~OKDHS~~DHS, or in a foster home.

(d) **GARC composition.**

(1) GARC is composed of at least three voting members appointed by the ~~OKDHS~~ DHS Director. The ~~OKDHS~~DHS Director designates one member to serve as chair and appoints substitute members as needed.

(2) The advocate general is an ex officio member of GARC. The advocate general designates a member of his or her staff to attend GARC meetings in the advocate general's absence.

(e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. At least three business days before a meeting, the advocate general provides each GARC member with materials relevant to matters to be considered at the meeting. GARC members review the agenda material prior to the GARC meeting.

(f) **GARC meetings.**

(1) The advocate general or designee coordinates GARC meetings. This includes:

(A) arranging the dates for GARC meetings;

(B) establishing the agenda for GARC meetings;

(C) eight calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the date of the GARC meeting;

(D) transmitting agenda material to GARC members three business days prior to a meeting;

(E) recording the GARC findings and recommendations ~~of GARC~~;

(F) preparing GARC reports in consultation with GARC members;

(G) granting extensions of time for good cause shown; and

(H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the purposes of the meeting.

(3) At the conclusion of the GARC meeting, the matter is taken under advisement and the GARC chair informs interested parties of the results by means of GARC's written report.

340:2-3-62. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports

(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, ~~caretaker misconduct,~~ or exploitation, with the exception of cases involving a community services worker ~~that are~~ processed per Oklahoma Administrative Code (OAC) 340:100-3-39.

(b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis

of the review and the reasons review is requested. Supporting documentation for the request for review is included with the request.

(1) With regard to investigations involving a facility ~~operated by OJA or~~ under contract or license with the Office of Juvenile Affairs ~~(~~OJA~~)~~, with the exception of OJA operated secure facilities, a request for GARC review may be made by the OJA advocate general or the executive director ~~of OJA~~.

(2) With regard to investigations involving ~~Oklahoma Department of Human Services (OKDHS~~DHS~~)~~ operated facilities, a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the ~~OKDHS~~DHS Director. ~~If~~When a request is made by a facility administrator, he or she sends a copy of the request to the applicable state office administrator.

(3) With regard to investigations involving facilities that contract with ~~OKDHS~~DHS, a request for GARC review may be made by the applicable state office administrator, or the ~~OKDHS~~DHS Director.

(4) With regard to investigations involving a Hissom class member that result in a not substantiated finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services ~~Division~~ (~~DDSD~~DDS) director or designee.

(5) With regard to investigations involving a facility operated by the Oklahoma Department of Rehabilitation Services (ODRS), a request for GARC review may be made by the ODRS director.

(6) With regard to all other investigations conducted ~~pursuant to~~per OAC 340:2-3-32, including investigations involving ~~an OKDHS~~a DHS employee not working at an ~~OKDHS~~DHS operated facility, a request is made by the applicable state office administrator or the ~~OKDHS~~DHS Director.

(7) The advocate general also can request GARC review.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.

(1) GARC does not consider prior unsubstantiated allegations.

(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and their designees may attend the GARC meeting. The OCA investigator involved in a case being reviewed, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the GARC chair ~~of GARC~~.

(3) ~~If~~When an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.

(2) ~~If in GARC's opinion the evidence is sufficient to confirm maltreatment, the report specifies the maltreatment found to have occurred, the specific acts constituting the maltreatment, the dates and places the conduct occurred, the rules, policies, and statutes violated, and the nature of any injury to the alleged victim(s).~~

~~(3)~~ GARC's recommendation as to any action needed to protect the victim and other clients.

(~~4~~3) ~~Areas~~Any areas of concern identified during GARC's review of the case regarding facility or ~~OKDHS~~DHS practices or procedures.

(e) **~~OKDHS~~DHS Director's review.** The advocate general submits to the ~~OKDHS~~ DHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of the GARC report, the ~~OKDHS~~DHS Director decides whether to:

(A) adopt GARC's findings;

(B) adopt GARC's findings with modifications;

(C) return the matter to GARC for further consideration; or

(D) reverse GARC's finding.

(2) ~~If~~When the ~~OKDHS~~DHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.

(3) OCA notifies in writing all interested parties of the result of the ~~OKDHS~~DHS Director's review.

(f) **Routing the results of the ~~OKDHS~~DHS Director's review.**

(1) In cases involving ~~OKDHS~~DHS operated facilities, the advocate general sends a copy of the GARC report and the results of the ~~OKDHS~~DHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two business days of receipt of the ~~OKDHS~~DHS Director's decision, the administrator informs each accused employee of the result of the ~~OKDHS~~DHS Director's review.

(2) In cases involving private or non~~-~~ ~~OKDHS~~DHS operated public facilities, the advocate general sends a copy of the GARC report, and the results of the ~~OKDHS~~ DHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation, the GARC report and results of

the ~~OKDHS~~ DHS Director's review are sent to the chair of the facility's board of directors.

(g) **Response to results of the ~~OKDHS~~DHS Director's review.** After receipt of the results of the ~~OKDHS~~DHS Director's review of an OCA investigation involving ~~an~~a ~~OKDHS~~DHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action per OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the ~~OKDHS~~DHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.

[OAR Docket #14-536; filed 6-27-14]

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

[OAR Docket #14-535]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Fair Hearings
Part 7. Assistance Programs
340:2-5-60 through 340:2-5-67 [AMENDED]
340:2-5-69 through 340:2-5-76 [AMENDED]
340:2-5-78 [AMENDED]
340:2-5-80 [AMENDED]
340:2-5-81 [NEW]
(Reference WF 13-03)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statues (56 O.S. § 162); and 56 O.S. § 168.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Chapter 2 Subchapter 5 amend the rules to: (1) improve the fair hearing process; (2) conform to statutory amendments; (3) update program name changes; and (4) add rules designed to better insure clients' rights in the hearing process.

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 5. FAIR HEARINGS

PART 7. ASSISTANCE PROGRAMS

340:2-5-60. Legal bases

Section 168 of Title 56 of the Oklahoma Statutes ~~provide~~provides an administrative hearing for ~~a~~an Oklahoma Department of Human Services (DHS) client who is aggrieved by a DHS action~~,~~ or failure to act~~,in any of the~~for programs listed in Oklahoma Administrative Code (OAC) 340:2-5-61.

340:2-5-61. Client hearings conducted by the Appeals Unit

(a) **Children's Special Health Care Needs Program.** Circumstances ~~which~~that constitute a basis for a hearing are:

(1) ~~the~~a denial of an individual's application for services ~~is denied~~;

(2) a decision regarding eligibility has not been reached within 45 days from the application date ~~of application~~;

(3) the client disagrees with the date on which assistance begins; or

(4) the client is dissatisfied with an action affecting eligibility for receipt of medical services or with the relevant policy as applied to his or her situation.

(b) **Child ~~care services~~Care Subsidy Program.** A hearing may be granted if:

(1) there is a delay in reaching a decision on an application for assistance of more than ~~30~~ two working days of receiving all necessary verification to certify or deny the application;

(2) the client disagrees with the date on which assistance begins; ~~or~~

(3) the client disagrees with the amount of the family share co-payment; or

(4) the client, family, or guardian is aggrieved because of Oklahoma Department of Human Services (DHS) actions to deny, terminate, or reduce services.

(c) **Services for persons with developmental disabilities.**

(1) A hearing may be granted if:

(A) the application for services is denied;

(B) the ~~Department of Human Services (~~DHS~~)~~ action regarding the application for state-funded services has not occurred within 180 days from the date DHS received the application and the client has exhausted the remedies afforded by the Office of Client Advocacy (OCA);

(C) when resources are sufficient for initiation of Home and Community Based Waivered Services and action is not taken within 45 days; or

(D) the client, family, or guardian is aggrieved because of the DHS ~~actions~~action to suspend, terminate, or reduce services.

(2) All other complaints or grievances are made to OCA and are addressed ~~in accordance with the~~per OCA policies and procedures ~~of OCA~~.

(3) Nothing contained in this subsection is construed as a limitation of the rights of class members regarding the review and appeal procedures set forth in the Consent Decree in Homeward Bound vs. The Hissom Memorial Center.

(d) **~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP).** A hearing may be granted if:

(1) the household's application is denied;

(2) a decision regarding eligibility has not been reached within 30 days from the date of application;

(3) a requested change in the amount of benefits has not been made within ~~ten~~10 days from the request;

(4) a decision regarding loss of benefits occurred in the previous 90 days; or

(5) the household is aggrieved by:

(A) reason of DHS interpretation and application of ~~Food Stamp Program~~SNAP policy as applied to the household's situation during the certification period; or

(B) any other DHS action ~~of DHS~~ in its administration of the program ~~which~~that affects the household's participation.

(e) **Individual and Family Disaster Grant Program.** A hearing may be granted if:

(1) the applicant's application is denied;

(2) the applicant is dissatisfied with the amount of the grant award; or

(3) there is an unreasonable delay relating to the application.

(f) **Low Income Home Energy Assistance Program and Energy Crisis Assistance Program.** A hearing may be granted if:

(1) the applicant's application is denied;

(2) there is a delay in reaching a decision regarding eligibility on an application for assistance of more than ~~30~~10 calendar days;

(3) the client disagrees with the date on which assistance begins; or

(4) the applicant is dissatisfied with the amount of the payment.

(g) **Medical Assistance Program under Title XIX of the Social Security Act.**

(1) The Oklahoma Health Care Authority (OHCA) is the state agency authorized to operate Oklahoma's Medical Assistance Program pursuant to Title XIX of the Social Security Act. Through an interagency agreement with OHCA, DHS:

(A) determines financial and non-financial eligibility for certain categories of eligibility for the Medical Assistance Program;

(B) conducts hearings regarding:

(i) financial and non-financial eligibility for certain categories of eligibility for the Medical Assistance Program; and

(ii) the scope of services provided through the ~~ADvantage Program waiver services~~DHS Developmental Disabilities Services; and

(C) does not conduct hearings ~~regarding:~~

~~(i) the scope of services received for a person found eligible for the Medical Assistance Program, except as described in (B)(ii) of this subsection;~~

~~(ii) payment for services;~~

~~(iii) drug coverage for clients who are medically needy; or~~

~~(iv) enrollment, disenrollment, and assignment within managed care plans~~ when the action being appealed is based on an OHCA decision, or the action relates to the Advantage Waiver Program.

(2) Circumstances ~~which~~that constitute a basis for a hearing are:

(A) the individual's application for medical services is denied;

(B) a decision regarding eligibility has not been reached within the specified time limit from the date of the application:

~~(i) five working days for presumptive eligibility for pregnant women;~~

~~(ii) 20 days for:~~

~~(I) categorically related to pregnancy related services; and~~

~~(II) Medical Assistance only and categorically related to Aid to Families with Dependent Children;~~

(~~iii~~i) 30 days for:

(I) Refugee Medical Assistance; and

(II) ~~Categorically~~categorically related to Aid to the Aged; ~~and~~

~~(III) Medical Assistance only and categorically related to Aid to Families with Dependent Children TANF and establishing incapacity~~;

(~~iv~~ii) 45 days for:

(I) Medical Assistance ~~Program~~ only, ~~not~~categorically related to ~~age, pregnancy or disability~~Aid to the Disabled;

(II) a request for long-term care on an active State Supplement Payment (SSP) or Medical Assistance case; and

(III) Medical Assistance ~~Program~~ for optional tuberculosis (TB) coverage group; ~~and~~

~~(IV) Medical Assistance Program for long-term care request on active SSP for Aged, Blind, or Disabled cases;~~

(~~v~~iii) 60 days for~~:~~

~~(I) Medical Assistance Program only; or~~

~~(II)~~ categorically related to Aid to the Blind or Disabled when disability must be established; and

(C) the client disagrees with the date on which assistance begins; or

(D) the client is dissatisfied with any other action affecting eligibility for Medical Assistance.

(3) Administrative hearings are not granted when either state or federal law requires automatic adjustments for classes of recipients unless the reason for an individual appeal is incorrect eligibility determination.

(h) **Social services under Title XX of the Social Security Act.** A hearing may be granted if:

(1) the client is aggrieved because of:

(A) denial of a request for, or exclusion from, a service program;

(B) failure to ~~take account of~~consider the individual's choice of service in assignment of program; or

(C) a decision requiring participation in a service program; or

(2) the recipient is aggrieved about the operation of the service program.

(i) **SSP for the Aged, Blind, and Disabled~~,~~ and ~~Temporary Assistance to Needy Families (TANF)~~, including TANF Emergency Assistance.**

(1) A hearing is not granted in these programs when either state or federal law or regulation requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

(2) A hearing may be granted when:

(A) there is a delay in reaching a decision on an application for assistance of more than:

(i) five ~~working~~business days for TANF Emergency Assistance;

(ii) ~~seven days for Diversion Assistance;~~

~~(iii)~~ 30 days for:

(I) SSP for the Aged;

(II) TANF; or

(III) Refugee Cash Assistance;

(~~iv~~iii) 45 days for SSP for the Blind; or

(~~v~~iv) 60 days for SSP for the Disabled;

(B) there is a delay of more than ~~ten~~10 days in implementing a requested change regarding an assistance payment;

(C) the client disagrees with the date on which assistance begins;

(D) the assistance payment ~~has been~~was discontinued or suspended;

(E) the client is aggrieved regarding protective payments because:

(i) payment is made in the form of a protective payment; or

(ii) of any action with regard to the protective payment, such as the protective payee selected; or

(F) the client is aggrieved about conditions of payment, including the requirements for work, medical treatment, or training, but only ~~if~~when the requirement complained of, if true, would constitute a violation of DHS ~~regulations~~policy.

(j) **Assistance.** In any other program which constitutes assistance within the definition of Section 164 of Title 56 of the Oklahoma Statutes, a hearing may be requested if the client disagrees with:

(1) denial or termination of assistance;

(2) amount of assistance; or

(3) the conditions on receipt of benefits.

(k) **Overpayments.** If a client is notified of an overpayment in any of the programs listed in this Section, the client may request a hearing regarding:

(1) the existence of the overpayment;

(2) the amount of the overpayment;

(3) when appropriate, whether the overpayment was caused due to ~~Agency~~DHS error, inadvertent client error, or willful misrepresentation by the client; and

(4) when appropriate, the client's liability to repay the overpayment.

(l) Any action, not specified in subsections (a) through (k) of this Section, for which DHS is required to provide an administrative hearing by state or federal constitution, statute or regulation.

340:2-5-62. Definitions

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

"Access to the entire case file" means ~~that~~ the client and authorized representative have, with the exceptions described in this Section, the right to review the entire contents of the case file(s) ~~which~~that relates to the issue(s) appealed, and all documents and records to be used by the Oklahoma Department of Human Services (DHS) at the hearing.

(A) Certain documents and information within the case file are made confidential by state and federal laws and therefore are not available to the client or authorized representative, unless such information is to be used by DHS at the hearing. Confidential documents and information include:

(i) child abuse or neglect reports including the names and information from complainants;

(ii) psychological and medical reports, unless there are written releases from both the author and the patient;

(iii) information from other family members ~~that is~~ unrelated to the appeal;

(iv) information from references or witnesses, unless there is a written release of information; and

(v) confidential ~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP) information.

(B) The review may be made at a reasonable time before the date of the hearing as well as during the hearing.

(i) When a request for file access is made, the local office must make arrangements for the client,

authorized representative, or both~~,~~ to review the case file with as much privacy as possible.

(ii) A supervisory staff member observes the review of the case file to ensure ~~that~~the contents of the case file are not removed from the record.

(iii) The client and authorized representative are free to make written notes from the record or make copies of documents.

(iv) A client or representative is not charged for copies of documents made for the purpose of hearing preparation or presentation.

"Administrative hearing officer (AHO)" means:

(A) the ~~professional staff member of the Appeals Unit who has been~~DHS employee designated by the Appeals Unit supervisor to conduct an administrative hearing. The AHO may not have had a part in the action or failure to act, which is the subject of the appeal; or

(B) a lawyer who has a contract with DHS to preside over administrative hearings ~~which~~that are the responsibility of the Appeals Unit, and ~~who has been~~ designated by the Appeals Unit supervisor to preside over a particular case.

"Appeals Committee" means the committee ~~which~~that makes the hearing decision, consisting of:

(A) the AHO who presided over a hearing~~,~~;

(B) the division director of the affected program or the division director's designee~~,~~. The designee must report directly to the division director; and

(C) the Appeals Unit supervisor. If the Appeals Unit supervisor made, or helped make the decision that led to the action that is the subject of a hearing, a lawyer employed by DHS Legal Services is designated by the supervisor to vote in his or her place. The DHS Director ~~of DHS~~ has the authority to alter the members as he or she deems appropriate.

"Appeals Unit" means the unit established within ~~the~~ Legal ~~Division which is~~Services responsible for conducting administrative hearings.

"Appeals Unit supervisor" means the person designated by the DHS general counsel to supervise the Appeals Unit.

"Authorized representative" means a person authorized by the client to represent him or her in the hearing process.

(A) Any party may be represented by a lawyer, or legal intern, licensed by the Supreme Court of Oklahoma.

(B) A party may be represented by a non-lawyer only when federal law requires that non-lawyer representatives are allowed. Appeals in which non-lawyer representatives may appear include, but are not limited to:

(i) ~~Food Stamp Program~~SNAP;

(ii) Temporary Assistance ~~to~~forNeedy Families (TANF);

(iii) ~~Medical Assistance Program~~SoonerCare, Oklahoma's medical assistance program authorized per Section 1396, et seq. of Title 42 of the United States Code;

(iv) State Supplement Payment for the Aged, Blind, and Disabled;

(v) TANF Emergency Assistance;

(vi) ~~Services~~services for persons with developmental disabilities; and

(vii) Low Income Home Energy Assistance Program.

(C) If the representative is not a lawyer, DHS must verify the authority of the person to represent the client through:

(i) personal contact with the client;

(ii) an original written authorization signed by the client; or

(iii) in instances where the client is unable to give oral or written authorization, a non-lawyer may represent a client ~~if~~when the proposed representative is a:

(I) friend or relative, and circumstances show ~~that~~ the proposed representative is knowledgeable about the issues involved in the case and will act in the client's best interest; or

(II) vendor of services relating to the issue in dispute and has no interests adverse to the client; there is no friend or relative who is willing and able to adequately represent the client; circumstances show ~~that~~ the vendor is knowledgeable about the issues involved in the case~~;~~ and will act in the client's best interest.

"Client" means:

(A) an applicant for DHS services or payments ~~from DHS~~ in any of the programs ~~described at~~per Oklahoma Administrative Code (OAC) 340:2-5-61; or

(B) a recipient of DHS services or payments ~~from DHS~~ in any of the programs ~~described at~~per OAC 340:2-5-61.

"DHS" means the Oklahoma Department of Human Services.

"Fair hearing" means ~~a~~an administratiave hearing held pursuant to Section 168 of Title 56 of the Oklahoma Statutes.

"Hearing" means the process by which an AHO obtains evidence and makes a decision regarding the protested action, or failure to act, by DHS.

"Hearing request" means a clear expression by a client or authorized representative of the client's desire to contest an action, or failure to act, by DHS through the presentation of testimony and evidence to an AHO. Except for ~~the Food Stamp Program~~SNAP, a hearing request must be made in writing and contain the signature of the client or authorized representative.

"Hearing summary" means a document prepared by the local office stating the reasons for the local office action or inaction. It provides the client with information needed to prepare for the hearing. The six areas covered in the hearing summary are described ~~at~~per OAC 340:2-5-66.

"Local office" means any part of DHS which is responsible for the act, or failure to act, which is the subject of the hearing request.

"Local staff member" means the particular staff member who was responsible for the protested action, or failure to act, and who represents DHS in activities during the time period extending from the client's request for a hearing through implementation of the hearing decision.

"OAC" means the Oklahoma Administrative Code, which contains the regulations promulgated by each state agency.

"Official record" means a record consisting of:

(A) all evidence offered for introduction at the hearing;

(B) an electronic recording of the hearing; and

(C) the hearing decision.

340:2-5-63. Time

In computing any period of time prescribed or allowed by this Part, the day of the act, or event, from which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a weekend, or a legal holiday as defined by the Oklahoma Statutes. Unless otherwise noted, all time periods are calendar days.

(1) Items received by the client from the Oklahoma Department of Human Services (DHS) for:

(A) mailed items:

(i) time deadlines begin with the second day on which mail is delivered after the date of mailing to the client's last known address; and

(ii) items are considered mailed on the date on the notice, determination, or decision unless otherwise indicated by the facts, such as the postmark on the envelope containing the item mailed; and

(B) items delivered in person:

(i) time deadlines begin with the day after the date of delivery to the client; and

(ii) items are considered delivered to the client on the date the item is:

(I) given to the client or authorized representative; or

(II) left at the client's last known address with a person who is ~~age~~ 15 years of age or older.

(2) Items are considered received by DHS from the client if transmitted:

(A) via the United States Postal Service (USPS), on the date it is mailed. The mailing date ~~will be~~is:

(i) ~~as~~ shown by the postmark;

(ii) in the absence of a postmark, the postage-meter mark on the envelope in which it is received; or

(iii) if not postmarked or postage-meter marked, or if the mark is illegible, the date received by DHS; or

(B) by means of the United Parcel Service, Inc. (UPS), FedEx, or a similar entity:

(i) on the date shown on the package, or document attached by the delivering entity to the outside of the package, that the item was entrusted to the delivering entity; or

(ii) in the absence of such date, on the date of receipt by DHS; or

(~~B~~C) by any means ~~other than the USPS~~not listed in paragraph (2) of this Section, on the date it is received by DHS.

(3) The submission by a client of any item beyond the specified time period ~~are~~isconsidered timely if the administrative hearing officer is satisfied that the delay is due to a cause ~~which~~ that is beyond the control of the client.

340:2-5-64. Hearing request

(a) In the ~~Food Stamp~~Supplemental Nutrition Assistance Program a hearing request is any indication by a client or authorized representative that the client wants to contest ~~a~~an Oklahoma Department of Human Services (DHS) action, or failure to act, through the hearing process.

(b) In all other cases ~~coming~~ within this Part, a hearing request is a written expression by a client or authorized representative that the client wants to contest a DHS action, or failure to act, through the hearing process.

(1) The writing must be signed by the client or authorized representative.

(2) An original document, as well as a facsimile of a written document, are both considered a writing.

(3) An email, or a document attached to an email from the client or authorized representative, is considered a writing signed by the client.

340:2-5-65. Explanations by the local office when a client or authorized representative indicates ~~that~~ a hearing is desired

For any of the programs ~~which come~~ within this Part, at the time a client or authorized representative indicates that the client wants an administrative hearing, the local office must explain the information listed in (1) - (4) of this ~~subsection~~Section to the client or authorized representative.

(1) If the issue involves a proposed closure or reduction of State Supplemental Payment, Temporary Assistance ~~to~~for Needy Families (TANF), social services, medical assistance, Child Care Subsidy, or food ~~stamps~~benefits, known in Oklahoma as Supplemental Nutrition Assistance Program (SNAP), the client or authorized representative is advised:

(A) of the option of having benefits continued pending outcome of the hearing if, within ~~ten~~10 days of the notice being appealed, the client or authorized representative submits a written request for a hearing which is signed by the client or authorized representative;

(B) if he or she fails to indicate a preference in a written request for hearing made within ~~ten~~10 days following mailing of the notice, benefits are continued during the hearing process and if the hearing is not decided in his or her favor, a claim is made against him or her for all benefits received pending the hearing decision;

(C) if benefits are continued during the appeals process and the hearing is not decided in his or her favor, a claim ~~will be~~is made against him or her for all benefits received pending the hearing decision; and

(D) if the client elects to not continue benefits during the pendency of the appeal, ~~that~~ if the appeal is decided in his or her favor, the local office ~~will authorize~~authorizes supplemental payment(s) for the period of time covered during the appeal.

(2) If the issue concerns a ~~Food Stamp Program~~SNAP case, the household or authorized representative is advised:

(A) if necessary, he or she is entitled to receive a postponement of a scheduled hearing. The household is advised ~~that~~ the postponement will not exceed 30 days and ~~that~~ the time limit for action on the decision will be extended for as many days as the hearing is postponed; and

(B) if the client, such as a migrant farm worker, plans to move from the state before the end of the 60 days in which a hearing decision must be made, that processing of the hearing will be expedited in order that a decision may be rendered before he or she leaves the state.

(3) When a hearing is requested on a medical decision made by the Oklahoma Department of Human Services (DHS), the client or authorized representative is advised:

(A) of the right to introduce as evidence at the hearing the report of any examination he or she may have obtained, provided that the records are signed by the health care provider; and

(B) when the hearing involves medical issues, such as those concerning a diagnosis, if the administrative hearing officer (AHO) considers it necessary, ~~the Department of Human Services (~~DHS~~)~~ will obtain at the expense of DHS ~~expense~~:

(i) an examining physician's report;

(ii) a medical review team's decision; or

(iii) a medical assessment other than that of the person or persons involved in making the original decision.

(4) In every case, the local office advises the client or authorized representative:

(A) that the request for hearing will be sent to the Appeals Unit and a letter will be sent from that office regarding the date, time, and place of the hearing;

(B) of the right to be represented by legal counsel if desired, but that DHS does not provide, or pay for, legal representation. ~~If free legal services are available in the community this is explained and a list is given to the client~~;

(C) that the client, authorized representative, or both, has access to the following at a reasonable time before the date of the hearing, as well as during the hearing:

(i) all documents to be introduced at the hearing by DHS ~~at the hearing~~; and

(ii) the case file, except for confidential documents;

(D) that the client ~~can request that~~may ask the AHO to require ~~that~~:

(i) individual DHS employees be present at the hearing; and

(ii) DHS produce specific records at the hearing;

(E) that ~~after receipt of the notification that~~before the hearing, ~~has been scheduled~~ the client will receive a copy of the hearing summary, documents, and records the local office will present at the hearing;

(F) that transportation equivalent to the rate for public transportation is paid for the client and witnesses, if any, when essential for attendance at the hearing;

(G) that the testimony given by the client, witnesses, and the local office is taken by an AHO, who records the proceedings;

(H) that an opportunity is given at the time of the hearing to give all the evidence on the points at issue ~~that~~ the client believes necessary and ~~that~~ the evidence can be presented by anyone he or she desires;

(I) that if the client needs help in understanding how to present evidence, explanation is given regarding some of the ways in which this may be done, such as presenting evidence orally, in writing, or by having anyone the client chooses present the evidence for him or her; and

(J) that the client will receive the written decision of the AHO.

340:2-5-66. Hearing summary

(a) As soon as a request for a hearing is received:

(1) in cases involving services through ~~the~~ Developmental Disabilities Services ~~Division~~, a programs manager prepares Oklahoma Department of Human Services (DHS) Form ~~H-1-A~~ 13MP002E, Hearing Summary; and

(2) in other cases, the local staff member responsible for the case prepares Form ~~H-1-A~~ 13MP002E. The supervisor of the local staff member is responsible for review of the Form ~~H-1-A~~13MP002E for completeness and for pertinence to the point(s) at issue.

(b) The six areas covered in the hearing summary are:

(1) the type of decision, action, or inaction on the part of the local office ~~which~~that is the subject of the hearing request;

(2) nature of client's complaint;

(3) point at issue, exactly what the client is appealing;

(4) chronological summary of pertinent events and evidence leading to the action or inaction;

(5) policy including:

(A) verbatim quotations from the manual regarding the policy on which the decision was based; or

(B) copies of applicable policy with the pertinent portions marked; and

(6) documents and other evidence ~~which~~that supports the decision being appealed and ~~which~~ that the local office intends to introduce at the hearing.

(c) A copy of Form ~~H-1-A~~13MP002E is delivered to the client ~~as soon as a copy of the notification of the hearing date is received from the Appeals Unit~~no later than the fifth business day before the hearing.

340:2-5-67. Appeals Unit action following ~~receipt of a~~ hearing request receipt

(a) Upon ~~receipt of a~~ hearing request receipt in the Appeals Unit, a hearing number is assigned.

(b) The Appeals Unit supervisor assigns the case to an administrative hearing officer (AHO).

(c) The AHO determines if the hearing request was timely made ~~timely~~.

(1) A hearing request is considered timely:

(A) in the ~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP), ~~if~~when the client or authorized representative indicates, in any way, the desire to have a hearing within 90 days of the action, or failure to act~~, which~~that is being appealed;

(B) in all other cases:

(i) if the initial indication that the client wants a hearing is in writing, signed by the client or authorized representative, if the writing was received by the Oklahoma Department of Human Services (DHS) within 30 days of the action, or failure to act~~, which is~~ being appealed; or

(ii) if the initial indication that the client wants a hearing other than in writing, signed by the client or authorized representative:

(I) the indication to DHS was made to DHS within 30 days of the action, or failure to act, which is being appealed; and

(II) DHS receives a written hearing request, signed by the client or authorized representative within the later of ~~ten~~10 days from the date of the initial indication that the client wanted a hearing, or 30 days of the action, or failure to act~~, which is~~ being appealed.

(2) ~~If~~When the AHO or Appeals Unit supervisor determines ~~that~~ the hearing request was not timely made ~~timely~~, the AHO notifies the client and authorized representative that the hearing request is dismissed. This notice includes a statement of appeal rights.

(d) ~~If~~When a hearing request was timely made ~~timely~~, the AHO determines whether the request relates to an appealable issue.

(e) ~~If~~When a hearing request is both timely and relates to an appealable issue, paragraph (1) or (2) of this subsection apply.

(1) ~~If~~When the client appeal relates to a delay in decision, or a delay in acting on a case change, the evidence is reviewed by an AHO.

(A) If the available information clearly shows ~~that~~ there has been a delay, the AHO issues a decision, without holding a hearing.

(B) If the available information does not clearly show ~~that~~ there has been a delay, the AHO schedules a hearing to determine whether there has been a delay.

(2) ~~If~~When the request for hearing does not involve delay, the Appeals Unit mails a notice of hearing to the client. Copies of this notification are sent to the local office, appropriate supervisory staff, and the authorized representative, if any.

~~(A)~~ The notification is mailed prior to the date of hearing not less than:

~~(i)~~ ~~ten~~(A) 10 days for ~~Food Stamp Program~~SNAP appeals, unless waived by the client; and

(~~ii~~B) eight days in all other cases, unless waived by the client.

~~(B) If the client moves from Oklahoma to another state and requests an administrative hearing in a timely manner, the client is advised that he or she has the option of scheduling the hearing by:~~

~~(i) returning to Oklahoma to attend a scheduled hearing. In this case, the hearing is scheduled and conducted in the same manner as a client who continues to live in Oklahoma; or~~

~~(ii) telephonic hearing. In this case the hearing is scheduled and conducted in the manner described at OAC 340:2-5-24.~~

340:2-5-69. Local office contact with client after ~~receipt of the~~hearing notice receipt~~of hearing~~

(a) ~~Immediately upon receipt of~~At least five business days before the ~~notice of~~ hearing, the local office representative contacts the client or authorized representative and gives him or her a copy of ~~the~~Oklahoma Department of Human Services Form ~~H-1-A~~13MP002E, Hearing Summary.

(b) Form ~~H-1-A~~13MP002E must be delivered at least five complete ~~working~~business days prior to the date scheduled for the hearing. If Form ~~H-1-A~~13MP002E is not delivered timely, paragraph (1) or (2) of this subsection applies.

(1) ~~If~~When the local office shows good cause for failure to deliver Form ~~H-1-A~~13MP002E timely, the administrative hearing officer (AHO) continues the hearing to another date if the client is not prepared to proceed as a result of receiving Form ~~H-1-A~~13MP002E late.

(2) ~~If~~When the local office does not show good cause for failure to deliver Form ~~H-1-A~~ 13MP002E timely, the AHO may prohibit the local office from presenting evidence at the hearing and decide the case based only on evidence presented by the client.

(c) Immediately upon receipt of the hearing notice, the local office submits a copy of ~~the~~ Form ~~H-1-A~~13MP002E to the Appeals Unit.

340:2-5-70. Hearing continuance, withdrawal, and dismissal

(a) **Continuance of hearing.**

(1) At any point after setting a case for hearing, the administrative hearing officer (AHO) may determine ~~that~~ additional evidence is needed before a final decision can be made. If so, the AHO may continue the hearing and direct the parties to take whatever action the AHO deems necessary. The AHO may set time limits for the actions.

(2) If the AHO is informed~~,~~ in advance of a hearing~~,~~ that the client, authorized representative, or local office representative cannot ~~attend a~~participate in the hearing at the scheduled time, the AHO continues the hearing ~~if~~when good cause exists for the person's absence. The AHO may require whatever proof of good cause that is deemed necessary.

(3) Clients who are appealing an action in the ~~Food Stamp~~Supplemental Nutrition Assistance Program are entitled to one hearing continuance of up to 30 days, for which good cause need not be shown.

(b) **Withdrawal of request for hearing.** A client or authorized representative may withdraw a hearing request only by a signed writing. Any other indication of a desire to withdraw a hearing request is insufficient.

(c) **Dismissal of hearing request.** The AHO may dismiss a hearing request ~~if~~when, in the AHO's judgment:

(1) the Oklahoma Department of Human Services (DHS), by written notice, withdraws the action appealed and restores the client's status which existed before the action appealed was taken. Continuation of benefits because a hearing request has been made does not constitute restoration of the client's status;

(2) DHS implements action and issues a notice to correct ~~an~~a DHS error ~~made by DHS which~~that resulted in the appeal; or

(3) there are circumstances ~~which~~that indicate ~~that~~ it is impossible to hold the hearing, such as the death of a client.

340:2-5-71. Presence of Oklahoma Department of Human Services (DHS) employees or DHS records at hearings

(a) An administrative hearing officer (AHO), at the request of a client, authorized representative, or on his or her own motion, may require the presence at a hearing of:

(1) a ~~particular~~ DHS employee;

(2) DHS records; and

(3) other DHS evidence ~~in the possession of DHS~~.

(b) A client's request for the presence of a DHS employee, DHS documents, or other evidence, is granted by the AHO only ~~if~~when the client shows that the presence of the DHS employee or evidence is:

(1) relevant to the issues involved in the hearing;

(2) necessary for determination of the issue; and

(3) not otherwise obtainable by the client.

(c) ~~If~~When the AHO determines that a DHS employee, or DHS evidence ~~in DHS possession~~, must be present at the hearing, the AHO gives notice to the DHS employee, or office where the evidence is located the:

(1) date, time, and location of the hearing; and

(2) employee's name, records, or other evidence ~~which~~that must be present.

(d) ~~If~~When, without good cause, the DHS employee fails to appear or DHS fails to produce the needed records or ~~other~~ evidence, the AHO may:

(1) decide the case as if the missing evidence was as the client asserted, if the client's assertion is reasonable; or

(2) continue the hearing ~~for~~so the missing testimony or evidence ~~to~~may be produced.

340:2-5-72. Hearing issue, standard of review, and burden of proof

(a) **Hearing issue.** The issue determined through the hearing process is whether the Oklahoma Department of Human Services (DHS) acted correctly in taking the action, or failed to act, which is the subject of the client's request for hearing.

(b) **Standard of review.** The administrative hearing officer (AHO) determines ~~anew~~ the relevant facts and applies the law to those facts. ~~Therefore no~~No presumptions are made for or against DHS concerning the validity of the factual or legal basis for the action, or inaction, which is the subject matter of the hearing.

(c) **Standard of proof.**

(1) The standard of proof necessary to prove a fact is governed by state and federal law and regulations ~~which are~~ applicable to the subject matter of the hearing.

(2) If such law and regulations are silent, the standard of proof is a preponderance of the evidence. A preponderance of the evidence is ~~that~~ evidence ~~which~~that, in light of the record as a whole, leads the AHO to believe a fact is more likely true than not true.

(d) **Burden of proof.**

(1) The burden of proof is governed by state and federal law and regulations ~~which are~~ applicable to the subject matter of the hearing.

(2) ~~If~~When such law and regulations are silent, the party ~~who seeks~~seeking to alter the status quo has the burden of proof.

(3) Examples of the burden of proof are shown in (A) and (B) of this paragraph.

(A) The burden of proof is on a client to show that:

(i) the applicant is eligible for Temporary Assistance ~~to~~for Needy Families (TANF), ~~the~~ medical assistance, ~~the food stamps~~Supplemental Nutrition Assistance Program (SNAP), ~~or~~ other DHS benefit programs, or the amount of benefits the applicant receives;

(ii) when seeking recertification for benefits, the recipient remains eligible for TANF, ~~the Medical Assistance Program~~medical assistance, ~~the Food Stamp Program~~SNAP, or other DHS benefit programs; or

(iii) an applicant is eligible for services through ~~the~~ Developmental Disabilities Services ~~Division~~ (DDS~~D~~).

(B) The burden of proof is on DHS to show that:

(i) during a period of certification, the recipient's TANF, medical assistance, ~~food stamps~~SNAP, or other DHS program benefits should be reduced or terminated; or

(ii) during a DDS~~D~~ plan of care, services should be reduced or terminated.

340:2-5-73. Hearing procedures

(a) **Hearings.** All hearings scheduled by the Appeals Unit are conducted by an administrative hearing officer (AHO), who:

(1) administers oaths;

(2) regulates and conducts the hearing in an orderly manner;

(3) ensures ~~that~~ all relevant issues are considered;

(4) rules on the admissibility of evidence;

(5) at his or her discretion, requests ~~that~~ written comments be submitted;

(6) if necessary for a client's case to be adequately presented, assists a client to present his or her case; and

(7) takes such action as the AHO deems necessary to reach a proper disposition of the case.

(b) **Hearing location.**

(1) It is solely within the discretion of the AHO whether to hold the hearing in person or by telephone. When in person, it is solely within the discretion of the AHO to designate the location ~~in~~at which the hearing is held.

(2) ~~If~~When the hearing is held in the local office and the AHO determines ~~that~~ the space provided for the hearing by the local office is inadequate, the local office provides other space ~~which is~~ acceptable to the AHO.

(c) **Hearings are not open to the public.**

(1) In order that the confidential nature of case material and the relationship between the client and the Oklahoma Department of Human Services (DHS) are maintained, hearings are not open to the public.

(2) No one other than the client, the authorized representative, and the DHS representative are permitted to attend the hearing, without permission of the AHO and the client.

(d) **Failure to appear.**

(1) ~~If~~When an appropriate representative from the local office fails to appear, and the local office fails to show good cause, the AHO ~~will proceed~~proceeds with the hearing, ~~take~~taking evidence from the client, and ~~issue~~issues a decision.

(2) Client failure to appear in:

(A) ~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP) disqualification hearings~~, if a client fails to appear,~~ a hearing must be held and a decision issued; and

(B) in all other cases, if a client fails ~~to appear, and fails~~ to show good cause, the AHO dismisses the hearing request.

(e) **Pre-hearing conference.**

(1) A conference may be conducted by the AHO immediately prior to the formal beginning of a hearing. The purpose of the pre-hearing conference is to reduce the actual amount of time spent in the hearing. In the pre-hearing conference the AHO identifies all:

(A) witnesses;

(B) exhibits; ~~and~~

(C) issues to be covered in the hearing~~.~~; and

(~~2~~D) ~~The pre-hearing conference is~~does not ~~recorded~~record the conference.

(2) At the AHO's discretion, a pre-hearing conference may be held before the date of the hearing.

(A) The AHO notifies the parties of the date and time of the conference.

(B) The conference is not recorded.

(C) Based on the statements of the parties, the AHO determines the issues to address at the hearing.

(D) The AHO establishes dates for submission of the following:

(i) the DHS proposed exhibits, witness list, and Hearing Summary;

(ii) appealing party's proposed exhibits, witness list, and response to DHS Hearing Summary; and

(ii) the DHS reply to the appealing party's response.

(E) The AHO schedules a hearing date.

(F) The AHO issues a Scheduling Order.

(G) All documents must be mailed or emailed to the AHO with a copy to the opposing party. Documents must be received by the AHO and the opposing party on the date established by the AHO.

(f) **Recording the hearing.**

(1) The AHO is responsible for arranging for the hearing to be recorded. The hearing may be recorded electronically or by a certified court reporter.

(2) The AHO's recording of the hearing is the official recording. The client or authorized representative may provide his or her own recording device for use during the hearing if such recording is not disruptive. In no case is videotaping allowed.

(3) Upon written request to the Appeals Unit, DHS provides the client or authorized representative a copy of the~~:~~

~~(A)~~ ~~tape~~ recording of the hearing. A transcript of the recording is provided only when required by federal or state law~~; or~~

~~(B)~~ ~~court reporter's transcript~~.

(g) **Admonitions.**

(1) When the hearing involves assistance, as defined at Section 161(g) of Title 56 of the Oklahoma Statutes (56 O.S. § 161(g)), all persons presenting evidence are advised of the provisions of ~~Section 182 of Title 56 of the Oklahoma Statutes~~56 O.S. § 182.

(2) When the hearing involves an applicant for or a recipient of the Medical Assistance Program, Children's Special Health Care Needs Services, State Supplemental Payment for the Aged, Blind, and Disabled, Child Care Subsidy, or Temporary Assistance for Needy Families, all persons presenting evidence are advised by the AHO of the provisions of ~~Section 185 of Title 56 of the Oklahoma Statutes~~56 O.S. § 185.

(3) ~~If~~When the hearing involves ~~Food Stamp Program~~SNAP, all individuals appearing to give testimony are advised by the AHO of the provisions of ~~Section 243 of Title 56 of the Oklahoma Statutes~~56 O.S. § 243.

(h) **Oath for Witnesses.**

(1) An oath is administered by the AHO to the client, ~~witnesses~~witness(es), and the representative(s) of the local office. The following form is used for the oath, "Do you solemnly swear or affirm that the evidence you give in this case will be the truth, the whole truth, and nothing but the truth?"

(2) In hearings in which a client is assisted by an interpreter, the AHO ~~will~~ also ~~administer~~ administers an oath to the interpreter. The following form is used for the oath, "Do you solemnly swear or affirm that you will truthfully translate from English into (state the other language) the questions about to be asked~~,~~ and from (state the other language) into English the answers about to be given in the case to the best of your ability?"

(i) **Sequestration of witnesses.** The AHO may require that any witness, other than the client~~, or~~ authorized representative, and the local office representative, absent himself or herself from the hearing room except when the witness is testifying.

(j) **Presentation of the case.**

(1) Presentation of the case includes:

(A) participation in the pre-hearing conference;

(B) opening statements;

(C) calling witnesses;

(D) questioning witnesses;

(E) offering of non-testimonial evidence; and

(F) closing statements.

(2) ~~Who presents the case?~~ Case presentation.

(A) Presentation of the DHS case is made by the DHS employee most familiar with the issues.

(B) The client:

(i) may elect to present the case himself or herself; or

(ii) have an authorized representative present the case.

(3) The AHO directs the order of presentation of evidence.

(A) The AHO may call and/or examine witnesses to develop the record ~~fully~~ and ~~to~~ ensure all evidence favorable to an unrepresented client is presented.

(B) If during the hearing, the AHO determines ~~that~~ a party can submit evidence after the hearing, without the necessity of reconvening the hearing, the AHO sets ~~forth~~ the time and manner in which the evidence is submitted.

(4) When presentation of the evidence is complete, the AHO allows closing statements, with the party bearing the burden of proof ~~going~~presenting last.

(k) **Other AHO duties.**

(1) When opinions of a subjective nature or expert opinions of a technical nature are relevant, the AHO elicits information ~~which~~that indicates the competence of the persons making these statements.

(2) ~~If~~When the AHO determines ~~that~~ the client cannot adequately represent himself or herself, the AHO may continue the hearing and direct the local office to help the client obtain an authorized representative.

(l) **AHO closing statement.**

(1) ~~If~~When the hearing is continued, the AHO explains the reason(s) for the continuance and the responsibilities to be carried out by the client and local office before the hearing is reconvened. The AHO is responsible for setting the date on which the hearing will be resumed and for notifying the client and the local office.

(2) ~~If~~When the hearing is not continued, as soon as all pertinent evidence ~~has been~~is presented, the parties are given an opportunity to make closing statements.

(3) Following closing statements by the parties, the AHO makes a closing statement in which he or she explains:

(A) ~~that~~ the Appeals Committee will make a decision in the case;

(B) the possible decisions that ~~could~~may be reached;

(C) the decision is normally made within the following time periods, plus any delay caused by the client:

(i) 30 days for the Low Income Home Energy Assistance Program;

(ii) 60 days for ~~the Food Stamp Program~~SNAP; and

(iii) 90 days ~~in~~for all other cases;

(D) that a letter will be sent to the client, authorized representative, and local office by the AHO ~~which~~that constitutes the decision; and

(E) the local office is responsible for taking whatever action is required to carry out the decision made on the client's hearing.

(m) **Closing the hearing.** The AHO closes the hearing.

340:2-5-74. Evidence

(a) **General.**

(1) Formal rules of evidence are not observed.

(2) Evidence is admitted ~~if~~when it is the ~~kind~~type of evidence upon which reasonable persons are accustomed to rely on in the conduct of serious affairs.

(3) Evidence ~~which is~~ reasonably construed as relevant and ~~which is~~ not otherwise unduly repetitious is admitted. Evidence ~~which~~that is irrelevant or unduly repetitious may be excluded.

(4) The fact that evidence is admitted does not limit the authority of an administrative hearing officer (AHO) in determining the appropriate weight given such evidence.

(b) **Specific evidentiary issues.**

(1) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, all parties are given an opportunity to compare the copy with the original.

(2) ~~Evidence normally~~Information stored in electronic form may be printed and introduced as if the printed page was the original. ~~Electronic evidence~~Electronically stored information includes, but is not limited to:

(A) Oklahoma Department of Human Services (DHS) records;

(B) ~~e-mail~~email; and

(C) Internet pages.

(3) When all parties stipulate to a fact, the AHO officer may make a finding of fact on the basis of the stipulation. Signed statements by the parties or on-the-record oral statements by the parties are sufficient as stipulations.

(4) Judicial notice.

(A) Law. Judicial notice is taken by the AHO of the common law, constitutions, statutes, and administrative regulations in force in every state, territory, and jurisdiction of the United States.

(B) Facts.

(i) A judicially noticed adjudicative fact is not subject to reasonable dispute. It is either:

(I) generally known within the state; or

(II) capable of accurate and ready determination by reference to sources whose accuracy cannot reasonably be questioned.

(ii) An AHO may take judicial notice of a fact:

(I) if requested by a party and supplied with the necessary information; or

(II) on his or her own motion.

(C) Propriety. In determining the propriety of taking judicial notice of a matter:

(i) the AHO may consult and use any source of pertinent information, whether or not furnished by a party;

(ii) a party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking judicial notice and the scope of the matter noticed; and

(iii) judicial notice may be taken at any stage of the proceeding.

(5) Hearsay.

(A) Hearsay is evidence regarding a statement made outside of the hearing by a person not present at the hearing and ~~which is~~ offered to prove the truth of the statement.

(B) Hearsay evidence is not excluded because of its hearsay nature, but is admitted or excluded based upon the standards ~~set forth below.~~

~~(C)~~ ~~Admissibility~~for admissibility and weight of hearsay evidence ~~is~~ explained in (i) - (iii) of this subparagraph.

(i) Generally, evidence is admissible if it is the ~~kind~~type of evidence upon which reasonable persons are accustomed to rely on in the conduct of serious affairs.

(ii) Unlike judicial proceedings in which certain classes of hearsay evidence are automatically excluded due to concerns over the hearsay's reliability, no class of hearsay evidence is automatically excluded in administrative proceedings.

(iii) Once hearsay evidence ~~has been~~is admitted, it is ~~still~~ necessary for the AHO to decide what weight ~~should be~~is given to the evidence.

(D) ~~Even if~~When hearsay evidence is admitted and accorded great weight, an administrative decision may not be based solely on hearsay.

340:2-5-75. Reopened hearings

(a) If, following a hearing at which a decision was not pronounced, the administrative hearing officer (AHO) determines ~~that~~ the evidence presented in the hearing was so inadequate that a decision cannot be made, the hearing is reopened and further information requested.

(1) When it is necessary to reopen a hearing, the AHO sends the client, authorized representative, and the local office a letter ~~which~~ clearly ~~states~~stating:

(A) what evidence is to be submitted;

(B) who ~~will submit~~submits the evidence;

(C) a deadline for submission;

(D) the manner in which the evidence is submitted; and

(E) the deadline for the opposing party to submit comments regarding the evidence or to request ~~that~~ the hearing be reconvened.

(2) The client is expected to cooperate in any way necessary to obtain the desired information and failure to do so without good cause may result in the dismissal of the hearing request.

(b) ~~If~~When the hearing is reopened for the purpose of obtaining additional medical information, the needed examination is arranged in the usual manner.

(1) ~~If~~When the examination is authorized by a local office, ~~that~~the office routes the original ~~of the~~ completed report to the Appeals Unit and the client or authorized representative.

(2) ~~If~~When the examination is authorized ~~at the~~by State Office, all copies of the completed report are forwarded to the Appeals Unit by the division or unit ~~which~~that authorized the examination. The Appeals Unit sends a copy of the completed report to the local requesting office ~~in which the appeal was requested~~ and to the client.

(c) The AHO may make a referral to another unit or division, or request the local office ~~to~~ obtain the needed information.

(d) Following receipt of additional information, the AHO informs the client, authorized representative, and local office in writing of:

(1) the additional evidence obtained;

(2) the source of the additional evidence;

(3) how the evidence relates to the issues; and

(4) that either party may ask ~~that~~ the hearing be reconvened, but the AHO is not required to grant the request.

340:2-5-76. Hearing decision

(a) **The Appeals Committee.**

(1) The Appeals Committee makes the hearing decision.

(2) ~~Unless otherwise designated by the Director of the Department of Human Services (DHS), the Appeals Committee consists of the:~~

~~(A) administrative hearing officer (AHO) who presided over the hearing;~~

~~(B) director of the DHS division which administers the program which was the subject of the hearing. The division director may delegate this responsibility~~

~~to someone in the division at the level of programs administrator; and~~

~~(C) Appeals Unit supervisor.~~

~~(3)~~ No member of the Appeals Committee may obtain information about the case from outside the hearing record.

~~(4) Any member of the Appeals Committee who was involved in making the decision which is the subject of appeal disqualifies himself or herself from participation.~~

~~(A) A division director or programs administrator appoints an appropriate substitute from within the division or, if an appropriate substitute is not available within the division, a substitute is appointed by the Appeals Unit supervisor.~~

~~(B) The Appeals Unit supervisor appoints a substitute for himself or herself from the Legal Division.~~

(b) **Legal and factual basis of the decision.**

(1) The factual basis of the decision is the information ~~that was~~ available to the Oklahoma Department of Human Services (DHS) on the date of the decision and, if DHS failed to follow its own rules regarding the gathering of information, the information that would have been available to DHS at the time of the decision had the rules been followed. This information is obtained through:

(A) hearing testimony;

(B) exhibits introduced at the hearing; and

(C) facts or law of which the AHO has taken judicial notice.

(2) The law applied to the case is described in (A) - (C) of this paragraph.

(A) The relevant ~~sections~~Sections of the Oklahoma Administrative Code (OAC) are applied.

(B) Where the OAC is ambiguous or silent on a point critical to the decision, reference to other sources, including state and federal statues, federal regulations, sub-regulatory material, and case law is appropriate.

(C) No ~~sections~~Section of the OAC ~~shall be~~is declared invalid. However, if the validity of any ~~sections~~Section of the OAC is raised as an issue, the AHO permits arguments concerning ~~that~~the issue so that ~~the issue~~it is preserved for subsequent review.

(c) **Making the decision.**

(1) Following the hearing, the AHO reviews the evidence and applicable law.

(2) If the AHO concludes ~~that~~ DHS acted correctly, the AHO issues a ~~hearing~~written decision ~~letter~~ on behalf of the Appeals Committee.

(3) If the AHO concludes ~~that~~ DHS acted incorrectly, the AHO refers the case to the other members of the Appeals Committee.

(A) The AHO prepares a~~:~~

~~(i) summary of the hearing, which includes the AHO's findings of fact. The findings of fact are binding on each member of the Appeals Committee; and~~

~~(ii)~~ vote sheet~~,which contains~~containing the AHO's vote and the reasoning supporting the vote.

(B) The AHO sends the ~~summary,~~ vote sheet~~,~~ and Appeals Unit file to the member of the Appeals Committee from the affected division, who reviews the summary and Appeals Unit file prior to voting.

(C) If the vote from the division member is:

(i) favorable to the client, the file is returned to the AHO to issue a decision; or

(ii) unfavorable to the client, the file is sent to the Appeals Unit supervisor to review and vote.

(D) Following the vote by the Appeals Unit supervisor, the file is returned to the AHO to issue a decision in accord with the majority vote of the Appeals Committee.

(d) **The Appeals Committee may make a decision:**

(1) completely favorable to the client;

(2) partially favorable to the client;

(3) completely unfavorable to the client;

(4) dismissing the hearing request because of client withdrawal or abandonment; ~~or~~

(5) dismissing the hearing request because the hearing request does not relate to an appealable issue;

(6) to hold a supplemental hearing; or

(7) direct one, or both parties to obtain and submit additional information.

(e) **The Appeals Committee decision must contain:**

(1) a sufficient explanation of the issues, evidence, findings of fact, and law ~~which are~~ sufficient to inform the parties of the basis for the decision; and

(2) appeal rights, the action required to appeal, and the time within which such action must be taken.

(f) **The Appeals Committee decision is sent to:**

(1) the client;

(2) the authorized representative, if any;

(3) the local office;

(4) the DHS State Office programs manager of the program most affected by the decision;

(5) ~~any~~ other DHS~~component of DHS which is~~components necessary for implementation of the decision; and

(6) ~~any~~ other DHS~~component of DHS which~~components the AHO or Appeals Unit supervisor chooses to notify.

340:2-5-78. Administrative disqualification hearings

(a) **Administrative disqualification hearings.** An administrative disqualification hearing is initiated by the Oklahoma Department of Human Services (DHS) when the facts of the individual ~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance ~~to~~for Needy Families (TANF) case indicate ~~that~~ an intentional program violation may have occurred.

(b) **Definition of intentional program violation.**

(1) ~~Food Stamp Program~~SNAP. An intentional program violation consists of a client intentionally:

(A) making a false or misleading statement;

(B) misrepresenting, concealing, or withholding facts; or

(C) committing any act that constitutes a violation of the Food Stamp Act; ~~the Food Stamp Program~~SNAP regulations; or ~~any~~ Oklahoma ~~law or regulation~~laws or regulations relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons, authorization to participate (ATP) document, or electronic benefit transfer (EBT) cards.

(2) TANF. An intentional program violation occurs when an individual, for the purpose of establishing or maintaining the household's eligibility for TANF or for increasing or preventing a reduction in the amount of the grant, intentionally:

(A) makes a false or misleading statement or misrepresentation, concealment, or withholding of facts;

(B) performs any act intended to mislead, misrepresent, or conceal;

(C) withholds facts; or

(D) offers or proposes a falsity.

(c) **Consolidation of administrative disqualification hearing with administrative hearing.** DHS may combine an administrative hearing and an administrative disqualification hearing into a single hearing ~~if~~when the factual issues arise out of the same, or related circumstances and the household receives prior notice ~~that~~ the hearings will be combined. If the disqualification hearing and administrative hearing are combined:

(1) DHS follows the time frame for conducting disqualification hearings; and

(2) the household loses its right to an additional administrative hearing on the existence or amount of the overpayment ~~if~~when the combined hearing addressed the overpayment amount.

(d) **Advance notice of hearing.** DHS sends a written notice to the household member suspected of an intentional program violation by first class mail at least 30 days in advance of the scheduled date of a disqualification hearing. The household may waive the 30-day advance notice if an administrative hearing and disqualification hearing are combined.

(e) **Failure to appear at the hearing.**

(1) If the household member suspected of an intentional program violation or its representative cannot be located or fails to appear at the ~~hearing initiated by~~ DHS initiated hearing without good cause, the hearing is conducted without the household member present.

(2) Even though the household member suspected of an intentional program violation is not present, the administrative hearing officer (AHO) is required to carefully consider the evidence and determine if an intentional program violation was committed. In the event of an adverse decision against the client, the client may demonstrate to the AHO good cause for failure to appear. If good cause is shown, the adverse decision is rescinded and another hearing scheduled.

(f) **Waiver of hearing.** DHS provides the accused household member(s) the option of signing a waiver for an administrative disqualification hearing.

(g) **Postponement of hearing.**

(1) The household member or representative is entitled to a postponement of a scheduled ~~Food Stamp Program~~SNAP hearing, provided ~~that~~ the request for the postponement is made at least ~~ten~~10 days in advance of the scheduled hearing.

(2) The local office notifies the Appeals Unit, if a postponement is requested.

(h) **Right to refuse to answer questions.** At an administrative disqualification hearing, the AHO advises the household member(s) or representative ~~that~~ they have the right to remain silent and that anything said, or signed, may be used against them in a court of law.

(i) **Criteria for determining intentional program violation.** The AHO bases the determination of intentional program violation on clear and convincing evidence ~~which~~that demonstrates ~~that~~ the household member(s) committed an intentional program violation, as defined in this Section.

(j) **Time limit for decision.** Within 90 days of the date on the notice of hearing the household member is notified in writing of the decision. However, if the hearing has been postponed at the request of the household member suspected of an intentional program violation, the time limit is extended for as many days as the hearing was postponed.

(k) **Further appeal.**

(1) No further administrative appeal procedure exists after an individual waives his or her right to an administrative disqualification hearing or is determined by an AHO to have committed an intentional program violation ~~by an AHO~~.

(2) The disqualification penalty cannot be changed by a subsequent administrative hearing decision.

340:2-5-80. Director review of administrative hearing officer (AHO) decision

With the exception of administrative disqualification hearings, the decision of the Appeals Committee is subject to review by the ~~Department~~Director of Human Services ~~(DHS)~~(Director) ~~pursuant to~~or the Director's designee per Section 168 of Title 56 of the Oklahoma Statutes.

(1) Requests for review of an Appeals Committee decision may be made by a client or authorized representative ~~if~~when a written request for review is received by DHS within 30 days from the date of the ~~AHO~~Administrative Hearing Officer decision letter. Benefits are not continued or reinstated during the pendency of the review.

(2) Request for review of an Appeals Committee decision may be made by the director of the DHS division that completed the action appealed.

(A) The authority to request review may be delegated when the division director is unable to make the request due to absence or illness.

(B) The request must be made in writing and received by the Appeals Unit or Director within 10 business days of the date of the hearing decision.

(C) On receipt of a request for review by the Director, the Appeals Unit immediately notifies the client of the request for review, with a copy of the request attached. The notice includes:

(i) a statement that the client may submit documents and written comments within 10 business days;

(ii) the hearing decision is implemented immediately unless the client wishes to maintain the pre-hearing status quo until the Director issues a decision; and

(iii) when the hearing decision has already been implemented, implementation is not undone unless the client wants to maintain the pre-hearing status quo until the Director issues a decision.

(D) The decision of the Director, or designee is issued within 10 business days of the earlier of receipt of the client's comments or running of the deadline for client comments.

340:2-5-81. General authority of the appeals unit supervisor and administrative hearing officer

(a) An administrative hearing officer (AHO) has the authority to:

(1) alter any requirement or procedure set forth in Oklahoma Administrative Code (OAC) 340:2-5-60 through 340:2-5-80 when necessary to provide due process to a client or give the client and the Oklahoma Department of Human Services (DHS) an adequate opportunity to present evidence and argument regarding issues relevant to the action being appealed. However, the AHO may not take an action that violates state or federal constitutions, statutes, or regulations;

(2) take appropriate action regarding any situation not addressed in OAC 340:2-5-60 through 340:2-5-80; and

(3) take any action necessary to provide a fair process for resolution of an appeal. However, the AHO may not take an action that violates the state or federal constitutions, statutes, or regulations.

(b) The appeals unit supervisor has the authority to:

(1) in case of absence or unavailability of the assigned AHO, make decisions regarding administrative issues in a case including, but not limited to, the granting of a request for continuance of a hearing or the determination of timeliness of a hearing request; and

(2) make any decision necessary to provide a fair process for resolution of an appeal. This may include the direction of an AHO to take, or not take, a specific action. However, the appeals unit supervisor may not take an action that violates state or federal constitutions, statutes, or regulations.

(c) The appeals unit supervisor may not direct the AHO to take, or not take, action regarding the merits of a case.

[OAR Docket #14-535; filed 6-27-14]

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

[OAR Docket #14-537]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-67 [AMENDED]
Part 21. Establishment
340:25-5-178 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 through 340:25-5-198.2 [AMENDED]
(Reference WF 13-04)
AUTHORITY:
Director of Human Services; 56 O.S. § 162; Social Security Act (SSA), codified at Chapter 7 of Title 42 of the United States Code (42 U.S.C. §§ 301-1397mm); Child Support Performance and Incentive Act of 1998, Public Law (Pub. L.) 105-200; 42 U.S.C. §§ 653, 654, 656, 666; 28 U.S.C. § 1738B; Section 302 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 302); 45 C.F.R. § 303; 31 C.F.R. § 285.3; 56 O.S. §§ 183 and 231-240.23; 43 O.S. §§ 112, 118-118I, 119, 601-611, 601-613, and 601-615.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Chapter 25 Subchapter 5 amend the rules to implement policy changes recommended during the annual Child Support Services (CSS) policy review process.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential* per Section 183 of Title 56 of the Oklahoma Statutes (56 O.S. § 183).

(1) All files and records concerning the assistance or services provided under the child support program or concerning an alleged father of a child born out of wedlock are confidential per 56 O.S. § 237, except as otherwise authorized by law.

(2) Any information Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~CSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. ~~OCSS~~ CSS complies with the limitations imposed by federal laws and regulations per Section 653 of Title 42 of the United States Code (42 U.S.C. § 653), Section 285.3 of Title 31 of the Code of Federal Regulations (31 C.F.R. § 285.3), and Internal Revenue Service Publication 1075.

(3) Nothing in this Section authorizes disclosure of the location or information that may lead to discovery of the location of a case participant with a family violence indicator per Oklahoma Administrative Code (OAC) 340:25-5-67.1.

(4) ~~OCSS~~CSS redacts personal information, including Social Security and driver's license numbers, from court documents prior to filing them, pursuant to Rule 31 of the Rules for District Courts of Oklahoma.

(b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties per 56 O.S. § 183, including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency Title IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within ~~the Oklahoma Department of Human Services (OKDHS)~~DHS, with authorized representatives of ~~OKDHS~~DHS programs and other state agencies, other states and countries, and federal and tribal agencies;

(B) exchange of information directly and through statewide automated data processing and information retrieval networks with ~~OKDHS~~DHS representatives and other state agencies administering programs under Titles IV-A through IV-E, XIX, and XXI of Chapter 7 of Title 42 of the ~~United States Code~~U.S.C., and the Supplemental Nutrition Assistance Program (SNAP) to the extent necessary to carry out the responsibilities of those agencies;

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person per 42 U.S.C. § 663 representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the ~~United States Code~~U.S.C. to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support purposes, such as:

(i) locating the parents;

(ii) submitting cases for federal administrative and income tax refund offset;

(iii) state income tax refund offset;

(iv) financial institution data match;

(v) enrolling children as beneficiaries of health insurance coverage; and

(vi) processing interstate child support services;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the ~~order~~Order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles ~~Title~~ 43 or 56 of the Oklahoma Statutes disclosed for the purpose of reviewing, establishing, or modifying a support order;

(E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;

(F) information necessary to access court-ordered health care coverage and obtain health care for the children; and

(G) address of record for service of process per 43 O.S. § 112A. The address of record must only be released per OAC 340:25-5-340.1;

(3) employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court-ordered health insurance coverage; and

(4) persons as directed by court order or by a subpoena approved by ~~an O~~a CSS state's attorney.

PART 21. ESTABLISHMENT

340:25-5-178. Establishment of current child support

(a) Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~CSS) establishes current child support per:

(1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43~~; and Sections 231 through 240.23 of Title 56~~ of the Oklahoma Statutes; and 56 O.S. §§ 231 through 240.23.

(b) ~~OCSS~~CSS uses the child support guidelines in ~~Sections 118 and 119 of Title 43 of the Oklahoma Statutes~~43 O.S. §§ 118-118I and 119 to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by ~~OCSS~~CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network ~~Web site~~website per ~~Section 120 of Title 43 of the Oklahoma Statutes~~43 O.S. § 120.

(c) Per ~~Section 118 of Title 43 of the Oklahoma Statutes~~43 O.S. §§ 118-118I, ~~OCSS~~CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting child support orders that are fair and equitable. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts per 43 O.S. § 118H.

(d) To establish the amount of current support, ~~OCSS~~CSS considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person (CP) except when ~~subsection~~ (e) of this Section applies. ~~OCSS~~CSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the ~~noncustodial parent~~NCP becomes part of the fixed monthly child support obligation.

(e) When the ~~custodial person~~CP is participating in the ~~OKDHS~~DHS Child Care Subsidy Program per ~~Section 230.50 of Title 56 of the Oklahoma Statutes~~56 O.S. § 230.50, ~~OCSS~~CSS uses ~~OKDHS~~ DHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule, to determine the family share co-payment amount considered as actual child care costs on the child support computation form per 43 O.S. § 118G. ~~[43 O.S. § 118]~~

(1) ~~OCSS~~CSS considers the ~~noncustodial parent's~~NCP's share of the base monthly obligation for child support and the ~~custodial person's~~CP's gross monthly income as the ~~custodial person's~~ CP's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, ~~OCSS~~CSS uses the corresponding family share co-payment amount based on the number of children in ~~OKDHS~~DHS subsidized child care. ~~OCSS~~CSS allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. ~~OCSS~~CSS staff ~~perform~~performs a separate child support guidelines calculation for each ~~noncustodial parent~~NCP.

(2) If the ~~custodial person~~CP has a child(ren) in ~~OKDHS~~DHS subsidized child care other than a child(ren) included in the child support case being established, ~~OCSS~~CSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(f) ~~OCSS~~CSS establishes child support orders in deprived court actions per ~~Section 1-4-702 of Title 10A of the Oklahoma Statutes~~10A O.S. § 1-4-702 and prepares the child support order on the standard child support order form prescribed by ~~OCSS~~CSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network ~~Web site~~website.

(g) ~~OCSS~~CSS establishes child support orders for a child(ren) for whom child support is imposable under applicable law.

(h) When the ~~noncustodial parent~~NCP is a minor, ~~OCSS~~CSS establishes paternity per Oklahoma Administrative Code (OAC) 340:25-5-176 ~~if~~when necessary and establishes a child support order. ~~If~~When a minor ~~noncustodial parent~~NCP or a ~~custodial person~~CP is under 16 years of age, ~~OCSS~~ CSS does not impute gross income for the minor parent in the child support computation and only uses actual income. ~~If~~When a minor ~~noncustodial parent~~NCP or ~~custodial person~~CP is between 16 and 18 years of age and regularly and continuously attending high school, unless it is otherwise inappropriate, ~~OCSS~~CSS uses either the ~~greater of~~ imputed gross income for the minor ~~parent(s)~~ parent based on minimum wage at 20 hours per week, or actual income.

(i) ~~OCSS~~CSS enforces child support orders for adults with disabilities ~~under Section 112.1A of Title 43 of the Oklahoma Statutes~~per 43 O.S. § 112.1A.

(j) ~~OCSS~~CSS establishes or modifies child support orders to continue after the child reaches the age of majority per ~~Section 112.1A of Title 43 of the Oklahoma Statutes~~43 O.S. § 112.1A~~if~~when the application or referral for Title IV-D services is received during the period when child support is due per ~~Section 112 of Title 43 of the Oklahoma Statutes~~43 O.S. § 112.

(k) ~~OCSS~~CSS establishes a child support and medical support order on an incarcerated ~~noncustodial parent~~NCP and requests the court order that the child support obligation ~~begin~~begins the first day of the month following a lapse of 45 calendar days from release from incarceration. ~~OCSS~~CSS requests the court reserve the amount of child support for the time period prior to the entry of the court order ~~as~~ per OAC 340:25-5-179.1 through the time of incarceration to the date the current child support obligation begins.

(l) When ~~OCSS~~CSS establishes a child support order for a child of a ~~noncustodial parent~~NCP or a ~~custodial person~~CP who is a servicemember, ~~OCSS~~CSS applies the provisions of the Servicemembers Civil Relief Act, codified in ~~Sections 501 through 596 of Title 50A of the United States Code~~50A U.S.C. §§ 501 through 596.

(m) ~~OCSS~~CSS does not impute gross income to a person ~~who has been~~ determined disabled by the Social Security Administration.

(n) When a default order for child support has been ordered and either party contacts ~~OCSS~~CSS in writing within 30 calendar days of entry of the default order and provides information to calculate an accurate child support obligation, ~~OCSS~~CSS treats the request as a motion to vacate or modify and requests the court enter a new order consistent with the evidence presented.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.1. Review of a child support order

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in ~~Section~~Sections 118-118I ~~through~~and 119 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 118-118I & 119) and Oklahoma Administrative Code (OAC) 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a child support order is established, reviewed, or modified, Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~CSS) notifies all parties in a full-service case of the right to request a review of the child support order and the process for requesting a review.

(c) **Authority for review.** ~~OCSS~~CSS conducts a review every three years in cases with a Temporary Assistance for Needy Families (TANF) assignment. ~~OCSS~~CSS determines the tribunal with jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act ~~(FCCSOA)~~, codified in Section 1738B(e) of Title 28 of the United State Code (28 U.S.C. § 1738B(e)) and the Uniform Interstate Family Support Act (UIFSA) in ~~Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes~~43 O.S. §§ 601-101 through 601-901 to modify the order. ~~If~~When another tribunal has jurisdiction to modify the child support order, ~~OCSS~~CSS follows the provisions in (j) of this Section. ~~If~~When Oklahoma has jurisdiction to modify the child support order, ~~OCSS~~CSS follows the provisions of this subsection. ~~OCSS~~CSS completes the review and modification process within 180 calendar days after a request is received or the non-requesting party is located, whichever is later.

(d) **Initiation of review.**

(1) ~~OCSS~~CSS reviews an order upon written request by a customer or on its own initiative ~~when the non-initiating party is located and there has been a material change in circumstances per Section 118I of Title 43 of the Oklahoma Statutes. OCSS notifies the parties of the review with instructions for submitting financial and other information required for the review. OCSS does not initiate a review upon customer request when~~:

(A) when there has been a material change in circumstances per 43 O.S. § 118I; or

(B) per 56 O.S. § 237 when the evidence in the case justifies a modification as per OAC 340:25-5-198.2, regardless of whether there has been a change of circumstances.

(2) CSS notifies the parties of the review with instructions for submitting financial and other information required for the review.

(3) CSS does not initiate a review upon customer request when:

(A) the non-initiating party is not located;

(~~A~~B) it has been less than 12 months since the child support order was established, reviewed, or modified unless there has been a material change of circumstances; ~~and~~or

(~~B~~C) the preliminary information indicates the change of circumstances will not significantly impact the child support amount or the change of circumstances is temporary.

(~~2~~4) When ~~OCSS~~CSS determines the customer review request does not meet the provisions in paragraph (1) of this subsection, ~~OCSS~~CSS provides available pro se self-help modification forms to the customer.

(e) **Medical enforcement only (MEO) cases.**

(1) When either the custodial person or the noncustodial parent requests a review, ~~OCSS~~CSS changes the services offered from an MEO to a full-service case. ~~OCSS~~CSS notifies the parties of the change in services provided.

(2) When the ~~noncustodial parent~~non-applicant requests the review, the ~~noncustodial parent~~non-applicant must complete Form 03EN001E, Application for Child Support Services, per OAC 340:25-5-110.1.

(f) **Initial review.** Within 15 calendar days after receiving a request for a review, ~~OCSS~~CSS determines if the criteria described in paragraph (1) of subsection (d) of this Section are met. ~~OCSS~~ CSS notifies the requesting person ~~if~~when the criteria for review are not met. If the criteria are met, ~~OCSS~~CSS may:

(1) request further information as necessary from the parties; or

(2) proceed with the review process when ~~OCSS~~CSS considers it has information sufficient to complete the process.

(g) **Final review.** Within 30 calendar days after the deadline for the parties to submit requested financial and other information to ~~OCSS~~CSS under (d)(1) of this Section, ~~OCSS~~CSS completes the review process and notifies parties of its determination as to whether the support order should be modified.

(h) **Modification after review.** ~~OCSS~~CSS staff ~~follow~~follows OAC 340:25-5-198.2 to determine if the child support order is modified after the review process is complete.

(i) **Termination of the review process.**

(1) The person requesting a review may withdraw the request after the review process begins, upon CSS approval ~~by OCSS~~CSS. ~~OCSS~~CSS does not accept requests to withdraw the review after making a determination that the child support order be modified.

(2) ~~If~~When the requesting person fails to supply information requested by ~~OCSS~~CSS as instructed, ~~OCSS~~CSS

may terminate the review process, unless ~~OCSS~~CSS or the non-requesting party requests the process continue.

(3) When the review is initiated by ~~OCSS~~CSS, failure of the parties to return requested information does not stop the review process. ~~OCSS~~CSS proceeds, using the best information available.

(j) **Interstate cases.**

(1) When a tribunal other than an Oklahoma district or administrative court has jurisdiction under UIFSA to modify an order, ~~OCSS~~CSS obtains the information necessary for the review.

(A) ~~OCSS~~CSS transmits the documents to the Title IV-D agency in the other state within 20 calendar days after receipt of the request to modify the order and of the completed documents from the person requesting the modification.

(B) ~~OCSS~~CSS issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or ~~OCSS~~CSS is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party.

(C) ~~OCSS~~CSS may terminate the review process in an interstate case as provided in subsection (g) per ~~Sections 601-611 and 601-613 of Title 43 of the Oklahoma Statutes~~43 O.S. §§ 601-611 and 601-613.

(2) ~~If~~When Oklahoma has jurisdiction to modify the order of another state, Native American tribe, territory, or foreign country as defined by ~~subsection (b) of FCCSOA, codified in Section 1738B(b) of Title 28 of the United States Code~~28 U.S.C. § 1738B(b), the order is registered in Oklahoma for modification per ~~Section~~28 U.S.C. § 1738B(i) and ~~Sections 601-609 through 601-613 of Title 43 of the Oklahoma Statutes~~43 O.S. §§ 601-609 through 601-613.

340:25-5-198.2. Modification

(a) **Authority for modification.** Oklahoma Department of Human Services (DHS) Child Support Services (~~OCSS~~CSS) may initiate modification of a child support order per Sections 112, 118~~,~~-118I, 118.1, 119, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112, 118-118I, 118.1, 119, 601-611, 601-613, and 601-615) and 56 O.S. § 237 in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

(b) **Modification of child support order.** ~~OCSS~~CSS seeks a modification when ~~the existing support order is not in compliance with the child support guidelines because~~:

(1) there has been a material change in circumstances per 43 O.S. § 118I including, but not limited to:

(A) a change in either parent's gross income or in the parents' contributions to the monthly child support amount, such as child care expenses or medical support;

(B) a child reaching the age of majority per 43 O.S. § 112;

(C) a component of or the new current child support amount is 20 percent higher or lower than the existing order;

(~~2~~D) there is a change in physical custody verified per Oklahoma Administrative Code (OAC) 340:25-5-201.1;

~~(3) the original order fails to set child support according to the guidelines;~~or

(~~4~~E) one of the parents is determined disabled by the Social Security Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income; or

(2) per 56 O.S. § 237 when the evidence in the case justifies a modification regardless of whether there has been a change of circumstances including, but not limited to, when:

(A) the original order fails to set child support according to the guidelines; or

(B) an adjustment is needed to maximize a noncustodial parent's (NCP's) available income to meet the current child support obligations in each of the NCP's cases.

(c) **Modification of medical support order.**

(1) ~~OCSS~~CSS seeks a modification of an order for medical support when:

(A) there is no existing order for either parent to provide dependent health care coverage. ~~OCSS~~CSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when ~~OCSS~~CSS obtains information that the child(ren) is not covered under an existing health care plan other than SoonerCare (Medicaid), regardless of whether the coverage is currently available to either parent;

(B) the availability of medical insurance changes;

(C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate per ~~Section 139.1 of Title 43~~43 O.S. § 139.1 or ~~Section 566 of Title 21 of the Oklahoma Statutes~~21 O.S. § 566;

(D) an order for the ~~noncustodial parent~~NCP to provide medical insurance and the release of information necessary for enrollment of the child is inappropriate due to family violence and a cash medical order is appropriate per OAC 340:25-5-198; or

(E) there is an order for a parent to provide medical insurance, the applicant for child support services has not requested services against that parent, and the ordered parent is not actually providing medical insurance for the child.

(2) When ~~OCSS~~CSS participates in the modification of a child support order filed by a party, ~~OCSS~~CSS requests ~~that~~ the court order contain a provision for medical support consistent per OAC 340:25-5-168.

(3) When a child support order exists, ~~OCSS~~CSS considers a request to establish a medical support order as a request for modification of the order per ~~Section 118.1 of Title 43 of the Oklahoma Statutes~~43 O.S. § 118.1.

~~OCSS~~CSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures per OAC 340:25-5-198.1.

(4) When cash medical support is ordered as part of a modification action, ~~OCSS~~CSS requests ~~that~~ a cash medical support order be effective the first day of the month following the date the modification order is entered.

[OAR Docket #14-537; filed 6-27-14]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #14-538]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-6 [AMENDED]
(Reference APA WF13-02)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statues (O.S. 56 § 162); and 7 C.F.R 273.14(c).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revision to Chapter 50 Subchapter 9 amends the rule to change the date a certification renewal is considered timely from the first to the 15th day of the last month of the certification period to comply with federal certification renewal regulations.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-6. Procedures relating to food benefit certification renewals

(a) **Worker action.** The worker completes the application process, approves or denies applications for certification renewal, and provides eligible households with an opportunity to participate in a timely manner. The worker cannot continue benefits to the household beyond the certification period until the worker ~~certifies~~recertifies the household ~~again~~.

(b) **Notice of expiration.**

(1) A computer-generated expiration notice titled, Continue My SNAP Benefit, is sent after deadline the month prior to the last month of the certification period. The notice informs households:

(A) they must provide information to complete their certification renewal within a time frame or food benefits stop by a certain date;

(B) of methods the household may use to supply certification renewal information including, but not limited to:

(i) online at okdhslive.org;

(ii) ~~calling~~phoning the Oklahoma Department of Human Services (~~OKDHS~~DHS) at the telephone number listed on the notice ~~to complete the renewal~~;

(iii) mailing a completed and signed paper renewal form to the address listed on the notice; or

(iv) faxing or ~~bringing~~hand delivering a completed and signed paper renewal form to ~~the~~a local ~~OKDHS~~DHS office;

(C) how to obtain a paper renewal form;

(D) ~~OKDHS~~DHS staff contacts the household when an interview is required;

(E) proof of household income must be provided; and

(F) proof of certain expenses is required before an expense deduction is given.

(c) **Timely certification ~~renewal~~renewals.**

(1) ~~Certification~~Timely certification renewals are processed within the ~~time frames~~periods described in (A) through (B) of this paragraph.

(A) **Prior certification of fewer than three months.** A household with a prior certification period of fewer than three months who applies by the ~~first~~ 15th day of the last month of the certification period is provided ~~with~~ the opportunity to participate, if eligible, no later than 30 calendar days after the date the household last had an opportunity to obtain its food benefits.

(B) **Prior certification of three months or more.** Certification renewals filed on or before the ~~first~~ 15th day of the last month of the certification period are considered timely. If the household meets all of the requirements and completes all of the processing steps, the worker certifies or denies the application prior to the end of the certification period.

(i) Any eligible household who renews benefits timely is provided an opportunity to participate

by its normal issuance date in the month following the end of the current certification period.

(ii) To retain this right to uninterrupted benefits, the household must have attended any interview and/or provided all required verification due on or after the deadline for filing timely certification renewals.

(iii) Although a household loses its right to uninterrupted benefits, it retains its right to complete the process and receive benefits, when eligible, within 30 calendar days of the application date.

(2) Households ~~who have~~that timely ~~renewed~~renew, but~~,~~ due to worker error, are not timely determined eligible are certified immediately upon being determined eligible. ~~If~~When the delay in certification renewal extends into the following month, the certification is made retroactive to the first day of the month following expiration of the certification period.

(3) A household applying for certification renewal in the last month of its certification period is not entitled to expedited services. When the certification renewal is teleprocessed on or before the last day of the month of the ~~old~~previous certification period, the subsequent month's benefit is issued on the second working day of the month.

(d) **Untimely certification renewal.** A household ~~who~~that submits an untimely certification renewal, without good cause, loses its right to uninterrupted benefits and the worker has 30 calendar days to certify or deny the application. When a certification renewal is not received until after the certification period expired, the application is considered an initial application and benefits for that month are prorated. The household is entitled to expedited service ~~if~~when the household qualifies per Oklahoma Administrative Code(OAC) 340:50-11-1.

(e) **Good cause for failure to timely renew food benefits.** When the household had good cause for its failure to submit a timely certification renewal or to otherwise complete the certification process and the household did not receive food benefits in the month following expiration of benefits, it is entitled to restoration of lost benefits per OAC 340:50-11-4. The worker determines good cause on a case-by-case basis. Good cause may include reasons, such as~~may include~~ failure to receive timely notice of expiration or personal illness.

[OAR Docket #14-538; filed 6-27-14]

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

[OAR Docket #14-539]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-4 [AMENDED]
340:75-8-6 through 340:75-8-14 [AMENDED]
(Reference WF 13-07)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Title 45 of the Code of Federal Regulations (CFR) Parts 98 and 99.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Chapter 75 Subchapter 8 amend the rules to: (1) comply with federal and state statutes and regulations and Oklahoma Pinnacle Plan requirements related to the provision of child welfare service; and (2) update division, unit, and position titles consistent with the Oklahoma Department of Human Services (DHS) reorganization.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-1. Purpose, legal base, and definitions

(a) **Purpose.** Therapeutic foster care (TFC) serves those in Oklahoma Department of Human Services (DHS) custody who:

(1) ~~children three~~are 3 through 17 years of age~~, in Oklahoma Department of Human Services (OKDHS) custody, who meet medical necessity criteria~~; ~~and~~or

(2) ~~youth, up to 19~~are 18 through 20 years of age ~~or until completion of high school, if the youth continues to meet medical necessity criteria and requests~~and have voluntarily requested extended services~~, who:~~per Oklahoma Administrative Code (OAC) 340:75-6-110; and

(3) meet medical necessity criteria established by the Oklahoma Health Care Authority (OHCA) per OAC 317:30-5-741;

(~~A~~4) respond to close relationships within a family setting;

(~~B~~5) require more intensive behavioral health services than available in traditional foster family settings~~;~~ and when additional supports, such as outpatient services, systems of care, or modification of the child's individualized education plan are not available or will not meet the child's needs in his or her established placement; and

(~~C~~6) do not require 24-hour awake supervision.

(b) **Legal base.**

(1) Section 1-7-103 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-103) mandates that ~~OKDHS~~DHS review and assess each child in ~~OKDHS~~DHS custody to determine the type of placement consistent with the child's treatment needs in the nearest geographical proximity to the child's home.

(2) 10A O.S. § 1-9-110 mandates that ~~OKDHS~~DHS develop and implement a diversity of community-based residential care, as needed, to provide for adequate and appropriate community-based treatment or rehabilitation of each child in a:

(A) foster home;

(B) group home;

(C) community residential center; or

(D) non-secure facility consistent with the child's individualized treatment needs and, when possible, in or near the child's home community.

(c) **Definitions.** The following words and terms, when used in Part 1 of this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

(1) ~~**"APS Healthcare Service (APS)"** means the agency under contract with OHCA responsible for prior authorization for:~~

~~(A) the admission and extension of Medicaid or Title XIX reimbursed inpatient psychiatric treatment and TFC services; and~~

~~(B) Medicaid or Title XIX reimbursed outpatient behavioral healthcare services~~ **"Oklahoma Department of Human Services (DHS) placement agreement for residential behavioral management services (RBMS)"** means the contract entered into between DHS and an agency providing TFC services, including all attachments and exhibits.

(2) **"Oklahoma Health Care Authority (OHCA)"** means the entity designated for administering Title XIX Medicaid reimbursement,~~and responsible~~including both the responsibility for the establishment of medical necessity criteria for children receiving TFC services and prior authorization for the admission and extension of Medicaid or Title XIX reimbursed TFC services.

(3) **"Therapeutic foster care (TFC)"** means residential behavioral management services provided in a specialized foster care setting for a child who:

(A) meets medical necessity criteria, per Oklahoma Administrative Code (OAC) 317:30-5-741;

(B) has special psychological, behavioral, social, ~~and~~or emotional needs requiring more intensive, therapeutic care than may be found in the traditional foster care setting;

(C) ~~accepts and~~ responds to close relationships within a family setting; and

(D) requires more intensive or therapeutic services than are found in traditional foster care and when additional supports, such as outpatient services, systems of care, or modification of the child's individualized education plan are not available or will not meet the child's needs in his or her established placement.

(4) **"TFC contractor"** means a licensed child care agency that meets ~~OKDHS~~DHS and OHCA requirements to provide residential behavioral management services in a foster care setting. A TFC contract agency:

(A) provides direct clinical treatment services to the child placed; and

(B) recruits, trains, certifies, reimburses, and provides supportive services to the TFC foster parent.

340:75-8-4. Contract procedures for therapeutic foster care

(a) Contracts for the provision of therapeutic foster care (TFC) placements are issued ~~in accordance with OAC 340:2-13-10~~per Oklahoma Administrative Code (OAC) 340:2-13-75 through ~~340:2-13-14.18~~340:2-13-89 and Section 85 of Title 74 of the Oklahoma Statutes. Prior to issuance of ~~the~~ Oklahoma Health Care Authority ~~(OHCA)~~ Title XIX contract for TFC services, providers are approved as eligible TFC contractors by the ~~Children and Family Services Division (CFSD)~~Child Welfare Services programs ~~manager~~supervisor for TFC ~~as eligible TFC contractors~~.

(b) Contracts for the provision of TFC placements are monitored on-site at least annually to ensure ~~that~~ services provided are in compliance with contract terms, per ~~OAC 340:2-13-14.14~~OAC 340:2-13-102.

340:75-8-6. General requirements for contracted therapeutic foster care placement providers

Contracted therapeutic foster care (TFC) placement providers must:

(1) maintain a written case record on each child that documents all services provided or obtained for the child while in placement;

(2) implement and review an individualized treatment plan for each child in placement, with documented input ~~of~~from the child's assigned Child Welfare Services (~~CW~~CWS) ~~county of jurisdiction and county of placement worker~~specialist, ~~when different,~~ according to the requirements set forth in the Oklahoma Department of Human Services (~~OKDHS~~DHS) contract~~. The TFC contractor notifies the CW county of jurisdiction worker of the initial treatment plan meeting within five days of the child's placement~~;

(3) assume responsibility for maintenance of basic needs of each child placed;

(4) accept responsibility for a reasonable knowledge of the child's whereabouts at all times.

(A) When a child:

(i) is removed by anyone without authorization;

(ii) is taken into custody by law enforcement officials;

(iii) runs away; or

(iv) otherwise cannot be accounted for, the TFC contractors immediately notify by phone the:

(I) ~~CW county of jurisdiction and county of placement workers~~ assigned CWS specialist;

(II) contract liaison; and

(III) police.

(B) The contractor submits a written incident report to the child's ~~CW county of jurisdiction worker~~assigned CWS specialist describing the circumstances and files a copy in the child's case record;

(5) ensure the child receives all needed routine, specialized, and emergency medical care in a timely manner provided by a medical provider who accepts Medicaid payment. Prior consultation and consent from DHS and the child's parent(s) are not required for routine and ordinary medical care. Provision of all medical or dental care is documented in the contractor's case record, including notification and attempts of notification in emergency situations per OAC 340:75-6-88. Prior consultation and consent from DHS and the child's parent or parents are obtained per OAC 340:75-6-88:

(A) ~~Prior consultation and consent from OKDHS and the child's parent(s) are required~~ for emergency medical care. ~~If~~When the appropriate ~~OKDHS~~DHS authority cannot be contacted and the situation is life-threatening, the contractor has ~~the~~ authority to obtain emergency care and treatment, and notifies ~~OKDHS~~DHS at the earliest possible time~~.~~;

(B) ~~Prior consultation and consent from OKDHS and the child's parent(s) are required~~ for any extraordinary medical procedure, such as surgery and invasive procedures~~.~~; and

(C) ~~Prior consultation and consent from OKDHS and the child's parent(s) are not required for ordinary medical care. Provision of all medical or dental care is documented in the contractor's case record, including notification and attempts of notification in emergency situations, per OAC 340:75-13-6~~before administering any new psychotropic medication when a separate and specific consent is requested by a physician or medical facility;

(6) notify the ~~CW county of jurisdiction and county of placement workers~~assigned CWS specialist or specialists and the contract liaison of ~~any accidental or non-accidental~~ injuries sustained by the child~~,~~ per OAC ~~340:75-3-6.1~~340:75-3-400 and 340:75-6-88;

(7) ensure ~~that~~ the child's religious and cultural ~~observations of the child~~observances, practices, or beliefs comply with OAC 340:75-6-49;

(8) develop and implement written policy and procedures regarding each child's access to legal counsel, court-appointed special advocate (CASA), ~~OKDHS~~DHS staff, phone, mail, and visitation, per OAC 340:75-6-30 and 340:75-11-237;

(9) develop and implement written policy and procedures regarding the maintenance and safeguarding of each child's clothing, personal items, property, and funds while placed;

(10) ensure the completion of a clothing and personal item inventory for each child entering and leaving placement and ensure each child leaves the placement with all of his or her clothing and personal items;

(11) obtain prior approval from the ~~CW~~CWS county of jurisdiction ~~worker~~specialist any time the child travels overnight outside of the county of placement or Oklahoma, per OAC 340:75-6-89;

(12) develop and implement written policy and procedures defining situations in which any person, other than family members previously approved by the ~~CW~~CWS county of jurisdiction ~~worker~~specialist, may take the child away from the placement on a day pass, not to exceed six hours, without supervision of the placement provider.

(A) The TFC contractor does not allow a child any overnight visitation between custody children and parents or parties of the deprived case without the prior planning and documented written approval of the child's ~~CW county of jurisdiction and county of placement workers~~assigned CWS county of jurisdiction specialist. Overnight visitation with peers is considered time outside of the direct supervision of the TFC parent and is addressed through the child's treatment plan and Form 04TF006E, Unsupervised Time Assessment.

~~(i) The contractor is responsible for:~~

~~(I) completing an evaluation of the appropriateness of the overnight plan;~~

~~(II) submitting the overnight plan to the CW county of placement and county of jurisdiction workers and supervisors;~~

~~(III) securing written confirmation of the plan from the CW county of placement and county of jurisdiction workers and supervisors; and~~

~~(IV) documenting the results in the child's case.~~

~~(ii) CW county of placement and county of jurisdiction workers and supervisors are responsible for reviewing the overnight plan developed and submitted by the TFC contractor.~~

(B) The TFC contractor does not secure any placement without the prior planning and documented written approval of the ~~CW~~CWS~~county of jurisdiction worker~~ specialist.

(C) ~~If~~When the TFC contractor utilizes volunteers, the contractor's policy for approval and utilization of volunteers must, at a minimum, require criminal history and sex offender registry checks;

(13) develop and implement written policy and procedures that prohibit the utilization of any child in ~~OKDHS~~DHS custody for commercial purposes;

(14) submit written reports to the child's ~~CW~~CWS county of jurisdiction ~~and county of placement workers~~specialist or specialists describing the child's stay in placement, progress toward meeting the identified treatment plan, education, and medical care as requested for court hearings, and file a copy of the reports in the child's case record;

(15) develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38 and Sections 1-7-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-105);

(16) ensure each employee and TFC parent is trained in an approved passive physical restraint curriculum defined in OAC 340:75-11-237;

(17) develop and implement written policy and procedures requiring the TFC contractor, and all employees of the contractor, having reason to believe any child in placement has been subject to abuse or neglect to report the matter to the ~~child abuse hotline~~Oklahoma Child Abuse and Neglect Hotline (Hotline) the same day of the incident. Failure to report is a misdemeanor pursuant to 10A O.S. § 1-2-101;

(18) develop and implement written policy that prohibits possession or use of tobacco and tobacco products by any child in placement, and prohibits the use of tobacco or tobacco products by employees of the TFC contractor in the presence of any child in placement;

(19) develop and implement written policy and a system for resolution of grievances by any child placed and by the TFC parent regarding the substance or application of any written or unwritten policy or rule, decision, act, or omission of the TFC contractor, or employees or agents of the contractor, per OAC 340:2-3-49 and 340:2-3-50;

(20) afford the TFC parent the same rights as all foster parents in Oklahoma, per 10A O.S. § 1-9-119;

(21) develop and implement written policy and procedures regarding communicable disease, per OAC 340:75-1, Part 9;

(22) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace ~~in accordance with~~per the Drug-Free Workplace Act of 1988;

(23) develop and implement written policy and procedures to maintain confidentiality with regard to children in placement in order to comply with ~~OKDHS~~DHS rules regarding the protection, use, and release of client information, per 10A O.S. § 1-6-102 and Part 3 of OAC 340:75-1;

(24) plan and coordinate each child's discharge with the child's ~~CW~~CWS~~county of jurisdiction worker and county of placement worker~~assigned specialist or specialists, ~~if~~when different, and provide a minimum of 48 hours-notice to discharge, except in medical or psychiatric emergencies. On-site crises intervention must be provided prior to any emergency discharge. ~~Contractor's~~The TFC contractor's recommendation for discharge is approved by ~~the~~a child's ~~CW~~CWS~~county of jurisdiction worker and county of placement worker~~ specialist ~~if different~~ prior to the contractor's implementation of the discharge plan;

(25) submit a written discharge summary to the child's ~~CW~~CWS~~county of jurisdiction workers~~specialists within 30 calendar days of the child's discharge and file a copy in the child's case record. The discharge summary includes:

(A) a summary of treatment services;

(B) child's progress on the treatment plan;

(C) reason for discharge; and

(D) recommendations for future placements and services for the child's treatment needs;

(26) ensure ~~that all staff comply~~compliance with ~~the~~:

(A) minimum licensing standards ~~defined in the Oklahoma~~per Child Care Services ~~(OCCS)~~ licensing standards for child-placing agencies; and

(B) staffing requirements per ~~OKDHS~~DHS Placement Agreement for TFC;

(27) develop and implement written policy and operating procedures regarding corrective discipline procedures for employees;

(28) ensure ~~that~~ the foster parent maintains a current Life Book for each child, regardless of the child's age, that documents the child's stay in care and provides continuity throughout the child's life, per OAC 340:75-7-37;

(29) develop and implement written policy and operating procedures to govern the foster parent's maintenance and administration of prescription and non-prescription medication to each child in placement, including transporting prescription and non-prescription medication when the child receives medication any place other than the TFC home, such as respite placements, family visits, and medication administered during school hours;

(30) develop written policy and operating procedures regarding the use of physical ~~force~~ restraint for behavior management of any child placed.

(A) The use of mechanical restraints and the use of medication for behavior management are prohibited in the care and treatment of the child in ~~OKDHS~~DHS custody.

(B) The use of physical ~~force~~restraint is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum, such as when the child's behavior poses an immediate danger or threat of danger to self or others and other methods have been exhausted; and

(31) develop and implement written policy,~~and~~ operating procedures, and supervision guidelines regarding use of solitary confinement and separation programs, such as restricting the child to his or her own room for a cooling off period. The duration of room restriction is specified

at the time of assignment and is consistent with the child's chronological age, developmental level, behavioral, emotional, and medical needs, and availability of supervision.

340:75-8-7. Contracted therapeutic foster care services

(a) **Contractor rules.** Therapeutic foster care (TFC) contractors meet Oklahoma Health Care Authority (OHCA) rules as described in Parts 1, 3, and 5 of ~~OAC~~the Oklahoma Administrative Code (OAC) 317:30-3 and ~~Part~~Parts 21 and 83 of OAC 317:30-5.

(b) **TFC services.** Contracted TFC services are based on the child's assessed needs and are provided consistent with the goals and objectives of the child's treatment plan (TP)~~, and in accordance with~~ per OAC 317:30-5-241.2 and OAC 317:30-5-742.2 and include:

(1) individual therapy;

(2) family therapy. The TFC contractor:

(A) works with the ~~parent(s)~~parent or parents or placement provider to whom a child in TFC will be discharged;

(B) seeks to support and enhance the child's relationship with family members, including siblings;

(C) arranges for and encourages regular contact and visitation between the child and ~~parent(s)~~parent or parents and other family members; and

(D) engages the child's ~~parent(s)~~parent or parents and siblings in visitation and family therapy with the child, when the case plan is reunification. The TFC contractor provides consultation, support, and technical assistance to the TFC parent in the implementation of the child's ~~treatment plan~~TP;

(3) group rehabilitative treatment. ~~Group~~When provided, group rehabilitative treatment ~~services include~~includes education and supportive services, such as basic living skills, social skills redevelopment, interdependent living, self-care, lifestyle change, ~~and~~ recovery principles, and other similar services~~. Thirty minutes of individual therapy, family therapy, or both, may be provided in lieu of one hour of group rehabilitative treatment~~;

(4) substance abuse or chemical dependency therapy, as needed, by a child with behavioral or emotional problems directly related to substance abuse. ~~A minimum of two hours of education and prevention therapy per 90-day period is required for a child who does not have behavioral or emotional problems directly related to substance abuse~~;

(5) basic living skills redevelopment provided by the TFC parent;

(6) social skills redevelopment provided by the TFC parent;

(7) crisis behavior management and redirection services to ensure therapeutic contract staff ~~availability~~are available for response 24 hours a day, seven days a week ~~for response~~. Response includes providing face-to-face or telephone intervention during a crisis~~to the residential placement provider during a placement crisis~~ to stabilize the child's behavior and prevent placement disruption. Face-to-face intervention must be utilized prior to a child's placement in a higher level of care, unless there is an imminent safety risk. Crisis behavior management and redirection services are consistent with the goals and objectives of the child's ~~treatment plan~~TP;

(8) collaboration with Child Welfare Services (CWS) specialists in the completion of the youth's basic life skills assessment and the development of the youth's Independent Living (IL) plan; and

(9) ~~independent living (~~IL~~)~~ services ~~consistent~~in compliance with the IL program administered by Oklahoma Department of Human Services (~~OKDHS~~DHS), per Part 13 of OAC 340:75-6~~; and~~

~~(9) TFC agency developed policy and operating procedures that support collaboration with Child Welfare CW workers in the completion of the child's basic life skills assessment and the development of the child's IL plan~~.

(c) ~~**Contractor**~~**TFC contractor requirements.** TFC contractors are required to provide services and meet requirements as identified in OAC 340:75, OAC 317:30-5-740, OAC 317:30-5-740.1 and the ~~TFC contract. The contractor~~residential behavioral management services (RBMS) contract~~:~~.

(1) ~~seeks to ensure services provided to the youth age 16 to 21 assist in planning for the youth's future and enhancing individual strengths and abilities~~Specialized treatment services to augment the services provided by the TFC contractor may be obtained when a child experiences severe functional impairment, exhibiting the need for additional treatment beyond the established TFC individualized treatment plan and ability of the TFC contractor to provide. Specialized treatment services require a Medicaid provider and prior authorization from OHCA, and are not provided by the TFC contractor;

(2) ~~ensures the youth in OKDHS custody applies for Medicaid upon his or her 18th birthday, if the youth remains in placement in voluntary care to complete his or her secondary education;~~The CWS specialist is required to participate in the coordination of all requests for additional treatment services for a child in a TFC placement with the TFC contractor. The CWS specialist and TFC contractor consider the:

(A) duration, intensity, and frequency of the child's behaviors;

(B) child's specialized treatment needs including, but not limited to, sexual perpetration, long-term substance abuse, and highly sexualized behaviors;

(C) number of crises requiring on-site response; and

(D) child's progress on his or her TFC treatment plan; and

(3) ~~ensures TFC staff comply with the qualifications in OHCA rules, per OAC 317:30-5-740 and 317:30-5-740.1;~~

~~(4)~~ after the initial placement of a child, provides clothing. Emergency funds for clothing may be accessed per OAC 340:75-13-45~~;~~

~~(5) ensures recreation, other than school and church attendance, is available through a wide range of activities to~~

~~provide the child opportunities to pursue his or her talents, hobbies, or interests;~~

~~(6) supports all permanency planning efforts as identified on the child's Form 04KI012E, Individualized Service Plan (ISP);~~

~~(7) advocates for educational services in the community that best meet the needs of each child in compliance with Section 1-113 of Title 70 of the Oklahoma Statutes.~~

~~(A) The contractor:~~

~~(i) ensures timely school enrollment and provides the child's school with the information defined in the TFC contract at the time of enrollment; and~~

~~(ii) provides or arranges tutoring services in conjunction with the CW county of jurisdiction or county of placement worker.~~

~~(B) A child in TFC may:~~

~~(i) attend a private school accredited by Oklahoma. OKDHS does not pay the cost or related cost of private school education; and~~

~~(ii) be home schooled consistent with OAC 340:75-6-50. The TFC contractor consults with the Children and Family Services Division (CFSD) TFC programs manager and the involved CW field liaison in the decision to home school;~~

~~(8) completes a written incident report describing any extreme behavioral incident or major rule violation, including the contractor's response. The contractor provides a copy to the child's CW county of jurisdiction and placement workers and contract liaison, and files in the TFC record per contract specifications;~~

~~(9) complies with children's rights per OAC 340:75-11-237;~~

~~(10) complies with all general requirements per OAC 340:75-8-6;~~

~~(11) complies with all other requirements specified in the OKDHS contract;~~

~~(12) maintains documentation of the child's runaway status and leave days defined in the contract and reports leave days on Form 04CB002E, CFSD Claim for Purchase of Residential Care; and~~

~~(13) submits Form 04CB002E for reimbursement to CFSD Administrative Services Unit. TFC contractors are reimbursed by:~~

~~(A) OHCA at a fixed daily rate for the provision of Medicaid services per OAC 317:30-5-743 and 317:30-5-744; and~~

~~(B) OKDHS at a fixed daily rate. The fixed daily rate is a blend of Title IV-E federal funds, per eligibility of each child served, and state funds~~.

340:75-8-8. Therapeutic foster care contractor requirements

(a) Therapeutic foster care (TFC) contractors:

(1) engage in active recruitment of potential TFC parents who reflect the racial and ethnic diversity of children requiring placement, in compliance with the Multiethnic Placement Act of 1994 and per Oklahoma Administrative Code (OAC) 340:75-7-10;

(2) engage in active recruitment of potential TFC parents who are receptive and capable of meeting the service needs of all Oklahoma Department of Human Services (DHS) custody children determined to be eligible for TFC placement;

(~~1~~3) certify TFC homes according to rules established by ~~Oklahoma~~ Child Care Services (~~O~~CCS), ~~Children and Family Services Division (CFSD)~~Child Welfare Services (CWS), OAC 340:75-7-10 through 340:75-7-19, Oklahoma Health Care Authority (OHCA), and the requirements outlined in ~~Oklahoma Department of Human Services (OKDHS)~~DHS ~~Placement Agreement for Residential Behavioral Management Services~~placement agreement for residential behavioral management services (RBMS) in TFC Settings;

(~~2~~4) ensure each TFC parent receives the appropriate pre-service training according to CCS rules, OHCA rules per OAC 317:30-5-740.1, CWS resource family requirements including Bridge, and the requirements outlined in RBMS in TFC sections, prior to the placement of a child in the home;

(5) ensure the TFC home meets all certification requirements prior to the placement of a child in the home;

~~(3) engage in active recruitment of potential TFC parents who reflect the racial and ethnic diversity of children requiring placement, in compliance with the Multiethnic Placement Act of 1994 per OAC 340:75-7-10;~~

(~~4~~6) ~~continually~~ evaluate the TFC parent's ability to provide TFC services and meet the needs of children receiving ~~residential behavior management services~~RMBS in a foster care setting per OAC 340:75-7-94;

~~(5) ensure each TFC parent:~~

~~(A) is trained according to OCCS rules, OHCA rules per OAC 317:30-5-740.1, and CFSD resource family requirements including Bridge, and the requirements outlined in OKDHS Placement Agreement for RBMS in TFC Settings, prior to the placement of a child in the home;~~

~~(B) meets the requirements for in-service training as defined in the OKDHS contract; and~~

~~(C) has access to respite care per OAC 340:75-8-11;~~

(~~6~~7) participate in regularly scheduled staffings with CWS program staff for any child abuse and neglect referral on a home certified by the contractor. Each foster care resource file must contain a log of all investigations and screened out referrals for use as a continual assessment of safety and resource home developmental needs;

(8) ensure that no TFC home is used for new placements or respite care while under investigation for child abuse or neglect. New placements or respite care cannot resume without specific consent of TFC program staff;

(9) ensure each TFC parent meets the requirements for in-service training as defined in the DHS RBMS contract;

(10) ~~completes~~complete Form 04TF006E, Unsupervised Time Assessment, for all TFC children ~~age six~~

~~and older~~, regardless of age, anytime an assessment is made that the child has the ability to have time away from the TFC ~~parents'~~parent's or parents' direct supervision, other than the child's participation in extracurricular educational activities for grades K through 12. When establishing a plan for unsupervised time, consideration is given to a child's individual need or desire to participate in activities with peers, such as religious, cultural or community events, other age-appropriate activities, or employment. This assessment includes, but is not limited to, the utilization of child care and the TFC parent or parents availability to respond to behavioral needs and all problems when the child is not under their direct supervision. The assessment is documented as part of the child's ongoing TFC treatment plan with a copy of the finalized plan provided to the TFC parent or parents;

(11) ~~requests~~request approval from the ~~CFSD programs manager~~CWS program staff for TFC prior to accessing child care for a child ~~five~~5 years of age or younger. ~~OKDHS~~DHS does not reimburse for child care for a child in TFC placement. The written request includes the:

(A) therapeutic justification in the child's treatment plan of daily child care outside of the child's TFC placement home;

(B) ability of child care ~~staff or child care~~ provider to meet the child's emotional and behavioral needs and all problems;

(C) availability of the TFC parent and TFC contractor staff to respond to behavioral needs and all problems ~~at~~in the child care environment;

(D) verification of child care center's licensing status, star ratings, and adult~~:~~to child ratio, per OAC 340:75-7-65(a)(3)(A);

(E) proposed weekly schedule for child care utilization;

(F) planned length of use of child care as a service component of the child's treatment plan; and

(~~F~~G) ~~verification of TFC approval as a respite provider when an individual is providing child care~~copy of the child's Form 04TF006E;

~~(7) completes Form 04TF006E, Unsupervised Time Assessment, for children age six and older anytime an assessment is made that the child has the ability to have time away from the TFC parents' direct supervision. The assessment is documented as part of the child's ongoing TFC treatment plan;~~

(~~8~~12) do not accept applications from any foster parent certified by any other agency, including all licensed child-placing agencies and ~~OKDHS~~DHS, without prior written approval of the current certifying TFC contractor and written approval of the ~~CFSD programs manager~~CWS program supervisor for TFC;

~~(9) do not certify the TFC home unless at least one TFC parent is available to provide care for the child any time the child is not in school;~~

(~~10~~13) do not certify ~~an OKDHS~~a DHS employee as a TFC parent without prior written approval from the ~~CFSD~~CWS director or designee. The TFC contractor submits the written request to the ~~CFSD programs manager~~CWS program supervisor for TFC. The review of the request is consistent with OAC 340:75-7-12;

(~~11~~14) do not certify a TFC agency employee assigned to the TFC program as a TFC parent without prior written approval from the ~~CFSD programs manager~~CWS program supervisor for TFC. The request includes a copy of TFC agency policy regarding certification of employees of the TFC agency; and

(~~12~~15) do not accept a foster parent application from a person licensed to provide child care services. Families are not approved as licensed family child care homes and TFC homes at their home or in any other location.

(b) TFC homes may be jointly approved per OAC 340:75-7-19.

~~(1) Joint approval of a TFC home occurs following written approval between the TFC contractor and the other certifying agency.~~

~~(2) A TFC home certified by more than one agency may not accept new placements from either certifying agency without prior written agreement of all certifying agencies.~~

340:75-8-9. Placement procedures in therapeutic foster care homes

(a) Therapeutic foster care (TFC) is the least restrictive community-based residential care placement setting. Children in Oklahoma Department of Human Services (~~OKDHS~~DHS) custody served in TFC placements are ~~ages three~~3 through 17 years of age, male or female, and determined by the Oklahoma Health Care Authority (OHCA) authorized reviewer to meet the medical necessity criteria for TFC services, per ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-741.

(1) The child has been diagnosed with any ~~DSM-IV~~Diagnostic and Statistical Manual of Mental Disorders (DSM) AXIS I primary diagnosis, with the exception of V codes and adjustment disorders, accompanied by a detailed description of the symptoms supporting the diagnosis.

(2) The child's conditions are directly attributed to a mental illness or serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the inpatient authorization reviewer that the child's current disabling symptoms cannot be or have not been managed in a less intensive treatment program.

(4) There is evidence that the child's presenting emotional or behavioral problems prohibit full integration in a family or home setting without the availability of 24-hour crisis response, behavior management, and intensive clinical interventions from professional staff~~, preventing the child from living in a traditional family home~~.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The parent or the legal guardian of the child in DHS custody is afforded the opportunity to actively participate in the child's treatment and planning.

(b) The Child Welfare Services (~~CW~~CWS) ~~county of jurisdiction worker~~specialist and supervisor assess each child's treatment needs per OAC 340:75-6-40 and 340:75-6-85. The ~~CW worker~~CWS specialist seeks TFC placement when the:

(1) child's treatment needs can no longer be met in the child's own home, relative home, or traditional foster family setting;

(2) child does not require a group home placement; and

(3) child does not meet the medical necessity criteria for inpatient psychiatric treatment.

(c) A child whose behavior requires 24-hour awake supervision or who poses a danger in a family setting is not appropriate for TFC placement.

(d) The TFC contractor receives referrals for the placement of children from the ~~area~~regional resource coordinator ~~(ARC)~~(RRC), per OAC 340:75-8-12.

(e) The TFC contractor requests a TFC authorization extension 30 calendar days prior to the expiration of the authorized length of stay. ~~If~~When the OHCA authorized reviewer denies the extension of services, the TFC contractor provides written notification within one ~~working~~business day of the denial to the ~~CW~~CWS~~county of jurisdiction and county of placement workers, if different~~specialist.

(f) TFC contractors document in writing an assessment of the agency's ability to serve a child ~~age five and under~~5 years of age or younger prior to placement. The written documentation is maintained for onsite review during program audits and includes:

(1) the assessed diagnosis and proposed treatment plan for the child;

(2) the credentials, experience, and training of the TFC contractor's staff documenting the staff's ability to develop an age appropriate treatment plan and deliver clinical services to children, ~~five~~5 years of age or younger, with emotional disturbances or behavioral disorders; and

~~(3) other information as requested by the CFSD programs manager for TFC; and~~

(~~4~~3) a description of the proposed TFC parent's:

(A) age, availability, experience, and skills;

(B) family structure;

(C) ability to meet the needs of a child, including a child ~~age five~~5 years of age or younger; and

(D) parenting responsibilities to other children in the home, children in foster care or ~~therapeutic foster care~~TFC placement, any adopted children, and any birth children.

(g) The TFC contractor does not place more than two children in a TFC home without prior written approval from the ~~CFSD programs manager~~CWS programs supervisor for TFC via the completed ~~form~~Form 04FT003E, Request for Third Placement. The TFC contractor submits the written request that includes:

(1) primary treatment needs for the proposed placement of a third child and any subsequent children in the TFC home;

(2) availability, placement history, skills, completed or planned corrective action, and additional contractor supports of the TFC parent identified for proposed placement of a third child;

(3) risk factors considered and compelling reasons for proposed placement of a third child;

(4) documentation of TFC contractor contact with ~~CW workers~~CWS specialists or supervisors for each child in the home, involved professionals, and each TFC family member, regarding the impact of the proposed placement of a third child;

(5) documentation of TFC contractor's review of any separated siblings placed in the proposed third placement; and

(6) other information as requested by the ~~CFSD~~CWS programs manager for TFC.

(h) Title XIX payments for TFC services are not made for TFC parents who move out of Oklahoma. ~~TFC placements are made only in Oklahoma.~~

(i) A child may remain in TFC placement on a voluntary basis after ~~age~~ 18 years of age, per OAC 340:75-6-110.

340:75-8-10. ~~TFC~~Therapeutic foster care placement in close proximity to child's home community

(a) **Placement within the closest geographic proximity.** The therapeutic foster care (TFC) contractor places the child in custody:

(1) in a therapeutic foster home within the closest geographic proximity as possible ~~of~~to the county of residence of the child's parent(s); or

(2) ~~if the child is in Oklahoma Department of Human Services (OKDHS) permanent custody,~~ within the closest geographic proximity as possible ~~of~~to the child's county of court jurisdiction.

(b) **Proximity of siblings.** The TFC contractor considers the placement and accessibility of the placed child's sibling(s), if the sibling(s) is in ~~OKDHS~~Oklahoma Department of Human Services (DHS) custody.

(c) ~~**Approval.** If a placement is not available within the closest geographic proximity as possible, and the child must be placed outside a 40 mile radius a signed agreement is required between the TFC contractor accepting the child for placement and Child Welfare (CW) staff. The TFC contractor initiates the signed agreement with approval granted by the CW county of jurisdiction worker and supervisor and the sending and receiving area resource coordinators (ARCs).~~

~~(d)~~ **Disruption.** If disruption occurs in the TFC placement and the custody child's disrupted placement is not in the closest geographic proximity as possible, the TFC contractor serving the child seeks placement, ~~in accordance with~~per (a) and (b) of this Section, in one of the TFC contractor's homes.

(1) If the TFC contractor cannot place the child, ~~whose TFC placement disrupted, in accordance with~~per (a) and (b) of this Section, the TFC contractor contacts other TFC contractors ~~serving the identified close proximity area of the child~~ for availability of an appropriate TFC placement.

(2) If another TFC contractor can appropriately place the child ~~within the 40 mile radius~~per (a) and (b) of this Section, ~~OKDHS~~DHS transfers the child to that TFC contractor for placement.

(3) ~~The CW county of jurisdiction worker is responsible for transporting the child immediately following the identification of the need for TFC placement.~~When efforts to locate new placement are not successful, the TFC contractor provides notification of discharge to the Child Welfare Services (CWS) specialist per Oklahoma Administrative Code 340:75-8-6 (24).

(4) The CWS specialist arranges for alternate placement and transportation in accordance with the timeframes established by the TFC contractor's notification of discharge.

~~(e) **Exception to placement within the closest geographic proximity.** If all reasonable efforts to place a child within the closest geographic proximity to the county of residence of the child's parent(s), or, in the case of a child in the permanent custody of OKDHS, the child's county of jurisdiction and the TFC contractor has an appropriate TFC home outside a 40 mile radius, an exception is made to place the child. The exception is approved with a signed agreement initiated by the TFC contractor and signed by the CW county of jurisdiction worker and supervisor, the CW county of placement worker and supervisor, and the sending and receiving ARCs.~~

340:75-8-11. Therapeutic foster care placement stability

(a) ~~**Notification of respite placement.** The therapeutic foster care (TFC) contractor notifies the Child Welfare (CW) county of jurisdiction and county of placement workers, area resource coordinators (ARCs) involved in the placement, and the contract liaison of all placement changes, including all types of respite, for each child in TFC placement.~~ **Assessment of placement stability.** Therapeutic foster care (TFC) contractors and Child Welfare Services (CWS) specialists continually assess the stability of a child's placement. When indications of instability are identified, the TFC contractor and CWS specialist jointly evaluate the need for additional services and supports to maintain the current placement.

(b) **Supporting placement stability.** The TFC contractor and CWS specialist review the child's current treatment plan and determine the need for modifications including, but not limited to:

(1) the need for further evaluation;

(2) specialized treatment services;

(3) increased communication between team members;

(4) wrap around services;

(5) additional supports for the foster parents;

(6) use of disruption prevention staffing; and

(7) behavior redirection and crisis management services.

(c) **Placement disruption.** Disruption is an unplanned change in a child's placement and occurs when a child is removed from a therapeutic foster home and will not return. Disruptions include all placement changes that are not related to a planned movement towards the child's identified permanency goal. Unless an emergency exists the:

(1) TFC contractor does not move children in therapeutic foster care placement without DHS approval.

(2) TFC parent provides a 30-calendar day advance notice to the TFC contractor when requesting a child's removal from the TFC home, unless a more immediate removal is required to protect the health or safety of the child or TFC family members.

(d) **Disruption staffing.** A disruption staffing will occur for all unplanned placement changes.

(~~b~~e) **Respite care.** Respite care ~~is a planned~~provides reprieve and support for the TFC parent, child, or both. Respite for children in therapeutic foster care is only provided in certified therapeutic foster homes. There are four classifications of respite care:~~with whom a child is placed and includes a defined time frame for the length of stay and an identified date for the child's return to the TFC parent with whom the child is placed.~~

(1) ~~**Respite location.** Respite care is provided in the home of a TFC parent, certified and trained by the TFC contractor. Respite care does not occur in emergency shelters.~~

~~(2)~~ **Planned respite.** ~~Planned respite is a planned reprieve~~Reprieve for the TFC parent with whom a child is placed includes a defined timeframe, not to exceed 14 calendar days, and specifies the date for the child to return.

(~~3~~2) **Unplanned respite.** ~~Unplanned respite is an unplanned or crisis reprieve,~~Reprieve for the TFC parent with whom a child is placed due to a crisis or emergency circumstance includes a defined timeframe, not to exceed three ~~working~~business days~~, for the TFC parent with whom the child is placed~~. If circumstances warrant an extension beyond three business days of the respite stay, the TFC contractor submits a written request for the extension to the assigned TFC agency contract liaison for their agency. Any extension of unplanned respite will not exceed a total of 14 calendar days.

~~(A) The TFC contractor submits a written request for an extension of time, if needed, to the CW county of placement supervisor.~~

~~(B) A copy of the county approved respite extension is sent by the TFC contractor to the CW county of jurisdiction supervisor, when different from the county of placement, and Children and Family Services Division (CFSD) programs manager for TFC for information purposes.~~

(~~4~~3) **Transitional respite.** ~~Transitional respite is a~~Reprieve for stabilization and assessment ~~period, not to exceed five working days, utilized~~ following a TFC home placement disruption, is not to exceed five business days. This period~~that~~ allows the TFC contractor and ~~CW~~CWS county of jurisdiction ~~workers~~specialist time to develop an appropriate plan for the child's next placement. If circumstances warrant an extension beyond five business days of the respite stay, the TFC contractor submits a written request for the extension to the assigned TFC

agency contract liaison for their agency. Any extension of transitional respite will not exceed a total of 14 calendar days.

~~(A) The TFC contractor submits a written request for an extension of time to the CW county of jurisdiction supervisors for approval.~~

~~(B) A copy of the approved extension is maintained in the child's case and sent to the CFSD programs manager for TFC for information purposes.~~

(4) **Administrative Respite.** Care provided for children when safety or contract compliance is under review in the TFC home. These periods are identified by the contractor or DHS. Circumstances could include, but are not limited to, abuse and/or neglect investigations, new criminal offenses by an adult household member, or contract violations that impact safety or may affect the requirements for continued certification.

(A) DHS immediately notifies the TFC contractor when a need for administrative respite is identified and provides details of safety concerns.

(B) When concerns are identified by the TFC contractor, DHS programs staff are notified within one business day that a child has been moved to a respite setting for administrative respite and provided details of safety concerns.

(C) The contractor and CWS programs staff agree to a specified time period for the respite care and establish a date to review the use of continued respite.

(f) **Notification of respite placement.** The TFC contractor notifies, via Form 04FT004E, Notice of Child's Location, the CWS county of jurisdiction and county of placement specialists, regional resource coordinators involved in the placement, and the contract liaison of all placement changes, including all types of respite, for each child in TFC placement.

(~~c~~g) **TFC contractor.** The TFC contractor:

(1) ensures the respite TFC parent is informed of the child's current treatment issues, behavioral, medical, and physical needs, and any child specific supervision or safety plans; and

(2) supervises the respite TFC parent in the implementation of the in-home treatment strategies identified in the TFC contractor's individualized treatment plan for the child~~; and~~

~~(3) provides behavior redirection and crisis management services to prevent disruption of TFC placements, per OAC 340:75-8-7.~~

~~(d) **TFC parent.** The TFC parent provides 14 days notice to the TFC contractor when requesting a child's removal from the TFC home, unless the removal is required to protect the health or safety of the child or TFC family member~~.

340:75-8-12. Responsibilities of area resource coordinators

Therapeutic foster care (TFC) contractors receive referrals for the placement of children in Oklahoma Department of Human Services custody in TFC homes from the ~~area~~regional resource coordinator ~~(ARC)~~(RRC). ~~Child Welfare workers assigned as ARCs have responsibilities for the referral of children to TFC contractors~~RRC staff are responsible for the referral process of children to TFC contractors.

340:75-8-13. Additional responsibilities of the Child Welfare worker

Children in Oklahoma Department of Human Services ~~(OKDHS)~~ custody and in therapeutic foster care ~~(TFC)~~ placements receive ~~Child Welfare (CW)~~child welfare services consistent with ~~OAC 340:75-6-47 and 340:75-6-85~~Oklahoma Administrative Code 340:75-6.

340:75-8-14. Responsibilities of the contract liaison

A Child Welfare ~~(CW) worker~~Services (CWS) specialist~~, in the county where the Therapeutic Foster Care (TFC) contractor's office is located,~~ is assigned as a liaison to each ~~TFC contractor as the contract liaison~~contracted therapeutic foster care agency.

[OAR Docket #14-539; filed 6-27-14]

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

[OAR Docket #14-540]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended
Part 7. Program Standards for Services Funded Under Title III
340:105-10-50.1 through 340:105-10-51 [AMENDED]
340:105-10-75 [AMENDED]
(Reference WF 13-01)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and The Older Americans Act of 1965, as Amended, Sections 305 and 307.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Chapter 105 Subchapter 10 amend the rules to match changes in state and federal legislation and rules.

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

340:105-10-50.1. Title III services taxonomy

(a) **Rule.** Parts B, C, D, and E of Title III of the Older Americans Act of 1965, as Amended, authorize the development of a variety of services to meet the needs of older persons. A comprehensive listing of services that may be funded, service definitions, and service units are included in (1) through (15) of this ~~paragraph~~subsection.

(1) Personal care - one hour; provides personal assistance, stand-by assistance, supervision, or cues.

(2) Homemaker - one hour; provides assistance preparing meals, shopping for personal items, managing money, using the telephone, or doing light housework.

(3) Chore - one hour; provides assistance with heavy housework, yard work, or sidewalk maintenance.

(4) Home delivered meal - one meal; provides a qualified person at the person's place of residence a meal that:

(A) complies with the most recent Dietary Guidelines for Americans~~, published by the Secretary and the Secretary of Agriculture~~;

(B) provides, ~~if~~when one meal is served, a minimum of 33 and 1/3 percent of the current dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;

(C) provides, ~~if~~when two meals are served together, a minimum of 66 and 2/3 percent of the DRI allowances; and

(D) provides, ~~if~~when three meals are served together, 100 percent of the DRI allowances.

(5) Adult day care or adult day health - one hour; provides personal care for dependent adults in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care or adult day health typically include social and recreational activities, training, counseling, and services, such as rehabilitation, ~~medications~~ medication assistance, and home health aide services for adult day health.

(6) Case management - one hour; provides assistance either in the form of access or care coordination in circumstances where the older person is experiencing diminished functioning capacities, personal conditions, or other characteristics requiring the provision of services by formal service providers or family caregivers. Case management activities include:

(A) assessing needs;

(B) developing care plans;

(C) authorizing and coordinating services among providers; and

(D) providing follow-up and reassessment, as required.

(7) Congregate meal - one meal; provides a qualified person in a congregate or group setting, a meal that:

(A) complies with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture;

(B) provides, ~~if~~when one meal is served, a minimum of 33 and 1/3 percent of the DRI as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;

(C) provides, ~~if~~when two meals are served together, a minimum of 66 and 2/3 percent of the DRI allowances; and

(D) provides, ~~if~~when three meals are served together, 100 percent of the DRI allowances.

(8) Nutrition counseling - one session per participant; provides individualized guidance to a person who is at nutritional risk because of health or nutrition history, dietary intake, ~~medications use~~medication use, ~~or~~ chronic illnesses, or to caregivers. Counseling is provided one-on-one by a registered dietician and addresses the options and methods for improving nutrition status.

(9) Assisted transportation - one one-way trip; provides assistance and transportation, including escort~~,~~ to a person who has difficulties, physical or cognitive, using regular vehicular transportation.

(10) Transportation - one one-way trip; provides transportation using a vehicle for a person who requires help in going from one location to another and does not include any other activity.

(11) Legal assistance - one hour; provides legal advice, counseling, and representation by an attorney or other person acting under the supervision of an attorney.

(12) Nutrition education - one session per participant; a program promoting better health by providing accurate and culturally sensitive nutrition, physical fitness, or health information, as it relates to nutrition, information, and instruction to participants, caregivers, or both~~,~~ in a group or individual setting overseen by a dietitian or person of comparable expertise.

(13) Information and assistance - one contact; a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as

publications, publicity campaigns, and other mass media activities~~,~~ are not counted as a unit of service. Internet website hits are counted only ~~if~~when information is requested and supplied. This service:

(A) provides older persons with current information on services available within their communities;

(B) links older persons with the opportunities and services available within their communities; and

(C) establishes adequate follow-up procedures, to the maximum extent practicable.

(14) Outreach - one contact; provides persons with intervention initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits. Outreach is a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service.

(15) Funded "Other" category.

(A) Advocacy or representation - one hour; provides action taken on behalf of an older person to secure the person's rights or benefits. Advocacy or representation includes receiving, investigating, and working to resolve disputes or complaints. It does not include services provided by an attorney or person under the supervision of an attorney.

(B) Education or training - one session; provides formal and informal opportunities for older persons to acquire knowledge, experience, or skills. Includes individual or group events designed to increase awareness.

(C) Health promotion - one event; provides health promotion or disease prevention ~~information, instruction, or activities, such as exercise~~programs and activities demonstrated to be evidence-based to participants, caregivers, or both, in a group or individual setting. The Administration on Community Living uses a graduated or tiered set of criteria for defining evidence-based interventions. Health promotion programs can fall within any of the tiers with the goal for all activities to move toward the highest-level criteria.~~Examples include:~~

~~(i) individual health screenings such as blood pressure screenings. The event is documented by a participant sign-in sheet at the time of the screening; or~~

~~(ii) a health promotion program in an individual or group setting. The program is counted as one event.~~

(D) Home repair - one job; provides minor repairs, modifications, or maintenance on a home owned and occupied by an eligible participant, up to $250 annually, per participant.

(E) Coordination of services - unit to be determined by Aging Services ~~Division~~ (AS~~D~~); provides for the administration or delivery of a service for which direct cost is not funded by Title III. The Area Agency on Aging (AAA) contacts ~~ASD~~AS regarding use of this category.

(F) National Family Caregiver Support Program service categories are:

(i) information services - one activity; provides caregivers information on resources and services available to the public or persons within their communities. Information services are for activities directed to large audiences of current or potential caregivers, such as disseminating publications, conducting media campaigns, and other similar activities;

(ii) access assistance - one contact; assists caregivers in obtaining access to the services and resources available within their communities. To the maximum extent practicable, access assistance ensures persons receive the services needed by establishing adequate follow-up procedures. Internet website hits are counted only when information is requested and supplied;

(iii) counseling - one session per participant; assists caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiver roles. This includes counseling to persons, support groups, and caregiver training of individual caregivers and families;

(iv) respite care - one hour; provides temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. When the specific service units purchased via a direct payment, such as cash or voucher~~,~~ can be tracked or estimated, the service unit is reported by hour; otherwise, the unit of service is one payment. Respite care is:

(I) in-home respite, such as personal care, homemaker, and other in-home respite;

(II) respite provided by attendance of the care recipient at a senior center or other nonresidential program; or

(III) institution respite provided by placing the care recipient in an institutional setting, such as a nursing home for a short period of time as a respite to the caregiver or summer camp as a respite for grandparents caring for children; and

(v) supplemental services - provides services on a limited basis to complement the care provided by caregivers. The unit and service are determined by AS~~D~~. The AAA contacts AS~~D~~ regarding use of this category.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 339 and 371 through 373 of the Older Americans Act of 1965, as ~~amended~~Amended.

(c) **Procedures.** The AAA:

(1) incorporates provisions of the rule into its policies and procedures manual;

(2) provides technical assistance to prospective service project applicants regarding the rule in the development of services; and

(3) utilizes the rule as an indicator in the evaluation of service project proposals.

(d) **Cross references.** ~~See OAC~~Refer to Oklahoma Administrative Code 340:105-10-40 and 340:105-10-51.

340:105-10-51. General Title III service standards

(a) **Policy.** Parts B, C, D, and E of Title III of the Older Americans Act of 1965, as Amended, (OAA) provide funding for a variety of services to meet the needs of older persons. All services meet service specific standards and the general standards in this subsection.

(1) Project sponsors who are the recipients of grant awards may be public, private for-profit, or nonprofit agencies or organizations, institutions, political subdivisions of the state, or Indian tribal organizations demonstrating to the Area Agency on Aging (AAA) a capacity for the effective delivery of nutrition, supportive services, or both, throughout the project service area (PSA). Project sponsors serve all eligible persons in the PSA and do not limit participation to their own membership or residents, such as church memberships or residents of a day care program.

(2) Project services are provided to persons 60 years of age and older unless otherwise allowed for in the eligibility requirements of a specific service.

(3) Project services are located in communities with the greatest occurrence of older persons in greatest economic and social need with particular attention to low income minority persons and older persons residing in rural areas. The project documents in the written grant agreement with the AAA:

(A) assurance that~~,~~ to the extent possible, the project serves low income minority persons and older persons residing in rural areas in accordance with their need for services;

(B) specific objectives outlining how the project satisfies the service needs of low income minority persons and older persons residing in rural areas served by the project. These objectives reflect the Area Plan objectives for targeting these persons;

(C) information on the extent the project met its objectives for serving low income minority persons and older persons residing in rural areas during the previous fiscal year, if previously funded; and

(D) other targeting activities required for specific funded services, as appropriate, such as targeting activities for outreach services.

(4) Projects provide recipients with the opportunity to contribute to the cost of services, with the restrictions in this paragraph.

(A) Contributions are voluntary and no otherwise eligible person is denied service because he or she chooses not to or cannot contribute to the cost of services.

(B) Participants are advised of the opportunity to contribute to the cost of programs through:

(i) individual consultation when they enter the program to include a written suggested contribution schedule;

(ii) written brochures about the program and written schedules of activities of the program; and

(iii) signs posted at the project site.

(C) The participant's privacy regarding contributions is protected at all times.

(D) The project advisory council develops a suggested contribution schedule for funded services and takes into consideration the income ranges of older persons in the community and the project's other means of income. Means testing is not used to determine suggested contributions.

(E) Congregate and home delivered meals participants are allowed to use United States (U.S.) Department of Agriculture food benefits to contribute toward the cost of their meals.

(F) The project uses appropriate procedures to safeguard and account for all contributions.

(G) The project uses participant contributions to expand funded services.

(5) Projects conform to the Title III fiscal accounting and program reporting systems as implemented by ~~the State Agency~~Aging Services (AS) and AAAs. All records are managed according to the guidelines in this paragraph. OAA grantees:

(A) maintain adequate and separate accounting and fiscal records, and account for all funds provided by any source to pay the cost of the OAA funded project;

(B) permit audit, examination, or both, of all such records, procedures, and accounts at any reasonable time by authorized personnel of the U.S. Department of Health and Human Services, the Oklahoma Department of Human Services (~~OKDHS~~DHS), the State Auditor and Inspector, and other appropriate state entities;

(C) allow authorized personnel open and complete access to the grantees' accounting records and practices, and to any other items of the service provider pertinent to the performance or payment of the grant in order to audit, examine, and make excerpts of records;

(D) retain for at least three years all financial and program records, supporting documents, statistical records, and other records pertaining to the Title III services.

(i) In the case of litigation, claim negotiation, audit, or other pending action before the end of the three year period, the records are retained until such action is completed, and until all issues arising from it have been resolved, or until the end of the regular three year period, whichever is later.

(ii) Permanent records are maintained at the project office; and

(E) provide the appropriate security, confidentiality, and accommodations for the proper maintenance and organization of program records and reports.

(6) Where feasible and appropriate, projects make arrangements for the availability of services to older persons in weather related emergencies and other local and national emergencies, including terrorist acts and flu pandemics.

(7) Projects assist participants in taking advantage of benefits or services under other programs.

(8) Project staff reports to the appropriate officials any situation that places the participant, participant's household, or both, in imminent danger.

(9) Project staff ensures that signage is posted appropriately informing all persons that, with the exception of law enforcement, no firearms are to be permitted within the project office, maintenance buildings, and all nutrition site-dining areas.

(~~9~~10) Projects coordinate Title III services with other appropriate services in the community, including Title VI Native American nutrition programs. Appropriate coordination efforts include:

(A) joint planning;

(B) information sharing; and

(C) negotiation of written agreements.

(~~10~~11) Projects establish and maintain an advisory council to advise the projects on all matters relating to the delivery of project services, per ~~OAC~~Oklahoma Administrative Code 340:105-10-52.

(~~11~~12) Projects ensure appropriate intake information is gathered on each participant.

(A) Participants receiving Title III:

(i) personal care, homemaker, chore, home repair, home delivered meals, adult day health or adult day care, or case management services, information is gathered on Form 02AG002E, Older Americans Act Assessment, Part I, and Form 02AG003E, Older Americans Act Assessment, Part II, and includes at a minimum:

(I) identifying information;

(II) household composition;

(III) ability to perform activities of daily living (ADLs);

(IV) ability to perform instrumental ~~activities of daily living~~ADLs;

(V) support system;

(VI) participant signature or witness signature ~~if~~when the participant is unable to sign;

(VII) explanation of donation system;

(VIII) release of information authorization; and

(IX) status related to poverty level;

(ii) congregate meals, nutrition counseling, assisted transportation, outreach, or information and assistance, information is gathered on Form 02AG002E, Part I, and includes at a minimum:

(I) identifying information;

(II) household composition;

(III) participant signature or witness signature ~~if~~when the participant is unable to sign;

(IV) explanation of donation system;

(V) release of information authorization; and

(VI) status related to poverty level;

(iii) home delivered meals, congregate meals, case management, or nutrition counseling, project staff ensures Form 02AG002E, Part I, Determine your nutritional health, is completed; and

(iv) National Family Caregiver Support Program (NFCSP) services~~,~~ information is gathered on an approved intake form and includes at a minimum:

(I) the family caregiver's identifying information;

(II) the caregiver's relationship to the care receiver;

(III) the care receiver's identifying information; and

(IV) a written description of the caregiver's current situation, including the care receiver's need for assistance due to inability to perform specific ADLs or the need for supervision due to Alzheimer's disease or other dementia.

(B) Project staff:

(i) obtains from participants of other Title III services not given in (A) of this paragraph, or their informants, only information necessary to provide the appropriate Title III service(s) and ~~ensure~~ensures the safety and well-being of participants;

(ii) ensures assessment procedures are conducted in a confidential manner, with only the intake person, the participant, and other persons approved by the participant in attendance;

(iii) conducts an assessment of each participant upon the participant's entry into a Title III service~~,~~ with~~,~~ at a minimum, annual reassessments; and

(iv) at a minimum, conducts a reassessment of in-home service participants every six months~~, at a minimum~~.

(C) Income source information is not required to receive Title III services and may only be used to assist the participant in determining eligibility for programs with income guidelines.

(~~12~~13) Projects have procedures, approved by ~~the~~ AAA, to ensure strict confidentiality is maintained regarding all participant information. Projects ensure identifying participant information is disclosed only when staff obtains the informed consent of the participant or the participant's legal representative. Exceptions to the rules in this paragraph include court orders, reporting possible neglect, abuse, or both, and monitoring project records by federal, state, and AAA officials.

(~~13~~14) Project staff posts grievance procedures in a public area of the project facility and complies with AAA grievance procedures for Title III participants.

(~~14~~15) Projects comply with the Americans with Disabilities Act, Section 504 of The Rehabilitation Act of 1973, and Title VI of The Civil Rights Act of 1964. A public notice of civil rights compliance is posted in a public area in all project facilities and offices.

(~~15~~16) Projects comply with the Oklahoma Open Meetings Act when conducting public meetings. Public meetings are held in handicap accessible facilities with provisions for interpreters, as needed.

(~~16~~17) Project staff conducts ongoing public information activities to ensure the general public is aware of each project and the services it provides. All materials produced by, or for the project include a statement that:

(A) the project makes no distinctions on the grounds of race, color, sex, age, ancestry, national origin, religion, or disability; and

(B) a portion of the project costs are met by state and federal OAA funds from ~~the~~ AAA and ~~OKDHS~~DHS~~Aging Services Division~~AS.

(~~17~~18) Project staff provides or arranges for orientation and ongoing training for all staff engaged in the implementation of the project. Training is designed to enhance staff performance as related to specific job responsibilities of each staff person. Projects authorize staff time to attend AAA and ~~State Agency~~AS sponsored training as funds permit. Minimum orientation or training topics include:

(A) the OAA, as amended, and related regulations;

(B) the ~~OKDHS~~DHS Policies and Procedures Manual for Title III of the OAA, as amended;

(C) the AAA Title III policies and procedures manual;

(D) all program and fiscal reports, as appropriate;

(E) assessment procedures;

(F) the aging network; and

(G) specific job duties.

(~~18~~19) Project staff participates in regularly scheduled assessments and evaluations by the AAA.

(A) The AAA schedules assessments at least 30 calendar days in advance at a time mutually convenient for the AAA and the project.

(B) The AAA informs the project director of ~~the~~ areas ~~to be~~ covered during the assessment.

(C) The project director makes arrangements for site visits as requested by the AAA.

(~~19~~20) The project allows unscheduled or unannounced visits by the AAA for the purposes of:

(A) investigating alleged problems;

(B) monitoring corrective action; or

(C) evaluating the normal daily activity of the project.

(b) **Authority.** The authority for this Section is Sections 1321.11, 1321.51, 1321.63(b), 1321.65, and 1321.67 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The AAA is required to:

(1) incorporate the standards into the AAA policies and procedures manual;

(2) provide training on the standards to Title III project directors and other appropriate staff;

(3) monitor the compliance of Title III projects with the standards; and

(4) provide ongoing technical assistance to Title III projects regarding the standards.

(d) **Cross references.** ~~See OAC~~Refer to Oklahoma Administrative Code 340:105-10-40, 340:105-10-50.1, and 340:105-10-52.

340:105-10-75. Congregate meals planning

(a) **Policy.** The congregate meals project conducts appropriate meal planning for the congregate meals service with the consultation of persons competent in the ~~field~~fields of nutrition, food service, and the needs of older persons.

(b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as ~~amended~~Amended and Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** Menus:

(1) are prepared or approved by a registered dietitian (RD) who considers the special needs of older persons. The RD ensures ~~that~~ each meal served contains at least:

(A) one-third of the dietary reference intakes as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences; and

(B) 600 calories. The recommended level is 750 to 850 calories;

(2) are planned on a six-month basis with a minimum four-week cycle with seasonal changes. Nutritional adequacy is documented with computer analysis and meal pattern by the RD.

(A) Maintenance of optimal nutritional status through menu planning is reflected in menus moderate in fat, salt, and simple sugars and high in fiber.

(B) Form 02AG018E, Project Menu Plan - Nutrition Program for the Elderly, is submitted quarterly to the area agency on aging (AAA) and is available to the ~~State Agency~~Aging Services (AS) RD for random review upon request;

(3) are signed by the RD and posted at the nutrition site;

(4) reflect:

(A) special diets to meet the medical needs of eligible participants. When special diets are provided to meet the medical needs of eligible participants:

(i) a valid written physician's order is on file for each participant receiving a special diet. The physician's order indicates the participant is restricted to the special diet and the duration of the special diet. If the participant is consuming a liquid supplement in addition to a meal, the supplement is not reimbursed through the Nutrition Services Incentive Program as a separate meal; and

(ii) special diets are planned and prepared under the supervision of the RD; and

(B) where feasible, religious, ethnic, cultural, or regional dietary requirements or preferences of a major portion of the group of participants at a congregate meals site;

(5) are served as planned unless the RD reviews and approves an appropriate substitution. A complete menu move from one day to another does not constitute a substitution. When substitutions are made, the project maintains and submits to ~~the State Agency~~AS at the end of each month the:

(A) date of substitution;

(B) original menu item(s); and

(C) substituted menu item(s);

(6) are based on accurate production forecasting that does not include a margin for oversized portions or second servings. Leftover foods are not taken from the kitchen by staff, participants, or volunteers; however, participants may take the remainder of their noon meals from the dining site;

(7) may include, where feasible, provisions for the celebration of special occasions for participants, ~~for example~~such as birthdays and holidays; and

(8) allow for food items within the meat, vegetable and fruit, and dessert groups to vary for the same days of the week, from week-to-week, in order to provide a variety of foods and nutrients.

(d) **Cross references.** ~~See OAC~~Refer to Oklahoma Administrative Code 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-74, 340:105-10-76 through 340:105-10-80, and 340:105-10-86.

[OAR Docket #14-540; filed 6-27-14]

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

[OAR Docket #14-541]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services-Child Care
340:110-1-8.1 [AMENDED]
340:110-1-10.1 [AMENDED]
Part 3. Licensing Services-Residential Care and Agencies
340:110-1-51 [AMENDED and RENUMBERED to 340:110-1-8.1]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-2 through 340:110-3-3 [AMENDED]
340:110-3-5 [AMENDED]
340:110-3-6 [AMENDED]
340:110-3-7.1 [AMENDED]
340:110-3-10 [AMENDED]
340:110-3-33.2 [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-36 through 340:110-3-37 [AMENDED]
340:110-3-39 [AMENDED]
340:110-3-41 through 340:110-3-42 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-85 [AMENDED]
340:110-3-88 [AMENDED]
340:110-3-97.1 [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-146 through 340:110-3-147 [AMENDED]
340:110-3-150 [AMENDED]
340:110-3-153.1 [AMENDED]
340:110-3-154 [AMENDED]
340:110-3-168 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-221 through 340:110-3-223 [AMENDED]
340:110-3-225 through 340:110-3-226 [AMENDED]
340:110-3-228 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 1. Requirements for Child-Placing Agencies
340:110-5-3 through 340:110-5-4 [AMENDED]
340:110-5-8 [AMENDED]
340:110-5-12 [AMENDED]
Part 5. Requirements for Foster Home Agencies
340:110-5-57 [AMENDED]
(Reference APA WF13-05)
AUTHORITY:
Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Senate Bill 917; Oklahoma Child Care Facilities Licensing Act, 10 O.S. § 401 et seq.; and Oklahoma Department of Labor Child Labor Law, 40 O.S. §§ 70 and 77.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
None requested
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superceded rules:
Subchapter 1. General Provisions
Part 1. Licensing Services-Child Care
340:110-1-8.1 [AMENDED]
340:110-1-10.1 [AMENDED]
Part 3. Licensing Services-Residential Care and Agencies
340:110-1-51 [AMENDED and RENUMBERED to 340:110-1-8.1]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-2 through 340:110-3-3 [AMENDED]
340:110-3-5 [AMENDED]
340:110-3-6 [AMENDED]
340:110-3-7.1 [AMENDED]
340:110-3-10 [AMENDED]
340:110-3-33.2 [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-36 through 340:110-3-37 [AMENDED]
340:110-3-39 [AMENDED]
340:110-3-41 through 340:110-3-42 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-85 [AMENDED]
340:110-3-88 [AMENDED]
340:110-3-97.1 [AMENDED]
Part 9. Requirements for Residential Child Care Facilities
340:110-3-146 through 340:110-3-147 [AMENDED]
340:110-3-150 [AMENDED]
340:110-3-153.1 [AMENDED]

340:110-3-154 [AMENDED]
340:110-3-168 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-221 through 340:110-3-223 [AMENDED]
340:110-3-225 through 340:110-3-226 [AMENDED]
340:110-3-228 [AMENDED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 1. Requirements for Child-Placing Agencies
340:110-5-3 through 340:110-5-4 [AMENDED]
340:110-5-8 [AMENDED]
340:110-5-12 [AMENDED]
Part 5. Requirements for Foster Home Agencies
340:110-5-57 [AMENDED]
(Reference APA WF13-05)

Gubernatorial approval:
October 15, 2013 except for 340:110-1-51 & 340:110-5-12 which were approved on October 29, 2013

Register publication:
31 Ok Reg 154

Docket number:
13-1264

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed amendments reflect revisions to rules per the Oklahoma Child Care Licensing Facilities Act as a result of Senate Bill (SB) 917. SB 917 amended statute with regard to: (1) provisions for fingerprinting processes and procedures relating to licensed child care facilities; (2) definitions for responsible entity and specialized services professionals; (3) clarifying rap back definition and unsupervised access to children; and (4) requiring parent notification when volunteers, who transport on an irregular basis, or specialized service professionals may not have been fingerprinted.

Revisions also remove the category of teen aides for child care center and school-age programs. Oklahoma Child Care Services (OCCS) was contacted by Oklahoma Department of Labor on May 17, 2013, regarding teen aide licensing requirements for child care centers and school-age programs. The teen aide category is being removed in response to clarification received from Oklahoma Department of Labor and also OKDHS Legal Services review of this language.

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

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

OAC 340:110-1-8.1 is amended to reflect revisions to division policy regarding fingerprinting.

OAC 340:110-1-10.1 is amended to reflect revisions to division policy regarding fingerprinting.

OAC 340:110-1-51 is amended and renumbered to OAC 340:110-1-8.1.

OAC 340:110-3-2 is amended to define specialized services professionals, define unsupervised access to children, remove definition of teen aides, and align program definitions.

OAC 340:110-3-3 is amended to reflect clarified definitions.

OAC 340:110-3-5 is amended to reflect revised rule section citations.

OAC 340:110-3-6 is amended to require parental notification when applicable regarding specialized services professionals and volunteers transporting on an irregular basis. Amendments also revise maintenance of personnel records regarding rule revisions associated with fingerprinting and remove reference to teen aide category and records.

OAC 340:110-3-7.1 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures and remove category of teen aides.

OAC 340:110-3-10 is amended to reflect revised rule section citations.

OAC 340:110-3-33.2 is amended to reflect revised rule section citations.

OAC 340:110-3-36 is amended to define specialized services professionals, unsupervised access to children, and align program definitions.

OAC 340:110-3-37 is amended to reflect clarified definitions.

OAC 340:110-3-39 is amended to reflect revised rule section citations.

OAC 340:110-3-41 is amended to require parental notification when applicable regarding specialized services professionals and volunteers transporting on an irregular basis. Amendments also revise maintenance of personnel records regarding rule revisions associated with fingerprinting.

OAC 340:110-3-42 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures.

OAC 340:110-3-81 is amended to define specialized services professionals, unsupervised access to children, and align program definitions.

OAC 340:110-3-82 is amended to reflect clarified definitions.

OAC 340:110-3-85 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures.

OAC 340:110-3-88 is amended to require parental notification when applicable regarding specialized services professionals and volunteers transporting on an irregular basis. Amendments also revise maintenance of personnel records regarding rule revisions associated with fingerprinting.

OAC 340:110-3-97.1 is amended to reflect revised rule section citations.

OAC 340:110-3-146 is amended to define specialized services professionals and align program definitions.

OAC 340:110-3-147 is amended to reflect clarified definitions.

OAC 340:110-3-150 is amended to reflect clarified definitions.

OAC 340:110-3-153.1 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures. Amendments also revise maintenance of personnel records regarding rule revisions associated with fingerprinting.

OAC 340:110-3-154 is amended to require parental notification when applicable regarding specialized services professionals and volunteers transporting on an irregular basis.

OAC 340:110-3-168 is amended to revise language as hospitals contracting with Oklahoma Health Care Authority are no longer exempt from submission of criminal history records to Licensing Records Office.

OAC 340:110-3-221 is amended to define specialized services professionals, define unsupervised access to children, remove definition of teen aides, and align program definitions.

OAC 340:110-3-222 is amended to reflect clarified definitions.

OAC 340:110-3-223 is amended to reflect revised rule section citations.

OAC 340:110-3-225 is amended to require parental notification when applicable regarding specialized services professionals and volunteers transporting on an irregular basis. Amendments also revise maintenance of personnel records regarding rule revisions associated with fingerprinting and remove reference to teen aide category and records.

OAC 340:110-3-226 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures and remove category of teen aides.

OAC 340:110-3-228 is amended to reflect revised rule section citations.

OAC 340:110-5-3 is amended to define specialized services professionals and align program definitions.

OAC 340:110-5-4 is amended to reflect clarified definitions.

OAC 340:110-5-8 is amended to reflect requirements for facilities regarding fingerprinting processes and procedures.

OAC 340:110-5-12 is amended to revise maintenance of personnel records regarding rule revisions associated with fingerprinting.

OAC 340:110-5-57 is amended to reflect revised rule section citations.

[OAR Docket #14-541; filed 6-27-14]

TITLE 345. COMMITTEE FOR INCENTIVE AWARDS FOR STATE EMPLOYEES CHAPTER 10. PRODUCTIVITY ENHANCEMENT PROGRAM [REVOKED]

[OAR Docket #14-745]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [REVOKED]
345:10-1-1. Purpose [REVOKED]
345:10-1-2. Definitions [REVOKED]

Subchapter 3. Organization [REVOKED]
345:10-3-1. Incentive for State Employees Committee [REVOKED]
345:10-3-2. The Productivity Enhancement Program coordinator [REVOKED]
345:10-3-3. Agency nomination evaluators [REVOKED]
Subchapter 5. Types of Awards [REVOKED]
345:10-5-1. Individual productivity incentive awards [REVOKED]
345:10-5-2. Individual incentive compensation [REVOKED]
345:10-5-3. Unit incentive pay [REVOKED]
345:10-5-4. Individual longevity incentive awards [REVOKED]
Subchapter 7. General Causes for Ineligibility [REVOKED]
345:10-7-1. Ineligible persons and groups [REVOKED]
345:10-7-2. Ineligible nominations [REVOKED]
Subchapter 9. General Requirements for Committee Consideration [REVOKED]
345:10-9-1. Cash nominations and proposals [REVOKED]
Subchapter 11. Protection [REVOKED]
345:10-11-1. Ownership of proposals [REVOKED]
345:10-11-2. Non-discrimination [REVOKED]
345:10-11-3. Promulgation, amendment or repeal of rule(s) [REVOKED]
345:10-11-4. Public information [REVOKED]
345:10-11-5. Savings clause [REVOKED]

AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1361 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 28, 2014

PUBLIC HEARING:
February 28, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 345, as the Oklahoma State Employees Benefits Council has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.

CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

345:10-1-1. Purpose [REVOKED]

~~The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq. The specific purpose of this program, known as the Productivity Enhancement Program, is to encourage state employees to participate in improving the efficiency of state government operations. It is intended to increase the motivation to identify problems and to stimulate creativity in the solution of those problems. Additionally, the program provides a means for the state to communicate, to its employees and to the public, the high value placed on constructive ideas. To accomplish these goals, this program offers rewards and recognition for ideas, programs, and projects that result *in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state.* [74:4116]~~

345:10-1-2. Definitions [REVOKED]

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

~~**"Committee"** or **"program Committee"** or **"statewide PEP Committee"** or **"PEP Committee"** means the Incentive Awards for State Employees Committee described in Section 345:10-3-1.~~

~~**"Coordinator"** or **"program coordinator"** or **"statewide PEP coordinator"** or **"PEP Coordinator"** means the Productivity Enhancement Program coordinator described in Section 345:10-3-2.~~

~~**"PEP"** means the Productivity Enhancement Program.~~

~~**"Title 74"** means Title 74 of the Oklahoma Statutes.~~

SUBCHAPTER 3. ORGANIZATION [REVOKED]

345:10-3-1. Incentive Awards for State Employees Committee [REVOKED]

~~(a) **Structure of the Committee.** The Productivity Enhancement Program will be managed by a seven-member committee. The members of the Committee will be appointed to represent state employees, management, and business. The Committee will be comprised of:~~

~~(1) *The Director of Central Services or designee who shall be the chairperson;*~~

~~(2) *The Director of State Finance or designee;*~~

~~(3) *The Administrator of the Office of Personnel Management or designee;*~~

~~(4) *The chief administrative officer of a state executive agency, department, commission, or office who shall be appointed by the Governor;*~~

~~(5) *A state employee who does not occupy a supervisory position, to be appointed by the Governor;*~~

~~(6) A person who is not a state officer or employee, to be appointed by the President Pro Tempore of the Senate; and~~

~~(7) A person who is not a state officer or employee, to be appointed by the Speaker of the House of Representatives. [74:4112]~~

~~(b) **Term of Members.** Each member who is appointed by the Governor shall serve on the Committee at the pleasure of~~

~~the Governor. Those members not appointed by the Governor shall serve on the Committee at the pleasure of their respective appointing authority. [74:4112] Apart from the Committee, the chairman will appoint or identify a Productivity Enhancement Program coordinator to handle administrative details, to act as an advisor to the Committee, and to act as secretary to the Committee at all meetings. The program coordinator shall have no vote.~~

~~(c) **Role of the Committee.** It shall be the responsibility of the Committee to:~~

~~(1) Promulgate rules and regulations and adopt policies and procedures to implement the Productivity Enhancement Program pursuant to the provisions of the Incentive Awards for State Employees Act. [74:4113]~~

~~(2) Review all nominations and evaluations brought before it by the program coordinator.~~

~~(3) Assure that each nomination is thoroughly and fairly investigated and reported upon by:~~

~~(A) Calling upon any state employee or officer for information on the evaluation or implementation of any nomination;~~

~~(B) Requesting any further information and investigation it deems appropriate.~~

~~(4) Encourage employees to make nominations, and explain the program to agencies and groups upon request.~~

~~(5) Periodically review and update the program rules as necessary, and waive procedural rules in individual cases in the interest of fairness and equity.~~

~~(6) Authorize awards and the amounts of awards. [74:4117]~~

~~(7) Prepare and submit to the Governor, Speaker of the House of Representatives and the President Pro Tempore of the Senate, a comprehensive annual status report on the activities, decisions, awards and recommendations of the Committee with respect to the Productivity Enhancement Program.~~

~~(d) **Operations of the Committee.**~~

~~(1) The Committee chair may cancel regularly scheduled Committee meetings if there is no business before the Committee. When meetings are canceled, the required public notices will be filed with the Secretary of State and publicly posted.~~

~~(2) The Committee may consider "revenue generation" in evaluating cash nominations.~~

345:10-3-2. The Productivity Enhancement Program coordinator [REVOKED]

~~(a) Status of the program coordinator. The coordinator shall be either a classified or unclassified/exempt employee of the state, working under the general guidance of the program Committee and under the supervision of the Administrator of the Office of Personnel Management. The Administrator shall provide the program coordinator with such clerical, computer, and other support and facilities as may be needed to effectively implement and sustain the program.~~

~~(b) Role of the program coordinator. The program coordinator, under the direction of the Committee, shall:~~

~~(1) Develop guidelines, requirements, and procedures for the administration, promotion and maintenance of the program.~~

~~(2) Administer, promote, and maintain the program.~~

~~(3) Ensure compliance with program requirements and goals by the orderly and timely processing of nominations and award payments.~~

~~(4) Provide initial screening of all nominations received by the Committee, returning those ineligible for evaluation, and provide for evaluation of appropriate proposals.~~

~~(5) Provide recommendations to the Committee for appropriate awards, recognition, and/or disposition.~~

345:10-3-3. Agency nomination evaluators [REVOKED]

~~(a) Status of the evaluators. The director or administrator of each agency, department, commission, or office of state government participating in the Productivity Enhancement Program shall designate one or more qualified, objective agency nomination evaluators, who shall receive and review all nominations submitted by employees of their respective agencies and transmit to the Committee those nominations the agency deems worthy of cash awards.~~

~~(b) Role of the evaluators. The evaluators shall:~~

~~(1) Review and consider each nomination fairly, giving factual, complete, and prompt replies.~~

~~(2) Review each proposal for merit and implementation feasibility, including defining such modifications as may be necessary for adoption.~~

~~(3) Assess benefits and projected savings.~~

~~(4) Return rejected nominations to agency employees with explanation for actions.~~

~~(5) State any actions that approved proposal caused, such as partial or full implementation, both prior to submission of nominations to the Committee and during subsequent evaluations by the Committee.~~

~~(6) For non-cash nominations:~~

~~(A) Transmit non-cash nominations with recommendations for approval or rejection to the agency administrator (appointing authority) who shall approve or reject nominations.~~

~~(B) Transmit copies of all non-cash nominations reviewed by the agency to the statewide PEP coordinator, clearly noting the disposition of each.~~

~~(C) Develop procedures for awarding non-cash awards (lapel pins and certificates of commendation) furnished by the PEP Committee. Lapel pins and certificates will be supplied to the agency after receipt of approved non-cash nomination documentation documentation.~~

~~(7) For cash nominations:~~

~~(A) Transmit nominations that demonstrate cost savings to their agency fiscal officers for certification that cost savings or revenue generation are real and funds are therefore available for awards; costs will be determined by the formula adopted by the Committee. [74:4117]~~

~~(B) Transmit nominations approved by the agency administrator (appointing authority), with agency recommendations, to the Committee.~~

~~(C) Provide final documentation to the Committee of cost savings during a fiscal year and consequent award recommendations.~~

~~(D) Transmit to the Committee, on a timely basis, copies of all cash nominations reviewed by the agency, clearly noting the disposition of each.~~

SUBCHAPTER 5. TYPES OF AWARDS [REVOKED]

345:10-5-1. Individual productivity incentive awards [REVOKED]

~~(a) Definition. An individual productivity incentive award will consist of a certificate and lapel pin designed by the Committee. This type of award may be made by the agency administrator (appointing authority) of any state agency, office, or commission eligible to participate in the program to those eligible and nominated employees, as recommended by the agency nomination evaluator, who have demonstrated excellence by making an exceptional contribution to their respective work unit, to their agency or state government in general resulting in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state. [74:4116]~~

~~(b) Eligibility of employees to participate. With the exception of agencies and offices within the Legislature, the Office of the Governor, the Office of the Lieutenant Governor, and the Office of the State Auditor and Inspector, any agency, department, commission, or office of state government may participate in the incentive awards program . . . [74:4114] To be eligible for individual productivity incentive awards, an individual must be an employee of an eligible group and be nominated by a state employee occupying a supervisory position. State agency supervisors, managers and agency administrator may be nominated for noncash awards for making similar contributions. [74:4116]~~

~~(c) Eligibility of employees to receive awards. To be eligible for an award, the nominated employee must have demonstrated excellence by making an exceptional contribution to their respective work unit, to their agency or to state government in general resulting in increased productivity, cost curtailment, improved safety, efficiency, or morale or better services to the citizens of this state. [74:4116]~~

~~(d) Funding. The cost of award certificates and lapel pins shall be reimbursed to the Committee by the agency, board, commission or office that made the nomination. [74:4116]~~

~~(e) Exceptionally meritorious individual productivity incentive awards. The statewide PEP Committee may review the various non-cash individual awards approval by state agency administrators to:~~

~~(1) Evaluate the quality and quantity of awards being made to state employees.~~

~~(2) Serve as a clearinghouse to share award winning ideas and actions with all state agencies.~~

~~(3) Select exceptionally deserving actions by state employees for special recognition by the PEP Committee or the Governor.~~

345:10-5-2. Individual incentive compensation [REVOKED]

~~(a) Definition. An individual incentive compensation award will consist of a payment equal to at least twenty-five percent (25%) of the amount determined by the Committee to be the total unit dollar savings to the state for the level of services rendered, but shall not exceed ten thousand dollars ($10,000). The individual incentive compensation shall be paid in one lump sum if the twelve-month period mirrors the fiscal year, [otherwise, it shall be paid in two separate payments]. The calculation for two payments shall be based on the number of months in the first fiscal year of implementation for the first payment. The second payment shall come at the end of the first twelve (12) months of implementation, which falls in the second fiscal year. [74:4117]~~

~~(b) Eligibility of employees to participate. All employees except state agency heads eligible to participate in the individual incentive awards program (see Section 345:10-5-1) shall be eligible to participate in the individual incentive compensation program. Eligibility of state agency supervisors and managers for cash awards will be reviewed on a case by case basis according to Section 345:10-7-1(2).~~

~~(c) Eligibility of employees to receive individual incentive compensation. This type of award may be made to eligible employees, nominated for such compensation who, at a minimum, must have made an exceptional contribution similar to, but greater than, that required for an individual incentive award. Individual incentive compensation awards will be made only for proposals that result in real cost savings or revenue generation to an agency.~~

~~(d) Funding. Individual incentive compensation awards shall be paid from the accrued savings in the operating budget of the nominating agency, department, commission, or office. [74:4117] Incentive pay awards shall be exempt from retirement contributions and shall not be included for the purpose of computing a retirement allowance pursuant to any public retirement system of the state. [74:4119]~~

345:10-5-3. Unit incentive pay [REVOKED]

~~(a) **Definition.** A unit incentive pay award is a cash award made to the employees of a participating agency, commission, office or department who upon determination of the Committee, has reduced its unit dollar cost of operations or increased its level of services in the eligible fiscal year. The award shall consist of a sum not in excess of twenty-five percent (25%) of the amount determined to be the total unit dollar savings to the state for the level of services rendered. The amount awarded shall be divided and distributed in equal shares to the employees of the agency, department, commission, or office except that employees who have worked for the agency, department, commission, or office less than the full twelve (12) months of the fiscal year shall receive only a pro rata share based on the fraction of the year said employees have worked for that~~

~~agency, department, commission, or office. Employees voluntarily leaving the employment of state government or employees dismissed for cause shall forfeit their share. [74:4119]~~

~~(b) **Eligibility of units to participate.** With the exception of agencies and offices within the Legislature, the Office of the Governor, the Office of the Lieutenant Governor, and the Office of the State Auditor and Inspector, any agency, department, commission, or office of state government may participate in the unit incentive pay program. [74:4114]~~

~~(c) **Eligibility of units to receive unit incentive pay.** To qualify for the award of unit incentive pay to its employees, an agency, department, commission, or office shall demonstrate to the satisfaction of the Committee that said agency, department, commission, [or] office . . . has met both of the following two criteria in its operations during the fiscal year, after adjustment for inflation or deflation:~~

~~(1) Operated at a lower unit cost. "Unit cost" shall be defined as expenditures in dollars to complete a measurable unit of work.~~

~~(A) For first time participants the unit cost for the participating year shall be compared to either the unit cost for the immediately preceding fiscal year or a standard unit cost approved by the Committee, or~~

~~(B) For participants with one or more years in the program, the unit cost for the participating year shall be compared to either the average unit cost of prior successful participating years in the program or a standard unit cost approved by the Committee; and~~

~~(2) Operated at no greater total dollar expenditures, except:~~

~~(A) In a case where unit costs are reduced but total expenditures increased due to the agency or office maintaining its level of service; or~~

~~(B) In a case where the Legislature or department head specifically mandates an increase in the workload. [74:4118]~~

~~(d) **Possible areas of award.** The Committee will consider but is not limited to the considering as legitimate savings those reductions in expenditures made possible by such items as the following:~~

~~(1) Reductions in overtime; [74:4118(C)(1)]~~

~~(2) Elimination of consultant fees; [74:4118(C)(2)]~~

~~(3) Less temporary help; [74:4118(C)(3)]~~

~~(4) Elimination of budgeted positions; [74:4118(C)(4)]~~

~~(5) Improved methods of communication; [74:4118(C)(5)]~~

~~(6) Improved systems and procedures; [74:4118(C)(6)]~~

~~(7) Better development and utilization of manpower; [74:4118(C)(7)]~~

~~(8) Elimination of unnecessary travel; [74:4118(C)(8)]~~

~~(9) Elimination of unnecessary printing and mailing; [74:4118(C)(9)]~~

~~(10) Elimination of unnecessary payments for advertising, memberships, dues, and subscriptions; [74:4118(C)(10)]~~

~~(11) Elimination of waste, duplication, and operations of doubtful value; [74:4118(C)(11)]~~

~~(12) Improved space utilization; [74:4118(C)(12)]~~

~~(13) Proven cost reduction techniques; [74:4118(C)(13)]~~

~~(14) Any other items considered by the Committee as representing true savings. [74:4118(C)(14)]~~

~~(e) **Causes for denial of award.** The Committee shall satisfy itself that the claimed unit dollar cost of operation is real and not merely apparent, and that it is not, in whole or in part, the result of any of the following:~~

~~(1) A lowering of the level or quality of the service rendered; [74:4118(B)(1)]~~

~~(2) Reduced pass through on transfer expenditures; [74:4118(B)(2)]~~

~~(3) Receipts realized in excess of amounts budgeted; [74:4118(B)(3)]~~

~~(4) Nonrecurrence of expenditures which were single outlay, or one time expenditures, in the preceding fiscal year; [74:4118(B)(4)]~~

~~(5) Failure to reward deserving employees through promotions, reclassification, award of merit salary increments, or salary increases authorized by salary range revisions; [74:4118(B)(5)]~~

~~(6) Postponement of normal purchases and repairs to a future fiscal year; [74:4118(B)(6)]~~

~~(7) Stockpiling inventories in the immediately preceding fiscal year so as to reduce requirements in the eligible fiscal year; [74:4118(B)(7)]~~

~~(8) Substitution of federal funds or any funds which are not state funds for state appropriations; [74:4118(B)(8)]~~

~~(9) Unreasonable postponement of payments of accounts payable until the fiscal year immediately following the eligible fiscal year; [74:4118(B)(9)]~~

~~(10) Shifting of expenses to another agency, department, commission, or office of government; [74:4118(B)(10)]~~

~~(11) Any other practice, event, or device which the Committee decides has caused a distortion which misrepresents that a savings or increase in level of services has occurred. [74:4118(B)(11)]~~

~~(f) **Funding.** Unit incentive pay shall be drawn from the accrued savings in the operating expenses of the agency, department, commission, or office for the eligible fiscal year. Incentive pay awards shall be exempt from retirement contributions and shall not be included for the purpose of computing a retirement allowance pursuant to any public retirement system of the state. [74:4119]~~

345:10-5-4. Individual longevity incentive awards [REVOKED]

~~(a) **Definition.** An individual longevity incentive award will consist of certificate of appreciation and a lapel pin provided by the Committee. State employees will be recognized for their service to the state. They will receive length of service longevity awards at five year intervals during the month following the anniversary date of the employee as defined in Section 805.2 of Title 74 of the Oklahoma Statutes. [74:4115A]~~

~~(b) **Eligibility of employees to participate.** All state employees, classified, unclassified, and exempt are eligible to receive longevity awards, excluding members of boards, commissions, and institutions under the administrative authority of the State Regents for Higher Education, employees of public school districts and elected officials (re Section 805.2 of Title 74).~~

~~(c) **Funding.** The cost of the individual longevity incentive awards shall be billed to the employing agency. [74:4115A]~~

~~(d) **Procedure for making awards.** Appointing authorities are responsible for awarding the pins and certificates designed by the Committee, to eligible state employees at five-year intervals during the month following the anniversary date of the employee (see Section 345:10-5-4(a)). [74:4115A]~~

SUBCHAPTER 7. GENERAL CAUSES FOR INELIGIBILITY [REVOKED]

345:10-7-1. Ineligible persons and groups [REVOKED]

~~The following classes of persons and groups shall be ineligible for awards:~~

~~(1) Members of the Incentive Awards for State Employees Committee, the program coordinator and their assistants.~~

~~(2) Employees who submit proposals which would normally be expected in the performance of their duties and responsibilities, or for which the employees have authority to implement. (This applies to cash nominations only.)~~

~~(3) Employees who submit proposals that are a result of assigned or contracted audits, studies, surveys, reviews, or research.~~

~~(4) Employees serving on any department proposal system committee, sub-committee, or ad hoc committee are not eligible to become involved with the decision to adopt their proposals.~~

345:10-7-2. Ineligible nominations [REVOKED]

~~In addition to those causes specifically mentioned in subchapter 5 of this Chapter, the following nominations shall be ineligible for awards:~~

~~(1) Nominations which duplicate another nomination previously eligible for consideration or for which an award has previously been granted.~~

~~(2) Nominations which concern matters which are actively being considered by supervision or management. (Note: Supporting documentation pre-dating the nomination should be available from management if requested.)~~

~~(3) Nominations which involve routine maintenance matters or requests for supplies and services that should be reported through established channels. (This applies to cash nominations only.)~~

~~(4) Nominations which, in fact, are personal grievances and complaints.~~

~~(5) Nominations concerning individual employee compensation and individual position classifications.~~

~~(6) Nominations which could result in either unit incentive pay or individual incentive compensation until the nominating agency, department, commission, or office assures that funds for said award are available, or will become available upon accrual of savings.~~

~~(7) Nominations that would result in increased costs or decreased services rendered in other department or agencies.~~

SUBCHAPTER 9. GENERAL REQUIREMENTS FOR COMMITTEE CONSIDERATION [REVOKED]

345:10-9-1. Cash nominations and proposals [REVOKED]

~~(a) Nominations and proposals must be submitted on forms and according to procedures prescribed by the Committee. Only those nominations and proposals forwarded to the Committee by agency administrators will be considered. Any nomination or proposal which may result in individual incentive compensation or unit incentive pay must:~~

~~(1) Be certified by the administrator of the submitting agency that funds for such award are available, or will be available through accrued savings, and those funds have been encumbered for the purpose of making any resulting award.~~

~~(2) Be accompanied by acceptable accounting procedure or guidelines to be used by the agency in documenting the actual savings during the fiscal year.~~

~~(b) If an unadopted cash nomination is subsequently adopted within one year after the date of rejection, the proposer may submit to the Committee a request for reconsideration. Such request must be submitted within 90 days of adoption of the nomination. Any unadopted nomination may be resubmitted and considered eligible after a lapse of one year. The proposer may request the Committee to re-evaluate the amount of any award or the rejection of any nominations, acted upon by the Committee, if done so within 90 days of award or rejections. However, the Committee, the coordinator, and the evaluators, while acting in good faith, shall remain faultless for disposition of nominations.~~

SUBCHAPTER 11. PROTECTION [REVOKED]

345:10-11-1. Ownership of proposals [REVOKED]

~~All proposals become the property of the state of Oklahoma. Use of the proposal by the state may not be the basis of any future claim of any nature against the state or the program by the proposer, his heirs, or assigns. In the event that proposals adopted by the state of Oklahoma are shared with the incentive awards programs of other states or public jurisdictions, and those jurisdictions likewise adopt the proposals, no future claim of any nature against the state of Oklahoma or~~

~~the outside adopting jurisdiction may be made by the proposer, his heirs or assigns.~~

345:10-11-2. Non-discrimination [REVOKED]

~~The Incentive Awards for State Employees Committee and the Productivity Enhancement Program will refrain from any practice which discriminates against participating employees on the basis of age, race, religion, color, national origin, sex, or handicap.~~

345:10-11-3. Promulgation, amendment or repeal of rule(s) [REVOKED]

~~Any person seeking promulgation, amendment, or repeal of rules adopted by or to be considered by the Committee, shall do so in writing, to the chairperson of the Committee. Disposition of these will be made according to provisions of the Administrative Procedures Act.~~

345:10-11-4. Public information [REVOKED]

~~The Committee shall make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions. The Committee shall make available for public inspection all final orders, decisions, and opinions. Persons desiring to inspect those materials may do so at the administrative office of the Committee during normal business hours.~~

345:10-11-5. Savings clause [REVOKED]

~~If any section, sentence, clause, or phrase of the rules of this Chapter for the Committee for Incentive Awards for State Employees shall be held, for any reason, to be inoperative or unconstitutional, void or invalid, the validity of the remaining portion of the rules of this Chapter shall not be affected thereby. It being the intention of the Incentive Awards for State Employees Committee, in adopting the rules of this Chapter, that no portion thereof, or provision herein, shall become inoperative or fail by reason of the unconstitutionality or invalidity of any portion or provision. And, the Incentive Awards for State Employees Committee does hereby declare that it would have severally passed and adopted the provisions contained in this Chapter, separately, and apart one from the other.~~

[OAR Docket #14-745; filed 7-18-14]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS [REVOKED]

[OAR Docket #14-751]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Chapter 1. Administrative Operations [REVOKED]

AUTHORITY:
The Director of the Office of Management and Enterprise Services: 62. O.S. §34.28; 62 O.S. §34.3.1; 74 O.S. §1304.1; 74 O.S. §1305.1; §1308.1(1) and §1332(A)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 18, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.

CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5)AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

360:1-1-1. Purpose [REVOKED]

~~The purpose of this chapter is to outline the structure of the Office of Management and Enterprise Services (OMES) Employees Group Insurance Division (EGID) and to identify the availability and procedures to be used to access a grievance hearing.~~

360:1-1-1.5. Definitions [REVOKED]

~~The following words and terms as defined by EGID shall have the following meaning unless the content clearly indicates otherwise:~~

~~**"Adverse determination"** means a determination by or on behalf of EGID or its designee utilization review organization that an admission, availability of care, continued stay or other healthcare service is a covered benefit but, after review, based upon the information provided, does not meet the Board's requirements for medical necessity, appropriateness,~~

~~health care setting, level of care or effectiveness, and the requested service is therefore denied, reduced, or terminated.~~

~~**"The Board"** means the seven [7] members of the Oklahoma Employees Insurance and Benefits Board designated by statute [74 O.S. §1303(1)].~~

~~**"EGID"** means the Employees Group Insurance Division of the Office of Management and Enterprise Services.~~

~~**"Grievance Panel"** means EGID's independent constitutionally created administrative court. [Const. Art. 7. § 1.]~~

~~**"Independent review organization"** means EGID's Grievance Panel with exclusive authority and jurisdiction to conduct independent external reviews of all adverse determinations rendered by or on behalf of EGID or its designee utilization review organization.~~

~~**"OEIBB"** means the Oklahoma Employees Insurance and Benefits Board.~~

360:1-1-2. Rules, cumulative [REVOKED]

~~The Employees Group Insurance Division of the Office of Management and Enterprise Services hereinafter "EGID" will, from time to time, adopt handbooks, policies and procedures for the implementation of the rules set forth herein. Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. The rules in this title shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.~~

360:1-1-2.1. Rules in this title and benefit administration procedures or guidelines as adopted by EGID are controlling in all situations [REVOKED]

~~The rules in this title and the benefit administration procedures or guidelines as adopted by EGID shall be controlling in all situations, without exception, and any and all written information contained in any handbook, summary or other document prepared by or for EGID shall be superseded and limited by the rules in this title and the benefit administration procedures or guidelines as adopted by EGID.~~

360:1-1-2.2. Disclaimer of conflicting information [REVOKED]

~~In the event there appears to be a conflict between information contained in the rules in this title and the benefit administration procedures or guidelines as adopted by EGID, and any information contained within any handbook or any other written materials, including any letters, bulletins, notices, or any other written document, or oral communication, regardless of the source, such conflict shall always be resolved by a strict application of the rules in this title or the benefit administration procedures or guidelines as adopted by EGID, and no conflict will be resolved by application of the erroneous information contained within the handbook or other written document when the result would be contrary to the limitations set forth in the rules in this title, and the benefit administration procedures or guidelines as adopted by EGID. All erroneous, incorrect, misleading or obsolete language contained within any handbook or any other written document or oral communication, regardless of the source, shall be void from the inception, and of no effect under any circumstances.~~

360:1-1-3. Amending of rules [REVOKED]

~~This chapter may be amended or repealed from time to time and new rules adopted by EGID pursuant to the Administrative Procedures Act.~~

360:1-1-4. Gender reference [REVOKED]

~~All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.~~

SUBCHAPTER 3. THE BOARD [REVOKED]

360:1-3-1. Regular meetings [REVOKED]

~~The Board shall meet at least once each quarter in Oklahoma City, with the date, time and place determined by the Board. Four [4] members must be present to constitute a quorum in the transaction of the Board's business and a majority vote of those present shall be necessary to approve any motion before the Board. The Board shall hold an annual meeting each year at which officers shall be elected.~~

360:1-3-2. Special meetings [REVOKED]

~~Special meetings may be called upon written notice of the Chairman or by agreement of any four[4] members of the Board. Notice of a special meeting is to be delivered to all members in person or by registered or certified mail not less than seven [7] days prior to the fixed date of the meeting, unless waived.~~

360:1-3-3. Open Meeting Act [REVOKED]

~~All meetings and notices thereof shall be held in strict accordance with the Open Meeting Act [25 O.S. §§301 et seq., as amended].~~

360:1-3-4. Committees [REVOKED]

The Chairman may appoint subcommittees and committees as he deems appropriate. ~~Such appointments shall be in writing and may be changed as needed, upon written notice to all Board members.~~

360:1-3-5. Cancellation of meetings [REVOKED]

~~The Chairman of the Board, or the Vice-Chairman in the Chairman's absence, shall have the power to cancel or reschedule any regular or special meeting of the Board due to anticipated lack of quorum, inclement weather or other emergency. Notice of cancellation of said meeting shall be posted as soon as reasonably possible and in the same manner as the agenda.~~

360:1-3-6. Board and EGID records; release of information [REVOKED]

~~All official records of the Board and EGID shall be public records open to public inspection under reasonable circumstances at any reasonable time during business hours by any person, but such records shall not be taken from the EGID office. Copies of public records may be obtained pursuant to the current fee schedule as adopted by EGID.~~

360:1-3-7. Minutes of the Board [REVOKED]

~~A summary shall be made of all proceedings before the Board which shall show those members present and absent, all matters considered, all actions taken, and the vote of each member on any motion, and shall be open to public inspection, as prescribed in 360:1-3-6.~~

360:1-3-8. Confidentiality of medical records [REVOKED]

~~(a) All information, documents, medical reports and copies thereof contained in a member's insurance file held by EGID shall be confidential and shall not be reviewed by unauthorized parties, without permission of the individual or provider, or by court order. The confidentiality of a member's information is maintained when the member's information held by EGID is utilized for health management and communicated among:~~

~~(1) employees of EGID;~~

~~(2) EGID's contracted third party administrators and consultants;~~

~~(3) providers to the member and~~

~~(4) the member, according to statutory provisions for privilege and confidentiality or written agreements to protect the confidentiality and non-disclosure of the information.~~

~~(b) Authorizations to use or share protected health information will remain valid until termination of the member's or dependent's enrollment in HealthChoice, unless a shorter period of time has been specified, or unless rescinded.~~

~~(c) A member's health information is protected by this rule and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy regulations as codified in 45 Code of Federal Regulations Parts 160 and 164.~~

~~(1) EGID requires a signed HIPAA compliant authorization from a member or dependent before any confidential information is released to a person, company, or law firm.~~

~~(2) When individual circumstances arise in specific cases, EGID has authority to ask the member or dependent to independently confirm that EGID has permission to disclose confidential information before responding to any pending request.~~

~~(3) EGID's obligation to respond to record requests is discharged when EGID has responded to the original request, or if permission of the member or dependent is withdrawn. EGID requires a new authorization or subpoena if more records are requested after EGID has responded.~~

360:1-3-8.1. Participating entities/business associate protection of confidential health Information [REVOKED]

~~(a) The participating entity/business associate may only use and disclose the member's health information for the purposes of a member's treatment, to facilitate payment for Plan benefits or for participating entity/business associate business operations on behalf of the member. The participating entity/business associate may not use or further disclose a member's health information other than permitted by EGID rules or described in a written contract between EGID and the participating entity/business associate.~~

~~(b) Participating entities/business associates shall protect a member's confidential health information according to the following guidelines. Participating entity/business associate shall:~~

~~(1) not use or disclose a member's health information other than permitted in these rules; described in a written contract with EGID or required by law,~~

~~(2) ensure that subcontractors or agents of the participating entity/business associate maintain confidentiality of any health information provided to its subcontractors or agents,~~

~~(3) not use or disclose confidential health information for employment related actions concerning the member, unless required by law,~~

~~(4) notify EGID within five [5] working days when the participating entity/business associate becomes aware of any use or disclosure of a member's health information that is inconsistent with this rule and make an accounting of these disclosures available for EGID and each member,~~

~~(5) allow a member to access and review health information on file with the participating entity/business associate and submit amending statements for inclusion in their health information file,~~

~~(6) establish procedures to protect a member's health information and account for disclosures not authorized by these rules,~~

~~(7) identify the participating entity/business associate employees who may access a member's health information and restrict access to those persons,~~

~~(8) return to EGID or destroy a member's health information when no longer required by the participating entity/ business associate, and if not feasible, limit the use or disclosure to the required purposes,~~

~~(9) ensure that proper security is in place to protect electronically stored health information and~~

~~(10) make internal practices, books and records concerning uses and disclosures of protected health information available for inspection by the appropriate authority. A written contract between EGID and participating entity/business associate shall not limit the participating entity/business associate protection of a member's health information to an extent less than described in this rule.~~

360:1-3-9. Authorization for release of medical records [REVOKED]

~~Through the submission of claims, each member for whom coverage is applied authorizes, without further notice or consent, EGID to obtain from any provider of medical services, all records and information pertaining to that service which will aid in the proper payment of said claims. EGID is further authorized to use and release to third party payers any information and records so obtained. In all instances, the Rules of Confidentiality shall be applied without regard to the requirements of 360:1-3-8.~~

360:1-3-10. Right to receive and release necessary information [REVOKED]

~~For the purpose of determining applicability of and implementing the terms in this Plan or any provision of similar purpose of any other Plan, the Administrator may, without the consent of or notice of any person, release to or obtain from any other insurance company or other organization or person any information, with respect to any person, which the Administrator deems to be necessary for such purposes. Any person claiming benefits under this Plan shall furnish to the Administrator such information as may be necessary to implement this section.~~

360:1-3-11. Call monitoring for quality control [REVOKED]

~~The Administrator may institute procedures for monitoring of telephone calls for purposes of providing quality control.~~

360:1-3-12. Application of retiree benefit allowance [REVOKED]

~~When calculating premium rates for the retired population, EGID shall first apply in whole or in part, benefit allowances funded by the retirement systems to offset costs projected for the pharmacy portion of the health insurance plan. Remaining amounts, if any, will then be applied toward the medical coverage premium.~~

360:1-3-13. Electronic records and facsimile, electronic or copies of signatures [REVOKED]

~~Use of electronic records, electronic signatures, facsimile signatures and handwritten signatures executed to electronic records.~~

~~(1) Electronic records, electronic signatures, handwritten signatures executed to sign electronic records, handwritten signatures used to effectuate an electronic record for network contracting purposes, and facsimile or copies of signatures on EGID forms received from participating entities or members, may be used as an alternative or duplicate of paper records and handwritten signatures executed on paper to comply with any of the record and signature requirements of 12A O.S. §15-101 et seq. these rules or applicable Oklahoma law.~~

~~(2) Combinations of paper records and electronic records, electronic records and handwritten signatures executed on paper, or paper records and electronic signatures or handwritten signatures executed to sign electronic records, may be used to comply with any of the record and signature requirements of 12A O.S. §15-101 et seq., these rules or applicable Oklahoma law.~~

~~(3) The EGID Administrator or a Deputy Administrator may utilize a facsimile signature stamp to execute EGID contracts of any kind.~~

SUBCHAPTER 5. GRIEVANCE PANEL AUTHORITY AND HEARING PROCEDURES [REVOKED]

360:1-5-1. Access to Grievance Panel; request for hearing [REVOKED]

~~(a) **Grievance Panel Authority.** EGID has established a grievance procedure by which an independently appointed three [3] member Grievance/review Panel shall act as an appeals body and the exclusive remedy:~~

~~(1) For complaints by insured employees regarding the allowance and payment of claims, eligibility, benefits, provision of services, or other matters:~~

~~(2) To conduct independent external reviews of all adverse determinations rendered by or on behalf of the Board or its designee utilization review organization.~~

~~(b) **Court Administrator Appointees.** The Court Administrator shall designate Grievance Panel members as shall be necessary. The members of the Grievance Panel shall consist of two [2] retired active Judges licensed to practice law in this state and one [1] state licensed health care professional or health care administrator who has at least three [3] years practical experience, has had or has admitting privileges to a State of Oklahoma hospital, has a working knowledge of prescription medication, or has worked in an administrative capacity at some point in their career.~~

~~(c) **Governor Appointees.** The state health care professional shall be appointed by the Governor. At the Governor's discretion, one or more qualified individuals may also be appointed as an alternate to serve on the Grievance Panel in the event the Governor's primary appointee becomes unable to serve.~~

~~(d) **Right to a Hearing.** Except for grievances settled to the satisfaction of both parties prior to a hearing, any aggrieved covered member who requests in writing a hearing before the Grievance Panel shall receive a hearing before the panel.~~

~~(e) **Exclusive remedy.** The grievance procedure provided by this subchapter shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, including provisions thereof for review of agency decisions by the district court.~~

~~(f) **Timely request for a Hearing.** Any covered member aggrieved regarding the allowance and payment or denial of claims, eligibility, benefits and provision of services, adverse determinations, or other matters may request a hearing before~~

~~the Grievance Panel [hereinafter referred to as Panel] to determine the validity of the grievance. All requests for hearings must be filed within one [1] year from the date the member is notified of a denial of the claim, benefit or coverage. After more than one [1] year from the date the member was first notified of an allowance, payment, or denial of a claim, benefit, coverage, or other matter, the matter shall be deemed finally resolved.~~

~~(g) **Aggrieved member covered by an HMO.** Any member covered by an HMO is entitled to a hearing before the Panel in the same manner as all other covered members. The member must exhaust the HMO's internal grievance procedure, except for an emergency or if the HMO fails to timely respond, before requesting a grievance panel hearing. The member must file, along with his request for hearing, a written certification from the HMO that the member has exhausted said procedure, or a detailed explanation of the emergency or of the HMO's failure to respond.~~

~~(h) **Submission of Request for Hearing.** The Request for Hearing shall be in writing on a form provided by EGID for such purpose or in writing by the employee if in substantial compliance with the form and shall contain the following information:~~

~~(1) Name of employee, Social Security Number and address;~~

~~(2) Name of dependent for whom claim was submitted, if not the covered employee;~~

~~(3) Name of employee's employing entity, location, and identifying number;~~

~~(4) Nature of claim: Health, Dental, Life, Eligibility, Disability, HIPAA or HMO;~~

~~(5) Date claim submitted for payment, claim number;~~

~~(6) The reason given, if any, by the claims administration contractor for denying the claim in whole or in part; and~~

~~(7) A short statement as to the nature of the illness or injury giving rise to the claim.~~

~~(i) **Mailing address for submission of Request for Hearing.** The Request for Hearing shall be mailed or delivered to EGID to the attention of Attorney - Grievance Procedures, at 3545 N. W. 58th Street, Suite 110, Oklahoma City, Oklahoma 73112.~~

360:1-5-2. Notice of hearing [REVOKED]

~~Upon receipt of a Request for Hearing form, a hearing number shall be assigned thereto and notice shall be forwarded to the claims administration contractor by mail at its closest office. The employee shall be notified of the hearing date by certified mail, return receipt requested. A copy of all rules pertinent to the hearing shall be forwarded with the Notice, along with a statement of claimant's rights.~~

360:1-5-3. Prehearing conference [REVOKED]

~~The Attorney representing EGID, the claimant, or the claimant's attorney may request a pre-hearing conference to determine legal or factual issues. The Attorney representing EGID may conduct such a conference.~~

360:1-5-4. The grievance hearing [REVOKED]

~~(a) **Witness list.** Each party must submit, in writing, at least forty-eight [48] hours prior to the date of a grievance hearing a complete list of witnesses he or she intends to call, along with a brief comment as to the nature of the testimony. Witnesses shall not be called to testify at the hearing unless notice has been given to the opposing parties.~~

~~(b) **Assignment of Panel and Chairman.** All hearings shall be held before a three-member Grievance Panel, as assigned by the Office of the Administrative Director of the Courts. All hearings shall be conducted in accordance with and be governed by the provisions of the Oklahoma Administrative Procedures Act, 75 O.S. §301-326. At each convening of the Panel, one member shall be designated to act as the Chairman.~~

~~(c) **Admissibility of evidence.** Rulings on admissibility of evidence shall be made by the Panel Chairman; provided, however, that the remaining members of the Panel may, by affirmative vote, overrule the Chairman's decision, on their own motion or upon motion of any party to the hearing.~~

~~(d) **Oaths and subpoena.** The Chairman of the Panel shall have the authority to administer oaths for obtaining testimony for the hearing; and any member of the Panel or the Attorney representing EGID shall have the authority to issue subpoenas for witnesses or subpoenas duces tecum to compel the production of books, records, papers and other objects for the hearing. Said subpoenas may be served by any duly qualified officer of the law, or any employee of EGID in any manner prescribed for the service of a subpoena in a civil action.~~

~~(e) **Court reporter.** The Attorney representing EGID shall cause a recording of the proceedings to be made by a certified court reporter at EGID's expense. If transcribed, such written transcript shall become a part of the official record of the hearing, and a copy shall be furnished to any other party having a direct interest therein at the request and expense of such party. The cost of preparing the written transcript of the hearing and providing a copy of the transcript to the other party shall be paid by the party on whose behalf the written transcript is requested.~~

~~(f) **Procedure.** In all hearings, opportunity shall be afforded the party or parties requesting same to respond and present evidence and argument on all issues involved. The hearing shall be conducted in an orderly manner. The party or parties requesting the hearing shall be heard first; those, if any, who oppose the relief sought by the requesting party shall next be heard. Each party shall have the opportunity to present closing arguments.~~

360:1-5-5. Continuance; disposition; Attorney representation [REVOKED]

~~Any request for continuance may be granted by the Attorney representing EGID or the Panel if requested for any of the following reasons: illness or unavailability of the party requesting the hearing; unavailability or illness of a material witness; unavoidable conflict of schedule or other good cause. All parties to the hearing shall be notified of the continuance as soon as possible.~~

~~(1) Unless precluded by law, informal disposition may be made of any individual proceedings by stipulation, agreed settlement, consent order, or default.~~

~~(2) Any party shall at all times have the right to be represented by counsel at their own expense, provided such counsel is licensed to practice law by the Supreme Court of Oklahoma.~~

360:1-5-6. Certificate of mailing [REVOKED]

~~All filings, including Orders, Notices and Briefs, shall include a Certificate of Mailing showing the names and mailing addresses of adverse parties or their attorneys of record.~~

360:1-5-7. Final order; appeals [REVOKED]

~~(a) **Final Order.** The Panel shall enter a Final Order within no more than forty-five [45] days after the date of the hearing in all cases in which evidence and testimony has been offered and admitted. The Final Order shall separately state all Findings of Fact, Conclusions of Law and an Order approving or denying the claim.~~

~~(b) **District Court appeals.** The Panel's Final Order shall be considered a final decision of EGID for purposes of appeal. Any party to the hearing has the right to appeal to District Court from Final Orders entered by the Panel. This appeal shall be governed by the Administrative Procedures Act, 75 O.S. §301, et seq., and by other pertinent statutes such as 74 O.S. §1301, et seq.~~

360:1-5-8. Scheduling of hearings [REVOKED]

~~All requests for hearings regarding the allowance and payment or denial of claims, eligibility, benefits, provision of services, adverse determinations, or other matters shall be presented to, and heard by the Grievance Panel in open court within sixty [60] days of receipt of the properly submitted written request, unless the matter is: settled to the satisfaction of both parties; continued by agreement of the parties; or the Panel orders a continuance for good cause shown.~~

SUBCHAPTER 7. DECLARATORY RULINGS [REVOKED]

360:1-7-1. Petitions for declaratory rulings [REVOKED]

~~Petitions for declaratory rulings as to the applicability of any rule or order of EGID shall be in writing and must be filed with EGID. The petition must state with clarity the issues to be decided and any legal authority which may be applicable.~~

360:1-7-2. Final rulings [REVOKED]

~~EGID shall issue a written final ruling within sixty [60] days of hearing a petition for declaratory ruling. The final ruling shall be mailed to the person requesting the ruling and shall be kept on file in the EGID office for public inspection.~~

360:1-7-3. Judicial review [REVOKED]

~~Final declaratory rulings of EGID are subject to judicial review pursuant to the Administrative Procedures Act, in the same manner as individual proceedings.~~

[OAR Docket #14-751; filed 7-18-14]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS [REVOKED]

[OAR Docket #14-752]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. State and Education Employees Health, Dental, Vision and Life Plans [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 74 O.S. §1304(12); §1306(12), §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

360:10-1-1. Purpose [REVOKED]

~~The purpose of this chapter is to outline definitions, plan administration, coverage, and exclusions pertaining to health, dental, vision and life benefits.~~

360:10-1-2. Definitions [REVOKED]

~~The following words and terms as defined by EGID, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:~~

~~**"Administrative error"** occurs when the coverage elections the member makes are not the same as those entered into payroll for deduction from the member's paycheck. This does not include untimely member coverage elections or member misrepresentation. When such an administrative error results in underpaid premiums, full payment to EGID shall be required before coverage elected by the member can be made effective. If overpayment occurs, EGID shall refund overpaid funds to the appropriate party.~~

~~**"Administrator"** means the Administrator of the Employees Group Insurance Division or a designee.~~

~~**"Allowable fee"** means the maximum allowed amount based on the HealthChoice Network Provider Contracts payable to a provider by EGID and the member for covered services.~~

~~**"Attorney representing EGID"** means any attorney designated by the Administrator to appear on behalf of EGID.~~

~~**"The Board"** means the seven [7] Oklahoma Employees Insurance and Benefits Board members designated by statute [74 O.S. §1303(1)].~~

~~**"Business Associate"** shall have the meaning given to "Business Associate" under the Health Insurance Portability and Accountability Act of 1996, Privacy Rule, including, but not limited to, 45 CFR §160.103.~~

~~**"Carrier"** means the State of Oklahoma.~~

~~**"Comprehensive benefits"** means benefits which reimburse the expense of facility room and board, other hospital services, certain out-patient expenses, maternity benefits, surgical expense, including obstetrical care, in hospital medical care expense, diagnostic radiological and laboratory benefits, providers' services provided by house and office calls, treatments administered in providers' office, prescription drugs, psychiatric services, Christian Science practitioners' services, Christian Science nurses' services, optometric medical services for injury or illness of the eye, home health care, home nursing service, hospice care and such other benefits as may be determined by EGID. Such benefits shall be provided on a copayment or coinsurance basis, the insured to pay a proportion of the cost of such benefits, and may be subject to a deductible that applies to all or part of the benefits as determined by EGID. [74 O.S. §1303 (14)]~~

~~**"Cosmetic procedure"** means a procedure that primarily serves to improve appearance.~~

~~**"Current employee"** means an employee in the service of a participating entity who receives compensation for services actually rendered and is listed on the payrolls and personnel records of said employer, as a current and present employee, including employees who are otherwise eligible who are on approved leave without pay, not to exceed twenty-four [24] months. An education employee absent from employment, not to exceed eight [8] years, because of election or appointment as local, state, or national education association officer who is otherwise eligible prior to taking approved leave without pay will be considered an eligible, current employee. A person elected by popular vote will be considered an eligible employee during his tenure of office. Eligible employees are defined by statute. [74 O.S. §1303 and §1315]~~

~~**"Custodial care"** means treatment or services regardless of who recommends them or where they are provided, that could be given safely and reasonably by a person not medically skilled. These services are designed mainly to help the patient with daily living activities. These activities include but are not limited to: personal care as in walking, getting in and out of bed, bathing, eating by spoon, tube or gastrostomy, exercising, dressing, using toilet, preparing meals or special diets, moving the patient, acting as companion or sitter, and supervising medication which can usually be self-administered.~~

~~**"Dependent"** means the primary member's spouse (if not legally separated by court order), including common law. Dependents also include a member's daughter, son, stepdaughter, stepson, eligible foster child, adopted child or child legally placed with the primary member for adoption up to the child's twenty-sixth [26th] birthday. In addition other unmarried children up to age twenty-six [26] may be considered dependents if the child lives with the member and the member is primarily responsible for the child's support. A child may also be covered regardless of age if the child is incapable of self-support because of mental or physical incapacity that existed prior to reaching age twenty-six [26]. Coverage is not automatic and must be approved with a review of medical information. A disabled dependent deemed disabled by Social Security does not automatically mean that this disabled dependent will meet the Plan requirements. [74 O.S. §1303(13)]. See additional eligibility criteria for disabled dependents over the age of twenty-six [26] at 360:10-3-24.1.~~

~~**"Durable medical equipment"** means medically necessary equipment, prescribed by a provider, which serves a therapeutic purpose in the treatment of an illness or an injury. Durable medical equipment is for the exclusive use of the afflicted member and is designed for prolonged use. Specific criteria and limitations apply.~~

~~**"Emergency"** means a sudden and unexpected symptom that a prudent lay person, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention would result in placing the health of the individual or others in serious jeopardy.~~

~~**"Enrollment period"** means the time period in which an individual may make an election of coverage or changes to coverage in effect.~~

~~**"Facility"** means any hospital, rehabilitation facility, skilled nursing facility, midwifery center, ambulatory surgical center, home health agency, infusion therapy entity, hospice program, durable medical equipment vendor, radiology facility, dialysis facility, or laboratory which is duly licensed under the laws of the state of operation, Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines,~~

~~for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF).~~

~~**"Fee schedule"** means a listing of one or more allowable fees.~~

~~**"Former participating employees and dependents"** means eligible former employees who have elected benefits within thirty [30] days of termination of service and includes those who have retired, or vested through an eligible State of Oklahoma retirement system, or who have completed the statutory required years of service, or who have other coverage rights through Consolidated Omnibus Budget Reconciliation Act (COBRA) or the Oklahoma Personnel Act. An eligible dependent is covered through the participating former employee or the dependent is eligible as a survivor or has coverage rights through COBRA.~~

~~**"Health information"** means any information, whether oral or recorded in any form or medium: (1) that relates to the past, present or future physical or mental condition of a member; the provision of health care to a member; or the past, present or future payment for the provision of health care to a member; and (2) that identifies the member or with respect to which there is a reasonable basis to believe the information can be used to identify the member.~~

~~**"Home health care"** means a plan of continued care of an insured person who is under the care of a provider who certifies that without the Home health care, confinement in a hospital or skilled nursing facility would be required. Specific criteria and limitations apply.~~

~~**"Hospice care"** means a concept of supportive care for terminally ill patients. Treatment focuses on the relief of pain and suffering associated with a terminal illness. Specific criteria and limitations apply.~~

~~**"Initial enrollment period"** means the first thirty [30] days following the employee's entry on duty date. A group initial enrollment period is defined as the thirty [30] days following the enrollment date of the participating entity.~~

~~**"Insurance Coordinator"** means Insurance/Benefits Coordinator for Education, Local Government, and State Employees.~~

~~**"Maintenance care"** means there is no measurable progress of goals achieved, no skilled care required, no measurable improvement in daily function or self-care, or no change in basic treatment or outcome.~~

~~**"Medically necessary"** means services or supplies which are provided for the diagnosis and treatment of the medical and/or mental health/substance abuse condition and complies with criteria adopted by EGID. Direct care and treatment are within standards of good medical practice within the community, and are appropriate and necessary for the symptoms, diagnosis or treatment of the condition. The services or supplies must be the most appropriate supply or level of service, which can safely be provided. For hospital stays, this means that inpatient acute care is necessary due to the intensity of services the member is receiving or the severity of the member's condition, and that safe and adequate care cannot be received as an outpatient or in a less intensified medical setting. The services or supplies cannot be primarily for the convenience of the member, caregiver, or provider. The fact that services or supplies are medically necessary does not, in itself, assure that the services or supplies are covered by the Plan.~~

~~**"Members"** means all persons covered by one or more of the group insurance plans offered by EGID including eligible current and qualified former employees of participating entities and their eligible covered dependents.~~

~~**"Mental health and substance abuse"** means conditions including a mental or emotional disorder of any kind, organic or inorganic, and/or alcoholism and drug dependency.~~

~~**"Network provider"** means a practitioner who or facility that is duly licensed under the laws of the state in which the "Network provider" operates and/or is accredited by a nationally recognized accrediting organization such as The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF) approved by state or federal guidelines, and has entered into a contract with EGID to accept scheduled reimbursement for covered health care services and supplies provided to members.~~

~~**"Non-Network out-of-pocket"** means the member's expenses include the total of the member's deductibles and co-insurance costs plus all amounts that continue to be charged by the non-Network provider after the HealthChoice allowable fees have been paid.~~

~~**"OEIBB"** means the Oklahoma Employees Insurance and Benefits Board.~~

~~**"Open enrollment period"** means a limited period of time as approved by either EGID or the Legislature in which a specified group of individuals are permitted to enroll.~~

~~**"Option period"** means the time set aside at least annually by EGID in which enrolled plan members may make changes to their enrollments. Eligible but not enrolled employees may also make application for enrollment during this time. Enrollment is subject to approval by EGID.~~

~~**"Orthodontia limitation"** means an individual who enrolls in the Dental Plan will not be eligible for any orthodontia benefits for services occurring within the first twelve [12] months after the effective date of coverage. Continuing orthodontia services for newly hired employees who had previous group dental coverage will be paid by prorating or according to plan benefits.~~

~~**"Other hospital services and supplies"** means services and supplies rendered by the hospital that are required for treatment, but not including room and board nor the professional services of any provider, nor any private duty, special or intensive nursing services, by whatever name called, regardless of whatever such services are rendered under the direction of the hospital or otherwise.~~

~~**"Participating entity"** means any employer or organization whose employees or members are eligible to be participants in any plan authorized by or through the Oklahoma Employees Insurance and Benefits' Act.~~

~~**"The Plan or Plans"** means the self-insured Plans by the State of Oklahoma for the purpose of providing health benefits to eligible members and may include such other benefits as may be determined by EGID. Such benefits shall be provided on a coinsurance basis and the insured pays a proportion of the cost of such benefits.~~

~~**"Primary insured"** means the member who first became eligible for the insurance coverage creating eligibility rights for dependents.~~

~~**"Prosthetic appliance"** means an artificial appliance that replaces body parts that may be missing or defective as a result of surgical intervention, trauma, disease, or developmental anomaly. Said appliance must be medically necessary.~~

~~**"Provider"** means a physician or other practitioner who is duly licensed or certified under the laws of the state in which the Provider practices and is recognized by this Plan, to render health and dental care services and/or supplies.~~

~~**"Schedule of benefits"** means the EGID plan description of one or more covered services.~~

~~**"Skilled care"** means treatment or services provided by licensed medical personnel as prescribed by a provider. Treatment or services that could not be given safely or reasonably by a person who is not medically skilled and would need continuous supervision of the effectiveness of the treatment and progress of the condition. Specific criteria and limitations are applied.~~

SUBCHAPTER 3. ADMINISTRATION OF PLANS [REVOKED]

360:10-3-2. Open enrollment period [REVOKED]

~~The Board or the Legislature may, at its discretion, declare an open enrollment period during which time eligible individuals may enroll in optional coverage on behalf of themselves or eligible dependents.~~

360:10-3-2.1. Approval of exceptional claims and eligibility matters [REVOKED]

~~The Administrator shall have the authority to approve individual exceptional claims or eligibility matters when circumstances require. The Administrator shall provide a regular report on exceptional claims approved to the Board or a committee designated by the Board.~~

360:10-3-3. Insurance/Benefits Coordinator for Education, Local Government, and StateEmployees [REVOKED]

~~The appointing authority or governing body of each participating entity shall designate an Insurance/Benefits Coordinator and at least one [1] Alternate to properly enroll members of the entity. Any information given by an Insurance/Benefits Coordinator shall not supersede or modify the statutes, rules in this title or any Insurance/Benefits Coordinator Guide governing the Group Insurance Plan. Insurance/Benefits Coordinator representing retirees may be provided by the retirement system from which the retiree is receiving benefits. It is the employee's duty to notify his Insurance/Benefits Coordinator of a change in eligibility for himself, his spouse or his dependents. It is the Coordinator's duty to notify EGID within ten [10] working days of the employee's notice of change. EGID is not obligated to accept untimely notifications of change, and may elect to refuse to permit said changes.~~

360:10-3-3.1. Right of recovery [REVOKED]

~~(a) **Error in payment.** Any benefits paid erroneously by EGID are fully recoverable from the recipient. No such erroneous payment shall constitute waiver or estoppel or result in any equitable obligation by EGID to pay any benefits which are not specifically payable according to the rules in this title and the benefit administration procedures or guidelines as adopted by the Board. [74 O.S. §1321]~~

~~(b) **Excessive amounts.** Whenever payments have been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at the time to satisfy the intent of this part, the Administrator shall have the right to recover such excess, from any person, organization or company with respect to whom such payments were made.~~

~~(c) **Right to Audit.** EGID reserves the right to audit any enrollment or insurance change form and to require that supporting documentation showing the participant's eligibility, including (but not limited to) proof of a qualifying event, be provided. EGID may retroactively terminate coverage on any individual who was not eligible to be enrolled in the Plan and recover any claims paid on the individual's behalf.~~

360:10-3-3.5. Responsibility for premium payment [REVOKED]

~~(a) **Participating entity premiums.** Employer and employee premiums for participating entities are due to EGID no later than the tenth [10th] day of each month following the month of coverage. The first payroll deductions for insurance premiums of individuals paid bi-weekly will be withheld from the first pay period that extends into the month during which insurance coverage begins. It is ultimately the employing agency's responsibility to check and verify that premiums paid to EGID are a true and accurate accounting of the member's approved coverage selections. If premium for coverage selected by the employee differs from the amount deducted from the member's check, then the participating entity is responsible for payment to EGID for any deficiencies in premium for the member's coverage. Any shortage of premiums due and payable will result in suspension of benefits for Plan participants.~~

~~(1) An employee may continue coverage while on approved leave without pay status for up to twenty-four [24] months as long as the entity continues to remit premiums with the entity's monthly payment. The twenty-four [24] month limitation shall be extended to eight [8] years for education employees who are absent from employment because of election or appointment as a local, state, or national education association officer. Except as protected by federal statute, employees on leave whose premiums are not remitted in a timely manner shall have their coverage terminated at the end of the month for which last payment was received. If coverage is terminated for non-payment all coverage is terminated. Upon return to work, the employee may re-enroll. All Plan limitations apply and evidence of insurability is required to re-enroll in any life coverage.~~

~~(2) Provided that if a State employee is on leave without pay due to an injury or illness arising out of the course of his employment, the employee may continue the insurance~~

~~during the maximum period of the time allowed by law, and the employing agency shall pay the entire employee premium.~~

~~(3) An employee may continue coverage while on suspension without pay for up to ninety [90] days following the date of suspension or the duration of the administrative appeals process, whichever is greater, as long as premiums are remitted by the entity for the coverage.~~

~~(4) Collecting any employee share from an employee on leave without pay or suspension without pay is the responsibility of the entity.~~

~~(b) **Premiums remitted by retirement systems.** Any State of Oklahoma retirement system establishing a withholding system for its retired employees shall forward the retirement contribution and employees' withholding to EGID by the tenth [10th] of the month following the month for which payment is due. This same time frame also applies to members receiving disability benefits.~~

~~(c) **Premiums remitted by former employees, COBRA participants or survivors.** Premiums are due by the twentieth [20th] day of the month of coverage. All premiums due, in excess of the retirement system contributions, shall be paid by the member. The member may elect to have the premiums withheld from their retirement benefit if the retirement benefit is sufficient to cover the entire premium. If the total monthly premium is the same as or greater than the retirement benefit, the member shall remit the entire amount due directly to EGID.~~

360:10-3-4. Cancellation of coverage [REVOKED]

~~After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, coverage may be cancelled.~~

~~(1) **Cancellation of coverage due to non-payment of premium.** If payment is not received by the end of the month in which the payment is due, coverage shall be canceled effective the end of the month for which the last premium was received. EGID may reinstate coverage within sixty [60] days after the date EGID canceled coverage, if it is shown that the failure to pay premiums was not due to the member's negligence, subject to payment of any required premiums. The employee shall be notified in writing by EGID of cancellation of coverage and provided an opportunity for a hearing.~~

~~(2) **Cancellation of coverage due to insufficient funds.** In the event the member's payment is returned or refused due to insufficient funds or closed account, coverage may be cancelled unless the check is returned due to no fault of the member.~~

~~(3) **All coverage canceled.** If coverage is canceled for either of the reasons listed above all coverage will be terminated. When the employee is eligible to re-enroll, all Plan limitations apply and evidence of insurability is required to enroll in any life coverage.~~

~~(4) **Cancellation of coverage for Medicare members.** If payment is not received by the twentieth [20th] of the month, Medicare members will be notified of the delinquency and given thirty [30] days to make the payment. If payment is not made within the thirty [30] day grace period, coverage will be terminated effective the first [1st] day of the following month.~~

360:10-3-6.1. Underpaid premiums [REVOKED]

~~When premiums are underpaid for coverage which has been selected and provided, future payments will first be applied to the shortage and the shortage will be rolled forward. Employees may not choose to retroactively cancel coverage that was selected. The full amount of the underpaid premium shall be submitted within sixty [60] days after the date EGID notifies the insured or the insured's employer of the error. When the underpayment occurs because an employee has entered into a salary reduction agreement pursuant to the Internal Revenue Code, and the insured's employer has erroneously failed to withhold and submit the proper premiums to EGID, the insured's employer shall be solely responsible for the payment of outstanding underpaid premiums to EGID. Failure to submit premiums could result in loss of coverage in accordance with 360:10-7-1(a)(3).~~

360:10-3-7. Refunds for overpayment [REVOKED]

~~Any refund of payment for any premium overpayment shall be made only when EGID is notified in writing no later than sixty [60] days after the actual date of the overpayment, unless lack of notification is beyond control as determined by EGID.~~

~~(1) Refunds for overpayment due to administrative error, as limited and defined in the rules in this title, of the Insurance/Benefits Coordinator or the payroll clerk for EGID, shall be made at one hundred percent [100%].~~

~~(2) Refunds on behalf of employees shall be paid to the entity. In order to receive a refund the entity must have a credit balance.~~

360:10-3-13. Payment of health, dental and life benefits [REVOKED]

~~(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to EGID at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with EGID, benefits will be paid to the decedent's estate.~~

~~(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, EGID, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of EGID's obligation to the extent of the amount paid.~~

~~(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.~~

360:10-3-16. Timely filing of health, dental and life claims [REVOKED]

~~Proof of loss must be furnished no later than the last day of the calendar year immediately following the calendar year in which loss is sustained. If such proof is not furnished within the time allowed, the claim will still be considered if the employee shows that it was not reasonably possible to furnish the notice of proof within the specified time and that the notice of proof was furnished as soon as reasonably possible.~~

360:10-3-17. Examination [REVOKED]

~~EGID reserves the right and opportunity to examine the person whose injury or sickness is the basis of a claim as often as may be reasonable during the pending of the claim.~~

360:10-3-18. Action to recover [REVOKED]

~~No action at law or in equity shall be brought to recover on this Plan unless brought pursuant to the Administrative Procedures Act, nor shall such action be brought at all unless brought within three [3] years from the expiration of the time within which proof of loss is required by the policy.~~

360:10-3-20. Rights of eligible former employees to continue in the Group Health, Dental, and Vision Insurance Plan [REVOKED]

~~(a) Health, dental and vision coverage may be elected as determined by State Statute or retained at the time of termination of employment from an employer who participates in that health, dental or vision coverage, if such election to continue in force or begin is made within thirty [30] days from the date of termination of service, and if the following conditions are met:~~

~~(1) The former employee either retires or has a vesting right with a State funded retirement plan, or has the requisite years of service with an employer participating in the Plan.~~

~~(2) The election must be received by EGID no later than thirty [30] days after the date of termination of service.~~

~~(3) Group coverage must be continuous in order to waive the orthodontia limitations when retaining or electing coverage.~~

~~(b) If an eligible former employee does not elect coverage at the time of termination of employment, or subsequently drops the coverage that was elected:~~

~~(1) The coverage may not be reinstated at a later date, except as permitted for former State employees exercising insurance retention rights available through a reduction in force (RIF) severance agreement.~~

~~(c) A participating eligible former employee cannot add dependents to coverage after termination of employment, except as follows:~~

~~(1) During an open enrollment period; or~~

~~(2) Eligible dependent(s) not covered at the time of the former employee's termination from active employment, as long as the dependent election is made within thirty [30] days of the termination date.~~

~~(3) If the dependent is newly acquired. New dependent[s] or additional dependent coverage must be added within thirty [30] days after acquiring the new dependent[s].~~

~~(4) If the dependent has lost other group health or dental insurance coverage and notice has been given to EGID within thirty [30] days after the loss of the other coverage. In this situation, coverage will begin without orthodontia limitations, provided group coverage was in effect and there is no break in coverage.~~

~~(d) During an option period, covered former employees may make changes to their existing benefits but not add additional benefits with the exception of vision coverage.~~

~~(e) If an eligible former employee has a spouse who is participating in the Plan as an employee of a participating entity, the former employee may transfer his or her health, dental and vision coverage to be dependent coverage under the spouse at any time, so long as the following conditions are met:~~

~~(1) Coverage must remain continuous; and~~

~~(2) All eligible dependents must be insured unless they have other verifiable group coverage.~~

~~(3) The eligible former employee, at a later date, may defer or transfer his or her insurance coverage from dependent status back to former employee status if coverage with the Plan has remained continuous, and the former employer of the eligible former employee continues to participate in the Plan.~~

~~(f) An individual who has retained health, dental or vision coverage who is returning to current employment for a participating entity and meets the eligibility criteria for a current employee is entitled to transfer his present coverage to that employer as long as the employer is a participant in the benefit transferred. The employee may retain his present life coverage and may add life coverage so long as the total amount of life coverage does not exceed the guaranteed issue amount. Evidence of insurability must be submitted and approved for any amount exceeding guaranteed issue or the amount previously held in retirement, whichever is greater.~~

~~(g) An eligible former employee who has retained any coverage and is returning to work for a participating entity but does not meet the eligibility criteria for a current employee is not entitled to coverage through that employer.~~

~~(h) In the event an otherwise eligible former employee returns to current employment who did not retain health coverage upon termination of employment, the eligibility requirements of a new employee must be met in order to obtain coverage through the employer. Such individuals must work for three [3] years in order to qualify for retaining any benefits not previously elected upon ceasing current employment when they re-retire. This includes members who terminated from employers not participating in the Group Plans authorized by the Oklahoma State Employees Benefits Act [74 O. S. §1301] when they originally ended employment.~~

360:10-3-20.1. Coverage for eligible non-vested employee [REVOKED]

~~A non-vested employee must apply for continuation of coverage thirty [30] days after the date of termination of employment. Coverage must be continuous and eligibility to continue must be based upon the length of service required by statute. [74 O.S. §1316.2; 74 O.S. §1316.3]~~

360:10-3-22. Effective dates of coverage for current employees [REVOKED]

~~An employee other than an education employee is eligible to participate if not classified as seasonal or temporary and whose actual performance of duties normally requires one thousand [1,000] hours per year or more. An education employee who is a member of or eligible to participate in the Oklahoma Teacher's Retirement System and working a minimum of four [4] hours per day or twenty [20] hours per week may participate in the Plan. Part time education employees are those who meet the requirements of a half time employee as defined by the Oklahoma Teachers Retirement System. Eligible employees shall be covered on the first [1st] day of the month following the month in which the employee is in an eligible status.~~

~~(1) If an employee is absent due to accident or illness on the date the employee coverage would normally become effective, benefits shall not be payable until the employee returns to the job. If the employee is absent from work because of a holiday, vacation or nonscheduled working day and the employee was on the job on a scheduled working day immediately preceding the effective date, this effective date will not be changed. An employee coming to work during the latter part of a payroll period who is not able to complete an insurance change form should be placed on the appropriate plans on the first [1st] day of the following month with employee only coverage, so that the employee life, dental and health will be in effect. Members may add optional coverages within the member's initial thirty [30] day enrollment period to be effective the first [1st] day of the month following the date the member enrolled for optional coverages.~~

~~(2) Participating entities shall forward members' enrollment information and any changes to enrollment information during the initial enrollment period to the Administrator within ten [10] days after the last day a member may enroll.~~

~~(3) If an employee leaves a participating entity and is hired by another participating entity within the following thirty [30] day period, premiums must be forwarded to EGID to avoid a break in coverage.~~

~~(4) An enrolled member who terminates employment or is in leave without pay status and whose spouse is also an enrolled employee may transfer coverage to their spouse to be insured as a dependent. The health, dental, vision and basic life may be transferred. The employee's basic life amount will transfer to a dependent spouse amount. If there are dependent children, they must also be insured unless they have other verifiable group coverage.~~

~~(5) An employee that terminates from a participating employer and is hired by another participating employer shall be entitled to be treated as a new employee with new health, dental, vision and life benefit options available. A rehired employee returning to a former employer has new health, dental and vision benefit options only after a thirty [30] day break in coverage and may be subject to orthodontia limitations.~~

~~(6) Except as provided by statute, an individual employee may choose not to be enrolled in the health or dental plans or may disenroll from these plans because of other group health or dental coverage or by reason of eligibility for military or Indian health services within thirty [30] days after the date the employee becomes eligible for the other group health or dental coverage. Such employees who subsequently lose the other group coverage or eligibility for military or Indian health services may enroll in the corresponding health or dental plans offered through EGID if the election is made no later than thirty [30] days after the date of loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the dental limitation, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost the previous group coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following the election of health and/or dental coverage, and any break in coverage shall result in the application of the dental limitations.~~

360:10-3-23. Participating entities [REVOKED]

~~(a) **Participation in plans offered by EGID.** Entities electing to participate in the dental, life, vision, or disability plans offered by EGID must participate in the health plan, unless the Administrator grants a waiver. Coverage offered by EGID to eligible education employees will also be offered to all elected members of the school board for that entity.~~

~~(b) **Enrollment in group term life benefits.** An entity may elect to participate in the group term life coverage offered by EGID. This includes basic and optional supplemental life coverage for the employee and dependent life coverage. Entities electing to participate in the life plan offered by EGID must participate in the health plan, unless the Administrator grants a waiver.~~

~~(c) **Non-participating entities in other group plans.** The group plans offered by EGID shall not be offered to any entity which is participating in any other group insurance program, regardless of the percentage or number of employees eligible to enroll, unless the Administrator grants a waiver.~~

~~(d) **Right of Board to approve or deny applications for coverage.** EGID shall retain the right to approve or deny any employer group applications for coverage. Upon approval, coverage will become effective at 12:01 a.m. on the first [1st] day of the month following the month in which approval is granted unless a subsequent month is requested and approved in advance.~~

~~(e) **Coverage without preexisting conditions.** When an entity enrolls all employees of the new entity are covered without penalty for preexisting conditions.~~

~~(f) **Enrollment of all individuals presently insured.** Upon the group initial enrollment of an institution of higher education, all individuals presently insured by the institution's previous group health plan may become enrolled. If any such individual does not meet the eligibility requirements of this plan, they are eligible for coverage only for the remaining period of the institution's contractual liability. The institution must provide written proof of its contractual liability at the time of said individual's enrollment.~~

~~(g) **Attestation of continuous coverage for retirees.** Upon beginning or reinstating participation in health coverage offered by EGID, the entity must provide EGID with an attestation that retirees over age sixty-five [65] that will gain coverage through EGID have had continuous creditable coverage for prescription drugs (coverage that is at least as good as Medicare's) since the retirees became eligible for Medicare. The entity must provide an accurate list of any retiree over age sixty-five [65] that does not meet this requirement in order for EGID to properly report uncovered months to Medicare.~~

360:10-3-24. Dependents [REVOKED]

~~Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other group coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life.~~

~~(1) When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan. HealthChoice newborn limited benefit: a newborn has limited coverage for a birth for the first forty-eight [48] hours following a vaginal delivery or for the first ninety-six [96] hours following a C-section delivery without an additional premium. There are no benefits for services in addition to the routine hospital stay if the newborn is not enrolled for the month of the birth and premiums are not paid for that month. A Newborn Benefit Waiver must be completed to exclude a newborn from the Newborn Benefit.~~

~~(2) Newborns must be added the first of the month of the child's birth by filling out an Insurance Change Form within thirty [30] days after birth of the newborn.~~

~~(3) When one or more eligible dependents are currently covered, the newborn must be added to the same coverage.~~

~~(4) Where a newborn is added to coverage, all other eligible dependents must be enrolled in coverage if they are not currently enrolled. A member can waive health or dental coverage for their spouse.~~

~~(5) If a member accepts newborn benefits for the birth of his or her child but does not retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) as a result of the member's failure to furnish his or her Insurance/Benefits Coordinator with a completed insurance change form and any appropriate premium for the month of the newborn's birth within thirty [30] days after the birth of the newborn:~~

~~(A) There is no additional premium for the newborn benefit.~~

~~(B) Enrollment of other eligible dependents is not required.~~

~~(6) If optional coverage is not selected until after the employee's effective date, but within the member's initial thirty [30] day enrollment period, the optional coverage will be effective the first [1st] day of the month following the date the optional coverage was selected.~~

~~(7) In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.~~

~~(8) Eligible dependents who lose other group health, dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through EGID within thirty [30] days after the loss of other group insurance coverage without penalty for orthodontia if those dependents have been continuously covered by other group dental insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the orthodontia limitations, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage, and any break in coverage will result in the application of the orthodontia limitations.~~

~~(9) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by EGID. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to EGID of the qualified event except for newborn or adopted dependent children.~~

~~(10) Provided all other eligibility requirements are satisfied, adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to EGID within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.~~

~~(11) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of placement, or at the next option period as established by EGID.~~

~~(12) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other unmarried children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide an Application for Coverage for Other Dependent Children form prescribed by the Plan; and (3) coverage, if approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. EGID shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.~~

360:10-3-24.1. Eligibility criteria for disabled dependent children over the age of twenty-six [26] [REVOKED]

~~Eligibility criteria for covering a disabled dependent child over the age of twenty-six [26] pursuant to 74 O. S. §1303(13) are as follows, provided all other eligibility requirements are also satisfied:~~

~~(1) It is intended that the following dependent children over the age of twenty-six [26] are eligible for coverage under this provision:~~

~~(A) A child who has been medically determined to be incapable of self-support because of mental or physical incapacity that currently exists and has continuously existed since before reaching the age of twenty-six [26] years; and~~

~~(B) The child is the primary member's natural child, an adopted child, a child for whom the primary member has been granted guardianship, or a child of the primary member's spouse when the spouse has been ordered by a Court to provide health insurance for the child; and~~

~~(i) Eligibility through court appointed guardianship will be accepted only for individuals considered to be the primary member's immediate family members (such as a child or grandchild). Guardianship for others not listed herein will not be considered as documentation supporting eligibility for coverage as a disabled dependent. The assessment/application for coverage must be submitted within thirty [30] days of obtaining legal guardianship. Power of attorney, including durable power of attorney, does not qualify as guardianship; and~~

~~(ii) Coverage ceases at the end of the month in which the primary member's appointment as guardian is terminated.~~

~~(2) Other criteria required for disabled dependent status are:~~

~~(A) For an individual who is a new hire or a re-hire, assessment/application for disabled dependent status must be completed and submitted to EGID within thirty [30] days of primary member's initial enrollment;~~

~~(B) Primary members must submit a copy of their federal and/or state income tax returns for the prior year reflecting their support of the dependent.~~

~~(C) Dependents are eligible only for the coverage in which the primary insured is enrolled. Only dependent life insurance can be carried by both parents if each is a primary member under the plan; and~~

~~(D) Primary members must apply for disabled dependent status for an eligible child at least thirty [30] days prior to the dependent's twenty-six [26th] birthday.~~

~~(3) Disabled dependent status must be continued for a minimum of one [1] year. If the dependent having the disabled status is dropped from coverage, the primary member may not reapply for disabled dependent status for the dependent for a period of twelve [12] months. The twelve [12] month requirement does not apply when the dependent has lost other group coverage.~~

360:10-3-25. Termination of dependent coverage [REVOKED]

~~(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve [12] months. Reinstated coverage shall be subject to penalty for orthodontia limitations.~~

~~(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does not apply when the dependent has lost other group health, dental, vision and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-24(8).~~

~~(c) **Dependent reaches age twenty-six [26].** Coverage will be terminated for dependents reaching age twenty-six [26] on the first [1st] day of the month following their twenty-sixth [26th] birthday, except disabled dependents who are incapable of self-support and who have been deemed eligible for coverage by EGID.~~

360:10-3-26. Withdrawal from plan; termination or loss of coverage [REVOKED]

~~(a) **Withdrawal from plan.** Those eligible entities participating on a voluntary basis that elect to withdraw cannot re-enter the Plan for one [1] year following the date of withdrawal except for extraordinary circumstances. Notice of the election to withdraw must be provided to EGID thirty [30] days prior to the actual withdrawal date.~~

~~(b) **Termination of coverage due to insolvency of carrier.** Any eligible entities who have withdrawn and purchased other coverage, then have been notified by their other group health and/or dental insurance carrier that coverage is being terminated due to insolvency of the carrier may re-enroll within thirty [30] days after the loss of coverage by submitting a completed application form which must be approved by EGID prior to enrollment.~~

~~(c) **Individual member withdrawal and re-enrollment.** An individual employee who discontinues coverage on himself cannot re-enroll in any coverage for himself or his dependents for a period of twelve [12] months. Subsequent to the end of this twelve [12] month period, he may reapply for coverage offered by the Oklahoma State and Education Employees Group Insurance Board provided that he is eligible through a participating entity. The orthodontia limitations will apply.~~

~~(d) **Loss of other group health, dental or life insurance coverage.** The twelve [12] month requirement does not apply when the individual member has lost other group health, dental and/or life insurance coverage and is seeking reinstatement pursuant to Rule 360:10-3-26(c).~~

360:10-3-27. Continuation of coverage for survivors [REVOKED]

~~(a) The surviving dependents of a deceased employee who was on current work status or authorized leave at time of death, or of a participating retiree, or any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, may continue the health or dental benefits in force provided said dependents pay the full cost of such coverage and they were covered as eligible dependents at the time of such death. Such election must be made within sixty [60] days after death and coverage must be continuous. The eligibility for said benefits shall terminate for the surviving children when such children cease to qualify as dependents under the provisions of this plan.~~

~~(b) The surviving spouse of a deceased employee who was on active work status or authorized leave at time of death, or a surviving spouse of a participating retiree, or surviving spouse of any person who has elected to receive a vested benefit under the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, and who had elected the optional dependent life benefit prior to his or her death, may continue the dependent life coverage for the surviving spouse and children that were covered as dependents on the date of deceased employee's death, provided the surviving spouse pays the full cost of such coverage and the surviving spouse and children were eligible dependents on the date of the deceased employee's death. Such election must be made within sixty [60] days after the date of the deceased employee's death and coverage must be continuous. The eligibility for life benefits shall terminate for the surviving spouse's children when the children cease to qualify as dependents under the provisions of this plan.~~

~~(1) Upon the death of the surviving spouse, life benefits granted under this paragraph are payable to the beneficiary designated by the surviving spouse.~~

~~(2) Upon the death of any covered dependent children under this paragraph, life benefits are payable to the surviving spouse.~~

~~(3) The amount of life insurance coverage elected by the surviving spouse or, if no spouse, the surviving eligible dependent children shall not exceed the amount elected by the deceased employee prior to the date of the employee's death.~~

~~(4) Coverage for all dependent children of the surviving spouse, if any, terminates simultaneously with the death of the surviving spouse or termination of the surviving spouse's life insurance coverage.~~

360:10-3-27.1. Mid-year benefit election changes [REVOKED]

~~(a) Mid-year elections will be allowed in accordance with and under those circumstances stated within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code. The determination of Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code compliance for the current employee will be through certification from the employer.~~

~~(b) EGID will accept any change for any current employee certified as being compliant by the employer of that current employee so long as the notification of change is received by~~

~~EGID within thirty [30] days of the employee's mid-year plan election. The employer must further certify that the documentation supporting compliances is available to EGID and will be provided upon written request. An employer's cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in Title 26 Treasury Regulations 1.125-4. This is discretionary with the employer. Employees should be aware that Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code does not require a cafeteria plan to permit any of these changes.~~

~~(c) For all other members not on current employee status or whose employer does not operate his employee benefit plan under a Section 125 plan, the rules for mid-year changes will be subject to the Section 125 guidelines as detailed in Title 26 Treasury Regulations 1.125-4.~~

~~(d) In all cases, mid-year election changes will only be considered in the event of a qualifying status change as described within Title 26 Treasury Regulations, Section 125 of the Internal Revenue Code. All other changes not in conjunction with a qualifying event can only be made during the annual Option Period.~~

360:10-3-28. Corrections to benefit elections [REVOKED]

~~Members shall review their confirmation of coverage statement to ensure that the coverage elected is correct. Any corrections shall be submitted to the member's Insurance/Benefits Coordinator and EGID within sixty [60] days of the election. Errors reported after the sixty [60] days shall be effective the first [1st] day of the month following the notification of the error.~~

360:10-3-29.1. Double coverage prohibited [REVOKED]

~~An eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured, except for dependent life. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.~~

360:10-3-33. Basic disclosure plan for Medicare beneficiaries [REVOKED]

~~(a) The following words and terms as defined by EGID, when used in this section, shall have the following meaning: "Medicare beneficiary" means individuals eligible for HealthChoice Medicare plan coverage who are also entitled to Medicare benefits as designated by the United States Social Security Administration.~~

~~(b) In order to assure Medicare beneficiaries with an understanding of the medical and pharmacy benefits provided by, and the operation of, the HealthChoice Medicare plans; EGID shall maintain, adopt, and implement a basic disclosure plan for Medicare beneficiaries. This basic disclosure plan includes but is not limited to informational materials such as:~~

~~(1) A Medicare beneficiary benefits handbook providing a summary of medical and pharmacy benefits available under EGID's Medicare HealthChoice plan. Such handbooks shall be updated when material benefits or covered services change, or when reductions occur. A separate notification of material changes will be sent to all Medicare beneficiaries in a timely fashion prior to the updating of the Medicare beneficiary benefits handbook.~~

~~(2) A pre-enrollment package which shall be provided to all plan eligible Medicare beneficiaries. The pre-enrollment package shall, within a reasonable person's determination, be written in clear and understandable language providing the Medicare beneficiary detailed and necessary information upon which to make a selection of coverage for an upcoming plan year.~~

~~(3) A confirmation of benefit coverage form which will be distributed in a timely fashion after enrollment of a Medicare beneficiary, and by which HealthChoice shall notify the Medicare beneficiary of the plan coverage for the upcoming year. The confirmation of benefit form shall further detail any identified preexisting exclusions, and provide a description of an appeal process.~~

~~(4) An explanation of benefit determination letter explaining the outcome of each medical or pharmacy claim processed for payment or denial. In the case of denial the explanation of benefit determination letter shall provide information of the appeals process available to the Medicare beneficiary.~~

~~(5) Material which provides all Medicare beneficiaries with basic disclosure information on special enrollment rights, medical child support orders, and any Medicare service or benefit that EGID by law has been directed to provide.~~

SUBCHAPTER 5. COVERAGE AND LIMITATIONS [REVOKED]

PART 1. POLICY PROVISIONS [REVOKED]

360:10-5-1. Selection of health plans [REVOKED]

~~(a) **Requirements for selection of HMO.** Eligible employees may select either the state's comprehensive health plan (HealthChoice) or an HMO option. In order to select an HMO option, the employee must reside or be employed within the selected HMO's service area. The HMO election will apply not only to the employee, but also to all covered dependents. Eligible retirees, vested, non-vested, COBRA or survivor members and eligible dependents must reside within the selected HMO's service area to participate in the HMO.~~

~~(b) **Selection of HMO during enrollment period.** A choice of comprehensive benefits or the HMO may be made on an annual basis by the member during the enrollment period as set by EGID. The eligibility requirements set by EGID as applied to the comprehensive health plan will apply to the HMO. Eligible members in all cases will retain eligibility for dental, basic life and AD&D. Selection of the comprehensive~~

~~health plan or the HMO option will not affect eligibility for life and AD&D, dependent dental, or dependent Life.~~

360:10-5-2. Schedule of benefits and benefit administration procedures or guidelines as adopted by EGID [REVOKED]

~~All benefits for plans offered through EGID as described in the rules in this title shall be paid according to the handbooks, schedule of benefits and benefit administration procedures or guidelines as adopted by EGID. The schedule of benefits and benefit administration procedures or guidelines as adopted by EGID shall be available for inspection by the public during regular office hours at 3545 N. W. 58, Suite 110, Oklahoma City, Oklahoma 73112.~~

360:10-5-3. Approval for emergency treatment by non-Network providers [REVOKED]

~~Members may have benefits available for medical emergencies when non-Network services occur. Notification to EGID is required.~~

PART 3. THE PLANS [REVOKED]

360:10-5-16. Plan limits [REVOKED]

~~(a) Deductible. Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.~~

~~(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.~~

~~(c) **Network out-of-pocket maximum.** When the member or dependent exceeds the specified out-of-pocket calendar year maximum EGID will pay one hundred percent [100%] of the allowable fee for treatment provided by a Network provider. The one hundred percent [100%] payment of the allowable fee will be made by HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-Network out-of-pocket accumulations. The out-of-pocket maximum does not include charges for non-covered services, balance billing charges from non-network providers and copays.~~

~~(d) **Non-Network out-of-pocket.** The Plan will pay one hundred percent [100%] of the allowable fee for treatment provided by a non-Network provider, once the member or dependent exceeds the specified out-of-pocket calendar year threshold. The one hundred percent [100%] payment of the allowable fee will be made by the Plan for the remainder of the calendar year. Specific HealthChoice plans may apply non-Network out-of-pocket accumulations to the Network out-of-pocket maximums. Unlike Network providers, non-Network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to Network and non-Network providers. Allowable fees are not the same as charges billed by providers. Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-Network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed costs for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket fee for treatment by the non-Network provider. The out-of-pocket maximum does not include charges for non-covered services, balance billing charges from non-network providers and copays.~~

~~(e) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by the Plan for a member or dependent, with regard to pharmacy benefits.~~

~~(f) **Treatment by non-Network providers.** Any treatment at a non-Network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by EGID at any non-Network hospital or provider are subject to the limited maximum allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-Network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.~~

360:10-5-17. Covered charges [REVOKED]

~~(a) Items which will be considered for payment under the state's comprehensive health plan (HealthChoice) will be referred to as covered charges that are medically necessary and are as follows:~~

~~(1) **Hospital services.** Charges made by a hospital for:~~

~~(A) Semi-private room and board;~~

~~(B) Other hospital services and supplies used for treatment;~~

~~(C) Charges for use of intensive care facility, coronary care facility and other special care facilities;~~

~~(D) Outpatient expense incurred within twenty-four [24] hours of a surgical operation or injury.~~

~~(2) **Provider's services.** Charges for the services of a duly qualified provider for:~~

~~(A) Performing a surgical procedure;~~

~~(B) In hospital medical treatment by a provider other than the surgeon;~~

~~(C) Care and treatment of an illness;~~

~~(D) Approved preventive medical treatment.~~

~~(3) **Skilled Nurse facility expense.** Coverage for facility expenses applies only when the skilled nursing care to be provided is medically necessary as evidenced by a written statement from the attending provider and approved by the managed care vendor. The maximum number of days per benefit period shall be no greater than one hundred [100] days.~~

~~(4) **Skilled Nurse care.** Skilled Nurse care that is rendered in the home must be medically necessary as evidenced by a written order and treatment plan from the attending provider and approved by the Health Care Management Unit. Services must be provided by an agency that is Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). The maximum number of visits per benefit period shall be according to the benefit administration procedures or guidelines as adopted by EGID.~~

~~(5) **Dentist's or oral surgeon's services.** Charges made by a duly qualified dentist or oral surgeon for treatment of fractures and dislocations of the jaw, and for cutting procedures and treatment covered under the oral surgery benefit. Dental services by Network providers shall be covered by HealthChoice for oral surgeries and related expenses which are covered medical benefits.~~

~~(6) **Oral surgery.** Reimbursement for oral surgeries for removal of exostosis, tumors, or cysts when medically necessary; for surgical correction of prognathism, retrognathism, hyperplasia, temporomandibular joint dysfunction, dysfunctional mandibular disorder. Hospital confinement and related ancillary services [including anesthesia] for dental surgery when the confinement is necessary for illness, severe disability, a minor eight [8] years of age or under, or other health conditions, even though the surgery itself may not be covered.~~

~~(7) **Rehabilitative care.** Charges for medical care that are considered primarily rehabilitative will be covered under the Plan. Out-of-hospital care must be prescribed by a provider and must begin within twelve [12] months after the onset of the condition being treated. Inpatient care must be rendered in a facility Medicare certified as applicable, and accredited by a nationally recognized accreditation organization that is approved by state or federal guidelines, for example, The Joint Commission (formerly JCAHO) or The Commission on Accreditation of Rehabilitation Facilities (CARF). Both inpatient and outpatient care must be approved.~~

~~(8) **Outpatient expense.** This coverage includes services and supplies provided by the hospital or licensed surgical center, or any center duly licensed for performing certain other surgical procedures, within twenty-four [24] hours following and in connection with a surgical procedure. The limit for outpatient expense incurred for any one surgery is stated in the benefit administration procedures or guidelines as adopted by EGID.~~

~~(9) **Hospice care.** Professional services provided by personnel recognized by this Plan as practitioners of the healing arts will be reimbursed according to the benefit administration procedures or guidelines as adopted by EGID. Specific criteria and limitations apply.~~

~~(10) **Approval of exceptional claims**~~

~~(A) The Health Care Management Unit may recommend exceptions to the benefits provided by the plan for situations which would otherwise be denied or subject to limited coverage.~~

~~(B) Each request for exception must first be reviewed by the Health Care Management Unit on an individual basis. All responsibility for providing the documentation necessary to complete the review falls to the member. Recommendations will then be given to the Medical Director and Administrator both of whom must review all requested exceptions. Exceptions that have been reviewed but not approved in writing by the Medical Director and Administrator are deemed not approved. Approval of exceptions shall not establish precedent for other requests. All requests shall confirm that the requested exception is:~~

~~(i) medically necessary, and~~

~~(ii) within the standards of the community, and~~

~~(iii) cost effective, and/or~~

~~(iv) in compliance with all criteria as established by the Medical Director or designee.~~

360:10-5-20. Health plan limitations and exclusions [REVOKED]

~~For the health plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:~~

~~(1) Expenses incurred prior to the effective date of an individual's coverage, or for expenses incurred during a period of confinement which had its inception prior to the effective date of an individual's coverage hereunder.~~

~~(2) Injury or any sickness which is covered under an "extended benefits" provision of the previous group health coverage, until such time as such individual has exhausted all extended benefits available thereunder.~~

~~(3) Hospitalization or other medical treatment furnished to the insured or dependent after coverage has terminated.~~

~~(4) Confinement to a facility unless approved by EGID or its designee.~~

~~(5) Medical and surgical services and supplies which are in excess of the fee schedule for such service and supply.~~

~~(6) Expenses to the extent that the insured person is reimbursed or is entitled to reimbursement; or is in any way indemnified for such expenses by or through any public program, State or Federal, or any such program of medical benefits sponsored and paid for by the Federal Government or any agency or subdivision thereof.~~

~~(7) Bodily injury or illness arising out of or in the course of any employment not specifically excluded by 85 O.S. §2.1 or 2.6 (of the Workers' Compensation Act).~~

~~(8) Any treatment or procedure considered experimental or investigational. This restriction will also apply to any facility, appliance, device, equipment or medication.~~

~~(9) Medical and/or mental health treatment of any kind, including hospital care, medications, or any medical care or medical equipment which is excessive or where medical necessity has not been proven.~~

~~(10) Medications available for purchase without a written prescription.~~

~~(11) Medical care and supplies for which no charge is made or no payment would be requested if the insured individual did not have this coverage.~~

~~(12) Complications from any non-covered or excluded treatments, items or procedures.~~

~~(13) Any medication, device, or procedure, not FDA approved for general use or sale in the United States.~~

~~(14) Surgical procedures or treatment performed for cosmetic or elective reasons unless such procedure is specifically included as a covered charge or is necessary as a result of an accident. Coverage must have been continuous from the date of the accident to the date of corrective surgery.~~

~~(15) Dental expenses unless incurred as the result of an accidental bodily injury to natural teeth or gums while the coverage is in effect. Coverage must have been continuous from the date of the accident to the date of corrective surgery. Broken or lost artificial teeth, bridges or dentures, are not covered.~~

~~(16) Illness, injury, or death as a result of committing or attempting to commit an assault or felony, including participation in a riot or insurrection as an aggressor.~~

~~(17) Intentionally self-inflicted injury, or for attempted suicide whether sane or insane except when the injury results from a physical or mental medical condition covered under the health plan.~~

~~(18) Wrongful act or negligence of another when an employee or dependent has released the responsible party, unless subrogation has been waived or reduced in writing in an individual case, solely at EGID's option, and only for good cause.~~

~~(19) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.~~

PART 5. LIFE BENEFITS [REVOKED]

360:10-5-30. Term life coverage [REVOKED]

~~(a) **Group Term Life Benefits.** A former employee who is reemployed by the same participating employer within twenty-four [24] months after the date of termination of previous employment shall not be enrolled for a greater amount of life insurance than the individual had at the time of termination of previous employment with the employer, unless the individual provides satisfactory evidence of insurability. The amount of coverage provided by the employer is specified in the benefit administration procedures or guidelines as adopted by EGID. In the event of death, the proceeds of this coverage are payable to the beneficiary listed on the most recently signed beneficiary designation subject to the limitations in Title 15. [15 O.S. §178] If no beneficiary form is on file at EGID, benefits will be paid to the decedent's estate.~~

~~(b) **Unlimited contestability period.** There shall be no time limitation imposed upon EGID, during which coverage based on evidence of insurability submitted to EGID can be contested, if it is found that materially erroneous, false, inaccurate, or misleading information was provided in order to obtain optional or supplemental coverage in excess of any guaranteed amounts of coverage. In the event EGID determines coverage was granted based upon erroneous, false, inaccurate or misleading information, and that such information was material to EGID providing any optional or supplemental coverage, EGID shall extinguish its liability by tendering a refund of premiums paid to the insured or the beneficiary.~~

360:10-5-32. Optional dependent life coverage [REVOKED]

~~**Current employees.** Current employees may select life insurance coverage for eligible dependents if the employee is enrolled in basic life. This coverage does not include accidental death or dismemberment benefits. This benefit is available even if the dependent is a participating employee.~~

360:10-5-33. Optional supplemental life coverage for eligible employees [REVOKED]

~~(a) **Supplemental life coverage.** Supplemental life coverage is available for eligible employees who are covered by the basic term life coverage.~~

~~(b) **Enrollment.** At the time of initial enrollment, supplemental life may be requested up to the pre-established level set forth in the benefit administration procedures or guidelines as adopted by EGID, without submitting evidence of insurability. All supplemental life insurance requested which exceeds the pre-established level will require evidence of insurability. Coverage selected in the supplemental life insurance program begins on the first [1st] day of the month following the date of employment. Optional coverages not selected within the member's initial enrollment period may be added only during the next enrollment period. Members who waive or do not select supplemental life insurance coverage shall be required to obtain approval of current evidence of insurability to obtain coverage at a later date. Coverage obtained under this provision will be subject to certain additional restrictions as adopted by EGID. Individuals who waived this coverage because they were covered by other group life insurance coverage will be allowed to enroll without being subject to these additional restrictions if they request the coverage in writing and supply proof of the loss of other group coverage within thirty [30] days following the loss of the other group life coverage.~~

~~(c) **Changes in levels of coverage.** Increases or reductions in coverage limits (except termination of coverage) are only accepted during the option period. Beneficiary changes may be made at any time, but must be communicated to EGID in writing. All changes in coverage levels will be subject to the benefit administration procedures or guidelines as adopted by EGID.~~

~~(d) **Waiver of life insurance premiums.** In the event the employee becomes disabled, life insurance premiums may be waived for employee and dependent life insurance coverage. Provider certification shall be required, as specified by EGID, and premium waiver shall start on the first [1st] day of the month~~

~~after the employee has been disabled for thirty [30] consecutive days, and shall continue for as long as the employee remains disabled. The waiver shall terminate on the earliest of the following events: the employee has been found to be able to return to current duty in any capacity by any provider; the employee returns to any active duty for any period of time; the employee changes in status to former or retired; the employee notifies EGID in writing that life insurance coverage is to be terminated; the employee is terminated for any reason, including, but not limited to resignation or discharge from his or her position; any termination of life insurance coverage occurs as set forth in 360:10-7-1.~~

~~(e) **Accidental Death and Dismemberment and loss of sight benefit.** The basic term life and the first twenty thousand dollars [$20,000] of the supplemental life coverage includes the accidental death and dismemberment and loss of sight benefit and will pay a scheduled benefit in the event of accidental death and dismemberment or loss of sight injury within ninety [90] days after the date of accident or accidental injury. Death must be a direct result of the accidental bodily injury independent of all other causes.~~

360:10-5-34. Rights of retired and vested employees to continue life insurance coverage [REVOKED]

~~(a) **Continuation of coverage.** Any person who retires or who has elected to receive a vested benefit under the provisions of the Oklahoma Public Employees Retirement System, the Oklahoma Teachers Retirement System, the Uniform Retirement System for Justices and Judges, or the Oklahoma Law Enforcement Retirement system or is eligible to continue in force the life insurance coverage following retirement or termination of employment with the required minimum years of service with a participating employer, or who meets each and every requirement of the State Employees Disability Plan, or the spouse or dependent of any such employee, may continue in force life benefits purchased prior to severance in a face amount of no less than one fourth [1/4] of the basic life coverage amount in five thousand dollar [$5,000.00] increments, and the full amount of any additional life insurance that was in effect prior to the date of retirement. Said individual shall pay actuarially determined cost of such coverage and shall make such election within thirty [30] days following the date of severance. Said election to continue coverage becomes effective on the first [1st] day of the month following termination of current employment.~~

~~(b) **Decrease or termination of coverage.** Coverage may be decreased or terminated after severance from current employment, but shall not be increased or reinstated after severance, except as permitted by rule or statute.~~

~~(c) **Unavailability to retirees, vested or eligible non-vested members or dependents.** accidental death and dismemberment and loss of sight benefits are not available to retired, vested, or eligible non-vested members or dependents.~~

~~(d) **Retirees returning to active employment.** When an individual has retired and then returns to active employment, that individual may not retain any more life insurance upon termination of active employment than the amount that was retained when the individual initially retired, unless the period of active employment is for at least three [3] years.~~

PART 7. LIMITATIONS AND EXCLUSIONS FOR LIFE PLANS [REVOKED]

360:10-5-45. Limitations and exclusions for life plans [REVOKED]

~~For the life plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:~~

~~(1) There is no coverage for employee life or dependent life benefits during the first twenty-four [24] months of coverage when death is the result of suicide. The twenty-four [24] month exclusion for death by suicide will begin on the effective dates of all elective increases in coverage, and will apply to all increased amounts of coverage which have been in effect for less than twenty-four [24] months on the date of the act causing the insured's death.~~

~~(2) There is no coverage for accidental death and dismemberment benefits or loss of sight benefits when such occurs as a result of the following:~~

~~(A) Suicide, attempted suicide or intentional self destruction, or intentionally self-inflicted injury while sane or insane,~~

~~(B) Committing an assault or felony, including participation as an aggressor in a riot or insurrection,~~

~~(C) Wholly or partly, directly or indirectly, by disease, physical or mental, or by medical or surgical treatment or the diagnosis of any of the foregoing,~~

~~(D) Wholly or partly, directly or indirectly by bacterial infection, other than septic infection of and through a visible wound sustained solely through external and accidental means,~~

~~(E) Any narcotic, drug, poison, gas or fumes, voluntarily taken, administered, absorbed or inhaled, unless prescribed for the exclusive use of the deceased, or administered by a licensed provider for a legal purpose,~~

~~(F) Hang gliding, sky diving and flying experimental aircraft.~~

PART 9. DENTAL BENEFITS, LIMITATIONS, AND EXCLUSIONS [REVOKED]

360:10-5-55. Scope of coverage; four classes of coverage [REVOKED]

~~The dental expense benefit applies to eligible covered employees and dependents. This benefit provides payment for dental expenses incurred in excess of any applicable deductible. It is not necessary for dependents to be covered by medical benefits to receive the benefits of this Plan. Coverage under this Plan is divided into four classes which are: Class A, Class B, Class C, and Class D.~~

360:10-5-56. Plan limits [REVOKED]

~~(a) **Deductible.** The deductible amounts are the out-of-pocket expenses for a class of benefits incurred by the employee for himself or on behalf of a covered dependent during each calendar year.~~

~~(b) **Family deductible.** During any benefit period, EGID will pay a percentage of the covered charges incurred which exceed the family deductible amount, if applicable.~~

~~(c) **Maximum benefits.** The dental plan has a maximum benefit on a calendar year basis as established by EGID.~~

360:10-5-61. Dental limitations and exclusions [REVOKED]

~~For the dental plans provided by EGID, there is no coverage for expenses incurred for or in connection with any of the items listed below:~~

~~(1) Dental care and supplies for which there are no charges made or no payment would be required if the insured individual did not have coverage.~~

~~(2) Charges incurred after the covered individual's benefit ends.~~

~~(3) Dental care or supplies which are furnished in a facility operated under the direction of or at the expense of the U.S. Government [or its Agency] or by a provider employed by such a facility.~~

~~(4) Dental care or supplies to the extent that they are payable under other provisions of the policy.~~

~~(5) Charges for any dental services and supplies which are in excess of the fee schedule and deductible for such services and supplies.~~

~~(6) Adult orthodontics without a diagnosis of temporomandibular joint dysfunction.~~

~~(7) Cosmetic procedures.~~

~~(8) Medical expenses for the treatment of temporomandibular joint dysfunction.~~

~~(9) Medical services treating an oral condition.~~

~~(10) Dental care or supplies resulting from taking part in committing or attempting to commit an assault or felony.~~

~~(11) Dental care or supplies due to sickness or injury covered by Workers' Compensation, occupational disease law or similar laws.~~

~~(12) Dental care or supplies as a result of Act of War declared or undeclared, Insurrection, or release of nuclear energy.~~

~~(13) Expenses relating to an intentionally self inflicted injury, except when the injury results from a physical or mental medical condition covered under the health plan.~~

~~(14) Charges for treatment of accidental injury to natural teeth or gums.~~

~~(15) All other conditions, services, procedures, treatments, expenses, items, and supplies excluded by EGID's benefit guidelines.~~

~~(16) Enrollees in the dental plan have a one [1] year waiting period before being eligible for orthodontic benefits.~~

PART 11. MEDICARE SUPPLEMENT [REVOKED]

360:10-5-75. Medicare Supplement and Medicare Part D Prescription Drug Plan (PDP) [REVOKED]

~~Members who are eligible for Medicare will be assumed to be enrolled in both Parts A and B of Medicare. Benefits payable under the Medicare Supplement will be determined in accordance with this assumption. The Medicare Supplement is either connected with a Medicare Part D Prescription Drug Plan or contains pharmacy benefits that are considered creditable coverage by Medicare.~~

360:10-5-76. Primary insurer of current employees [REVOKED]

~~The health plan(s) offered through EGID may be primary for current employees eligible for Medicare and their eligible covered dependents as set forth in the Federal statutes governing Medicare.~~

360:10-5-77. Limitations of Medicare Supplement [REVOKED]

~~The Medicare Supplement health coverage is a supplement to the coverage provided by Medicare.~~

~~(1) This Supplement applies only after Medicare benefits are determined.~~

~~(2) Coverage is limited to Medicare's scheduled amount.~~

360:10-5-79. Enrollment in Medicare Supplement [REVOKED]

~~(a) **Medicare Supplement coverage enrollment required regardless of age.** All covered individuals who are eligible for Medicare, except current employees and their dependents as addressed in 360:10-5-76, must be enrolled in a Medicare Supplement Plan, offered through EGID, regardless of age.~~

~~(b) **Effective date of Medicare Supplement coverage.** Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date EGID receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to EGID. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to EGID within thirty [30] days after the member's notification of the Social Security Administration award. A member's sixty fifth [65th] birthday is considered automatic notification of Medicare eligibility.~~

~~(c) **Non-Medicare eligible individuals.** Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in EGID's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded.~~

PART 13. COORDINATION OF HEALTH AND DENTAL BENEFITS [REVOKED]

360:10-5-86. Definitions [REVOKED]

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

~~**"Allowable expense"** means any medically necessary item of expense at least a portion of which is covered under at least one of the plans covering the person for whom the claim is made except where a statute requires a different definition. An expense or service, or a portion of an expense or service that is not covered by EGID's medical and or dental plan is not an allowable expense. The maximum liability under EGID's medical and or dental plan as a secondary or subordinate payor is the member's actual liability under any coordinating plan or EGID's standard benefit, whichever is less. However, items of expense under coverage such as, but not limited to dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an allowable expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an allowable expense, except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.~~

~~**"Plan"** means the following:~~

~~(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:~~

~~(i) group, blanket or franchise insurance coverage, service plan contracts, group practice, individual practice and other prepayment coverage,~~

~~(ii) any coverage under labor management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and~~

~~(iii) any coverage under governmental programs, and any coverage required or provided by any statute.~~

~~(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other plans into consideration in determining its benefits and that portion which does not.~~

~~(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.~~

~~(D) The definition of a "Plan" within the coordination of benefits provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:~~

~~(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this part and in (E) of this definition.~~

~~(ii) May include all group or group subscriber contracts as well as such group type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group type coverage is designated as "franchise" or "blanket" or in some other fashion.~~

~~(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group type basis may be included.~~

~~(F) Interpretation of the definition of a "Plan" may not include group or group type hospital indemnity benefits (written on a non expense incurred basis) of thirty dollars [$30] per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits at the time of the claim. In any event, the amount of group and group type hospital indemnity benefits which exceed thirty dollars [$30] per day may be construed as being included under the definition of "Plan".~~

~~(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken into consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a twenty-four [24] hour basis or "to and from school" for which the parent pays the entire premium.~~

~~(H) If "Medicare" or similar governmental benefits are included in the definition of "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.~~

~~(I) A plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:~~

~~(i) another plan exists; or~~

~~(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another plan; or~~

~~(iii) the claimant has elected an option under another plan providing a lower level of benefits than another option for which the claimant was eligible.~~

~~(J) With regard to plans offered by EGID an eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and EGID reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.~~

~~**"This Plan"** means that portion of the benefits that are subject to this part.~~

360:10-5-87. Effect on benefits [REVOKED]

~~(a) **Determining benefits.** This section shall apply in determining the benefits as to a person covered under the plan for any claim determination period if, for the allowable expense incurred as to such person during such period, the sum of:~~

~~(1) the benefits that would be payable under this plan in the absence of this provision, and~~

~~(2) the benefits that would be payable under all other plans in the absence therein of provisions of similar purpose to this provision would exceed such allowable expenses.~~

~~(b) **Claim determination period.** As to any claim determination with respect to which this section is applicable, the benefits that would be payable under this plan in the absence of this provision for the allowable expenses incurred as to such person during such claim determination period shall be reduced to the extent necessary so that the sum of such reduced benefits and all the benefits payable for such allowable expenses under all other plans, except as provided in (c) of this section, shall not exceed the total of such allowable expenses. Benefits payable under another plan include the benefits that would have been payable had claim been duly made therefore.~~

~~(c) **Coordination of benefits.** The benefits of another plan will be ignored for the purpose of determining the benefits under this plan if:~~

~~(1) the other plan which is involved in (b) of this section and which contains a provision coordinating its benefits with those of this plan would, according to its rules, determine its benefits after the benefits of this plan have been determined, and~~

~~(2) the rules are set forth in (d) of this section would require this plan to determine its benefits before such other plan.~~

~~(d) **Order of benefit determination.** For the purpose of (c) of this section, the rules establishing the order of benefit determination are:~~

~~(1) The benefits of a plan which covers the person on whose expenses claim is based other than as a dependent shall be determined before the benefits of a plan which covers such person as a dependent.~~

~~(2) The following guidelines apply with respect to claims regarding dependent children:~~

~~(A) Except for cases of a person for whom claim is made as a dependent child whose parents are separated or divorced, the benefits of a plan which covers the person on which expenses claim is based as a dependent of a person whose date of birth, excluding year of birth, occurs earlier in a calendar year, shall be determined before the benefit of a plan which covers such person as a dependent of a person whose date of birth, excluding year of birth, occurs later in a calendar year. If either plan does not have the provisions of this paragraph regarding dependents, which results either in each plan determining benefits before the other or in each plan determining its benefits after the other, the provisions of this paragraph shall not apply, and the rule set forth in the plan which does not have the provisions of this paragraph shall determine the order of benefits.~~

~~(B) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced and the parent with custody of the child has not remarried, the benefits of a plan which covers the child as a dependent of the parent with custody of the child will be determined before the benefits of a plan which covers the child as a dependent of the parent without custody.~~

~~(C) In the case of a person for whom claim is made as a dependent child whose parents are divorced and the parent with custody of the child has remarried, the benefits of a plan which covers that child as a dependent of the stepparent, and the benefits of a plan which covers that child as a dependent of the stepparent will be determined before the benefits of a plan which covers that child as a dependent of the parents without custody.~~

~~(D) In the case of a person for whom claim is made as a dependent child whose parents are separated or divorced, where there is a court decree which would otherwise establish financial responsibility for the medical, dental or other health care expenses with respect to the child, then, notwithstanding (B) and (C) of this paragraph, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other plan which covers the child as a dependent child.~~

~~(3) When (1) and (2) of this subsection do not establish an order of benefit determination, the benefits of a plan which has covered the person on whose expenses claim is~~

~~based for the longer period of time shall be determined before the benefits of a plan which has covered such person the shorter period of time, provided that:~~

~~(A) the benefits of a plan covering the person on whose expenses claim is based as a laid-off or retired employee, or dependent of such person, shall be determined after the benefits of any other plan covering such person as an employee, other than a laid-off or retired employee, or dependent of such person; and~~

~~(B) if either plan does not have a provision regarding laid-off or retired employees, which results in each plan determining its benefits after the other, then the provisions of (A) above shall not apply.~~

~~(4) When a claim under a plan with a coordination of benefits provision involves another plan which also has a coordination of benefits provision, the carriers involved should use the rules in (1) through (3) of this subsection to decide the order in which the benefits payable under the respective plans will be determined. Note:~~

~~(A) In determining the length of time an individual has been covered under a given Plan, two successive plans of a given group shall be deemed to be one continuous plan so long as the claimant concerned was eligible for coverage within twenty four [24] hours after the prior plan terminated. Thus, neither a change in the amount of scope of benefits provided by a plan, a change in the carrier insuring the plan, nor a change from one type of plan to another, (e.g. single employer to multiple employer plan, or vice versa, or single employer to a Taft Hartley Welfare Plan) would constitute the start of a new plan for purposes of this paragraph.~~

~~(B) If a claimant's effective date of coverage under a given plan is subsequent to the date the carrier first contracted to provide the plan for the group concerned (employer, union, association, etc.), then, the absence of specific information to the contrary, the carrier shall assume, for purposes of this paragraph, that the claimant's length of time covered under that plan shall be measured from claimant's effective date of coverage. If a claimant's effective date of coverage under a given plan is the same as the date the carrier first contracted to provide the plan for the group coverage, then the carrier shall request the group concerned to furnish the date the claimant first became covered under the earliest of any prior plans the group may have had. If such date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the length of time his coverage under that plan has been in force.~~

~~(5) A plan with order of benefit determination rules which complies with this section (herein called a Complying Plan) may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this section (herein called a Noncompliance Plan) on the following basis:~~

~~(A) If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis.~~

~~(B) If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary plan. In such a situation, such payment shall be the limit of the Complying Plan's liability.~~

~~(C) If the Noncompliance Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncompliance Plan are identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncompliance Plan.~~

360:10-5-89. Facility of benefit payment [REVOKED]

~~Whenever payments which should have been made under this plan in accordance with this section have been made under any other plans, EGID shall have the right, exercisable alone and in its sole discretion, to pay over to any organizations making such other payments any amounts it shall determine to be warranted in order to satisfy the intent of this section, and amounts so paid shall be deemed to be benefits paid under this plan and, to the extent of such payments, EGID shall be fully discharged from liability under this plan.~~

360:10-5-90. Right of recovery [REVOKED]

~~Whenever payment has been made by EGID with respect to allowable expenses in a total amount, at any time, in excess of the maximum amount of payment necessary at that time to satisfy the intent of this section, EGID shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as EGID shall determine:~~

~~(1) any persons to or for or with respect to whom such payments were made;~~

~~(2) any other insurers; or~~

~~(3) service plans or any other organizations.~~

PART 15. SUBROGATION [REVOKED]

360:10-5-100. Right of subrogation [REVOKED]

~~(a) EGID reserves the right to recover funds from members, dependents, tortfeasors, liability policies, underinsured/uninsured motorist policies, medical payments policies and/or other identifiable sources of funds, in amounts equal to any and all claim payments made on behalf of a member or dependent for injury caused by a third party's wrongful act or negligence.~~

~~(b) EGID has the right to recover any sums collected by or on behalf of a member or dependent even if the member or dependent has not been made whole. EGID is entitled to reimbursement from any recovery even if the recovery does not fully compensate the member or dependent for their injury.~~

~~The make-whole doctrine shall not apply. The sole exception to this paragraph exists only to the limited extent that EGID voluntarily elects to invoke its exclusive statutory authority to waive or reduce EGID's subrogation interest in an individual case.~~

~~(c) The act of submitting claims by or on behalf of a member or dependent constitutes notice and acceptance of EGID's right of recovery against the third party and creates a lien upon any identifiable funds referenced in (a) above.~~

~~(d) A member or dependent will not take any action to prejudice EGID's right of subrogation, such as settlement of the claim without first giving notice of EGID's subrogation rights to the responsible party and any and all known liability or other insurers.~~

~~(e) The member or dependent will cooperate in doing what is reasonably necessary to assist EGID in any recovery, including but not limited to promptly providing all information requested by EGID.~~

~~(f) Subrogation will exist only to the extent of plan benefits paid.~~

~~(g) Claims submitted after a member or dependent has released the responsible party may be denied at the option of EGID, by the issuance of routine written notice to the member, dependent, or their attorney.~~

~~(h) If claims relating to a specified injury are paid by EGID after the member or dependent has released the responsible party, when the member or dependent has failed to inform EGID in a timely manner prior to executing a release, EGID at its option, may require reimbursement from the member, dependent or provider.~~

~~(i) Claims submitted will initially be pended as incomplete and subsequently denied if information regarding possible third party responsibility is not voluntarily provided to EGID within a reasonable time period [not less than ninety (90) days] after the date the information was first requested in writing by or on behalf of EGID.~~

SUBCHAPTER 7. TERMINATION OF BENEFITS [REVOKED]

360:10-7-1. Termination of benefits [REVOKED]

~~(a) **Termination of coverage.** The coverage under this plan will terminate at the earliest time stated below:~~

~~(1) On the last day of the calendar month in which employment terminates.~~

~~(2) When the plan is discontinued.~~

~~(3) When any required premiums cease to be paid.~~

~~(4) The individual does not begin or continue coverage as an eligible participating former employee and/or dependent.~~

~~(5) For a dependent when said dependent becomes ineligible for coverage.~~

~~(6) A participating entity ceases to participate in this plan.~~

~~(b) **Submission of inaccurate or erroneous information.** If inaccurate or erroneous information is submitted by or on behalf of a member on any form or application for insurance coverage, coverage obtained pursuant to information provided on that form will be rescinded retroactive to the effective date.~~

~~(c) **Dependent termination of coverage.** In addition to (a) and (b) of this section, the coverage terminates with respect to an individual dependent on the last day of the calendar month in which such person ceases to be an eligible dependent. If a covered individual is found to be ineligible, coverage will be terminated effective on the first [1st] day of the month the coverage of the ineligible person was discovered by EGID. EGID reserves the right to recover any claims paid on behalf of an ineligible person.~~

SUBCHAPTER 9. COBRA HEALTH INSURANCE CONTINUATION [REVOKED]

360:10-9-1. Procedures and implementation [REVOKED]

~~**Notice of right to continue coverage.** Each agency or employer participating in the EGID Plan shall advise each covered employee of his right to continue coverage under Federal COBRA provisions. COBRA coverage applies only to health, dental, and vision benefits. Life and disability coverage are not available through COBRA.~~

360:10-9-2. COBRA administration [REVOKED]

~~(a) **COBRA coverage is identical to coverage provided at date of the qualifying event.** The coverage elected shall be identical to the coverage provided at the date of the qualifying event, unless a beneficiary moves outside an HMO's service area. In that event, coverage is continued under HealthChoice, EGID's self-insured plan.~~

~~(b) **Payment of back premiums.** All back premiums from the termination of coverage to the election and approval of continuation must be paid before coverage is effective. Coverage will then be retroactive to provide continuous coverage. All time limits are mandatory and cannot be waived under any circumstances.~~

~~(c) **Responsibility of qualified beneficiary to inform EGID of ineligibility.** It is the responsibility of the qualified beneficiary to provide timely notice if he is not eligible for any reason. Failure to do so will result in cancellation of COBRA insurance coverage, retroactive to the time of ineligibility.~~

~~(d) **Primary member premium.** For any benefit continued under COBRA, one person must pay the primary member premium. In cases where a spouse, child, or children are insured for a particular benefit where the primary member did not retain coverage, one person will be billed at the primary member rate.~~

~~(e) **Federal regulations.** Federal regulations regarding COBRA extension of coverage shall be controlling in all situations where applicable.~~

[OAR Docket #14-752; filed 7-18-14]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD
CHAPTER 15. THE DISABILITY PLAN
[REVOKED]

[OAR Docket #14-753]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 15. The Disability Plan [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §1304(12); §1306(12), §1308.1(1) and §1332(A)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the above-referenced rules from Title 360, as the Oklahoma State and Education Employees Group Insurance Board has been consolidated into the Office of Management and Enterprise Services. The rules will be re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

360:15-1-1. Purpose [REVOKED]

~~The rules of this chapter outline the coverage and limitations available under the Disability plan.~~

360:15-1-2. Definitions [REVOKED]

~~The following words and terms, when used in this chapter, shall have the following meaning, unless the content clearly indicates otherwise:~~

~~**"Base compensation"** means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.~~

~~**"Benefit period"** means the first [1st] day of the benefit period will be the day benefits commence as defined at 360:15-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 360:15-1-11(d). A recurrent disability as defined at 360:15-1-7 will not alter the beginning date of the benefit period.~~

~~**"Disability"** means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive calendar days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan.~~

~~**"EGID"** means the Employees Group Insurance Division of the Office of Management and Enterprise Services.~~

~~**"Eligibility period"** means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period. Employees reinstated to eligibility to participate in the disability plan after having waived disability coverage pursuant to 74 O.S. §1308.3 will be considered to have no prior service and no continuous employment prior to their reinstated eligibility.~~

~~**"Elimination period"** means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.~~

~~**"Employee"** means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Plan or who meet each and every requirement of this Disability Plan.~~

~~**"Furlough"** means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.~~

~~**"Illness"** means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the Plan.~~

~~**"Injury"** means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the Plan.~~

~~**"Participation"** means participation in the Disability Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.~~

~~**"Physician"** means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.~~

~~**"Preexisting condition"** means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry-on-duty (EOD) date. The term "preexisting condition" shall also include any condition which is related to such injury or illness.~~

~~**"Years of service"** means time spent as an active employee performing full-time duties for remuneration with an entity participating in the Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.~~

360:15-1-3. Gender reference [REVOKED]

~~All references to "he" or "his" are not intended to be gender related, but shall apply equally to both sexes.~~

360:15-1-4. Absence on eligibility date [REVOKED]

~~(a) **Eligibility date for disability.** If an employee is absent from work because of a furlough, holiday, vacation or non-scheduled working day and he was on the job or on paid leave other than for injury, illness, or unpaid leave, on a scheduled working day immediately preceding the eligibility date, the eligibility date for disability benefits will not be altered.~~

~~(b) **Release from physician for determination of eligibility.** If an employee is absent from work because of injury or illness on the date he would normally become eligible for disability coverage, he shall not become eligible until he obtains an unconditional release from his physician, and returns to the job for five [5] full-time consecutive work days, performing all of his normal duties.~~

~~(c) **Unpaid leave.** If an employee is absent from work because of other unpaid leave, he is not eligible for coverage until he returns to the job for five [5] consecutive work days.~~

360:15-1-5. Commencement of disability [REVOKED]

~~(a) **Short-term disability.** Short-term disability will be considered to have commenced on the date the employee first receives treatments or advice from a physician followed by a continuous absence from work due to disability, in accordance with the criteria under the definitions of 360:15-1-2. Short-term disability ends after the first one hundred eighty [180] days of disability.~~

~~(b) **Long-term disability.** Long-term disability commences after one hundred eighty [180] days of disability and coincides with the end of the short-term period.~~

360:15-1-6. Multiple disability claims [REVOKED]

~~In the event of a second eligible disability claim within the period of the first claim:~~

~~(1) the second claim must meet the definition of disability, and~~

~~(2) even though the second claim has no physical relationship to the first claim, the two will be combined so as to form one continuous disability period.~~

360:15-1-7. Recurrent disability [REVOKED]

~~(a) **Recurrent disability.** A recurrent disability is a disability related to or due to the same cause of a prior disability for which the employee received a monthly benefit:~~

~~(1) A recurrent disability is treated as part of the prior disability if:~~

~~(A) the employee returns to his regular occupation full-time for less than six months, and~~

~~(B) performs all the material duties of his occupation.~~

~~(2) If the employee returns to his regular occupation full-time for six months [6] or more, a recurrent disability will be treated as a separate disability.~~

~~(b) **Lump sum settlement.** The recurrent disability provisions do not apply in the event of a lump sum settlement payment.~~

360:15-1-8. Partial disability [REVOKED]

~~(a) **Partial disability.** If a person is performing at least one, but not all, of the material duties of any occupation, and is earning less than eighty percent [80%] of pre-disability base compensation, that person is considered to be partially disabled. The partial disability must result from the same cause as the disability. Proof of partial disability must be received within thirty-one [31] days after the end of a period during which disability benefits were paid in order to be eligible for monthly partial disability benefits.~~

~~(b) **Payment of benefits for partial disability.** Partial disability benefits are payable, after total disability, for up to twenty-four [24] months, or until recovery, or until maximum benefit limits as set out at 360:15-1-11(d) are met as defined, or until employee's gross rate of compensation reaches eighty percent [80%] of pre-disability base gross rate of compensation, whichever occurs first. Partial disability benefits are also subject to offsets described at 360:15-1-12.~~

360:15-1-8.5. Preexisting conditions [REVOKED]

~~(a) **Unavailability of benefits due to preexisting conditions.** No benefits are payable for any disability caused by a preexisting condition.~~

~~(b) **Non-applicability of preexisting conditions.** A condition will no longer be considered preexisting after the disabled person has been actively at work at his usual job for five [5] consecutive days following the expiration of:~~

~~(1) A one hundred eighty [180] day period following the EOD date during which the employee has not received medical care, diagnosis, consultation or treatment, or taken prescribed drugs or medicines for the preexisting condition, or~~

~~(2) A three hundred sixty [360] day period following the EOD date.~~

360:15-1-10. Proof of claim [REVOKED]

~~(a) **Notice.**~~

~~(1) Written notice of claim for disability benefits must be given to EGID within sixty [60] days after the date disability starts. For good cause shown, EGID's Administrator may waive the sixty [60] day requirement. If that is not possible, EGID must be notified as soon as it is reasonably possible to do so.~~

~~(2) No claim may be reopened when request is made more than one [1] year after benefits have ended for any reason.~~

~~(b) **Proof.**~~

~~(1) Proof of the claim, as specified by EGID, must be given to the third party administrator no later than one year after the start of disability. Proof must cover the severity and extent of the disability and the reasons the employee is unable to perform the duties of his/her position.~~

~~(2) The employee must provide proof of continued disability and regular attendance of a physician within thirty [30] days following the request for proof. Regular care of a physician means appointments with the physician at least once per month. Less frequent appointments may be approved by EGID.~~

360:15-1-11. Duration and amounts of benefits [REVOKED]

~~(a) **Determination of monthly disability benefits.** To determine monthly disability benefits:~~

~~(1) Multiply the employee's base compensation by sixty percent [60%], subject to short term and long term benefit maximums as established by the Board.~~

~~(2) Deduct any benefit offsets.~~

~~(3) Monthly benefit will be (1) minus (2), subject to any minimum long term disability benefit as established by EGID.~~

~~(b) **Prorating of benefit for part of a month.** Any benefit that is payable for part of a month will be prorated using the number of days in that month as the denominator and the number of days of disability during that partial month as the numerator.~~

~~(c) **Cooperation required.** Continued benefits shall be contingent upon cooperation and participation in the rehabilitation program herein.~~

~~(1) In order to remain eligible for long term benefits, the insured must make application for Social Security benefits by the seventh [7th] month of disability and continue pursuing Social Security benefits until the appeals process is exhausted. Refusal to appeal denial of Social Security benefits through the entire appeals process is grounds for termination of benefits. Exceptions may be granted by EGID in certain cases where application for Social Security benefits is not practical due to the type of disability.~~

~~(2) If, after twenty-four [24] months of disability, the Social Security Administration has not deemed the insured eligible for Social Security disability benefits, the insured will no longer be eligible for benefits from this plan.~~

~~(3) Exceptions to (c), (1), and (2), above may be granted by EGID on a case-by-case basis.~~

~~(d) **Mental health and substance abuse.** Disability claims due to mental health disorders or substance abuse are limited to twenty-four [24] months per disability.~~

~~(1) Provided, however, if the employee is confined in a hospital, as defined in 360:10-1-2, of these rules, at the end of the twenty-four [24] month period, benefits will be paid for the length of that confinement. If the employee continues to be totally disabled upon discharge from the hospital, the monthly benefit will be payable for a period not to exceed ninety [90] days. If the insured employee is reconfined during this recovery period for at least fourteen [14] consecutive days, the monthly benefit will resume during that confinement and one additional recovery period not to exceed ninety [90] days.~~

~~(2) Provided, also, that each employee shall have a lifetime maximum of no greater than sixty [60] months of disability benefits for all mental or substance abuse disorders; however, other maximums apply, and in no event shall benefits exceed the maximums listed in 360:15-1-11 of this section.~~

~~(e) **Payment of benefits monthly.** Benefits are paid monthly subject to the maximums listed below. These maximums apply to all disabilities, but are subject to (b) and (d) of this section. These maximums are computed from the first [1st] day of disability.~~

~~(1) Less than one year of service: 6 month maximum coverage~~

~~(2) From one to five years of service:~~

~~(A) Under age 66 at disability - 24 month maximum coverage~~

~~(B) at age 66 at disability - 21 month maximum coverage~~

~~(C) at age 67 at disability - 18 month maximum coverage~~

~~(D) at age 68 at disability - 15 month maximum coverage~~

~~(E) at age 69 or over at disability - 12 month maximum coverage~~

~~(3) More than five years of service:~~

~~(A) Under age 60 at disability - coverage to age 65~~
~~(B) at age 60 at disability - 60 month maximum coverage~~
~~(C) at age 61 at disability - 48 month maximum coverage~~
~~(D) at age 62 at disability - 42 month maximum coverage~~
~~(E) at age 63 at disability - 36 month maximum coverage~~
~~(F) at age 64 at disability - 30 month maximum coverage~~
~~(G) at age 65 at disability - 24 month maximum coverage~~
~~(H) at age 66 at disability - 21 month maximum coverage~~
~~(I) at age 67 at disability - 18 month maximum coverage~~
~~(J) at age 68 at disability - 15 month maximum coverage~~
~~(K) at age 69 or over at disability - 12 month maximum coverage~~

360:15-1-12. Benefit offsets [REVOKED]

~~(a) **Offset by benefits received from other sources.** The disability benefit due from this plan shall be offset by benefits received from other sources. These sources are:~~

~~(1) Any sick leave benefits for which the employee is eligible.~~

~~(2) Social Security benefits as follows:~~

~~(A) Any amount of primary disability benefits provided under the United States Social Security Act for which the employee is eligible because of this disability; and~~

~~(B) Any amount of primary and/or family retirement benefits provided under the United States Social Security Act which the employee receives.~~

~~(C) The following benefits under the Social Security Act are not to be considered offsets under this program:~~

~~(i) Social Security benefits effective prior to the established date of disability, unless awarded as a result of the same disability;~~

~~(ii) Social Security widow's/widower's benefits not connected to the claimant's disability; and~~

~~(iii) benefits awarded under the Supplemental Security Income Program.~~

~~(3) Any benefits received under the provisions of State of Oklahoma or county retirement systems, except those benefits which began prior to onset of disability.~~

~~(4) Benefits related to the disability provided by another group plan, including Veteran's Administration (VA) benefits. Such benefit becomes due as a result of the disability and not by a voluntary election to receive the benefit. This does not include:~~

~~(A) plans funded entirely by employee contribution;~~

~~(B) plans where payment of these benefits reduce the benefit the claimant would be due at a normal retirement age; or~~

~~(C) payments for conditions established one [1] year or more, prior to the established date of this disability claim. This does not include a profit sharing plan, a 401K, a thrift plan, an Individual Retirement Account, stock ownership plan, tax sheltered annuity or any benefits from a non-qualified deferred compensation plan.~~

~~(5) Benefits related to this disability that are provided under any state's Worker's or Workman's Compensation Law, any occupational disease law, or any other similar act or law.~~

~~(6) Any salary, wages, holiday pay, commissions or similar earnings the employee receives from any gainful employment, including salary increases as well as shared or annual leave payments. Neither longevity pay nor one-time bonuses are considered offsets.~~

~~(7) Subrogation (loss of earnings for employee only).~~

~~(8) Fifty percent [50%] of any earnings while partially disabled or during rehabilitative employment prior to final release.~~

~~(9) Any overpayment of previous disability payments.~~

~~(10) Any unemployment compensation benefits.~~

~~(b) **Non-reduction of benefits due to increases in other benefits.** Once a disability benefit begins, monthly benefits will not be further reduced due to any statutory or cost of living increases payable from pension or pension disability programs, Social Security or Workers' Compensation.~~

~~(c) **Lump sum payments.** If any benefits from the sources mentioned in (a) of this section are paid in a lump sum, EGID will prorate the benefits on a monthly basis, either over the period for which the benefit is established or over the actuarially expected life time of the employee, if no time period is established.~~

~~(d) **Payment of any overpayment or underpayment.** Benefits will be estimated if they have not yet been awarded, have not been denied or have been denied and the denial is being appealed. Any overpayment or underpayment that results from estimating these benefits will be repaid by the responsible party after the actual benefit is determined.~~

360:15-1-14. Payment of benefits [REVOKED]

~~(a) **Payment of benefits to employee only.** All benefits due to the employee from the disability plan are payable only to the employee. If the benefit is payable to an employee who is a minor or who is not competent, EGID may only pay the court appointed guardian or conservator. In the event of the employee's death, payment of any benefits still outstanding shall be made to the designated beneficiary or to the employee's estate.~~

~~(b) **Payment of benefits to another party other than the employee.** If EGID pays benefits to a party other than the employee as specified in (a) of this section or as required by law, EGID shall be deemed to have discharged its full responsibility with respect to those benefits.~~

~~(c) **Rehabilitation services.** Documented expenses payable for rehabilitation services may be paid directly to~~

~~the providers of such services or reimbursed to third party administrator; these payments shall not reduce the monthly disability benefits mentioned at 360:15-1-12.~~

~~(d) **Benefits are not assignable.** These benefits are not assignable.~~

360:15-1-14.1. Direct deposit and insurance premium deductions [REVOKED]

~~(a) Effective January 1, 2010, all disabled employees receiving disability benefit payments from EGID shall be required to receive monthly disability payments via electronic fund transfers to checking or savings account in a bank, credit union or savings and loan designated by the employee. The employee and receiving institution must complete the form prescribed for this purpose by EGID. In the event the electronic fund transfer creates an undue hardship on the employee, the employee may make application to EGID to request a waiver of this requirement. The waiver will be granted only upon good cause shown when it is determined to be in the best interest of the employee. EGID may also waive this requirement when it is necessary in the best interest of EGID to do so.~~

~~(b) In addition to all other required deductions, premiums for insurance coverage provided to disabled employees and their dependents as authorized at Title 74 Oklahoma Statutes Section 1332(A) and 1332.1(D) shall be deducted from disability benefit payments made pursuant to this Chapter.~~

360:15-1-15. Lump sum settlement [REVOKED]

~~EGID may authorize a lump sum settlement of a disability claim if mutually agreed upon by the employee and EGID's Administrator. Such agreement shall preclude the employee from receiving any future benefits for the disability for which the lump sum settlement is made.~~

360:15-1-16. Examination [REVOKED]

~~EGID, at its own expense, with travel reimbursement as set out by statute, will have the right and opportunity to have an employee whose injury or sickness is the basis of a disability claim examined by a physician or vocational expert of its choice. This right may be used as often as reasonably required.~~

360:15-1-17. Rehabilitation [REVOKED]

~~(a) **Participation by any person in rehabilitation services.** Any person submitting a claim under the Disability Plan shall be required to cooperate fully with all aspects of the rehabilitation services provided herein as a condition of receiving disability benefits.~~

~~(b) **Disabled employee receiving long-term benefits.** A disabled employee who is receiving long-term disability benefits may be able to return to work on a limited basis. To encourage a return to productive employment, EGID will pay the employee his/her regular monthly long-term disability benefit, reduced by only fifty percent [50%] of the income from rehabilitation employment, subject to partial disability provisions as set out at 360:15-1-12(8). If the employee becomes totally disabled again, while receiving partial disability benefits, his/her regular long-term disability benefit will resume without a new eligibility period, except as limited by 360:15-1-7 and 360:15-1-8.~~

360:15-1-18. Suspension or termination of benefits [REVOKED]

~~After notice and opportunity for a hearing according to the Oklahoma Administrative Procedures Act and these rules, disability benefits may be suspended or terminated for failure to:~~

~~(1) Fully cooperate with or implement the rehabilitation plan;~~

~~(2) Submit to examination by a physician selected by EGID;~~

~~(3) Supply recertification by a physician;~~

~~(4) Cooperate in the repayment of overpayments; or~~

~~(5) Otherwise comply with the requirements of this plan.~~

360:15-1-19. Termination of benefits [REVOKED]

~~(a) **Termination of benefits.** Disability benefits will cease on the occurrence of the earliest of the following events:~~

~~(1) The date the disability ends;~~

~~(2) The date the employee dies;~~

~~(3) The end of the maximum benefit period; As provided at 360:15-1-17 and 360:15-1-18.~~

~~(b) **Participation in the Disability Plan ends when employee's current employment ceases.** An employee's participation will end when current employment ceases. Coverage may be continued in case of layoff or leave of absence as described in the section on eligibility date. EGID will operate the plan according to the provisions outlined so as not to discriminate unfairly among employees.~~

360:15-1-20. Termination of coverage [REVOKED]

~~Employees cease to be insured under the Disability Plan on the earliest of the following dates:~~

~~(1) The date the Disability Plan terminates;~~

~~(2) The date employment terminates. Cessation of active employment will be deemed termination of employment, except:~~

~~(A) The insurance will be continued for a disabled employee during the period during which the employee remains disabled.~~

~~(B) EGID may continue the employee's insurance, subject to the following:~~

~~(i) Insurance may be continued for the time shown in the policy specifications for an employee on furlough or temporarily laid off; or~~

~~(ii) EGID shall act so as not to discriminate unfairly among employees in similar situations.~~

~~(3) Waiver of disability coverage pursuant to 74 O.S. §1308.3.~~

360:15-1-21. Termination of plan [REVOKED]

~~Termination of the disability plan under any conditions will not prejudice any payable claim which occurs while this plan is in force.~~

360:15-1-22. Retention of other insurance [REVOKED]

~~(a) **Authorization for deduction of premiums.** If eligible, the employee may elect to continue participation in the Oklahoma Employees Insurance Plan by authorizing deduction of premiums due. In the event the premium is more than the benefits being received by the employee, or in the event the benefits are suspended, EGID may accept remittance from the employee for the premium due. All premiums shall be at the rate and under such conditions as established by EGID.~~

~~(b) **Disabled employee not receiving disability benefits.** Dependent Health coverage will be continued for disabled employees during any period of time the employee is qualified as disabled but not receiving disability benefits. [74 O.S. §1332.1(D)]~~

~~(c) **Deduction of premiums.** All dependent health premiums due and owing shall be deducted by EGID from the first retroactive disability benefit payment and each payment thereafter. [74 O.S. §1332.1(E)]~~

360:15-1-23. Recovery of FICA contributions [REVOKED]

~~EGID is hereby authorized to recover FICA contributions from the employer, when appropriate.~~

360:15-1-25. Insurance/Benefits Coordinator [REVOKED]

~~Any entity participating in the Disability Plan shall appoint an Insurance/Benefits Coordinator to explain the benefits to the employee and aid the claimant in providing the necessary information for claims to be processed.~~

360:15-1-28. Exclusions [REVOKED]

~~Benefits will not be provided for any disability that is caused by:~~

~~(1) war or any act of war, whether such war is declared or undeclared;~~

~~(2) intentionally self inflicted injuries of any kind while sane or insane;~~

~~(3) injuries sustained by or during the commission or attempted commission of an assault or felony; or~~

~~(4) active participation in a riot.~~

360:15-1-29. Penal institution [REVOKED]

~~No benefits are payable for that portion of any period of disability when the disabled person is confined in a penal or correctional institution for conviction of a criminal or other public offense.~~

360:15-1-30. Rules, cumulative [REVOKED]

~~Nothing in this chapter shall be read, interpreted, understood or applied so as to affect the validity and enforceability of any additional requirements, statutes, rules or regulations of any other governmental entity, public agency or instrumentality which may be otherwise applicable to those transactions, conduct and facilities regulated herein. This chapter shall not be deemed cumulative and supplemental but shall replace all previously promulgated rules of this agency.~~

360:15-1-31. Amending of rules [REVOKED]

~~This chapter may be amended or repealed from time to time and new rules adopted by EGID pursuant to the Administrative Procedures Act.~~

[OAR Docket #14-753; filed 7-18-14]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-505]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-17. Other Agents Forms [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1435.19
SUBMISSION OF PROPOSED RULES TO GOVERN OR AND CABINET SECRETARY:
February 13, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to section 365:1-9-17 reflects that the Oklahoma Insurance Department no longer issues a letter of clearance to an agent, but instead utilizes the National Insurance Producer Registry (NIPR) Producer Database (PDB), which is a central repository of producer licensing information updated on a timely basis by participating state insurance departments.
CONTACT PERSON:
Buddy Combs, Director of Public Policy, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-4609

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

365:1-9-17. Other agents forms

(a) **Letter of certification.** A letter of certification is provided to an agent at his/her request to provide license status for a non-resident license out of state.

~~(b) **Letter of clearance.** A letter of clearance is provided to an agent at his/her request to provide license status at the time of license cancellation.~~

(~~c~~b) **Limited Power of Attorney.** The Limited Power of Attorney form is used for an individual to appoint and terminate agents.

(~~d~~c) **Suggested Consulting Agreement for Use by Insurance Agents.** The Suggested Consulting Agreement for Use by Insurance Agents form provides suggested language for preparing an agent's consulting agreement.

(~~e~~d) **TPA Plan Supplemental Information Sheet.** This form shall be submitted with each renewal and shall provide a summary of each plan administered.

[OAR Docket #14-505; filed 6-24-14]

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

[OAR Docket #14-506]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Coordination of Benefit Guidelines
365:10-11-2. Definitions [AMENDED]
365:10-11-9. ~~Retroactivity~~Applicability
Appendix UU. Policy Holder's Authorization to Release Insurance Policy Information to Agent of Record [REVOKED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 13, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
365:10-11-2 and 365:10-11-9 are amended to require coordination between individual and group health insurance products, as well as between group health insurance products, in order to prevent over-insurance of a person's health insurance risk. In turn, this will help keep premiums low for policyholders. Appendix UU is revoked because it is no longer in compliance with the Oklahoma Insurance Code due to a 2013 legislative change to 36 O.S. § 1435.41(A).
CONTACT PERSON:
Buddy Combs, Director of Public Policy, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-4609

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 11. COORDINATION OF BENEFIT GUIDELINES

365:10-11-2. Definitions

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

"Allowable expense" means any necessary, reasonable, and customary item of expense at least a portion of which is covered under at least one of the Plans covering the person for whom claim is made except where a statute requires a different definition. However, items of expense under coverage such as dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expense to like items of expense. When a Plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered shall be deemed to be both an Allowable Expense and a benefit paid. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be deemed to be an "Allowable Expense," except for the period of time during which the patient's confinement to a private hospital room is deemed medically necessary in terms of generally accepted medical practice.

"Plan"~~means~~includes the following:

~~(A) "Plan" means any plan providing benefits or services for or by reason of medical or dental care or treatment, which benefits or services are provided by:~~

~~(i) group, blanket or franchise insurance coverage,~~

~~(ii) service plan contracts, group practice, individual practice and other prepayment coverage,~~

~~(iii) any coverage under labor management trustee plans, union welfare plans, employer organization plans, or employee benefit organization plans, and~~

~~(iv) any coverage under governmental programs, and any coverage required or provided by any statute.~~

~~(B) The term "Plan" shall be construed separately with respect to each policy, contract, or other arrangement for benefits or services and separately with respect to that portion of any such policy, contract, or other arrangement which reserves the right to take the benefits or services of other Plans into consideration in determining its benefits and that portion which does not.~~

~~(C) Individually underwritten and issued contracts which provide a contractual right to renewal regardless of membership in or connection with any particular organization or group shall not be considered group-type contracts, irrespective of the mode or channel of premium payment and regardless of any reduction in premium the covered person may receive by virtue of such method of premium collection.~~

~~(D) The definition of a "Plan" within the COB provision of group contracts enumerates the types of coverage which the insurer may consider in determining whether other insurance exists with respect to a specific claim. Such definition:~~

~~(i) May not include individual or family policies, or individual or family subscriber contracts, except as provided in (ii) of this subparagraph and in (E) of this definition.~~

~~(ii) May include all group or group subscriber contracts as well as such group-type contracts as are not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition, at the option of the insurer and its policyholder client, whether or not individual policy forms are utilized and whether the group-type coverage is designated as "franchise" or "blanket" or in some other fashion.~~

~~(E) The definition of "Plan" may include both group and individual automobile "no fault" contracts but, as to the traditional automobile "fault" contracts, only the medical benefits written on a group or group-type basis may be included.~~

~~(F) Interpretation of the definition of a "Plan" may not include group or group-type hospital indemnity benefits (written on a non-expense incurred basis) of $30 per day or less unless they are characterized as reimbursement type benefits but are designed to administer so as to give the insured the right to elect indemnity type benefits, in lieu of such reimbursement type benefits, at the time of claim. In any event, the amount of group and group-type hospital indemnity benefits which exceed $30 per day may be construed as being included under the definition of "Plan".~~

~~(G) School accident type coverages, written on either an individual, blanket, group or franchise basis should not be taken in to consideration in coordination of benefits. In this context, school accident type coverages are defined to mean coverage covering grammar school, middle school, and high school students for accidents only, including athletic injuries, either on a 24 hour basis or "to and from school" for which the parent pays the entire premium.~~

~~(H) If "Medicare" or similar governmental benefits are included in the definition of a "Plan", such benefits may be taken into consideration without expanding any of the definitions of this provision beyond the hospital, medical, and surgical benefits which may be provided by the governmental program.~~

~~(I) A Plan may not coordinate or design benefits so that the benefits payable are altered solely on the basis that:~~

~~(i) another plan exists; or~~

~~(ii) except with respect to Part B of Medicare, that the claimant is or could have been covered under another Plan, or~~

~~(iii) the claimant has elected an option under another Plan providing a lower level of benefits than another option for which the claimant was eligible.~~

(A) Group and nongroup insurance contracts and subscriber contracts;

(B) Uninsured arrangements of group or group-type coverage;

(C) Group and nongroup coverage through closed panel plans;

(D) Group-type contracts;

(E) The medical care components of long-term care contracts, such as skilled nursing care;

(F) The medical benefits coverage in automobile "no fault" and traditional automobile "fault" type contracts;

(G) Medicare or other governmental benefits, as permitted by law, except as provided in a state plan under Medicaid. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program; and

(H) Group and nongroup insurance contracts and subscriber contracts that pay or reimburse for the cost of dental care.

"Plan" does not include:

(A) Hospital indemnity coverage benefits or other fixed indemnity coverage;

(B) Accident only coverage;

(C) Specified disease or specified accident coverage;

(D) Limited benefit health coverage;

(E) School accident-type coverages that cover students for accidents only, including athletic injuries, either on a twenty-four-hour basis or on a "to and from school" basis;

(F) Benefits provided in long-term care insurance policies for non-medical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

(G) Medicare supplement policies;

(H) A state plan under Medicaid; or

(I) A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other non-governmental plan; or

(J) Disability income protection coverage.

"This plan" means that portion of the policy which provides the benefits that are subject to this subchapter.

365:10-11-9. ~~Retroactivity~~ Applicability

(a) Group policies or contracts which are in force at the time of promulgation of this subchapter which contain an "excess" clause, "anti-duplication" provision, or any other provision by whatever name designated under which benefits would be reduced because of other existing coverages, other than the COB provisions established in this subchapter, shall be brought into compliance by the later of the next anniversary or renewal date of the group policy or contract or the expiration of the applicable collectively bargained contract, pursuant to which they are written, if any.

(b) The definition of "Plan" in 365:10-11-2 applies to plans that are delivered, issued for delivery, or renewed on or after January 1, 2015. A contract that is in force on January 1, 2015, must be brought into compliance with the definition of "Plan" on the next anniversary date or renewal date of the contract, or the expiration of any applicable collective bargaining contract under which it was written.

APPENDIX UU. POLICY HOLDER'S AUTHORIZATION TO RELEASE INSURANCE POLICY INFORMATION TO AGENT OF RECORD [REVOKED]

POLICY HOLDER'S AUTHORIZATION TO RELEASE INSURANCE POLICY INFORMATION TO AGENT OF RECORD

Pursuant to 36 O.S. § 1435.41(A), an insurer shall provide to any insurance producer authorized to sell life insurance products, whose appointment has been terminated for any reason other than the reasons set forth in 36 O.S. § 1435.13 and who is still the agent of record or servicing agent and has not been replaced by another servicing agent upon termination, information relating to the policy of a person who purchased a product from such producer if the policy holder and the insured have signed the following form authorizing the release of the information.

Policy Holder's Full Name:

_____

Policy Holder's Address:

_____

_____

Last four digits of Policy Holder's SSN:

_____

Type of Insurance Policy:

_____

Policy Number:

_____

Name of Insurance Company:

_____

Insurance Company Address:

_____

_____

AUTHORIZATION

I, (Policy Holder's name) _____, hereby authorize and request (Insurance Company Name) _____to release information related to the aforementioned policy to the Producer of record in accordance with 36 O.S. §, 1435.41 (A):

Producer's Name: _____

Oklahoma License Number: _____

Address:

_____

_____

Disclosure shall be limited to the following specific types of information:

_____

_____

Use of this information shall be limited to the following purpose(s):

_____

_____

I understand that any cancellation or modifications of this authorization must be in writing, and that I have a right to receive a copy of this authorization. A photocopy of this authorization shall be as effective and valid as the original.
This authorization shall remain valid until: _____
I furthermore release all parties stated here within from any legal liability resulting from the release of this information, with the understanding that all parties involved will exercise appropriate safeguards while using this information.

Policy Holder Signature:
_____Date:_____
Insured's Signature (if Insured is not also the Policy Holder):
_____Date:_____

[OAR Docket #14-506; filed 6-24-14]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 20. TITLE INSURANCE

[OAR Docket #14-507]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Oklahoma Title Insurance Policies
365:20-3-3. Documentation [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 13, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
365:20-3-3 is amended as a clean-up to reflect a 2013 legislative change to 36 O.S. § 5001.
CONTACT PERSON:
Buddy Combs, Director of Public Policy, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-4609

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. OKLAHOMA TITLE INSURANCE POLICIES

365:20-3-3. Documentation

(a) All title insurers engaged in the business of title insurance in this state, other than reinsurance, shall attach to or include in the title insurer's copy of the title insurance policy the following:

(1) A signed and dated copy of the preliminary abstractor's certificate as required by 74 O.S. § 227.10, et seq., along with the final title report or final abstractor's certificate shall be reproduced and attached to each policy.

(2) A copy of an opinion of title covering the real property insured under said policy shall be reproduced and attached to each policy. Said opinion of title shall be issued by an attorney licensed to practice in this state; and the Oklahoma Bar Association Number of the attorney issuing the opinion shall be prominently displayed upon the opinion.

(3) The title insurance policy shall be countersigned in accordance with the provisions of 36 O.S. § 5001(C). The function of making a title insurance coverage decision, based upon the title opinion of a licensed attorney, is the "countersignature" function. The countersignature function shall not be exercised by anyone other than an individual licensed title agent. In accordance with the provisions of 36 O.S. § 5001(C), only an individual actively and lawfully engaged in the ~~abstract of~~real estate title business,~~and~~ possessing a current ~~individual abstractor's~~ license,~~or an attorney licensed to practice law in this~~

~~state~~and maintaining an office in the state shall be permitted to exercise the countersignature function.

(4) If the title insurance policy is being issued directly by the title insurer, all of the requirements in (a)(1), (a)(2) and (a)(3) of this rule shall be attached to or included in the title insurer's copy of the policy, concurrently with the issuance thereof. If the title insurance policy is issued by a duly appointed agent of the title insurer, all of the requirements in (a)(1), (a)(2) and (a)(3) of this rule must be furnished to the title insurer not later than one hundred eighty (180) days from the effective date of the title insurance policy. In the case where a loan policy, owner's policy or leasehold policy are simultaneously issued, the required documentation need only be attached to the owner's policy. The documentation required under this section shall be permanently maintained by the title insurer in a manner which is readily accessible and open to inspection by the Insurance Commissioner or his duly authorized representative.

(b) No title insurance policy shall be issued in this state until a duly certified abstract of title has been prepared, in accordance with the Oklahoma Abstractors Law, and examined by an attorney licensed to practice in this state. The abstract need only be prepared once prior to the issuance of the title insurer's commitment and policy. Before a title insurance policy can be issued pursuant to a commitment, an abstractor licensed by the ~~State Auditor~~Oklahoma Abstractors Board and Inspector in the county where the insured property is located shall prepare either of the following:

(1) an extension of the abstract; or

(2) a final title report after a final title search has been conducted. The report shall include all information as mandated by Title 80:10-5-3(b) of the Oklahoma Administrative Code: Rules and Regulations Governing the Oklahoma Abstractors Law.

[OAR Docket #14-507; filed 6-24-14]

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

[OAR Docket #14-508]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors

365:25-3-14. Insurance adjusters continuing education [AMENDED]

Subchapter 5. Bail Bondsmen

Part 5. General Provisions Pertaining to Bail Bondsmen

365:25-5-31. ~~Business and residence~~Residence, business, mailing, and e-mail addresses on applications [AMENDED]

365:25-5-33. Change of mailing address, legal name, e-mail address, or telephone requirements [AMENDED]

Subchapter 15. Captive Insurance Companies Regulation

365:25-15-1. Purpose and authority [AMENDED]

365:25-15-2. Annual reporting requirements [AMENDED]

365:25-15-3. Annual Audit [AMENDED]

365:25-15-4. Independent Certified Public Accountant [AMENDED]

365:25-15-5. Deposit Requirement [AMENDED]

365:25-15-6. Organizational examination [AMENDED]

365:25-15-9. Executive officers and directors [AMENDED]

365:25-15-12. Acquisition of control of or merger with domestic company [AMENDED]

365:25-15-13. Change of business [AMENDED]

365:25-15-14. Prior approval [AMENDED]

365:25-15-15. Severability Provision [NEW]

Subchapter 19. Annuity Disclosure Regulation

365:25-19-5. Standards for the disclosure document and buyer's guide [AMENDED]

Appendix S. Buyer's Guide [REVOKED]

AUTHORITY:

Insurance Commissioner, 36 O.S. §§ 307.1, 6217, 6470.21; 59 O.S. § 1302(A).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 13, 2014

COMMENT PERIOD:

February 3, 2014 through March 5, 2014

PUBLIC HEARING:

March 6, 2014

ADOPTION:

March 26, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 26, 2014

APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:

June 19, 2014

EFFECTIVE:

September 15, 2014

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The amendment to 365:25-3-14(g) is a clean-up to reflect a 2013 legislative change to 36 O.S. § 6217(C), which changed the biennial continuing education requirement for licensed adjusters from 20 to 24 hours.

The amendment to 365:25-5-31 clarifies a confusing rule and reflects current Department policy of maintaining the resident, business, and mailing addresses of bail bondsmen. The amendment to 365:25-5-33 is a clean-up to reflect a 2013 legislative change to 59 O.S. § 1310(A)(23).

The amendments to Subchapter 15 - Captive Insurance Companies Regulation cleans up the language and reflects the 2013 legislative changes made to the Oklahoma Captive Insurance Company Act, 36 O.S. § 6470.1 et seq. The amendment to 365:25-15-1 provides consistency with terminology used elsewhere in Chapter 25. The amendment to 365:25-15-2 distinguishes the annual financial reporting requirements for risk retention groups as opposed to other types of captive insurance companies. Risk retention groups are still required to report pursuant to 36 O.S. § 311, but other captive insurance companies can now financially report pursuant to the Oklahoma Captive Company Annual Report prescribed by the Insurance Commissioner. The amendment to 365:25-15-3 allows a pure captive to apply to file its annual audited financial report within sixty days of the close of the fiscal year as opposed to June 30 each year; but the captive must still file certain parts of the financial report before March 1 of each year to support the premium tax return. In addition, the opinion of the independent certified public accountant, the report of evaluation of internal controls, and the notes to financial statements may now apply generally accepted accounting principles, as opposed to the previously required statutory accounting principles. A distinction is made in 365:25-15-3(e)(5) between reserves for property and casualty reserves and life, health, or annuity reserves as captives were previously formed only as property and casualty insurance companies. An exemption from the annual audit requirement has been added to 365:25-15-3 for companies who have no more than $2,000,000.00 of direct written premium. 365:25-15-4 requires independent certified public accountants

to apply for approval from the Insurance Commissioner before transacting annual audits for captive insurers and provides that either the company's captive manager or the captive company shall report notification of adverse financial condition to the Insurance Commissioner. 365:25-15-5 changes the deposit requirement from the requirements of 36 O.S. § 613 and Article 17 to as approved by the Commissioner and also adds that a clean irrevocable letter of credit issued by a bank may be used as a deposit. 365:25-15-6 adds that an organizational examination may be performed after, in addition to before, an applicant is licensed and deletes that independent third parties must perform biographical background checks as part of the organizational examination. 365:25-15-9 also deletes the requirement of independent third party biographical background checks when there is a change in a captive's executive officers or directors. 365:25-15-12 provides that the Insurance Commissioner may waive or modify the requirements for public hearing pursuant to 36 O.S. § 1653 if the Commissioner deems it not necessary due to limited public interest in the change of control. While any change in the nature of the captive business from that stated in the company's plan of operation still requires prior approval from the Commissioner, 365:25-15-13 adds that any other changes must be filed within sixty days of the change but does not require prior approval from the Commissioner. 365:25-15-14 adds a severability provision.

The amendment to 365:25-19-5(a)(1) allows an applicant for an annuity contract have access to the most recent version of the National Association of Insurance Commissioners' (NAIC) Buyer's Guide to Annuities in a face-to-face meeting with the seller of the annuity contract.

Appendix S is revoked because of the change to 365:25-19-5, which renders the form obsolete.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. PRODUCERS, BROKERS, LIMITED LINES PRODUCERS AND VEHICLE PROTECTION PRODUCT WARRANTORS

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

(1) **"CE"** means continuing education.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least fifty (50) minutes of classroom instruction, unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** Continuing education requirements shall not apply to non-resident adjusters licensed in a designated home state that has a continuing education requirement for adjusters.

(d) **Continuing education requirements.**

(1) **CE during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in Section 6217(B) of Title 36 of the laws of this state during each twenty-four month period. The twenty-four month period begins the first day after the license is granted.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, each adjuster shall submit upon each licensing renewal a certificate(s) of course completion as approved by the Insurance Department, which verifies courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Six (6) credit hours in excess of the minimum twenty-four month period requirement shall carry forward to the next twenty-four month period as general hours. Excess hours may be applied to bring a lapsed license into compliance.

(4) **Legislative Updates.** At least two (2) of the continuing education credit hours of instruction completed by licensees each twenty-four month period shall be taken in the following topics:

(A) State legislative updates, or

(B) Federal legislative updates.

(5) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.

(6) **Prerequisite for renewal or reinstatement.** As a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must demonstrate that the educational requirements have been reported for the previous renewal cycle.

(e) **Approval of continuing education providers.**

(1) **Information required.** Each provider shall apply for approval by the Commissioner. Each provider, with the exception of public funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations, and Oklahoma state agencies shall submit a provider fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations and Oklahoma agencies shall provide:

(A) Name, address, and email address of the provider.

(B) Contact person and his or her address and telephone number(s).

(2) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(3) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late or incomplete on the approval anniversary date.

(4) **Reinstatement period.** Providers whose approval has expired may be reinstated pursuant to paragraph 1 of this subsection. The reinstatement period shall be for a period of one (1) year following the expiration of the renewal date. The approval of the provider and any currently active courses shall remain active for the reinstatement period. If the provider and all courses fail to remain active following the reinstatement period, the provider and courses shall not be reinstated and the provider and courses shall be required to be approved pursuant to the provisions of this subsection.

(f) **Courses; approval; records.**

(1) **Timeline for approval.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply for and submit the appropriate course review fee to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies. The provider shall submit the following at the time of application:

(A) The number of CE hours requested for each course.

(B) Topic outlines which list the summarized topics covered in each course and a copy of any course materials.

(C) If a prior approved course has materially changed, a summarization of those changes.

(2) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted. An instructor shall have one of the following qualifications:

(A) Three (3) years of recent experience in the subject area being taught; or

(B) A degree related to the subject area being taught; or

(C) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(3) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.

(4) **Written approval required.** All courses shall require written approval by the Commissioner.

(5) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CE hours attained under the course previous to the withdrawal.

(6) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(7) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(8) **Content of courses.** Courses must be of a meaningful nature and shall not include insurance company specific courses in areas such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.

(9) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.

(10) **List of adjusters completing course to Commissioner.** Within ten (10) business days after completion of each course, the provider electronically upload a list of all insurance adjusters who completed the course to the Commissioner's database system. This list shall contain the course number, date of completion and license numbers of all insurance adjusters completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(11) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4)

years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(12) **Course review fee.** A non-refundable course review fee of thirty dollars ($30.00) per course shall be submitted by all continuing education providers at the time the course submission is first submitted for review and upon submission for renewal at expiration with the exception of publicly funded educational institutions, federal agencies, Oklahoma state agencies, non-profit organizations, and not-for-profit organizations.

(13) **Course evaluation.** The continuing education provider shall provide written notification to each producer of the opportunity to offer comments on any continuing education class via the Insurance Department website.

(g) **Approved professional designation programs**

(1) **Definitions.**

(A) **Participation.** As used in 36 O.S. § 6217(C), participates means successfully completing any part of a course curriculum totaling ~~twenty (20)~~twenty-four (24) classroom or equivalent classroom hours of an approved professional designation program.

(B) **Approved professional designation program.** As used in 36 O.S. § 6217(C), an approved professional designation program means an educational insurance program approved by the Commissioner with a sponsoring organization that administers curriculum requirements and testing standards for candidates.

(2) **Requirements.** A professional designation program shall satisfy the following criteria to receive initial and ongoing approval for the program:

(A) The program shall have a sponsoring organization;

(B) The program's sponsoring organization shall maintain and govern a code of conduct;

(C) The program shall be relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma;

(D) Each course of the professional designation course curriculum shall be a minimum of ~~twenty (20)~~twenty-four (24) hours of classroom instruction or equivalent classroom instruction; and

(E) The program shall include an examination requirement that students shall pass before earning the designation.

(3) **Submissions.** The sponsoring organization shall submit the following to the Commissioner for its professional designation program to be considered for initial and ongoing approval for the program:

(A) The sponsoring organization's code of conduct;

(B) The sponsoring organization's membership requirements;

(C) The professional designation program's course requirements; and

(D) The professional designation program's examination requirements.

(4) **Submission exemptions.** Professional designation programs recognized by the National Association of Insurance Commissioners (NAIC) for waiver/exemption of pre-licensing education training shall receive initial and continuing approval without submission by the sponsoring organization.

(h) **Presumptive continuing education credit approval.**

(1) **Requirements.** A professional association may receive presumptive approval of the association's continuing education courses by satisfying the following requirements:

(A) The association shall have a mission statement that includes a commitment to enhance the professional, educational, or ethical skills of its members;

(B) The association shall maintain and govern a code of member conduct;

(C) The association shall offer educational programs relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma; and

(D) The association shall perpetuate its continuity through the election of officers.

(2) **Submissions.** Each professional association shall submit the following to be considered for initial and ongoing presumptive course approval:

(A) The association's mission statement;

(B) The association's code of member conduct;

(C) The chapter officers, the responsibilities for each officer, and the term of office for each officer;

(D) The mailing address and primary contact for the association; and

(E) The list of continuing education courses approved in Oklahoma and offered by the professional association in the past twenty-four (24) months.

(3) **Notification of approval or disapproval.**

(A) The Commissioner shall notify the association within ninety (90) days from the receipt of submission whether presumptive approval for continuing education courses was granted. The notification shall indicate the reasons for disapproval.

(B) Submissions to the Commissioner by an association seeking presumptive approval of continuing education courses shall include the course summary, instructor name, course date and location and shall be submitted to the Commissioner at least fifteen (15) business days prior to the presentation of the course.

(C) If the Commissioner receives a report or reports that the content of a continuing education course may violate paragraph 365:25-3-1(f)(8) of this section, the Commissioner may review the content and determine if the course should be disapproved for noncompliance. The Commissioner shall notify the association if the course has been disapproved due to non-compliance, and the association shall immediately cease offering the course upon receipt of the notification. The association may then make corrections to a disapproved course to bring the course into compliance with paragraph 365:25-3-1(f)(8) of this section and submit the course for approval by the Commissioner

in the manner of an original submission for presumptive continuing education course approval.

(D) Should an association receive notification of three (3) disapproved courses within a twenty-four (24) month period, the association's presumptive approval for continuing education courses shall be rescinded for twenty-four (24) months after which time the association may re-apply for presumptive approval.

(4) **Assignment of course number.** The Commissioner shall assign a course number once the presumptive approval for continuing education courses has been granted and shall notify the association of the assigned course number. All future correspondence relating to that course shall reference the assigned course number.

(5) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted.

(6) **Review.** Course approval shall be reviewed every three (3) years. The association shall re-submit the items required in subparagraph 365:25-3-14(H)(3)(B) of this section during the fourth quarter of the last approval year.

(7) **Agency management courses.** Agency management courses shall not be considered for presumptive continuing education approval.

(i) **Self study and distance learning courses.** The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed and updated as appropriate and published on the Commissioner's website annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the adjuster and revocation of the course approval and or provider status for the Provider.

(j) **Repeating courses.** An insurance adjuster may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twenty-four month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2) years have elapsed and receive the maximum credits designated for the course.

(k) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(l) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Licensing Division, and representatives from the industry as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-14(f), a continuing education advisory committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-14-(f) regarding the course or additional information regarding the course, if necessary, the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of not more than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the validity period. At the expiration of the validity period, providers shall submit the course for approval by the Commissioner if the provider wants to continue to offer the course for continuing education credit.

(m) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBCHAPTER 5. BAIL BONDSMEN

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL BONDSMEN

365:25-5-31. ~~Business and residence~~Residence, business, mailing, and e-mail addresses on applications

(a) Original and renewal applications shall include the following:

(1) applicant's residence ~~mailing~~ address,

(2) applicant's ~~residence street (physical)~~business address,

(3) ~~prospective place of business~~applicant's mailing address, and

(4) ~~prospective place of business street (physical) address~~applicant's e-mail address.

(b) An applicant's business address and mailing address shall be in the same county.

365:25-5-33. Change of mailing address, legal name, e-mail address, or telephone requirements

(a) 59 O.S. §1310 requires bail bondsmen to notify the Insurance Commissioner within five (5) days after a change of mailing address, legal name, e-mail address, or telephone number. This notification must include:

(1) ~~signature~~name and license number of the bondsman,

(2) date of the notification, ~~and~~

(3) the bondsman's current telephone number~~.~~, and

(4) the bondsman's current e-mail address.

(b) This notification may be in any form acceptable to the Insurance Commissioner.

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1. Purpose and authority

This ~~regulation~~subchapter provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This ~~regulation~~subchapter sets forth the financial,~~and~~ reporting, and other requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this ~~regulation~~subchapter shall mean captive insurance company or companies, unless otherwise specified.

365:25-15-2. Annual reporting requirements

(a) ~~An association~~A pure, association, sponsored, or industrial captive insurance company doing business in this State shall annually, prior to March 1, submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that ~~required by Section 311 of Title 36 of the Oklahoma Statutes.~~prescribed by the Insurance Commissioner as "Oklahoma Captive Insurance Company Annual Report."

(b) ~~A pure or industrial insured captive insurance company~~A risk retention group doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that ~~prescribed by the Insurance Commissioner as "Captive Annual Statement: Pure or Industrial Insured." The reports shall be those~~ required by Section 311 of Title 36 of the Oklahoma Statutes.

365:25-15-3. Annual Audit

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) A pure captive insurance company may make written application to file its annual report on a fiscal year basis and shall file such report no later than sixty (60) days following the close of the fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required, a schedule detailing the net direct written premium and assumed premium for the fiscal year in question.

(~~b~~d) The annual audited financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Insurance Commissioner.

(~~c~~e) The annual audited financial report shall consist of the following:

(1) **Opinion of Independent Certified Public Accountant**

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with ~~statutory~~generally accepted accounting principles~~ as set out in the Oklahoma Insurance Code~~, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner and the National Association of Insurance Commissioners.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) **Report of Evaluation of Internal Controls**

(A) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to, such controls as the system of authorization and approval and the separation of duties.

(B) The review shall be conducted in accordance with ~~statutory~~generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and the report shall be filed with the Insurance Commissioner.

(3) **Accountant's Letter.** The accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That (s)he is independent with respect to the company and conforms to the standards of his/her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute

of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that (s)he is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by ~~statutory~~generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Insurance Commissioner.

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(iii) A narrative explanation of all material transactions and balances with the company.

(5) **Certification of Loss Reserves and Loss Expense Reserves**

(A) The annual audit shall include an opinion as to the adequacy of the company's life, health, or annuity reserves, or its loss reserves and loss expense reserves.

(B) The individual who certifies as to the adequacy of reserves shall be approved by the Insurance Commissioner and shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated his competence in loss reserve evaluation to the satisfaction of the Insurance Commissioner.

(C) Certification shall be in such form as the Insurance Commissioner deems appropriate.

(f) Any company having direct written premiums of Two Million Dollars ($2,000,000) or less in the preceding year may request exemption from the annual audit requirement.

365:25-15-4. Independent Certified Public Accountant

(a) **Designation of Independent Certified Public Accountant.** Companies~~, after becoming~~ subject to ~~this regulation,~~ an annual audit shall, within ninety days, report to the Insurance Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this ~~regulation~~subchapter. The certified public accountant that is retained to conduct the annual audit may only be appointed from the list of approved certified public accounting firms or individual certified public accountants maintained by the Insurance Commissioner.

(b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 ~~and~~or 6470.11 of Title 36 of the Oklahoma Statutes. The company, or its designated captive insurance manager, shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.

(c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than ~~seven (7)~~five (5) years after the period reported upon.

(2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential. The company shall require that the independent certified public accountant provide ~~photocopies~~copies of any of the working papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Work Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

365:25-15-5. Deposit Requirement

Whenever the Insurance Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Department cash,~~or~~ securities ~~which satisfy the requirements~~

~~of Section 613 and Article 17 of Title 36 of the Oklahoma Statutes~~approved by the Insurance Commissioner, or a clean irrevocable letter of credit issued by a bank chartered by the State of Oklahoma or a member bank of the Federal Reserve System and approved by the Insurance Commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

365:25-15-6. Organizational examination

In addition to the processing of the application, an organizational investigation or examination may be performed before or after an applicant is licensed. Such investigation or examination shall consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; biographical affidavits ~~with background checks made by an independent third party~~; and a review of such other factors as the Insurance Commissioner deems necessary.

365:25-15-9. Executive officers and directors

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit ~~and a background checked conducted by an independent third party~~ to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

365:25-15-12. Acquisition of control of or merger with domestic company

(a) Companies shall comply with Section 1653 of Title 36 when seeking to acquire control of or merge with a domestic company, notwithstanding the Insurance Commissioner may waive or modify the requirements for public notice and hearing when the Insurance Commissioner concludes the public hearing is not necessary due to the limited public interest in the change of control.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

365:25-15-13. Change of business

Any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner. Any change in any other information filed with the application must be filed with the Insurance Commissioner within sixty (60) days of the change, but does not require prior approval.

365:25-15-14. Prior approval

~~(a) Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.~~

~~(b) Requests for prior approval of the Insurance Commissioner other than as set out in Subsection (a) of this Section shall be made on Form D as set forth in Appendix O of this Chapter.~~

Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as determined by the Insurance Commissioner.

365:25-15-15. Severability Provision

If any provisions of this subchapter or its applicability to any person or circumstance are held invalid, the remainder of the subchapter, and the application of such provisions to other persons or circumstances shall not be affected. To this end, the provisions of this subchapter are declared severable.

SUBCHAPTER 19. ANNUITY DISCLOSURE REGULATION

365:25-19-5. Standards for the disclosure document and buyer's guide

(a) **Disclosure document and buyer's guide.**

(1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection (b) and ~~the Buyer's Guide contained in Appendix S of this Chapter~~, based on the type of annuity product involved in the application, the most current and appropriate version of the NAIC Buyer's Guide to Annuities ("Buyer's Guide").

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the

applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

(A) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(B) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(C) A solicitation for an annuity contract provided in other than a face-to face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

(b) **Minimum information included in disclosure document.** At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(2) The insurer's name and address;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(A) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(B) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(C) Periodic income options both on a guaranteed and non-guaranteed basis;

(D) Any value reductions caused by withdrawals from or surrender of the contract;

(E) How values in the contract can be accessed;

(F) The death benefit, if available and how it will be calculated;

(G) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(H) Impact of any rider, such as a long-term care rider.

(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(c) **Understanding by a typical person.** Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

APPENDIX S. BUYER'S GUIDE [REVOKED]

[The face page of the Fixed Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Reprinted by. . .

It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A *deferred* annuity has two parts or *periods.* During the *accumulation period*, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the *payout period*, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity. There are two kinds of multiple premium annuities. One kind is a *flexible premium* contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a *scheduled premium* annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred* annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

• Fixed

During the accumulation period of a *fixed deferred* annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

• Variable

During the accumulation period of a *variable* annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time**. Usually, what these rates will be is entirely up to the insurance company.**

Current Interest Rate

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

• The *initial rate* is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

• The *renewal rate* is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

Minimum Guaranteed Rate

The *minimum guaranteed interest rate* is the lowest rate your annuity will earn. This rate is stated in the contract.

Multiple Interest Rates

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. **You get only one of the accumulated values depending on which benefit you choose.**

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a *withdrawal* charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a *surrender* charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bail-out* option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a *rolling* surrender or withdrawal charge.

Some annuity contracts have a *market value adjustment* feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited *free withdrawal* feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

Contract Fee

A contract fee is a flat dollar amount charged either once or annually.

Transaction Fee

A transaction fee is a charge per premium payment or other transaction.

Percentage of Premium Charge

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

Premium Tax

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

Annuity Income Payments

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's *benefit rate* in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have *current* benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

• Life Only - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

• Life Annuity with Period Certain - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This *period certain* is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity.
Because the "period certain" is an added benefit, each income payment will be smaller than in a lifeonly option.

• Joint and Survivor - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the *survivor* feature is an added benefit, each income payment is smaller than in a life-only option.

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?

- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in.

Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this *before* any free look period ends
.
Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (**Note:** S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

Floor on Equity Index-Linked Interest

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

Averaging

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

Interest Compounding

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

Margin/Spread/Administrative Fee

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% (10% - 2.25% =7.75%). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

Vesting

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer *preset* combinations of features. You may have to make tradeoffs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.	Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.
High-Water Mark Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.	Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Low-Water Mark Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.	Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Point-to-Point Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.	Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

Cap on Interest Earned

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

Averaging

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

Participation Rate

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

Interest Compounding

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?

Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

Final Points to Consider

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.

[OAR Docket #14-508; filed 6-24-14]

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

[OAR Docket #14-509]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules
Part 9. HMO Requirements and Prohibitions
365:40-5-43. Premiums/co-payments [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 6903(D), 6923
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 13, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 6, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules
Part 9. HMO Requirements and Prohibitions
365:40-5-43. Premiums/co-payments [AMENDED]
Gubernatorial approval:
August 28, 2013
Register publication:
31 Ok Reg 51
Docket number:
13-1203
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
365:40-5-43 is amended to allow Health Maintenance Organizations more flexibility in their product design and offer products in a greater range of actuarial values. It also gives the Insurance Commissioner discretion to approve a cost-sharing arrangement if he or she finds that it will provide a reduction in premium costs.
CONTACT PERSON:
Buddy Combs, Director of Public Policy, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 522-4609

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 5. LIFE, ACCIDENT & HEALTH DIVISION AND CONSUMER ASSISTANCE AND CLAIMS DIVISION RULES

PART 9. HMO REQUIREMENTS AND PROHIBITIONS

365:40-5-43. Premiums/co-payments

(a) Each HMO shall provide or arrange basic health care services for a basic health care services payment which:

(1) Is paid on a periodic basis without regard to the dates these services are provided;

(2) Is fixed without regard to the frequency, extent, or kind of basic health care services furnished;

(3) Is fixed under a rating system which generates funds sufficient to meet the HMO's financial plan, and under which the rates are reasonable for the health services provided; and

(4) May be supplemented by nominal co-payments for specific basic health care services. Each HMO may establish one or more co-payment options calculated on the basis of a rating system.

(A) An HMO may not impose co-payment charges that exceed fifty (50) percent of the total cost of providing any single service to its enrollees, or in the aggregate more than: ~~twenty (20) percent of the total cost of providing all basic health care services.~~

(i) forty-five (45) percent of the total cost of providing all basic health care services; or

(ii) the dollar amounts in effect under section 223(c)(2)(A)(ii) of the Internal Revenue Code of 1986 for self-only and family coverage, respectively, for taxable years beginning in 2014.

(B) An HMO shall not impose on any subscriber or enrollee, in any calendar year, co-payment charges of more than two hundred (200) percent of the annual premium charged for an option with no co-payments.

(C) Co-payments applied to a service must be equal for all providers unless the unequal co-payments are based on differences in the cost to the HMO for the service.

(b) Basic health care services shall be provided for an illness or injury covered under a workers' compensation law or an insurance policy. The HMO may charge or authorize the provider to charge:

(1) The insurance carrier, employer, or other entity which is required to pay for the services; and

(2) The enrollee, to the extent that the enrollee has been paid under the law or policy for the services.

(c) An HMO may require payments for supplemental health care services in addition to the payments for basic health care services. Or, an HMO may include supplemental health care services in the basic health care services for a basic health care service payment.

(1) Supplemental health services payments may be made in any agreed upon manner, such as prepayment or fee-forservice.

(2) Supplemental health services may be limited as to time and cost.

(d) The Commissioner has discretion to approve a cost-sharing arrangement which does not satisfy the limitations imposed by this subsection if the Commissioner finds that such

cost-sharing arrangement will provide a reduction in premium costs.

[OAR Docket #14-509; filed 6-24-14]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

[OAR Docket #14-825]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Function and Structure of the Office of Juvenile Affairs
377:1-1-11. Executive Director [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 9, 2013
COMMENT PERIOD:
November 2, 2013 through December 4, 2013
PUBLIC HEARING:
December 4, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revision eliminates an erroneous statute reference.
CONTACT PERSON:
JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866, JLynn.Hartman@oja.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

377:1-1-11. Executive Director

(a) The Executive Director of the Office of Juvenile Affairs shall be appointed by the Board of Juvenile Affairs and shall report directly to the Board. As the administrator of the Office of Juvenile Affairs, the Executive Director is responsible for supervising OJA activities and establishing internal policy and procedures for the administration of the Office of Juvenile Affairs.

(b) The Executive Director shall be responsible for selecting staff or contracting with personnel capable of carrying out OJA's mission, goals, and statutory requirements.

(c) The Executive Director shall have the authority to assume all duties and responsibilities of the Chief of Staff of OJA~~, as found in 10A O.S., § 2-7-201~~.

[OAR Docket #14-825; filed 8-5-14]

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

[OAR Docket #14-826]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-20. Legal base and authority [AMENDED]
377:3-1-21. Definitions [AMENDED]
377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA [AMENDED]
377:3-1-27. OJA grievance policy [AMENDED]
377:3-1-28. General Grievance Procedure [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 9, 2013
COMMENT PERIOD:
November 2, 2013 through December 4, 2013
PUBLIC HEARING:
December 4, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-20. Legal base and authority [AMENDED]
377:3-1-21. Definitions [AMENDED]
377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA [AMENDED]
377:3-1-27. OJA grievance policy [AMENDED]
377:3-1-28. General Grievance Procedure [AMENDED]
Gubernatorial approval:
December 3, 2013
Register publication:
31 Ok Reg 311
Docket number:
13-1543
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

The rule revisions are the result of the promulgation of the national standards for the elimination of prison rape, pursuant to the Prison Rape Elimination Act, which was finally promulgated on June 20, 2012. These rule revisions were prepared in anticipation of the required audits by the federal government that commence August 20, 2013. The adopted rules are necessary in order to conform to the Prison Rape Elimination Act and are deemed as good practices concerning the reporting process within juvenile facilities that are operated or contracted by the Office of Juvenile Affairs.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-20. Legal base and authority

The State's legal basis and authority for the rules and procedure in this subchapter are found in 10A O.S., §§ 1-2-101, 1-2-102, 2-7-302, and 2-7-603.

377:3-1-21. Definitions

The following words and terms, when used in this Subchapter, have the following menaing, unless the context clearly indicates otherwise:

"Abuse" is defined in Title 10A O.S., § 1-1-105, for purposes of this subchapter abuse includes sexual abuse and sexual harassment.

"Advocate defender" means the institutional staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures;

(C) conducting the tentative release date hearings with juveniles and attending parole hearings;

(D) supervising the communication of grievance procedure to staff and juveniles;

(E) facilitating resolutions and regularly reviewing informal grievances;

(F) ensuring allegations of abuse and neglect are properly reported to the Advocate General of the Office Of Juvenile Affairs; and

(G) ensuring that allegations of caretaker misconduct by a person responsible for a child residing in an OJA secure facility not rising to the level of abuse or neglect are reported to the Advocate General of the Office of Juvenile Affairs.

"Caretaker" with regard to juveniles in the Office of Juvenile Affairs' custody means an agent or employee of a public or private institution or a public or private residential home above the level of foster care.

"Caretaker Misconduct" is defined in Department of Human Services' Rule OAC:340:2-3-2.

"Grievance coordinator" means a group home staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures and hearings;

(C) supervising the communication of grievance procedure to staff and juveniles; and

(D) regularly reviewing informal grievances and resolutions.

"Neglect" is defined in Title 10A O.S., § 1-1-105.

"Sexual harassment" as used in this subchapter is defined in 28 C.F.R. § 115.6.

377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA

(a) **Requirements for reporting incidents of abuse and neglect.** Title 10A O.S., § 1-2-101 requires every person who, in good faith and exercising due care, has reason to believe that a child under the age of eighteen (18) is ~~or has been abused or neglected~~ a victim of abuse or neglect to report the condition or incident to the appropriate office for investigation through the DHS statewide centralized hotline. For purposes of the reporting requirements for this subchapter, abuse shall include sexual abuse and sexual harassment. An employee who, in good faith and exercising due care, has reason to believe that a child is a victim of abuse or neglect shall make an immediate, verbal or email ~~transmittal~~ report, as required by 10A O.S., § 1-2-101 and to the supervisor who shall ensure a report is made to the OJA Office of Advocate General, or as required by 10A O.S., § 1-2-102 to the DHS hotline, when:

(1) the employee has reason to believe such child has been the victim of abuse or neglect;

(2) a child, parent, guardian, or other person makes an allegation of abuse or neglect of such child.

(b) **Use of restraints and physical force.** Abuse and neglect do not include the use of restraints or physical force as authorized by law, allowed by regulation or policy, and performed in such a manner as to be deemed acceptable by approved systems of restraint including, but not limited to, MANDT, CPI, CAPE, or CCMS. Medical attention shall be provided immediately upon the juvenile's release from restraint as a result of physical force even if there is no visible evidence or complaint of injury. Medical attention shall be provided in an institution by a licensed physician, licensed practical nurse, registered nurse, physician's assistant, or emergency medical technician; or in a group-home or private facility, staff certified in first aid and CPR may provide medical attention and are responsible for referring the juvenile to licensed medical personnel, if warranted.

(c) When a reportable situation arises and within 24-hours, each staff member, resident, or other person present during the incident shall prepare and submit to the facility administrator or designee, a written incident report describing what the person saw or heard. The facility administrator, shall ensure a preliminary assessment is conducted to:

(1) assure the safety of any juvenile named in the referral and of other juveniles in the same placement;

(2) protect the integrity of any evidence which may be relevant to the allegation, including taking photos following every restraint or act of physical force; and

(3) coordinate activities with OCA and any law enforcement authority involved in investigating the allegation.

(d) The facility administrator shall collect medical records, other documents and reports which pertain to the alleged incident, written statements and any other documentary evidence and place them in a holding file for investigative use by the appropriate investigative authority.

(e) **Caretaker misconduct in OJA secure facilities.** Every employee in an OJA secure facility shall report allegations of caretaker misconduct to the OJA AG for investigation and disposition. The system for investigation and disposition of such investigation shall be developed by the AG in cooperation with the Executive Director and shall be approved by the Board of Juvenile Affairs. The Advocate General shall determine whether the allegation involves caretaker misconduct.

(f) **Caretaker misconduct in facilities other than OJA secure facilities.** Every employee of a facility, other than an OJA secure facility, operated by or through contract with OJA shall report allegations of caretaker misconduct in accordance with DHS Rule 340:2-3-33.

(g) **Educational employees.** If the alleged abuse, neglect, or caretaker misconduct involves an employee of a school district which provides contract educational services to OJA, either as a witness or as an accused caretaker, the facility administrator shall notify the principal of the school of the nature of the allegation, and name of the assigned investigator. The principal shall then be responsible for advising the employee accordingly and coordinating with the appropriate investigative authority.

(h) **Protection or medical treatment.** In the event of alleged abuse, neglect, or caretaker misconduct in a facility, the facility administrator or designee shall assure protection of the juvenile and obtain medical attention for the juvenile.

(i) **Failure to report.** Any employee who fails to report abuse, neglect, or caretaker misconduct as required by this Section, is subject to disciplinary action under OJA's personnel rules. If it is determined the employee failed to report as required, the Advocate General of OJA shall make a referral to the appropriate law enforcement agency.

(j) **Interference prohibition.** Any employee who interferes with an abuse, neglect, or caretaker misconduct investigation, or attempts to intimidate or harass a witness, victim, or employee accused of alleged abuse, neglect, or caretaker misconduct through force or fear, or by threatening physical or mental harm to a witness, victim or others, is subject to disciplinary action under OJA's personnel policy and could be subject to criminal prosecution.

(k) **Contract termination.** A contractor's contract shall be subject to immediate termination for failure to adhere to this subchapter or knowingly allowing an employee to:

(1) interfere with an abuse, neglect, or caretaker misconduct investigation;

(2) interfere or retaliate against any employee for reporting or cooperating in such investigation; or

(3) deny the assigned investigator immediate and direct access to the contractor's employees, facilities, clients, places, or records of any type.

(l) **Retaliation.** The agency shall ensure protection of both staff and juveniles who report sexual abuse or sexual harassment or for cooperating in sexual abuse or sexual harassment investigations from retaliation.

377:3-1-27. OJA grievance policy

(a) It is OJA's intent to establish and maintain a fair, simple, and speedy system for resolution of grievances of all OJA-custody juveniles. The grievance policy and procedure is designed to provide an OJA-custody juvenile with a way to have another person review and, when appropriate, correct problems the juvenile is having.

(b) A juvenile may file a grievance regarding:

(1) the conditions of confinement, action of staff, and incidents occurring within or under the authority and control of the Office of Juvenile Affairs.

(2) any decision, behavior, or action by an OJA employee or contractor, or by another juvenile in OJA custody. Any grievance regarding allegations of abuse, including sexual abuse and sexual harassment, or neglect, shall be forwarded to the DHS hotline.

(c) A grievance may be filed by either a juvenile or by another person on behalf of the juvenile. The juvenile or person filing on behalf of the juvenile shall try to resolve the grievance informally at the local level before he or she submits a formal appeal. The procedures for informally resolving grievances with JSU and in institutions and contract facilities are set forth in OAC 377:3-1-28. If resolution cannot be achieved through the informal process, the juvenile has the right to appeal.

(d) Staff members shall not in any way discourage any juvenile from filing a grievance or appealing a grievance resolution. The rules in this Section shall not be construed to impinge upon the duties of the Advocate General, ~~advocate defender~~Advocate Defender, grievance coordinator, or any designee thereof from fairly and accurately advising a juvenile of his or her rights or alternative means of dispute resolution.

(e) OJA ensures the quality of the system by maintaining minimum standards and by using an ongoing monitoring program carried out by the Office of Advocate General in conjunction with other OJA Divisions.

(f) Each OJA and contracted facility shall make its grievance policies and procedures available upon request to any member of the public.

(g) Each OJA and contracted facility shall post its grievance policies in conspicuous places readily accessible to the juveniles in residence.

(h) Each OJA and contracted facility shall explain OJA grievance policies and procedures to every resident during intake at the facility.

(i) Every effort should be made to utilize the correct form, but all grievances must be processed regardless of the form used by the juvenile.

(j) The secure facility shall permit a juvenile to report sexual abuse or sexual harassment to DHS via the hotline.

377:3-1-28. General Grievance Procedure

(a) **Informal grievances.**

(1) Informal grievances are issues relating to daily life at the juvenile's placement, which can be resolved at the facility or local level. Informal grievances include, but are not limited to:

(A) grooming and hygiene;
(B) clothing;
(C) cottage cleanliness;
(D) food;
(E) disrespect not involving threats of harm;
(F) restrictions; or
(G) routine problems with the JSU; i.e., complaints against a JSU worker.

(2) A juvenile shall try to informally resolve his or her grievance by talking with the ~~Social Service Inspector~~Advocate Defender, supervising employee or other appropriate staff, excluding a staff member who is the subject of the grievance, within three (3) working days, excluding weekends and holidays, of the incident. If the issue is not resolved the juvenile may submit in writing a brief description of the problem and what efforts have been made to resolve the issue within (7) seven working days, excluding weekend and holidays, of the incident. The grievance should include the name of the person or group with whom the juvenile wants to meet to discuss the problem. The juvenile may put the written information in a designated grievance box or give the grievance to any staff member.

(3) The grievance must be numbered and logged in a grievance log on the day the grievance is received and distributed to the appropriate staff, excluding a staff member who is the subject of the grievance, for processing and possible resolution.

(4) The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile.

(5) If the grievance is not resolved within (5) five working days (excluding weekends and holidays), the juvenile may seek review by the supervisor.

(6) The supervisor shall have (10) ten working days (excluding weekends and holidays) from receipt of the review to resolve the grievance.

(7) If the juvenile does not accept the resolution of the supervisory review, he/she may file a formal grievance, which shall be received within 5 working days (excluding weekends and holidays) from the receipt of the review.

(8) The grievance log must also indicate the disposition of the grievance and the date of the resolution or the review. OJA Form OJA-AG-2 may be used to facilitate the grievance resolution process.

(b) **Formal Grievances.**

(1) Formal grievances are those grievances, which are appeals of informal grievances or those which cannot otherwise be resolved at the facility or local level. Issues which cannot be resolved at the facility or local level include, but are not limited to:

(A) placement;
(B) treatment;
(C) psychological services;
(D) social services;
(E) educational services;
(F) recreation; or
(G) abuse, neglect, or caretaker misconduct.

(2) Grievances which contain allegations of abuse, neglect, or caretaker misconduct shall be processed in accordance with 377:3-1-25 and 377:3-1-26.

(3) Formal grievances may be filed with any staff member, excluding a staff member who is the subject of the grievance, but shall be routed to the Advocate General for appropriate distribution and resolution by OJA State Office as set forth in paragraph (c) of this section. Form OJA-AG-3 may be used to facilitate the formal grievance process.

(c) **Emergency Grievances.** Any situation where the juvenile believes that he or she is subject to substantial risk of imminent sexual abuse, may file a grievance as an emergency grievance. Immediately upon the discovery that an emergency grievance has been filed, the emergency grievance shall be forwarded to the superintendent or designee, who may take corrective action within 48 hours.

(d) **Grievances received by Advocate General.** Upon receipt of an appeal of an informal grievance or formal grievance, the Advocate General's Office shall post the date of receipt. The Advocate General shall review the grievance and the accompanying documentation to determine what additional information is necessary for disposition of the grievance within five (5) working days and set deadlines for receipt of required information. If the Advocate General finds that an appeal or formal grievance was prematurely filed, the Advocate General shall send a reply containing suggestions regarding the proper procedure to the person that sent the grievance. The Advocate General shall review the applicable OJA rules, policy, and/or Oklahoma law to determine if the appeal or formal grievance is appropriate and provide an opinion regarding possible resolution.

(~~d~~e) **Appeal to the Division Director/final decision.** The Advocate General shall prepare a cover worksheet or memorandum for the appeal or formal grievance and forward a copy to the Division Director/designee for response. The response shall be completed within ten (10) working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator. A copy of the resolution shall be

inserted in the juvenile's master file. Resolutions, which will change or create OJA rules, are submitted to the appropriate division responsible for drafting new or revised rules. The Advocate General shall ensure that resolutions containing directives for specific action are completed.

(~~e~~f) **Board notification.** All matters referred to the Division Director for final decision may be placed on the agenda for the next, regularly scheduled meeting of the Board of Juvenile Affairs upon authorization of the Executive Director. If the Executive Director denies the request the OJA Board shall be informed. The Executive Director shall review any such grievance with the Board during Executive Session. At that time, the Advocate General will be allowed to voice concerns, the wishes of the juvenile, or such other matters as are relevant to the Board's understanding of the issues presented in the appeal.

(~~f~~g) **Review by juvenile.** The grievance coordinator, ~~advocate defender~~Advocate Defender, or Advocate General (whoever filed the last grievance), shall review the Division Director's resolution with the juvenile and notify the juvenile that his or her administrative remedies have been exhausted. If the juvenile does not accept the resolution, a copy of the grievance, appeals, and proposed resolutions shall be forwarded to the Office of Juvenile Systems Oversight.

(~~g~~h) **Grievances originated by the Advocate General.** The Advocate General may, on behalf of all or part of the juveniles committed to OJA, originate a grievance at the State Office level concerning:

(1) the substance or application of any written or unwritten policy, rule, or regulation of:

(A) OJA;

(B) an agent of OJA; or

(C) an OJA contractor; or

(2) any decision, behavior, or action of

(A) an OJA employee;

(B) an agent of OJA;

(C) an OJA-contractor; or

(D) any other person committed to OJA.

(~~h~~i) The Advocate General may write the grievance by way of a detailed memorandum.

(~~i~~j) The appropriate Division Director and Advocate General may determine there is misuse of the grievance process. Types of misuse, include, but are not limited to:

(1) Grievances intended to harass another;

(2) The continual and repeated submitting of frivolous grievances (frivolous grievances are those with no basis in fact or law);

(3) The repeated submitting of grievances about an issue, which has been adequately and completely addressed by staff.

(4) If misuse of the process is determined, the juvenile will be notified in writing, citing the above listed reason or reasons the grievance will not be processed through the grievance procedure. A copy of the determination will be placed in the offender's field file, Advocate General's and Advocate Defender's file. The agency may discipline a resident for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the resident filed the grievance in bad faith.

(~~j~~k) Non-grievable issues include;

(1) any appeals finalized and resolved by the disciplinary hearing process shall not be processed through the grievance process, or

(2) Requests for disciplinary action against staff.

(l) At any level of the administrative process, including the final level, if the juvenile does not receive a response within the time allotted for reply, including any properly noticed extension, the juvenile may consider the absence of a response to be a denial at that level.

[OAR Docket #14-826; filed 8-5-14]

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

[OAR Docket #14-827]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-30. Grievance procedures for ~~institutions,~~ group homes, and contract facilities [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 9, 2013
COMMENT PERIOD:
November 2, 2013 through December 4, 2013
PUBLIC HEARING:
December 4, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014.
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revisions eliminate the duplication and conflicting timelines for the OJA grievance process within juvenile facilities that are operated or contracted by the Office of Juvenile Affairs, as found in OAC 377:3-1-28.
CONTACT PERSON:
JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866, JLynn.Hartman@oja.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-30. Grievance procedures for ~~institutions,~~ group homes~~,~~ and contract facilities

~~(a)~~ **Group homes and contract facilities.** Contract facilities, youth shelters, and crisis intervention centers shall develop grievance policies and procedures consistent with those as contained in OAC 377:3-1-27 and 28.

~~(b) **Institutions.** Each institution shall have a locked, grievance box and a system to enable juveniles to obtain a grievance form upon request. The juvenile may put their written information in the grievance box or give the grievance to any staff member. The advocate defender shall on the same day log the grievances in a master grievance log and distribute the grievances to the appropriate staff member for processing and possible resolution. The advocate defender shall notify the juvenile of receipt of the grievance within one working day. The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile. If the grievance is not resolved in three working days, the juvenile may appeal to the supervisor or facility administrator who will have an additional five working days in which to attempt resolution. The grievance shall be resolved within seven working days. The advocate defender shall inform the juvenile of the decision regarding his or her grievance and the right to appeal. If the juvenile appeals the grievance decision, the advocate defender shall send the appeal to the appropriate person or Advocate General and document such in the log. If the juvenile does not appeal, the advocate defender shall file the completed grievance and document such in the log.~~

[OAR Docket #14-827; filed 8-5-14]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #14-828]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
377:10-1-4. Use of physical force and/or mechanical restraints [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 9, 2013
COMMENT PERIOD:
November 2, 2013 through December 4, 2013
PUBLIC HEARING:
December 4, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
377:10-1-4. Use of physical force and/or mechanical restraints [AMENDED]
Gubernatorial approval:
December 3, 2013 Register publication:
31 Ok Reg 315
Docket number:
13-1550
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revision eliminates an erroneous statute reference.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

377:10-1-4. Use of physical force and/or mechanical restraints

(a) **Use of physical force.** Title 10A O.S.~~,~~ § 2-7-604 prohibits the use of physical force in institutions and other facilities operated by or contracted with OJA except:

(1) when necessary for self-protection;

(2) to separate juveniles who are fighting;

(3) ~~to restrain juveniles who have escaped or are in the process of escaping~~to restrain juveniles who are in danger of harming themselves or others; or

(4) ~~to restrain juveniles who are in danger of harming themselves or others~~to restrain juveniles who have escaped or are in the process of escaping.

(b) **Use of mechanical restraints.** The use of mechanical restraints in institutions or other facilities operated by or contracted with OJA for any purpose is prohibited except upon a juvenile's hands and/or legs as specifically provided for in this subsection. ~~The practice of attaching hands and feet, as in hog tying, is presumptively punitive and is specifically prohibited.~~ Mechanical restraints may be employed only in the following situations:

(1) for transporting a juvenile to or from a facility when there are reasonable grounds to believe that the juvenile is a serious escape risk or a threat to the public safety; or

(2) within OJA institutions, to gain control of a violently out-of-control juvenile or in situations where multiple juveniles are collectively engaged in physically assaultive behavior. If the juvenile is not transported to a place of separation or confinement, the restraints shall be removed as soon as staff have gained control of the situation or the juvenile is no longer violently out of control.

(3) within OJA institutions, to transport a violently out-of-control juvenile to a place of ~~crisis management~~separation or confinement, but only after less restrictive methods of control have failed. When the restraints are employed in this situation, the restraints shall be removed as soon as the juvenile ~~is transported to a place of crisis management and~~ regains control but no later than the time that the juvenile is placed into solitary confinement. Under no circumstances shall OJA staff or contractors apply the restraints as punishment.

(4) A "walk and talk" policy shall be implemented wherein the juvenile is first afforded the opportunity to voluntarily walk to a place of separation or confinement without the application of any mechanical restraints.

(c) **Additional restraints.** The following use of mechanical restraints may be employed:

(1) bellychain;

(2) humane blanket wrap;

(3) newly developed mechanical restraint methods or practices that are no more restricted than those authorized by this subsection and reflect current standards of practice in the juvenile justice field.

(d) **Prohibited restraints.** The practice of attaching hands and feet, as in hog-tying, is presumptively punitive and is specifically prohibited. The use of a restraint chair is prohibited.

[OAR Docket #14-828; filed 8-5-14]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #14-829]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Agreements Between States for Placement and Transfer of Juveniles
377:10-5-1. Purpose [AMENDED]
377:10-5-2. Legal authority [AMENDED]
377:10-5-4. Interstate Compact on the Placement of Children [AMENDED]
377:10-5-5. Compact Administrator [NEW]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 9, 2013
COMMENT PERIOD:
November 2, 2013 through December 4, 2013
PUBLIC HEARING:
December 4, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Agreements between States for Placement and Transfer of Juveniles
377:10-5-1. Purpose [AMENDED]
377:10-5-2. Legal authority [AMENDED]
377:10-5-4. Interstate Compact on the Placement of Children [AMENDED]
377:10-5-5. Compact Administrator [NEW]
Gubernatorial approval:
December 3, 2013
Register publication:
31 Ok Reg 316
Docket number:
13-1551
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revision eliminates an erroneous statute reference.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. AGREEMENTS BETWEEN STATES FOR PLACEMENT AND TRANSFER OF JUVENILES

377:10-5-1. Purpose

The Interstate Compact ~~on~~for Juveniles (ICJ) is an agreement ~~between~~among compacting states to take joint and cooperative action, pursuant to 10A O.S., § 2-9-102(B) ~~states which provides a framework and a constitutional basis for contracts between individual states to:~~

~~(1) provide supervision of a juvenile placed on probation or parole;~~

~~(2) provide for the return, from one state to another, of a delinquent juvenile who has escaped or absconded;~~

~~(3) provide for the return, from one state to another, of a non-delinquent juvenile who has run away from home; and~~

~~(4) take additional measures for the protection of juveniles and the public which any two or more of the involved states desire to undertake cooperatively~~.

377:10-5-2. Legal authority

The Interstate Compact ~~on~~for Juveniles is authorized by and functions in ~~accord~~ accordance with 10A O.S., §§~~531~~2-9-101 through ~~537~~2-9-116 and the Rules of the Interstate Commission for Juveniles~~, the Association of Juvenile Compact Administrators' Rules and Regulations handbook, and the Manual of the Association of Juvenile Compact Administrators (Revised 1976)~~.

377:10-5-4. Interstate Compact on the Placement of Children

(a) The Interstate Compact on the Placement of Children (ICPC) is an agreement ~~between~~among compacting states to effect the out-of-state placement of children, which may include delinquent or in need of supervision (INS) juveniles in privately owned and operated group homes or institutions for delinquents.

(b) The ICPC functions pursuant to 10 O.S., §§ 571~~, Articles I through X~~ through 577.

(c) The JSU worker must use the ICPC in order to place a delinquent or INS juvenile in an out-of-state:

(1) privately owned and operated group home; or

(2) institution for delinquents.

377:10-5-5. Compact Administrator

(a) The Executive Director of the Office of Juvenile Affairs (OJA) shall serve as the Compact Administrator pursuant to the Interstate Compact for Juveniles (ICJ).

(b) The Compact Administrator shall be responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the State Council.

(c) The Compact Administrator, or designee, shall preside at all meetings of the State Council.

[OAR Docket #14-829; filed 8-5-14]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #14-830]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. General Provisions and Foster Care
Part 1. General Provisions and Foster Care
377:10-7-1. Legal Authority and Purpose [AMENDED]
377:10-7-2. General provisions [REVOKED]
377:10-7-2.1. Definitions [NEW]
377:10-7-3. Foster ~~Care~~home licensing [AMENDED]
377:10-7-3.1. Foster home study [NEW]
377:10-7-3.2. Criminal history records searches and disqualifying crimes [NEW]
377:10-7-3.3. Foster home physical requirements [NEW]
377:10-7-3.4. General foster parent qualifications [NEW]
377:10-7-3.5. Foster parent responsibility [NEW]
377:10-7-3.6. OJA responsibility [NEW]
377:10-7-3.7. Foster home contract [NEW]
377:10-7-3.8. Informal and alternate care arrangements [NEW]
377:10-7-3.9. Discipline and behavior management requirements [NEW]
377:10-7-3.10. Applicable records [NEW]
377:10-7-3.11. Applicable rights [NEW]
377:10-7-3.12. Foster parent grievance procedure [NEW]
377:10-7-4. Therapeutic foster care [AMENDED]
377:10-7-5. Specialized community home [AMENDED]
377:10-7-7. Kinship foster care [AMENDED]
AUTHORITY:
The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 25, 2013
COMMENT PERIOD:
October 16, 2013 through November 15, 2013
PUBLIC HEARING:
November 19, 2013
ADOPTION:
December 13, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. General Provisions and Foster Care
Part 1. General Provisions and Foster Care
377:10-7-1. Legal Authority and Purpose [AMENDED]
377:10-7-2. General provisions [REVOKED]
377:10-7-2.1. Definitions [NEW]
377:10-7-3. Foster ~~Care~~home licensing [AMENDED]
377:10-7-3.1. Foster home study [NEW]
377:10-7-3.3. Foster Home physical requirements [NEW]
377:10-7-3.4. General foster parent qualifications [NEW]
377:10-7-3.5. Foster parent responsibility [NEW]
377:10-7-3.6. OJA responsibility [NEW]
377:10-7-3.7. Foster home contract [NEW]
377:10-7-3.9. Discipline and behavior management requirements [NEW]
377:10-7-3.10. Applicable records [NEW]
377:10-7-3.11. Applicable rights [NEW]
377:10-7-3.12. Foster parent grievance procedure [NEW]
377:10-7-4. Therapeutic Foster Care [AMENDED]
377:10-7-5. Specialized community home [AMENDED]
377:10-7-7. Kinship foster care [AMENDED]
Gubernatorial approval:
October 29, 2013
Register publication:
31 Ok Reg 317
Docket number:
13-1542
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revisions are the result of changes within the Oklahoma State Statutes, as per Senate Bill 200 (2012), effective July 1, 2013, which pertain to the OJA foster care program.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. CONTRACT PROGRAMS AND SERVICES

PART 1. GENERAL PROVISIONS AND FOSTER CARE

377:10-7-1. Legal Authority and Purpose

(a) The Office of Juvenile Affairs is authorized by 10A O.S., § 2-7-613, to establish and implement a foster care program for juveniles in the custody of OJA, and by 10A O.S., § 2-7-614, to be the certification authority for foster homes. No juvenile in the custody of the Office of Juvenile Affairs shall be placed with any foster placement unless the foster placement meets licensing standards as required by rules promulgated by the Board of Juvenile Affairs and the Oklahoma Child Care Facilities Licensing Act, as found in 10 O.S., § 401 et seq, and is otherwise approved for foster care by the Office of Juvenile Affairs for juveniles within its custody.

(b) The Office of Juvenile Affairs is authorized by 10A O.S., § 2-7-606(D) to develop a variety of placements for OJA-custody juveniles.

(c) The purpose of this subchapter is to describe and establish the requirements for the programs and facilities ~~with~~for which the Office of Juvenile Affairs contracts for the placement of juveniles, and to establish the licensing standards for foster care.

377:10-7-2. General provisions [REVOKED]

~~(a) OJA staff and contractors shall strictly adhere to OJA rules found in Subchapter 1 of this Chapter. Rules include juvenile rights, discipline, use of physical force, use of mechanical restraints, confidentiality, Individual Service Plan (ISP), and contracting requirements.~~

~~(b) Any contractor, sub-contractor, or Community Intervention Center (CIC) regularly transporting juveniles or providing 24 hour a day care must maintain a policy for testing employees and job applicants for the use of alcohol and illegal drugs that is reasonably consistent with the OJA's rules, policies, and procedures. The policy must be approved in writing by the OJA Executive Director or designee.~~

~~(c) A consultant supervising the provision of clinical services in a contracted facility must possess a license as a:~~

~~(1) psychiatrist;~~

~~(2) psychologist; or~~

~~(3) clinical social worker.~~

~~(d) Mental health evaluations conducted by staff or consultants of contracted programs must be performed by a licensed mental health professional as defined in 43A O.S., § 5-502.~~

377:10-7-2.1. Definitions

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

"Foster family home" is defined in 10 O.S., § 402 and means a private residence in which a juvenile is placed for out-of-home foster care services and includes a specialized foster home, a therapeutic foster family home, or a kinship care home. Foster parents shall provide continuous 24-hour care and support.

"Kinship care" means full-time care of a child by a kinship relation.

"Kinship relation" or "kinship relationship" means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child' provided, however, in cases where the Indian Child Welfare Act applies, the definitions contained in 25 U.S.C., Section 1903 shall control.

"Parental substitute authority" means the foster parent's authority to integrate a juvenile who is in the custody of OJA and who requires out-of-home placement into the family setting, and to care for the juvenile as the foster parent would his or her own child, excluding the authority to use corporal punishment, by:

(A) meeting the juvenile's physical and emotional needs;

(B) teaching the juvenile problem-solving, self-control, and responsibility; and

(C) building the relationship between the foster parent and the juvenile.

"Treatment team" means the Juvenile Services Unit worker, the foster parents, and others deemed as appropriate by OJA.

377:10-7-3. Foster ~~Care~~home licensing

~~(a) A foster family home is a private residence in which a juvenile is placed for out-of-home foster care services and includes a specialized foster home, a therapeutic foster family home, or a kinship care home. Foster parents shall provide continuous 24-hour care and support.~~

~~(1) **OJA responsibility.** OJA is responsible for certification of the foster home and to verify the foster home meets minimum requirements, which include the following:~~

~~(A) **Criminal history records search.** OJA shall conduct a criminal history records search for each member of the foster family who is 18 years of age or older. A criminal history records search is obtained from:~~

~~(i) the Oklahoma State Bureau of Investigation (OSBI) which shall include a search of Department of Corrections files maintained by the OSBI pursuant to the Sex Offenders Registration Act; and~~

~~(ii) the state investigative agency in the previous state of residence if the person has resided in Oklahoma less than one year;~~

~~(iii) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the individual; and~~

~~(iv) a search of any child abuse registry maintained by a state in which the prospective foster parent or any adult living in the home of the prospective foster parent has resided in the past five years.~~

~~(B) **Disqualifying crimes.** A prospective foster parent is not an approved placement for a juvenile if the prospective foster parent or any other person residing in the home of the prospective foster parent has been convicted of any of the following felony offenses:~~

~~(i) within the five year period preceding the application date, physical assault, battery, or a drug-related offense;~~

~~(ii) child abuse or neglect;~~

~~(iii) domestic abuse;~~

~~(iv) a crime against a child, including, but not limited to, child pornography; and~~

~~(v) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in (A) of this paragraph.~~

~~(C) **Certification.** A copy of the certification is maintained in the foster home file.~~

~~(i) Certification of the foster home applies only to the location of the residence at the time the home study is made.~~

~~(ii) If the family moves, OJA shall certify the new location.~~

~~(D) **Policy.** OJA shall provide foster parents with OJA policy relative to foster care.~~

~~(E) **Medical services.** OJA requires that the juvenile in foster care receives appropriate medical services.~~

~~(F) **Case planning.** OJA is responsible for case planning.~~

~~(G) **Supervision.** OJA shall provide supervision at least once a month to each juvenile in foster care, including private visits with the juvenile in foster care and on-site visits to the home, to assess the continued suitability of the foster home environment.~~

~~(H) **Written agreement.** OJA shall have a written agreement with the foster family, and provides the foster parents a copy of the agreement. The agreement includes statements:~~

~~(i) regarding the financial agreement, if applicable, between OJA and the foster home;~~

~~(ii) that the foster home will not:~~

~~(I) accept a non-relative juvenile from any source without the approval from OJA; or~~

~~(II) provide child care on a regular basis;~~

~~(iii) that OJA has the right to remove the juvenile at its discretion;~~

~~(iv) that the juvenile in foster care is discharged from foster care only with the consent of OJA;~~

~~(v) that visitation by the juvenile's parents or relatives must be approved by OJA;~~

~~(vi) regarding absences of the juvenile from the home, including respite care, as per OJA policy;~~

~~(vii) that the foster parents agree to cooperate with OJA staff in evaluating the foster home and in the ongoing supervision of the foster home; and~~

~~(viii) that the foster parents agree to contact OJA when a household member has any involvement with legal authorities, a household member is alleged to have committed any allegations of child abuse, or if there are any other circumstance or incident seriously affecting the juvenile or care of the juvenile.~~

~~(I) **Grievance policy and procedure.** OJA shall have written grievance policy and procedure for foster parents and juveniles in foster care.~~

~~(2) **Foster home certification.** Certification of the foster home includes written documentation of:~~

~~(A) application for foster home certification that includes prior child care experience with other agencies;~~

~~(B) appropriate immunizations for the foster parents' children;~~

~~(C) a statement from a health professional certifying that all members of the household have had a physical examination within one year prior to application, verifying that they:~~

~~(i) are in good health; and~~

~~(ii) do not have a condition that would interfere with their ability to care for juveniles;~~

~~(D) three written references from non-relatives who have knowledge of family functioning;~~

~~(E) a current, completed foster home study before the home is approved; and~~

~~(F) a criminal history records search conducted for each household member who is 18 years of age or older, per OAC 377:10-7-3(a)(1)—(2).~~

~~(3) **Foster home study.** OJA shall prepare a written home study before approving the foster home and prior to placement of a juvenile that contains, at a minimum, information regarding:~~

~~(A) **Interviews and home visits.** Interviews and home visits, include documentation of at least one:~~

~~(i) separate face-to-face interview with each parent, school-age child, and any other household member;~~

~~(ii) joint face-to-face interview; and~~

~~(iii) home visit;~~

~~(B) **Household composition.** Information regarding household composition includes each person residing in the home;~~

~~(C) **Criminal history records search.** A criminal history records search is conducted on each household member who is 18 years of age or older, per OAC 377:10-7-3(a)(1)—(2), prior to initial approval of the home and when a new household member, age 18 or older, moves into the home;~~

~~(D) **Foster juvenile profile.** The foster home study includes statements regarding the applicant's preference for age, gender, and special needs of the juvenile;~~

~~(E) **Motivation, attitudes, and expectations.** The foster home study includes motivation and attitudes toward foster care and expectations regarding juveniles in foster care;~~

~~(F) **Health.** Health information for each household member includes:~~

~~(i) present physical health;~~

~~(ii) emotional stability;~~

~~(iii) medical history; and~~

~~(iv) any history of drug or alcohol use;~~

~~(G) **Family functioning.** The foster home study includes information regarding the assessment of family dynamics, functions and interactions with each member of the family.~~

~~(H) **Foster parents' marital status.** The foster home study includes information regarding the marital status of the foster parents, such as present marital status, history of previous marriages or significant relationships, date of present marriage, and description of the marriage or relationship;~~

~~(I) **Employment.** The foster home study includes the employment history of family members;~~

~~(J) **Financial information.** Financial information in the foster home study includes documentation of annual income.~~

~~(K) **Education.** The foster home study includes information regarding the education of family members.~~

~~(L) **Religion.** Information regarding religion includes the family's religious preference and practices;~~

~~(M) **Description of the home.** The description of the home includes the:~~

~~(i) type of dwelling and physical description; and~~

~~(ii) location of the home and description of the neighborhood;~~

~~(N) **Weapons and firearms.** The foster home study includes the location of weapons and firearms, if any, and a notice that weapons and firearms are prohibited unless a full-time duly appointed peace officer, who is certified by the Council on Law Enforcement Education and Training (CLEET) pursuant to the provisions of 10 O.S., § 3311, resides in the home;~~

~~(O) **Transportation.** Information regarding transportation includes the family's means of transportation and verification of:~~

~~(i) a valid driver's license for each family member who will transport a juvenile in foster care;~~

~~(ii) license tag;~~

~~(iii) insurance; and~~

~~(iv) an agreement to transport all juveniles and adults in compliance with applicable state law, per 47 O.S., § 11-1112;~~

~~(P) **Family history.** The foster home study includes information regarding family history, including:~~

~~(i) names of parents and siblings;~~

~~(ii) dates and places of birth;~~

~~(iii) physical health and mental stability;~~

~~(iv) relationship with family members;~~

~~(v) social, cultural, and religious orientation; and~~

~~(vi) information regarding their childhood including how they were disciplined;~~

~~(Q) **Written references.** The foster home study includes three written references from persons who have information relative to the family's ability to provide foster care that include:~~

~~(i) name, address, and telephone number;~~

~~(ii) when and how the person became acquainted with the applicants;~~

~~(iii) how often the person has contact with the family;~~

~~(iv) information regarding family functioning; and~~

~~(v) opinions regarding personal qualities and ability to provide care for juveniles in foster care; and~~

~~(R) **Recommendation.** The foster home study includes the recommendation whether to approve the home that:~~

~~(i) is signed and dated by the person who conducted the foster home study and the district supervisor; and~~

~~(ii) if approved, contains the juvenile's profile and number of juveniles for which the home is approved.~~

~~(4) **Annual home study updates.** The foster home study is updated annually to include:~~

~~(A) documentation of a home visit;~~

~~(B) documentation of a face-to-face interview with each parent, school-age child, and any other household member;~~

~~(C) current vehicle insurance verification; and~~

~~(D) reports of any significant changes from the initial home study.~~

~~(5) **Foster parent training.** OJA shall provide and document that each foster parent has received at a minimum:~~

~~(A) six hours of orientation or preservice training prior to approval of the foster home or placement of a juvenile and includes at a minimum:~~

~~(i) OJA policy;~~

~~(ii) program philosophy;~~

~~(iii) confidentiality;~~

~~(iv) mandatory reporting of child abuse;~~

~~(v) grievance process;~~

~~(vi) emergency medical procedures; and~~

~~(vii) fire and disaster plans;~~

~~(B) six additional hours of training within the first calendar year of certification that is relevant to the needs of the juvenile placed in their care and is documented by the OJA to include, but is not limited to:~~

~~(i) normal child development;~~

~~(ii) behavior management;~~

~~(iii) separation and loss; and~~

~~(iv) infection control and injury prevention; and~~

~~(C) 12 hours of training each calendar year thereafter that is relevant to foster parents' roles and responsibilities and may include workshops and video presentations.~~

~~(6) **Foster parent responsibility.**~~

~~(A) **General.** Foster parents shall provide OJA any information related to compliance with all requirements and allow representatives of the agency access to any member of the household and into all rooms within the home. Foster parents:~~

~~(i) are responsible, mature, healthy adults capable of meeting the needs of the juveniles in foster care;~~

~~(ii) demonstrate a capacity for setting realistic expectations for behavior and performance based on the ages, abilities, and special needs of the juveniles;~~

~~(iii) may be married couples, single persons, or family members with a stable living arrangement; and~~

~~(iv) ensure that all members of the household are informed of and agree to accept the juvenile into the home.~~

~~(B) **Age.** Foster parents shall be at least 21 years of age.~~

~~(C) **Income and employment.** Foster parents shall have sufficient income to meet their needs and ensure the security and stability of the household independent of foster care maintenance payments if applicable.~~

~~(i) Foster parents who both work outside the home shall obtain approval from OJA for their plan of care for the juveniles during their absence.~~

~~(ii) Foster parents shall obtain approval from OJA to conduct a business in the home and demonstrate that the activities related to this business will not interfere with the care of the juveniles.~~

~~(D) **Notifications.** Foster parents shall comply with the requirements pertaining to notifications. Foster parents shall notify OJA:~~

~~(i) in writing prior to allowing any person to take up residence for more than two weeks in the foster home;~~

~~(ii) immediately of the occurrence of:~~

~~(I) the death of a juvenile;~~

~~(II) a serious injury or illness involving medical treatment of the juvenile;~~

~~(III) unauthorized absence of the juvenile from the home as defined by OJA policy;~~

~~(IV) removal of the juvenile from the home by any person or agency other than OJA, or attempts at such removal;~~

~~(V) loss of income that affects the family's ability to meet the needs of the juveniles in foster care;~~

~~(VI) any involvement of a juvenile with legal authorities;~~

~~(VII) any fire or other emergency requiring evacuation of the home; and~~

~~(VIII) lack of heat, water, or electricity; and~~

~~(iii) as soon as possible of:~~

~~(I) any serious illness or death in the household;~~

~~(II) the departure or return of any member of the household;~~

~~(III) a move to another residence; and~~

~~(IV) any other circumstance or incident seriously affecting the juvenile or care of the juvenile; and~~

~~(V) any allegations of child abuse.~~

~~(E) **Cooperation.** Foster parents shall work cooperatively with OJA representatives as members of the treatment team responsible for planning, providing, and discussing the total care and services provided to each child. Foster parents shall:~~

~~(i) fully disclose all information related to a juvenile's problems or progress to OJA representatives;~~

~~(ii) treat any personal information about a juvenile or the juvenile's family in a confidential manner; and~~

~~(iii) participate in an annual mutual review with OJA to evaluate the strengths and weaknesses of the foster home and of OJA representatives' relationships with foster parents.~~

~~(F) **Number of children.** The foster home agency complies with requirements regarding placement of children in the foster family home.~~

~~(i) No more than five foster juveniles are placed in the home.~~

~~(ii) The number, ages, and needs of foster juveniles placed in the home are in keeping with the capacity and skills of the foster parents and accommodations of the home.~~

~~(iii) The total number of juveniles in the home, including the foster parents biological children, adopted children, and foster children cannot exceed six. Local city ordinances should be researched to determine if other restrictions apply.~~

~~(7) **General foster home requirements.**~~

~~(A) **Home requirements.** The foster home shall:~~

~~(i) be clean, safe, and in good repair;~~

~~(ii) have the exterior around the home free from objects, materials, and conditions that constitute a danger to the juveniles served;~~

~~(iii) be accessible to school, church, recreational and health facilities, and other community resources, as needed; and~~

~~(iv) be in compliance with all applicable fire, health, and safety laws, ordinances, and regulations.~~

~~(B) **Safety requirements.**~~

~~(i) Clear glass doors are plainly marked to avoid accidental impact.~~

~~(ii) Juveniles are protected from hazardous materials, such as flammable liquids and poisonous materials.~~

~~(iii) All weapons and firearms are prohibited, except as provided for in OAC 377:10-7-3(c)(14).~~

~~(iv) The premises are free of illegal drugs and paraphernalia.~~

~~(v) Smoking is prohibited inside the home and when transporting juveniles.~~

~~(vi) Stairways over four steps, inside and outside, have railings.~~

~~(vii) Any play activity that involves water is supervised constantly. Ponds or pools are not left accessible to juveniles.~~

~~(C) **Fire safety requirements.**~~

~~(i) A fire extinguisher rated for Class ABC fires is installed in the kitchen area.~~

~~(ii) The foster home is equipped with adequate operable smoke detectors in the vicinity of the sleeping areas.~~

~~(iii) Each floor used as living space has at least two means of escape, at least one of which is a door leading to an unobstructed path to the outside. The second means of escape may be an unobstructed, operable window with 20" X 24" minimum dimensions.~~

~~(iv) All heating and air conditioning equipment is installed in accordance with state and local mechanical codes and manufacturer's instructions.~~

~~(D) **Health requirements.**~~

~~(i) Water supply, sewage disposal, and solid waste disposal meet local city ordinances and Oklahoma Department of Environmental Quality regulations.~~

~~(ii) Rooms used by juveniles are well lighted and ventilated.~~

~~(iii) Windows and doors used for ventilation are screened.~~

~~(iv) The foster parents take measures to keep the house and grounds free of rodents, insects, and stray animals.~~

~~(v) At least one operable sink, one operable toilet, and one operable tub or shower are available in the home.~~

~~(vi) Each juvenile is provided with individual combs, toothbrushes, wash cloths, towels, and eating and drinking utensils.~~

~~(vii) Linens are changed when needed.~~

~~(viii) Animals or household pets are permitted provided there is proof of annual rabies vaccinations for each animal. Pets or animals in the foster home, indoors or outdoors, are in good health, show no evidence of carrying disease, are friendly toward juveniles, and present no threat to the health, safety, and well being of juveniles.~~

~~(ix) OJA requires the foster family to comply with the Oklahoma State Department of Health recommendations regarding tuberculin skin testing when there is a local identified tuberculin exposure.~~

~~(E) **Sleeping arrangements.** A separate bed is provided for each child or juvenile.~~

~~(i) No more than two children or juveniles may share a sleeping room, except as approved by OJA.~~

~~(ii) Separate sleeping rooms are provided for children older than four years who are of different sex.~~

~~(iii) Juveniles in foster care do not share a sleeping surface with adults in the household.~~

~~(F) **Emergency plans.** The foster home complies with the requirements pertaining to emergency plans contained in this subsection.~~

~~(i) The foster home has a planned source of medical care available, such as a hospital emergency room, clinic, or health professional known to the foster family.~~

~~(ii) The home has a telephone with emergency numbers posted nearby for the health professional or clinic, fire department, police department, ambulance service, and substitute caregiver.~~

~~(iii) The foster parent has an emergency evacuation plan in the event of fires, tornadoes, floods, and other emergencies.~~

~~(iv) First aid procedures and supplies are readily available.~~

~~(v) The foster parent ensures that each child and juvenile, as appropriate to age and developmental level, knows how to evacuate from the home in the event of a fire. The foster parent conducts periodic evacuation drills.~~

~~(G) **Transportation.** Juveniles in foster care are transported in compliance with applicable state law, 47 O.S., § 11-1112. The transporting vehicle shall be covered by liability insurance as required by Oklahoma laws. The foster family has emergency transportation available.~~

~~(i) **Driver qualifications.** Drivers transporting juveniles in foster care have an operator's license of the type appropriate for the vehicle that is valid in the driver's state of residence.~~

~~(ii) **Passenger restraints.** Juveniles who are transported are properly secured in an individual seat belt.~~

~~(H) **Nutrition.** Each juvenile is provided a balanced, nutritious, and developmentally appropriate~~

~~diet. The food is wholesome in quality, ample in quantity, and of sufficient variety.~~

~~(I) **Informal care arrangement requirements.** The foster parent may make informal care arrangements with friends, neighbors, or relatives for occasional care of the juvenile, including before and after school hours, and not to exceed 24 consecutive hours.~~

~~(i) The foster parent shall:~~

~~(I) ensure that informal care providers possess the maturity and skill to address the needs of the juvenile in foster care;~~

~~(II) secure prior authorization for informal care from OJA. Prior authorization may apply to multiple events when the same informal provider is used;~~

~~(III) not utilize a juvenile in foster care to babysit a younger child unless approved by OJA; and~~

~~(IV) provide the informal provider information for contacting the foster parent and other emergency contacts.~~

~~(ii) The informal provider must be at least 18 years of age.~~

~~(J) **Alternate care arrangement requirements.** The foster family is encouraged to develop a relationship with another family as an alternate provider who can provide care for the juvenile in foster care in case of family emergencies, family vacations, or when the provider needs respite care. The agency must approve the alternate care and have documentation that the alternate provider:~~

~~(i) is at least 21 years of age;~~

~~(ii) has obtained a criminal history records search within the last 12 months conducted by:~~

~~(I) the Oklahoma State Bureau of Investigation (OSBI) which shall include a search of Department of Corrections files maintained by the OSBI pursuant to the Sex Offenders Registration Act for each household member who is 18 years of age or older; and~~

~~(II) the authorized agency in the previous state of residence if the person has resided in Oklahoma less than one year;~~

~~(iii) meets the foster home requirements listed in OAC 377:10-7-3(g);~~

~~(iv) provides one reference; and~~

~~(v) complies with discipline and behavior management requirements in OAC 377:10-7-3(g)(11).~~

~~(K) **Discipline and behavior management requirements.** The objective of discipline and behavior management is to provide a positive learning experience for the juvenile to grow and develop and to learn acceptable standards of social behavior.~~

~~(i) **Expectations of foster parents.** Foster parents shall:~~

~~(I) recognize and encourage appropriate behavior;~~

~~(II) teach by example and use fair and consistent rules with logical consequences;~~

~~(III) use methods of discipline that are relevant to the behavior;~~

~~(IV) supervise with an attitude of understanding, firmness, and discipline;~~

~~(V) give clear directions and provide guidance consistent with the juvenile's level of understanding;~~

~~(VI) redirect the juvenile by stating alternatives when behavior is unacceptable;~~

~~(VII) express themselves so the child understands that the juvenile's feelings are acceptable but certain actions or behavior are not;~~

~~(VIII) help the juvenile learn what conduct is acceptable in various situations;~~

~~(IX) encourage the juvenile to control the juvenile's own behavior, cooperate with others and solve problems by talking things out; and~~

~~(X) communicate with the juvenile by showing an attitude of affection and concern.~~

~~(L) **Discipline and behavior management policy.** OJA complies with the requirements regarding discipline and behavior management contained in this subsection. OJA's discipline policy is maintained in writing and is provided to foster parents, the juvenile and the juvenile's parent or custodian.~~

~~(i) OJA's discipline policy includes:~~

~~(I) the goal and purpose of OJA's discipline and behavior management program;~~

~~(II) approved methods of discipline and behavior management;~~

~~(III) a list of persons authorized to administer discipline and behavior management methods to juveniles in foster care; and~~

~~(IV) the agency's method of monitoring and documenting implementation of the policy; and~~

~~(ii) OJA's discipline policy prohibits punishment:~~

~~(I) of a physical nature, such as shaking, striking, spanking, or physical abuse;~~

~~(II) that constitutes emotional abuse, such as humiliation, name calling, cursing, or degrading remarks regarding the juvenile or the juvenile's family;~~

~~(III) administered by one juvenile to another juvenile;~~

~~(IV) that denies meals, sleep, or mail; and~~

~~(V) that places a juvenile in a locked room.~~

~~(8) **Juvenile's case record.** Records maintained by OJA for juveniles in placement include, but are not limited to:~~

~~(A) an intake form that includes the juvenile's full name, nickname(s), if any, date of birth, race, gender,~~

~~place of birth, religion, and names, addresses and telephone numbers of parents and other significant relatives;~~

~~(B) history of previous placements and dates;~~

~~(C) reason for the present placement;~~

~~(D) a description of the circumstances that led to the juvenile's present placement;~~

~~(E) a description of the juvenile's relationship with other significant adults and children;~~

~~(F) admission assessment that includes the juvenile's current level of functioning and medical history, including:~~

~~(i) medications the juvenile is currently taking;~~

~~(ii) immunizations;~~

~~(iii) allergies; and~~

~~(iv) childhood diseases;~~

~~(G) current court order(s) documenting legal custody of the juvenile and other applicable court orders;~~

~~(H) certified birth verification;~~

~~(I) juvenile's medical information, including:~~

~~(i) juvenile's medical authorization number, if applicable;~~

~~(ii) medical examination completed no more than 60 days prior to placement or scheduled within 10 days after placement;~~

~~(iii) written authorization to provide medical care;~~

~~(iv) disabilities;~~

~~(v) psychosocial information;~~

~~(vi) name of the juvenile's last doctor, if known; and~~

~~(vii) documentation of medical services;~~

~~(J) history of the juvenile's family of origin;~~

~~(K) information regarding the physical health of the juvenile's family, including father, mother, and grandparents;~~

~~(L) information regarding the emotional stability of family members;~~

~~(M) reports from schools, specialists, and other agencies;~~

~~(N) documentation that the juvenile's rights have been explained to the juvenile;~~

~~(O) documentation that the grievance policy has been explained to the juvenile;~~

~~(P) a service plan per OAC 340:110-5-3 completed within 30 days of placement and signed and dated by the juvenile, staff, foster parents, and parent or guardian;~~

~~(Q) revision of the service plan every six months;~~

~~(R) case notes that have been signed and dated;~~

~~(S) a discharge plan that includes anticipated length of placement and future placement;~~

~~(T) a discharge summary that includes an assessment of the juvenile's progress in placement, the juvenile's continuing needs and plans, and recommendations for follow-up services, if any; and~~

~~(U) documentation of inability to obtain any of the information contained in this Section and efforts to obtain it.~~

~~(9) **Foster home record.** OJA shall maintain a current record on each foster home. Entries, dated in chronological order and identifying the staff member who recorded the information, include:~~

~~(A) certification form and documents verifying certification, per OAC 377:10-7-3(b);~~

~~(B) a complete report of the home study with evaluation and recommendations as required;~~

~~(C) records of all juveniles placed in the home with dates, names, ages, and rates of payment for services, if applicable;~~

~~(D) records of all juveniles removed from the home with dates, names, ages, and reasons for removal;~~

~~(E) financial agreements, if applicable;~~

~~(F) signed and dated case notes, visits or contacts, and conferences;~~

~~(G) a copy of the placement worksheet on each juvenile;~~

~~(H) correspondence;~~

~~(I) records of the home study, updated annually, per OAC 377:10-7-3(d);~~

~~(J) documentation of training; and~~

~~(K) written agreements and contracts between the agency and the foster parents.~~

~~(10) **Juvenile's rights.** OJA requires that the juvenile in foster care is:~~

~~(A) not forced to participate in publicity or promotional activities;~~

~~(B) not publicly identified as in the custody of OJA;~~

~~(C) provided an opportunity to participate in religious services;~~

~~(D) supplied with facilities and supplies for personal care, hygiene, and grooming;~~

~~(E) supplied with his or her own clothing and shoes appropriate to the season, age, activities, and individual needs and comparable to that of other juveniles in the community;~~

~~(F) provided individual space in the foster home for the juvenile's personal possessions and a reasonable degree of privacy.~~

~~(i) The juvenile has the right to bring, possess, and acquire personal belongings subject only to reasonable household rules and the Individual Treatment and Service Plan (ITSP).~~

~~(ii) Personal belongings are sent with the juvenile when the juvenile leaves the home;~~

~~(G) expected to perform only household tasks that are within the child's abilities, reasonable for the child's age, and similar to those expected of other household members of comparable age and ability;~~

~~(H) given guidance in managing money.~~

~~(i) Money earned by the juvenile or received as a gift or allowance is the juvenile's personal property.~~

~~(ii) The juvenile is not required to use earned money to pay for room and board, unless it is a part of the ITSP and approved by the parent or custodian and the agency;~~

~~(I) allowed privacy in writing, sending, or receiving correspondence, unless restricted by the ITSP;~~

~~(J) not denied meals as punishment;~~

~~(K) not subjected to remarks that belittle or ridicule the juvenile or the juvenile's family;~~

~~(L) allowed to visit with the juvenile's family, in accordance with the service plan;~~

~~(M) not forced to acknowledge dependency on OJA or foster home or gratitude to them;~~

~~(N) given the opportunity, at the juvenile's or OJA's request, for private conversation with OJA's staff members who are responsible for the juvenile's supervision; and~~

~~(O) provided educational opportunities in accordance with the juvenile's plan of care.~~

The Office of Juvenile Affairs, as the licensing authority, shall issue a certificate of licensure for each foster home approved for placement of OJA custody juveniles. A copy of the license is maintained in the foster home file. Certification of the foster home applies only to the location of the residence at the time the home study is made. If the family moves, OJA shall certify the new location. Certification of the foster home includes, but is not limited to, written documentation of:

(1) an application for foster home certification that includes prior child care experience with other agencies;

(2) a current and complete foster home study before the home is approved;

(3) criminal history records search conducted for each household member over the age of 18; and

(4) an annual foster home study update.

377:10-7-3.1. Foster home study

(a) **Written home study.** OJA shall prepare a written home study before approving the foster home and prior to placement of a juvenile that contains, at a minimum, information regarding:

(b) **Interviews and home visits.** Interviews and home visits include documentation of at least one of the following:

(1) separate face-to-face interview with each parent, school-age child, and any other household member;

(2) joint face-to-face interview; and

(3) home visit;

(c) **Household composition.** Information regarding household composition includes each person residing in the home;

(d) **Foster juvenile profile.** The foster home study includes the applicant's preference for age, gender, and special needs of the juvenile;

(e) **Motivation, attitudes, and expectations.** The foster home study includes motivation and attitudes toward foster care and expectations regarding juveniles in foster care;

(f) **Health.** Health information for each household member includes:

(1) present physical health;

(2) emotional stability;

(3) medical history, including records of immunizations; and

(4) any history of drug or alcohol use;

(g) **Family functioning.** The foster home study includes information regarding the assessment of family dynamics, functions and interactions with each member of the family;

(h) **Foster parents' marital status.** The foster home study includes information regarding the marital status of the foster parents, history of previous marriages or significant relationships, date of present marriage, and a description of the marriage or relationship;

(i) **Employment.** The foster home study includes the employment history of family members;

(j) **Financial information.** Financial information in the foster home study includes documentation of annual income;

(k) **Education.** The foster home study includes information regarding the education of family members;

(l) **Religion.** Information regarding religion includes the family's religious preference and practices;

(m) **Description of the home.** The description of the home includes the:

(1) type of dwelling and physical description; and

(2) location of the home and description of the neighborhood;

(n) **Weapons and firearms.** The foster home study includes the location of weapons and firearms, if any, and documentation of a notice to the applicant that weapons and firearms are prohibited unless a full-time duly appointed peace officer, who is certified by the Council on Law Enforcement Education and Training (CLEET) pursuant to the provisions of 70 O.S., § 3311, resides in the home;

(o) **Transportation.** Information regarding transportation includes the family's means of transportation and verification of:

(1) a valid driver's license for each family member who will transport a juvenile in foster care;

(2) license tag;

(3) insurance; and

(4) verification of the existence of the applicant's agreement to transport all juveniles and adults in compliance with applicable state law, per 47 O.S., § 11-1112;

(p) **Family history.** The foster home study includes information regarding family history, including:

(1) names of parents and siblings;

(2) dates and places of birth;

(3) physical health and mental stability;

(4) relationship with family members;

(5) social, cultural, and religious orientation; and

(6) information regarding each applicant's childhood including how each was disciplined;

(q) **Written references.** The foster home study includes three written references from persons who have information relative to the family's ability to provide foster care and includes:

(1) name, address, and telephone number;

(2) when and how the person became acquainted with the applicants;

(3) how often the person has contact with the family;

(4) information regarding family functioning; and

(5) opinions regarding personal qualities and ability to provide care for juveniles in foster care; and

(r) **Recommendation.** The foster home study includes a recommendation of whether to approve the home that:

(1) is signed and dated by the person who conducted the foster home study and the district supervisor; and

(2) if approved, contains the juvenile's profile and number of juveniles for which the home is approved.

377:10-7-3.2. Criminal history records searches and disqualifying crimes

(a) **Background history records search.** OJA shall conduct a records search for every person living in the household who is or becomes 18 years of age or older, which shall include all of the following:

(1) a national criminal history records search based upon submission of fingerprints that shall be conducted by the Oklahoma State Bureau of Investigation (OSBI) and the Federal Bureau of Investigation (FBI) pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes;

(2) a search of the Oklahoma State Courts Network (OSCN) which may include Oklahoma District Court Records (ODCR);

(3) a search of the Department of Human Services (DHS) Child Care Restricted Registry;

(4) a search of the Department of Corrections (DOC) Sex Offender Registry;

(5) a search of the Department of Corrections (DOC) Violent Offender Registry, also known as the Mary Rippy Violent Crime Offenders Registry;

(6) a Motor Vehicle Report obtained from the Department of Public Safety (DPS);

(7) a search of all applicable out-of-state child abuse and neglect registries for the foster parent and any adult household member who has not lived continuously in Oklahoma for the past five (5) years as required by 10A O.S., § 1-7-111;

(A) The prospective foster home is not approved without the results for the foster parent and adult household members of the out-of-state maintained child abuse and neglect registry checks, when a registry is maintained in the applicable state;

(B) When no child abuse and neglect registry is maintained in the applicable state, OJA shall request any information that can be provided;

(8) a criminal history records search conducted by an authorized source, when any adult household member has lived outside the United States within the last five (5) years; and

(9) a request for a background check from Family Advocacy for the active or retired military applicant or adult household member.

(b) **Disqualifying crimes.** A prospective foster parent is not an approved placement for a juvenile if the prospective foster parent or any other person residing within the home has been convicted of any of the following felony offenses:

(1) any physical assault, battery, or a drug-related offense within a five-year period preceding theapplication date;

(2) child abuse or neglect;

(3) domestic abuse;

(4) a crime against a child, including, but not limited to, child pornography; or

(5) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding those crimes specified in paragraph (1) if such crime occurred outside of the five year period.

(c) **Placement restriction.** OJA shall not place a juvenile with an individual subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act.

(d) **JOLTS record search.** A search of JOLTS shall be conducted by OJA on each minor over the age of thirteen (13) years residing in the home.

(e) **Early placement.** OJA may place a child pending completion of the national criminal history records search if the prospective foster parent and every adult residing in the foster family home has resided in this state for at least five years immediately preceding such placement and a preliminary name-based check of each person over the age of eighteen (18) years residing in the prospective foster family home has been conducted to determine whether any adult member of the household has been arrested for or convicted of any crime.

377:10-7-3.3. Foster home physical requirements

(a) **General requirements.** The foster home shall:

(1) be clean, safe, and in good repair;

(2) have the exterior around the home free from objects, materials, and conditions that constitute a danger to the juveniles served;

(3) have access to, or be able to provide transportation to, school, church, recreational and health facilities, and other community resources, as needed; and

(4) be in compliance with all applicable fire, health, and safety laws, ordinances, and regulations.

(b) **Safety requirements.**

(1) Clear glass doors are plainly marked to avoid accidental impact.

(2) All weapons and firearms are prohibited, except as provided in 70 O.S., § 3311.

(3) All controlled, prescribed, and alcoholic substances shall be secured in a locked cabinet.

(4) All dangerous, flammable, and poisonous substances shall be secured in a locked cabinet.

(5) Smoking is prohibited inside the home and when transporting juveniles.

(6) Stairways over four steps, inside and outside, have railings.

(c) **Fire safety requirements.**

(1) A fire extinguisher rated for Class ABC fires is installed in the kitchen area.

(2) The foster home is equipped with at least one operable smoke detector in the vicinity of the sleeping areas, or as required by OJA.

(3) Each floor used as living space has at least two means of escape, at least one of which is a door leading to an unobstructed path to the outside. The second means of escape may be an unobstructed, operable window with minimum dimensions of 20" X 24".

(4) All heating and air conditioning equipment is installed in accordance with state and local mechanical codes and manufacturer's instructions.

(d) **Health requirements.**

(1) Water supply, sewage disposal, and solid waste disposal meet local city ordinances and Oklahoma Department of Environmental Quality regulations.

(2) Rooms used by juveniles are well ventilated and well lit.

(3) Windows and doors used for ventilation are screened.

(4) The foster parent shall not expose the juvenile to environmental tobacco smoke, also known as passive or secondhand smoke.

(5) Measures are taken by the foster parents to keep the house and grounds free of rodents, insects, and stray animals.

(6) At least one operable sink, one operable toilet, and one operable tub or shower are available in the home.

(7) Each juvenile is provided with individual combs, toothbrushes, wash cloths, towels, and eating and drinking utensils.

(8) Linens are changed when needed.

(9) Animals or household pets are permitted, provided there is proof of annual rabies vaccinations for each animal. Pets or animals in the foster home, indoors or outdoors, are in good health, show no evidence of carrying disease, are friendly toward juveniles, and present no threat to the health, safety, and well-being of juveniles.

(10) OJA requires the foster family to comply with the Oklahoma State Department of Health recommendations regarding tuberculin skin testing when there is a local identified tuberculin exposure.

(e) **Sleeping arrangements.** A separate bed is provided for each child or juvenile.

(1) No more than two children or juveniles may share a sleeping room, except as approved by OJA.

(2) Separate sleeping rooms are provided for children older than four years who are of a different sex.

(3) Juveniles in foster care do not share a sleeping surface with adults in the household.

(f) **Emergency plans.** The foster home complies with the requirements pertaining to emergency plans contained in this subsection.

(1) The foster home has a planned source of medical care available, such as a hospital emergency room, clinic, or health professional known to the foster family.

(2) The home has a telephone, and emergency numbers are posted for the health professional or clinic, fire department, police department, ambulance service, and substitute caregiver.

(3) The foster parent has an emergency evacuation plan in the event of fires, tornadoes, floods, and other emergencies.

(4) First aid procedures and supplies are readily available.

(5) The foster parent ensures that each child and juvenile, as appropriate to age and developmental level, knows how to evacuate from the home in the event of a fire. The foster parent conducts periodic evacuation drills.

377:10-7-3.4. General foster parent qualifications

(a) **Age.** Foster parents shall be at least 21 years of age.

(b) **Income and employment.** Foster parents shall have sufficient income to meet their needs and ensure the security and stability of the household independent of foster care maintenance payments, if applicable.

(1) Foster parents who both work outside the home shall obtain approval from OJA for their plan of care for the juveniles during their absence.

(2) Foster parents shall obtain approval from OJA to conduct a business in the home and demonstrate that the activities related to this business will not interfere with the care of the juveniles.

(3) The foster home shall not operate a child care business in the foster home.

(c) **Number of children.** The foster home complies with requirements regarding placement of juveniles in the foster family home.

(1) No more than five foster juveniles are placed in the home.

(2) The number, ages, and needs of foster juveniles placed in the home are in keeping with the capacity and skills of the foster parents and accommodations of the home.

(3) The total number of juveniles in the home, including the foster parents' biological children, adopted children, and foster children, cannot exceed six. Local city ordinances should be researched by the foster parents to determine if other restrictions apply.

(d) **Foster Parent Training.** OJA shall provide and document that each foster parent has received at a minimum:

(1) six hours of orientation or pre-service training prior to approval of the foster home or placement of a juvenile which includes at a minimum:

(A) OJA policy;

(B) program philosophy;

(C) confidentiality;

(D) mandatory reporting of child abuse;

(E) grievance process;

(F) emergency medical procedures; and

(G) fire and disaster plans;

(2) six additional hours of training within the first calendar year of certification that is relevant to the needs of

the juvenile placed in the foster home including, but not limited to:

(A) normal child development;

(B) behavior management;

(C) separation and loss; and

(D) infection control and injury prevention; and

(3) twelve hours of training each calendar year thereafter that is relevant to foster parents' roles and responsibilities and may include workshops and video presentations.

377:10-7-3.5. Foster parent responsibility

(a) **General.** Foster parents shall provide OJA any information related to compliance with all requirements and allow OJA access to any member of the household and entry into all rooms within the home. Foster parents:

(1) are responsible, mature, healthy adults capable of meeting the needs of the juveniles in foster care;

(2) demonstrate a capacity for setting realistic expectations for behavior that is based on the ages, abilities, and special needs of the juveniles;

(3) may be married couples, single persons, or family members with a stable living arrangement; and

(4) ensure that all members of the household are informed of and agree to accept the juvenile into the home.

(b) **Notifications.** Foster parents shall comply with the requirements pertaining to notifications. Foster parents shall notify OJA:

(1) in writing, prior to allowing any person to take up residence for more than two weeks in the foster home;

(2) immediately of the occurrence of:

(A) the death of the juvenile;

(B) a serious injury or illness involving medical treatment of the juvenile;

(C) unauthorized absence of the juvenile from the home as defined by OJA policy;

(D) removal of the juvenile from the home by any person or agency other than OJA, or attempts at such removal;

(E) loss of income that affects the family's ability to meet the needs of the juveniles in foster care;

(F) any involvement of the juvenile with legal authorities;

(G) any fire or other emergency requiring evacuation of the home;

(H) lack of heat, water, or electricity; and

(I) removal of the juvenile from the county for an overnight stay; and

(3) as soon as possible of:

(A) any serious illness or death in the household;

(B) the departure or return of any member of the household;

(C) a move to another residence;

(D) any other circumstance or incident seriously affecting the juvenile or care of the juvenile; and

(E) any allegations of child abuse.

(c) **Cooperation.** Foster parents shall work cooperatively with OJA representatives as members of the treatment team responsible for planning, providing, and discussing the total care and services provided to each juvenile. Foster parents shall:

(1) fully disclose all information related to a juvenile's problems or progress to OJA;

(2) treat any personal information about a juvenile or the juvenile's family in a confidential manner;

(3) participate in an annual review with OJA to mutually evaluate the strengths and weaknesses of the foster home, as well as OJA's relationship with the foster parents; and

(4) agree to not accept a non-relative juvenile from any source without the approval from OJA.

(d) **Medical services.** OJA requires that the juvenile in foster care receive appropriate medical services.

(e) **Nutrition.** Each juvenile is provided a balanced, nutritious, and developmentally appropriate diet. The food is wholesome in quality, ample in quantity, and of sufficient variety.

(f) **Transportation.** Juveniles in foster care are transported in compliance with applicable state law, 47 O.S., § 11-1112. The transporting vehicle shall be covered by liability insurance as required by Oklahoma laws. The foster family has emergency transportation available.

(1) **Driver qualifications.** Drivers transporting juveniles in foster care have an operator's license that is valid in the driver's state of residence and is of the type appropriate for the vehicle.

(2) **Passenger restraints.** Juveniles who are transported are properly secured in an individual seat belt.

(g) **Financial disclosure.** The foster parent shall immediately make available to OJA the cost of the juvenile's care, all income, other than part-time employment income earned by the juvenile, and resources (including, but not limited to Social Security or SSI or other federal or state benefits, inheritance, trust funds, insurance benefits, Indian trusts, or other monies to which the juvenile may be entitled) that are received by the foster parent(s) on behalf of the juvenile.

377:10-7-3.6. OJA responsibility

(a) **Policy.** OJA shall provide foster parents with OJA policy relative to foster care.

(b) **Case planning.** OJA is responsible for case planning.

(c) **Supervision.**

(1) OJA shall provide supervision at least once a month to each juvenile in foster care, including private visits with the juvenile in foster care and on-site visits to the home, to assess the continued suitability of the foster home environment;

(2) OJA may remove the juvenile at its discretion or provide consent for discharge of the juvenile from foster care when appropriate; and

(3) OJA may approve visitation by parents or relatives when appropriate.

(d) **Annual home study updates.** OJA shall update the foster home study annually to include:

(1) documentation of a home visit;

(2) documentation of a face-to-face interview with each parent, school-age child, and any other household member;
(3) current vehicle insurance verification; and
(4) reports of any significant changes from the initial home study.

377:10-7-3.7. Foster home contract

(a) **Contract.** OJA shall have a written contract with the foster care placement provider and provide the foster parents a copy of the contract. At a minimum, the contract shall include the following provisions:
(1) OJA shall have access at all times to the juvenile and to the foster placement;
(2) a listing of any specific requirements, duties, or restrictions in providing foster care services;
(3) that any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child's attorney;
(4) any foster care placement provider shall comply with performance standards required pursuant to 10 O.S., § 401 and any of the rules promulgated by the Board of Juvenile Affairs;
(5) information regarding the amount of payment to be made for foster care services, including but not limited to a description of the process involved in receiving payment, including projected time frames, information related to reimbursements for eligible costs and expenses for which the foster parent may be reimbursed and any information concerning the accessibility and availability of funds for foster parents;
(6) OJA may remove a juvenile in OJA custody from a foster placement whenever the agency determines that removal is in the best interests of the juvenile or consistent with the state's interest in the protection of the public; and
(7) such other contract provisions required by OJA.

377:10-7-3.8. Informal and alternate care arrangements.

(a) **Informal care arrangements.** The foster parent may make informal care arrangements with friends, neighbors, or relatives for occasional care of the juvenile, including before and after school hours, and not to exceed 24 consecutive hours.
(1) The foster parent shall:
(A) ensure that informal care providers possess the maturity and skill to address the needs of the juvenile in foster care;
(B) secure prior authorization for informal care from OJA. Prior authorization may apply to multiple events when the same informal provider is used;
(C) not utilize a juvenile in foster care to babysit a younger child unless approved by OJA; and
(D) provide the informal provider information for contacting the foster parent and other emergency contacts.
(2) The informal provider must be at least 18 years of age.

(b) **Alternate care arrangements.** The foster family may develop a relationship with another family as an alternate provider who can provide care for the juvenile in foster care in excess of 24 hours, in case of family emergencies, family vacations, or when the provider needs respite care. OJA must approve the alternate care and have documentation that the alternate provider is at least 21 years of age, provides one reference, meets the foster home requirements listed in OAC 377:10-7-3.3, and complies with discipline and behavior management requirements in OAC 377:10-7-3.9.
(1) OJA shall conduct a records search for every person living in the household who is or becomes 18 years of age or older, which shall be assessed yearly, and shall include all of the following:
(A) a national criminal history records search based upon submission of fingerprints that shall be conducted by the Oklahoma State Bureau of Investigation (OSBI) and the Federal Bureau of Investigation (FBI) pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes;
(B) a search of the Oklahoma State Courts Network (OSCN) which may include Oklahoma District Court Records (ODCR);
(C) a search of the Department of Human Services (DHS) Child Care Restricted Registry;
(D) a search of the Department of Corrections (DOC) Sex Offender Registry;
(E) a search of the Department of Corrections (DOC) Violent Offender Registry, also known as the Mary Rippy Violent Crime Offenders Registry;
(F) a Motor Vehicle Report obtained from the Department of Public Safety (DPS);
(G) a search of all applicable out-of-state child abuse and neglect registries for the applicant and any adult household member who has not lived continuously in Oklahoma for the past five (5) years as required by 10A O.S., Section 1-7-111;
(i) the prospective foster home is not approved without the results for the applicant and adult household members of the out-of-state maintained child abuse and neglect registry checks, when a registry is maintained in the applicable state;
(ii) When no child abuse and neglect registry is maintained in the applicable state, OJA shall request any information that can be provided;
(H) a criminal history records search conducted by an authorized source, when any adult household member has lived outside the United States within the last five (5) years; and
(I) a request for a background check from Family Advocacy for the active or retired military applicant or adult household member.
(2) A search of JOLTS shall be conducted by OJA on each minor over the age of thirteen (13) years residing in the home.

377:10-7-3.9. Discipline and behavior management requirements

(a) **Objectives.** The objectives of discipline and behavior management are to provide a positive learning experience for the juvenile to grow and develop and to learn acceptable standards of social behavior.

(b) **Expectations of foster parents.** Foster parents shall:

(1) recognize and encourage appropriate behavior;

(2) teach by example and use fair and consistent rules with logical consequences;

(3) use methods of discipline that are relevant to the behavior;

(4) supervise with an attitude of understanding, firmness, and discipline;

(5) give clear directions and provide guidance consistent with the juvenile's level of understanding;

(6) redirect the juvenile by stating alternatives when behavior is unacceptable;

(7) express themselves so the juvenile understands that the juvenile's feelings are acceptable but certain actions or behavior are not;

(8) help the juvenile learn what conduct is acceptable in various situations;

(9) encourage the juvenile to control the juvenile's own behavior, cooperate with others and solve problems by talking things out; and

(10) communicate with the juvenile by showing an attitude of affection and concern.

(c) **Discipline and behavior management policy.** OJA complies with the requirements regarding discipline and behavior management contained in this subsection. OJA's discipline policy is maintained in writing and is provided to foster parents, the juvenile, and the juvenile's parent or custodian.

(1) OJA's discipline policy includes:

(A) the goal and purpose of OJA's discipline and behavior management program;

(B) approved methods of discipline and behavior management;

(C) a list of persons authorized to administer discipline and behavior management methods to juveniles in foster care; and

(D) OJA's method of monitoring and documenting implementation of the policy; and

(2) OJA's discipline policy prohibits punishment:

(A) of a physical nature, such as shaking, striking, spanking, or physical abuse;

(B) that constitutes emotional abuse, such as humiliation, name-calling, cursing, or degrading remarks regarding the juvenile or the juvenile's family;

(C) administered by one juvenile to another juvenile;

(D) that denies meals, sleep, or mail;

(E) that places a juvenile in a locked room; and

(F) any disciplinary action prohibited in OAC 377:10-1-3(d).

377:10-7-3.10. Applicable records

(a) **Juvenile's case record.** Records maintained by OJA for juveniles in placement include, but are not limited to:

(1) an intake form that includes the juvenile's full name, nickname(s), if any, date of birth, race, gender, place of birth, religion, and names, addresses and telephone numbers of parents and other significant relatives;

(2) history of previous placements and dates;

(3) reason for the present placement;

(4) a description of the circumstances that led to the juvenile's present placement;

(5) a description of the juvenile's relationship with other significant adults and children;

(6) admission assessment that includes the juvenile's current level of functioning and medical history, including:

(A) medications the juvenile is currently taking;

(B) immunizations;

(C) allergies; and

(D) childhood diseases;

(7) current court order(s) documenting legal custody of the juvenile and other applicable court orders;

(8) certified birth verification;

(9) juvenile's medical information, including:

(A) juvenile's medical authorization number, if applicable;

(B) medical examination completed no more than 60 days prior to placement or scheduled within 10 days after placement;

(C) written authorization to provide medical care;

(D) disabilities;

(E) psychosocial information;

(F) name of the juvenile's last doctor, if known; and

(G) documentation of medical services;

(10) history of the juvenile's family of origin;

(11) information regarding the physical health of the juvenile's family, including father, mother, and grandparents;

(12) information regarding the emotional stability of family members;

(13) reports from schools, specialists, and other agencies;

(14) documentation that the juvenile's rights have been explained to the juvenile;

(15) documentation that the grievance policy has been explained to the juvenile;

(16) a service plan per OAC 377:25-9-2 completed within 30 days of placement and signed and dated by the juvenile, staff, foster parents, and parent or guardian;

(17) revision of the service plan every six months;

(18) case notes that have been signed and dated;

(19) a discharge plan that includes anticipated length of placement and future placement;

(20) a discharge summary that includes an assessment of the juvenile's progress in placement, the juvenile's continuing needs and plans, and recommendations for follow-up services, if any; and

(21) documentation of inability to obtain any of the information contained in this subsection and efforts to obtain it.

(b) **Foster home record.** OJA shall maintain a current record on each foster home. Entries, dated in chronological order and identifying the staff member who recorded the information, include:

(1) certification form and documents verifying certification, per OAC 377:10-7-3;

(2) a complete report of the home study with evaluation and recommendations as required;

(3) records of all juveniles placed in the home with dates, names, ages, and rates of payment for services, if applicable;

(4) records of all juveniles removed from the home with dates, names, ages, and reasons for removal;

(5) financial agreements, if applicable;

(6) signed and dated case notes, visits or contacts, and conferences;

(7) a copy of the placement worksheet on each juvenile;

(8) correspondence;

(9) records of the home study, updated annually, per OAC 377:10-7-3.6(d);

(10) documentation of training; and

(11) written agreements and contracts between the agency and the foster parents.

377:10-7-3.11. Applicable rights

(a) **Juvenile's rights.** OJA requires that the juvenile in foster care is:

(1) not forced to participate in publicity or promotional activities;

(2) not publicly identified as in the custody of OJA;

(3) provided an opportunity to participate in religious services;

(4) supplied with facilities and supplies for personal care, hygiene, and grooming;

(5) supplied with his or her own clothing and shoes appropriate to the season, age, activities, and individual needs and comparable to that of other juveniles in the community;

(6) provided individual space in the foster home for the juvenile's personal possessions and a reasonable degree of privacy.

(A) The juvenile has the right to bring, possess, and acquire personal belongings subject only to reasonable household rules and the Individual Treatment and Service Plan (ITSP).

(B) Personal belongings are sent with the juvenile when the juvenile leaves the home;

(7) expected to perform only household tasks that are within the juvenile's abilities, reasonable for the juvenile's age, and similar to those expected of other household members of comparable age and ability;

(8) given guidance in managing money.

(A) Money earned by the juvenile or received as a gift or allowance is the juvenile's personal property.

(B) The juvenile is not required to use earned money to pay for room and board, unless it is a part of the ITSP and approved by the parent or custodian and OJA;

(9) allowed privacy in writing, sending, or receiving correspondence, unless restricted by the ITSP;

(10) not denied meals as punishment;

(11) not subjected to remarks that belittle or ridicule the juvenile or the juvenile's family;

(12) allowed to visit with the juvenile's family, in accordance with the service plan;

(13) not forced to acknowledge dependency on OJA or foster home or gratitude to them;

(14) given the opportunity, at the juvenile's or OJA's request, for private conversation with OJA's staff members who are responsible for the juvenile's supervision;

(15) given the opportunity to file a grievance, pursuant to 377:3-1-27 through 377:3-1-30; and

(16) provided educational opportunities in accordance with the juvenile's ITSP.

(b) **Foster parent's rights.** Foster parent's rights shall include, but not be limited to, the right to:

(1) be treated with dignity, respect, and consideration as a professional member of the treatment team;

(2) be notified of and given appropriate, ongoing and continuing education and training to develop and enhance foster parenting skills;

(3) be informed about ways to contact OJA or the child-placing agency in order to receive information and assistance to access supportive services for any juvenile in the foster parent's care;

(4) receive timely financial reimbursement for providing foster care services;

(5) be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;

(6) be provided a clear, written explanation of the ITSP concerning the juvenile in the foster parent's home;

(7) receive, at any time during which a juvenile is placed with a foster parent, additional or necessary information that is relevant to the care of the juvenile;

(8) be notified of scheduled review meetings, permanency planning meetings, and special staffing concerning the juvenile in order to actively participate in the case planning and decision-making process regarding the juvenile;

(9) provide input concerning the plan of services for the juvenile and to have that input be given full consideration in the same manner as information presented by any other professional on the treatment team;

(10) communicate with other foster parents in order to share information regarding the juvenile; specifically, information concerning the number of times a juvenile has been moved, the reasons for the movement, and the names and telephone numbers of the previous foster parents, if such information is authorized for release;

(11) communicate with other professionals who work with the juvenile within the context of the treatment team including, but not limited to, therapists, physicians, and teachers;

(12) be given, in a timely and consistent manner, any information regarding the juvenile and the juvenile's family which is pertinent to the care and needs of the juvenile and to the permanency plan for the juvenile. Disclosure of information shall be limited to that information which is authorized by the provisions of 10A O.S., § 2-6-101 et seq;

(13) be given reasonable notice of any change in or addition to the services provided to the juvenile pursuant to the juvenile's ITSP;

(14) except in emergency cases, be given written notice of plans to terminate the placement of the juvenile with the foster parents and the reasons for the changes or termination in placements;

(15) be notified by OJA in a timely and complete manner of all court hearings, including notice of the date and time of any court hearing, the name of the judge or hearing officer, location of the hearing, and court docket number of the case;

(16) be informed of decisions made by the court, OJA, or the child-placing agency concerning the juvenile;

(17) be considered a preferred placement option when a juvenile who was formerly placed with a foster parent is to re-enter foster care at the same level and type of care, if that placement is consistent with the best interests of the juvenile and other children in the home of the foster parent and the protection of the public;

(18) be provided a fair, timely, and impartial investigation of complaints concerning the certification of the foster parent;

(19) be provided the opportunity to request and receive a fair and impartial hearing regarding decisions that affect certification retention or placement of children in the home;

(20) be allowed to exercise parental substitute authority;

(21) have timely access to the appeals process of OJA and the child placing agency and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal;

(22) be provided the number of the statewide toll-free Foster Parent Hotline;

(23) file a grievance and be informed of the process for filing a grievance;

(c) OJA and a child-placing agency under contract with OJA shall be responsible for implementing this subsection on foster parents' rights.

(d) Nothing in this subsection shall be construed to create a private right of action or claim on the part of any individual, OJA, or any child-placing agency, pursuant to 10A O.S., § 1-9-119(C).

377:10-7-3.12. Foster parent grievance procedure

OJA's grievance policy and procedures for foster parents are as follows:

(1) Grievances shall be in writing and submitted to the Juvenile Services Unit District Supervisor of the district where the foster home is located. The JSU District Supervisor shall meet with the foster parent within five (5) days of the submission of the grievance to the district office. Within two (2) days of the initial meeting, a proposed resolution will be established and presented to the foster parent, unless the resolution was finalized at the initial meeting. If additional time is needed to satisfy a grievance, these time frames may be extended by agreement.

(2) If there is not an established agreed upon resolution within five (5) days of the initial meeting or applicable extensions, the foster parents may appeal to the JSU Division Director. Such appeal shall be filed within two (2) days. The JSU Division Director shall make a decision that resolves the appeal within three (3) days, and the decision shall be final.

(3) All resolved and unresolved grievances shall be reviewed by the JSU Division Director. Grievances shall be annually reported to the Board of Juvenile Affairs.

377:10-7-4. Therapeutic foster care

(a) The Office of Juvenile Affairs may contract for the provision of therapeutic foster care services to OJA-custody juveniles who are between the ages of 10 and 18 years of age with documented mental health problems. A therapeutic foster home is a foster family home, which provides specific services to eliminate social and behavioral problems of a juvenile placed in the home.

(b) Juveniles who are not appropriate for therapeutic foster care are those with serious and repeated delinquent behaviors who appear to need intensive residential or group care treatment programs which provide 24-hour awake supervision and/or juveniles who are so severely emotionally disturbed that they require hospitalization or intensive residential or group care treatment programs which provide 24-hour awake supervision.

(c) The number of children placed in one therapeutic foster home shall not exceed two unless written authorization is granted by OJA. The placement of a third resident shall only occur in special circumstances such as keeping sibling groups together or when a third resident is temporarily placed due to an existing resident approaching discharge from the program.

(d) Prior to the placement of children in therapeutic foster care homes, all foster parents must satisfactorily complete thirty-five pre-service hours, not including the six hours of orientation, of primarily skill-based training consistent with OJA's treatment methodology and the service needs of emotionally disturbed and behaviorally disordered children. All therapeutic foster parents must satisfactorily complete a minimum of eighteen hours of in-service training per year to maintain certification, whether or not a resident is placed in the home. First Aid and CPR training may count for up to 8 hours of in-service training within the first year of certification. After the first year, First Aid and CPR recertification training may count as no more than 4 hours of the required 18 hours of in-service training annually. In-service training may include a variety of formats and procedures including in-home training provided by OJA staff.

(e) Rules regarding eligible providers, admission requirements, description of required services, and the Title XIX payment rate are found in Title 317, the Oklahoma Health Care

Authority [317:30-5-740, 317:30-5-741(5)(D), 317:30-5-742, 317:30-5-473, and 317:30-5-475]. In addition to the requirements of the Oklahoma Health Care Authority, therapeutic foster homes shall be licensed by DHS, provide services, and meet the licensing requirements for therapeutic foster care as identified in OAC 340:75, the therapeutic foster care contract, and~~, at a minimum,~~ the OJA foster home standards listed in OAC 377:10-7-~~3~~1 through 377:10-7-3.12.

(~~c~~f) ~~In working with therapeutic foster families, OJA shall abide by the provisions of the Oklahoma Foster Care and Out of Home Placement Act.~~OJA, pursuant to 2-7-613(A), shall provide supervision to juveniles in therapeutic foster care.

377:10-7-5. Specialized community home

(a) **General provisions.** A specialized community home (SCH) is a community-based, family-structured home for up to five OJA-custody juveniles. A SCH shall be operated by, and in the home of, a professional, contracted social service provider. The contractor shall provide an intensive, individually-focused, therapeutic intervention program of social services in addition to basic residential care. The contractor shall also provide counseling, educational opportunity, employment opportunity, cultural enrichment, and independent living skills training consistent with each juvenile's treatment plan. The SCH contractor's full-time job shall be to operate the specialized community home and provide services.

(b) **Foster family care standards.** An applicant, to become a specialized community home provider, shall submit a program proposal to the Executive Director or the affected division administrator, and meet the requirements listed in OAC 377:10-7-3. A specialized community home ~~operator~~contractor shall meet, at a minimum, the OJA foster home standards listed in OAC 377:10-7-3.

(c) **Program proposal.** An applicant shall address each of the criteria listed in (1)-(16) of this subsection in the applicant's written program proposals.

(1) **Previous child care experience.** The applicant shall provide a description of the applicant's previous child care experience with the target population described.

(2) **Educational background and abilities of the applicant.** The applicant shall provide information regarding the applicant's formal education, training, and abilities. The applicant shall describe how the education enhances his or her ability to successfully operate this program.

(3) **Adaptability.** The applicant shall describe in writing how he or she may adapt to meet the needs of juveniles referred to the program.

(4) **Behavior management.** The applicant shall describe in writing his or her philosophy of behavior management methods and its applicability to the proposal population.

(5) **Effect on other family members.** The applicant shall provide information on the effect, if any, becoming a specialized community home will have on family members and the plan to minimize any risk potential that may exist.

(6) **Role of the spouse.** The applicant shall describe in writing the role which a spouse, present in the home, will play in the overall operation of the specialized community home.

(7) **Overall plan of service delivery.** The applicant shall provide a written plan of service delivery. The applicant shall answer the following questions:

(A) What types of services will be directly provided and in what manner?; and

(B) What will be accessed from the community?

(8) **Relief/respite care.** The applicant shall provide an outline of the plan for relief/respite care arrangements.

(9) **Community/school system acceptance.** The applicant shall describe the community/school system tolerance level for the type of juveniles proposed for placement.

(10) **Facility.** The applicant shall provide information regarding whether the home is adequate to accommodate four juveniles in addition to the applicant's own family. Upon written approval from the Executive Director or the affected division administrator, a home may be certified for five juveniles in addition to the applicant's own family.

(11) **Recreational resources.** The applicant shall provide a written description of and a plan for using available recreational resources.

(12) **Educational resources.** The applicant shall provide a description of available State Board of Education certified educational resources, including vocational education and special education.

(13) **Independent living.** The applicant shall have a plan to assess and teach independent living skills to juveniles 16 years of age and older.

(14) **Employment resources.** The applicant shall describe plans to teach job skills and access employment resources. The applicant shall identify transportation resources.

(15) **Community resources.** The applicant shall provide information regarding the availability of community resources and the applicant's plan for accessing community resources.

(16) **Transportation.** The applicant shall advise whether he or she can provide transportation for the juveniles.

(d) **OJA staff participation.** OJA staff may not participate in writing program proposals.

(e) **Role expectations of the specialized community home ~~operator~~contractor.** OJA may require specific training for the SCH prior to placing a juvenile in the home. Specialized community home (SCH) contractors shall annually obtain 21 hours of training regarding working with juveniles. All SCH contractors and their spouses shall receive training in an approved system for managing aggressive and non-aggressive acting-out behavior. Contractors shall attend OJA mandatory meetings held twice yearly, as well as any additional required training. Contractors shall receive training hours for attending the required meetings.

(f) **Responsibilities of the specialized community home contractor.** The Office of Juvenile Affairs shall set forth

specific responsibilities of the specialized community home ~~operator~~contractor in the contract between OJA and the contractor. OJA staff shall ensure that contractors meet all contractual requirements.

377:10-7-7. Kinship foster care

(a) Any responsible adult over the age of 18 with whom a juvenile has a kinship relationship may apply to become a kinship foster home for that juvenile.

(b) An OSBI criminal history records search must be completed and a national criminal history records search based on fingerprints initiated before a family is certified as a foster home.

(c) The worker shall complete a foster home study on kinship foster parents. Kinship foster parents must meet the standards set forth in OAC ~~377:10-7-3~~377:10-7-1 through 377:10-7-3.12.

(d) A foster parent providing kinship care shall, if possible, complete the training before the juvenile is placed. If training is not possible before placement, the kinship foster parent must receive the training no later than three months after placement. Training requirements are listed in OAC ~~377:10-7-3~~377:10-7-1 through 377:10-7-3.12.

[OAR Docket #14-830; filed 8-5-14]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 75. ALARM AND LOCKSMITH INDUSTRY RULES

[OAR Docket #14-533]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. License Requirements
380:75-3-2. Application and license fees, period and display, and examination alternatives or prerequisites [AMENDED]
AUTHORITY:
Department of Labor; 59 O.S. § 1800.17, Alarm and Locksmith Industry Act
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013
COMMENT PERIOD:
December 2, 2013 through January 8, 2014
PUBLIC HEARING:
January 8, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The Oklahoma Department of Labor is reducing the initial license fee for company manager, inspector, technician, and salesperson licenses to allow for examination fees to be paid directly to the testing facility. This will promote efficiency in the licensing process by allowing applicants to take an examination before submitting an application to the Department. Since technician trainees are not required to take an exam, the license fee for technician trainees is not reduced. The Commissioner is also granted the authority to allow for the option of electronic submission of the applicant's fingerprints for background checks. The rule also deletes the prorated fee for companies that are issued a license between February 1 and June 30. This provision is no longer necessary because the company licenses are now issued for a full year.
CONTACT PERSON:
Daniel A. Mares, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK, 73105, (405) 521-6186 or Jim Buck, Safety Standards Director, Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK, 73105 (405) 521-6111.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. LICENSE REQUIREMENTS

380:75-3-2. Application and license fees, period and display, and examination alternatives or prerequisites

(a) **Application and license fees.** The following fees apply to alarm and locksmith industry licensure:

(1) Initial application and licensing fees

(A) Company application and license - $250.00~~; license issued after February 1, but before the end of the State fiscal year - $125.00~~. A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee. A company shall submit a list of employees licensed in accordance with the Alarm and Locksmith Industry Act, to the Department, with each application or renewal application for a company license.

(B) Company manager and plan and design - Application ~~$100.00~~$70.00 and Licensing fee $100.00

(C) Inspector, technician, salesperson~~, technician trainee~~ - Application ~~$40.00~~ $14.00 and Licensing fee $35.00

(D) Re-examination, per attempt - $50.00

(E) Technician trainee - Application $40.00 and License fee $35.00

(~~E~~F) Fire Sprinkler Technician Trainee $20.00

(~~F~~G) Duplicate or revised license - $25.00

(2) Renewal fees

(A) Company license - $250.00; A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.

(B) Company manager and plan and design - $100.00

(C) Inspector, technician, salesperson - $35.00

(D) Trainee - $25.00

(E) Fire Sprinkler Technician Trainee $15.00

(b) **License period.**

(1) All individual licenses shall expire annually on the last day of the licensee's birth month. Each such license shall be prorated in accordance with the licensing procedures adopted by the Department. All company licenses shall expire annually on the last day of the month the license was initially issued. A manager may choose to renew the company license in the same month as the manager license. An expired license may be renewed by paying double the renewal fee. Any individual license renewal shall require the licensee to be listed as an employee of a licensed company on the companies' renewal form or in a separate letter from the company which has been signed by the licensed manager of record. If an individual licensee cannot supply to the Department the required employment information, the licensee may request the Department to designate his or her license as inactive. The inactive designation of the license shall remain until the employment information is provided to the Department. The requirement of employment by an employer specifically licensed as a company under this Section shall not apply for individual licensees employed by a general services provider engaged by the Department of Defense for broad, general DOD facility services which would include fire sprinkler, locksmith, alarm, access control, nurse call or locksmith services.

(2) Initial applications for managers, technicians, salespersons, plan and design and trainees shall be submitted to the Department. Each applicant shall comply with the licensing procedures adopted by the Department. This registration shall be contingent on a security background investigation. Each license applicant shall provide either:

(A) An application and a current criminal history record check dated within thirty days of application from the Oklahoma State Bureau of Investigation. If the applicant has resided in any other state within the past ten (10) years, a current criminal history record check from each state of previous residence will be required. In addition, the applicant shall submit two (2) ~~completed fingerprint cards~~classifiable sets of fingerprints. The Commissioner may allow for the option of electronic submission of the applicant's fingerprints under licensing procedures adopted by the Department. The applicant shall be photographed by the Department of Labor or an entity approved by the Department in accordance with the licensing procedures adopted by the Department. (This provides for temporary licensure for trainees only.); or

(B) An application and two (2) ~~completed fingerprint cards~~classifiable sets of fingerprints. The Commissioner may allow for the option of electronic submission of the applicant's fingerprints under licensing procedures adopted by the Department. The applicant shall be photographed by the Department of Labor or an entity approved by the Department in accordance with the licensing procedures adopted by the Department. (This does not provide for temporary licensure.)

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(4) A temporary trainee license will be issued to an individual who has provided the documents required in 380:75-3-2(b)(2)(A). The temporary license will be valid for a period not to exceed (90) ninety days. An individual may be issued a second temporary license for good cause shown as determined by the Department.

(c) **Examination and re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee.

(d) **Company license display.** While actively engaged in any activity regulated by this Chapter, the state issued company license number, or a statement referring to a website or toll free phone number to obtain licensing information shall be placed on all advertising and marketing materials including but not limited to, letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, printed advertisements, electronic media advertisements, decals and yard signs. The license number shall be prominently displayed on any publicly accessible website, either on the home page or on every page advertising a product or service regulated by this Chapter. The state issued license number shall be displayed in numerals of two (2) inches or more in height and shall be located on all vehicles that display the company name while actively engaged in any activity regulated by this Chapter. The license number shall be placed on every side of the vehicle which displays the company name. Display shall be in letters and numerals of two (2) inches or more in height. The required license number and company name shall be displayed in either a temporary or permanent manner on at least one company vehicle at any job site unless exempted by a specific written request of the customer.

(e) **Personal license display.** Each manager, technician, technician trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The individual license shall be presented to any authorized representative of the Department of Labor or other authorities having jurisdiction. In addition the individual shall have a valid, state-issued photo I.D. in their possession while engaged in the licensed activity.

(f) **Personal license information.**

(1) Each individual license holder shall notify the Department of Labor, on a form specified and provided by the Department, within fourteen (14) days of the following:

(A) Any change in the home address.

(B) Any separation from an employer or change in employer.

(C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his/her services as an independent contractor without applying for and being issued a company and manager license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

[OAR Docket #14-533; filed 6-27-14]

TITLE 380. DEPARTMENT OF LABOR CHAPTER 75. ALARM AND LOCKSMITH INDUSTRY RULES

[OAR Docket #14-534]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. License Requirements
380:75-3-3. Burglar alarm license requirements [AMENDED]
AUTHORITY:
Department of Labor; 59 O.S. § 1800.17, Alarm and Locksmith Industry Act
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 5, 2014
PUBLIC HEARING:
February 5, 2014
ADOPTION:
March 26, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendment requires any early termination clause applicable to military personnel in a contract for burglar alarm service, or the lack of such a clause, to be fully disclosed in writing and separately acknowledged by the customer. This will protect our military personnel by ensuring they are aware of early termination clauses that may affect them if they are subsequently transferred by the military.
CONTACT PERSON:
Daniel A. Mares, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK, 73105, (405) 521-6186 or Jim Buck, Safety Standards Director, Oklahoma Department of Labor, 3017 N. Stiles, Ste. 100, Oklahoma City, OK, 73105 (405) 521-6111.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. LICENSE REQUIREMENTS

380:75-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each burglar alarm company shall employ an Oklahoma licensed burglar alarm manager who is responsible for the operations of the company's office. A burglar alarm company shall notify the Department within fourteen (14) days in event of the death of the burglar alarm company manager or the manager's separation from the company for any other reason, and the company shall designate another licensed burglar alarm manager within (30) thirty days from separation.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 380:75-3-3(1)(A). The company will notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(D) Each alarm company engaged in alarm business that sells a burglar alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the lockout, installer, or programming code of the system to the factory default setting when the consumer cancels the contract on customer-owned equipment. If a system is installed without a written contract with the consumer, the system shall have the lockout code, installer or programming code set at default.

(E) A company shall maintain and provide the customer with the following information prior to any agreement for service becoming effective. Any early termination clause applicable to military personnel, or the lack of such a clause, shall be fully disclosed in writing and shall be separately acknowledged by the customer. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the address where service will be provided. The minimum contract information described above shall be disclosed in one of the following ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract;

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale; or

(iii) Electronically in a format and language that is understandable to the average consumer using bold type which is at least two (2) points larger than the type size of the remaining text in the contract.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of four (4) years of experience in the burglar alarm business. The experience shall include two (2) years verified/or licensed experience as a burglar alarm technician or other related experience approved by the Committee.

(B) Each burglar alarm manager applicant must pass an examination prescribed by the Commissioner.

(C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed burglar alarm company manager shall have a security background verification.

(E) Each licensed burglar alarm company manager shall also be licensed as a residential fire alarm manager.

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each burglar alarm technician applicant must pass an examination prescribed by the Commissioner.

(C) Each technician shall have a security background verification.

(D) Each licensed burglar alarm technician shall also be licensed as a residential fire alarm technician.

(E) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuant to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesperson per job site or project.

(D) Each technician/salesperson trainee shall have security background verification.

(E) Each licensed burglar alarm trainee shall also be licensed as a residential fire alarm trainee.

(F) An individual that holds a trainee license can engage in any licensed category pursuant to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(G) An individual who holds a trainee license can engage in the rough-in cabling or wiring under the direct supervision of a licensed company holding the appropriate license category.

(H) A technician trainee must submit a trainee application to the Department of Labor within fifteen (15) business days of being hired by a burglar alarm company.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each burglar alarm salesperson applicant must pass an examination prescribed by the Commissioner.

(C) Each salesperson shall have a security background verification.

(D) Each licensed burglar alarm salesperson shall also be licensed as a residential fire alarm salesperson.

[OAR Docket #14-534; filed 6-27-14]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 15. SALE AND OPERATION OF OIL AND GAS LEASES

[OAR Docket #14-613]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
385:15-1-6 [AMENDED]
AUTHORITY:
Commissioners of the Land Office; 64 O.S. Sections 1001-1095 (2011).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
November 15, 2013 - December 15, 2013
PUBLIC HEARING:
December 20, 2013 at 3 p.m.
ADOPTION:
January 9, 2014
SUBMISSION OF ADOPTED RULE TO GOVERNOR AND LEGISLATURE:
January 15, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE DATE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rule:
385:15-1-6 [AMENDED]
Gubernatorial approval:
September 10, 2013
Register publication:
31 Ok Reg 52
Docket number:
13-1201
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The proposed rule would make permanent the language of the current Emergency Rule amending 385:15-1-6. The proposed rule permits electronic bid submissions at CLO mineral lease auctions, in addition to the "Written bid submission process. Mineral lease bids and rulemaking are permitted pursuant to 64 O.S. Sections 1020, 1062-1063 & 1066 (2011), among others. Electronic bidding will potentially increase the number of bids received for school land mineral leases, operating to maximize the funds received to support public education. Further,the rule proposed provides notice to the public of this additional method for bid submission, promoting fairness in the bidding process.
CONTACT PERSON:
Lisa Blodgett, General Counsel, Commissioners of the Land Office, 120 N. Robinson, St 1000W, OKC, OK 73102, (405) 521-4069.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULE IS CONSIDERED PROMULGATED AND EFFECTIVE AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

385:15-1-6. Public bid process

The public bid process for school land oil and gas lease sales shall be as follows:

(1) **Separate tract requirement.** A separate bid showing the tract number and legal description must be filed on each tract. Each tract will be leased separately to the highest responsible bidder. Drilling contracts or production payments will not be considered, except in a special lease sale.

(2) **Sealed bid requirement.**

(A) **Written Bids.** Bids must be written and enclosed in one sealed envelope, and placed in another envelope bearing notation on the outside front face of the envelope "Bids for Oil and Gas Leases" and the date of sale. Such bids must be delivered to the office of the Commissioners of the Land Office, and if sent by mail shall be addressed to the Commissioners of the Land Office's official business residence [See 385:1-1-13]. (No bid will be considered that is not delivered prior to date and time of sale.), **or**

(B) **Electronic Bids.** Alternatively, the use of electronic bidding shall be permitted subject to the policies, requirements, and procedures contained in the Secretary'sElectronic Bidding Procedures as authorized by the Commissioners of Land Office,available online at www: clo.ok.gov or by request.

(3) **Time of sale.** Bids will be received as provided in the Notice of Sale and are subject to the right of the Commissioners of the Land Office to reject any and all bids. (All bidders are invited to attend opening of bids which is held in the office of the Secretary to the Commissioners of the Land Office.)

(4) **Minimum bid accepted.** No bid of less than $5.00 per acre will be considered, except in a special lease sale.

(5) **Deposit required.** Each bid must be accompanied by a remittance in the sum of 25% of the amount bid, payable to the Commissioners of the Land Office. Upon acceptance of any bid and the awarding of the lease to the bidder, the successful bidder shall be liable for the full amount of the bid. The unsuccessful bidders will have their remittance check returned.

(6) **Bid forms.** Bid forms are available on the Land Office's official website [See 385:1-1- 13]

(7) **Assignment of bids.** Oil and Gas Lease bids may not be assigned.

(8) **Special oil and gas lease sales.** The Commission will have a special oil and gas lease sale if they desire to consider bids other than standard lease terms. This notice of sale will be marked "Special Oil and Gas Lease Sale," and the terms and conditions of this sale will be as provided in the notice of said sale.

(9) **Bids become final.** All bids on mineral leases shall become final at the date and hour for opening bids and no bid may be withdrawn or rejected to correct an error by any bidder.

[OAR Docket #14-613; filed 7-1-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 1. AGENCY AUTHORITY AND OBJECTIVES

[OAR Docket #14-590]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:1-1-1 [AMENDED]
390:1-1-4 [AMENDED]
390:1-1-6 [AMENDED]
390:1-1-10 [AMENDED]
390:1-1-12 [AMENDED]
390:1-1-13 [NEW]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., § 3311.2 through 3311.13; 20 O.S., § 1313.2; 21 O.S.,§ 1289.8 and 1290.1; 51 O.S.,§ 24-A et. seq.; 59 O.S.,§ 1350.1 et seq.; 59 O.S.,§ 1750.1 through 1750.14 and 1451 through 1476; 59 O.S.,§ 1350.1 et seq.; 75 O.S.,§ 250 et seq. and 250.3.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments include statutory references for the Bail Enforcement and Licensing Act. Other changes include authorizing the Director's Designee to make decisions, requires original applications for licenses and certification and sets out forms of payments accepted by CLEET.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:1-1-1. Purpose

Pursuant to the authority vested in the Council by 70 O.S., Section 3311, 20 O.S., Section 1313.2, and 59 O.S., Section 1750.1 et seq., Section 1451 et seq., 1350.1 et seq., 21 O.S. Section 1289.8 and 1290.1 et seq., the rules of this chapter have been promulgated. The purpose of these rules is to set forth the requirements and procedures needed to effectively implement and enforce the provisions of these statutes. These rules supplement existing state and federal laws, and being duly promulgated, shall have the force and effect of law.

390:1-1-4. Objectives of the Council

The objectives of the Council are:

(1) To raise the level of professional competence and integrity of law enforcement by:

(A) Establishing and administering minimum standards for the training and certification of law enforcement officers, to include physical, mental, and moral standards.

(B) Establishing and administering minimum curriculum and instructional standards for law enforcement training at a variety of levels.

(C) Providing these and other services to law enforcement officers as directed by law.

(D) Recommending legislation necessary to upgrade Oklahoma law enforcement to professional status.

(E) Appointing a larger Advisory Council.

(i) The Advisory Council shall be composed of seventeen (17) members who are certified full-time peace officers employed by a campus, city, county, state or federal law enforcement agency. At least one member shall be appointed from each of the ten (10) geographic CLEET training regions.

(ii) Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) An Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(iv) When a vacancy occurs on the Advisory Council, the Advisory Council shall recommend an individual to the Council for the vacant position.

(F) Appointing a Drug Dog Advisory Council.

(i) The Drug Dog Advisory Council shall be composed of members as provided in 70 O.S. § 3311(L)(2).

(ii) Drug Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Drug Dog Advisory Council shall meet as the business of the Drug Dog Advisory Council demands.

(iv) A Drug Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Drug Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect controlled dangerous substances to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Drug Dog Advisory Council, the Drug Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(G) Appointing a Bomb Dog Advisory Council

(i) The Bomb Dog Advisory Council shall be composed of members as provided in 70 O.S. § 3311(M)(2).

(ii) Bomb Dog Advisory Council members shall serve for a term of three years and may be reappointed for additional terms, unless removed by the Council.

(iii) The Bomb Dog Advisory Council shall meet as the business of the Bomb Dog Advisory Council demands.

(iv) A Bomb Dog Advisory Council member may be removed and that position declared vacant by the Council for any reason.

(v) The Bomb Dog Advisory Council shall report research, recommendations and other matters related to minimum standards, educational needs, and other matters imperative to the certification of canines and canine teams trained to detect explosives, explosive materials, explosive devices, and materials which could be used to construct an explosive device to the larger Advisory Council for review prior to submission to the Council for final action.

(vi) When a vacancy occurs on the Bomb Dog Advisory Council, the Bomb Dog Advisory Council shall recommend an individual to the Council for the vacant position.

(H) Appointing a Curriculum Review Board as provided in 70 O.S., Section 3311(B)(16).

(I) Approve New Law Enforcement Agencies and Police Departments as provided in 70 O.S., Section 3311(B)(20).

(J) Entities must submit the following information 60 days prior to the creation of a law enforcement agency:

(i) the need for the agency in the community,

(ii) the funding sources and proof that no more than fifty percent (50%) of the funding of the entity will be derived from ticket revenue and/or fines,

(iii) the physical resources available to officers,

(iv) the physical facilities that the law enforcement agency or police department will operate, including descriptions of the evidence room, dispatch area, restroom facilities, and public area,

(v) law enforcement policies of the law enforcement agency or police department, including published policies on the use of force, vehicle pursuit, mental health, professional conduct of officers, domestic abuse, response to missing persons, supervision of part-time officers, and impartial policing,

(vi) the administrative structure of the law enforcement agency or police department,

(vii) liability insurance, and

(viii) any other information CLEET requires by rule.

(K) CLEET will respond within sixty (60) days of receiving the request and will forward to the entity by certified mail, return receipt requested, a letter of authorization or denial.

(L) If denied, the entity may appeal the decision of the director or the director's designee to the full CLEET Council.

(2) To raise the level of professional competence and integrity of the private security industry by:

(A) Establishing and administering minimum standards for the employment of security guards and private investigators, and the establishment of private security and investigative agencies, through a licensing program based on physical, mental, and moral standards.

(B) Establishing and supervising a validated training program for security guards and private investigators.

(C) Enforcing the provisions for the Oklahoma Security Guard and Private Investigator Act (Title 59, Sections 1750.1 *et seq*.).

(D) Appointing an Advisory Committee comprised of representatives from security guard and investigative agencies.

(i) The Committee shall be comprised of seven (7) representatives from licensed security guard and private investigative agencies as follows: One (1) from each quadrant of the state, one (1) at large, one (1) selected by the American Society for Industrial Security (ASIS) and one (1) selected by the Oklahoma Private Investigators Association (OPIA).

(ii) Committee representatives shall serve for a term of three years and may be reappointed for additional terms unless removed by the Council.

(iii) A Committee representative may be removed and that position declared vacant by the Council for any reason including but not limited to the following:

(I) Failure to be in good standing with their license;

(II) Use of their appointment on the Committee for threats or perceived personal gain; or

(III) Repeated absences.

(iv) When a vacancy occurs on the Advisory Committee, the Advisory Committee shall recommend an individual to the Council for the vacant position.

(v) Committee representatives shall meet at least quarterly or more often as the business of the Committee demands.

(vi) The Committee shall report research, recommendations and other matters related to licensure of security guards, security agencies, private investigators and private investigative agencies to

the Advisory Council for review prior to submission to the Council for final action.

390:1-1-6. Public records

(a) Except as specifically exempted as a confidential record, official records of the Council on Law Enforcement Education and Training are subject to the Oklahoma Open Records Act, Title 51, Section 24A1 *et seq*.

(b) Copies of public information may be obtained from the Council office during regular business hours upon receipt of a written request and payment of a fee to cover the cost of providing copies of the requested.

(c) There may be a charge of Twenty-Five Cents ($.25) per page for copies of ~~public~~ records of the Council.

(d) In the event a request for copies is for a commercial purpose or would cause disruption of the performance of the regular duties of the Council or Council staff, there may be an additional charge computed and assessed for locating and copying the requested materials based upon the cost of the lowest paid employee necessary to accomplish the copying request.

(e) Pursuant to 51 O.S., Section 24A.8:

(1) Individual requests for records will only be accepted if received by U.S. Mail or facsimile.

(2) Agency requests for records will be accepted if on agency letterhead and received by U.S. Mail with original signature.

(3) If documents requested are not submitted by the individual or a law enforcement agency for investigative purposes, an *Order to Compel and Protective Order for Materials Produced by CLEET* must be received. This Order must be certified by the issuing Court.

(4) A subpoena without an *Order to Compel and Protective Order for Materials Produced by CLEET* is not sufficient.

(f) All social security numbers except for the last four digits will be redacted from any documents supplied by CLEET.

390:1-1-10. Electronic signatures, photographs and records

(a) CLEET may issue and receive electronic signatures, photographs, and records as defined in this Chapter.

(b) ~~Information received electronically is subject to verification and may be denied if CLEET is unable to validate the source.~~All applications for a license or certification must be original and contain original signatures.

(c) CLEET reserves the right to request signatures, photographs and records in a particular format.

(d) Name changes in the CLEET database will only be made when certified documents are received.

390:1-1-12. Event and course fees

(a) Events and courses identified by the Director, or the director's designee, shall be subject to fees authorized in 70 O.S. 3311(B)(13). Costs will be advertised at the time the event or course is announced.

(1) Hourly tier rate per student cost for courses or events:

(A) Supplies

(i) Level 1: $ 0.00

(ii) Level 2: $ 3.13

(B) Facility rental other than K.O. Rayburn Training Center

(i) Level 1: $ 0.00

(ii) Level 2: $ 0.38

(iii) Level 3: $ 0.63

(iv) Level 4: $ 0.75

(v) Level 5: $ 0.88

(vi) Level 6: Facility rental fees for the K.O. Rayburn Training Center outlined in (OAC) 390:55-1-11 divided by the number of hours for the class or event.

(C) Professional service fees

(i) Level 1: $ 0.00

(ii) Level 2: $ 1.75

(iii) Level 3: $ 3.50

(iv) Level 4: $ 12.50

(v) Level 5: $ 25.00

(vi) Level 6: $ 50.00

(2) Event or course fees based upon a per person rate:

(A) Level 1: $ 100.00

(B) Level 2: $ 150.00

(C) Level 3: $ 240.00

(D) Level 4: $ 350.00

(E) Level 5: $ 375.00

(F) Level 6: $ 475.00

(b) Payment of fees shall be submitted with an application form at least five working days prior to the event.

(c) Forms of payment accepted ~~include:~~by CLEET are found in Rule 390:1-1-13.

~~(1) Business check~~

~~(2) Purchase order~~

~~(3) Cashiers check~~

~~(4) Money order,~~

~~(5) Credit card accepted by CLEET, or~~

~~(6) Cash if paying in person.~~

(d) Cancellations for an event or course must be made 24 hours in advance. Applications not cancelled shall be charged the full fee amount.

(e) The full fee amount for an event or course will be refunded in the event of a cancellation by CLEET due to unforseen circumstances or at the request of the Director or the director's designee.

(f) Failure to pay any assessed fee shall result in an action against a certification or license pursuant to OAR Chapter 2. Administrative Procedures.

390:1-1-13. Forms of payment accepted by CLEET

(a) The following forms of payment are accepted for any CLEET license, application, reimbursement, reinstatement, fine, rental, copy service, or any other payment to CLEET.

(1) Business check

(2) Purchase order

(3) Cashier's check

(4) Money order,
(5) Auto Bank Draft
(6) Credit card accepted by CLEET, or
(7) Cash if paying in person

(b) All checks and money orders must be made payable to CLEET.

[OAR Docket #14-590; filed 6-30-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 2. ADMINISTRATIVE PROCEDURES

[OAR Docket #14-591]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:2-1-2 [AMENDED]
390:2-1-10 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., § 3311 et seq.; 11 O.S., §34-101; 20 O.S., §1313.2; 21 O.S., § 1289.8 and 1290.1; 59 O.S., Section 1350.1 et seq., 59 O.S., Section 1750.1 through 1750.14 and 1451 through 1476; 59 O.S., § 1350.1 et seq.; 11 O.S., § 34-102; 21 O.S., § 1290.14 through 1290.15; 75 O.S., §250 et seq. and 250.3.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments add statutory references for the Oklahoma Bail Enforcement and Licensing Act, and adds bail enforcement schools, applicants, instructors, and any other parties for which CLEET has statutory authority to take action against. Changes also include notification that hearings of alleged violations of the Oklahoma Bail Enforcement and Licensing Act will be conducted in accordance with the Administrative Procedures Act.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:2-1-2. Denials, reprimands, suspensions, revocations, disciplinary penalties, fines

(a) **Persons affected by individual actions.** Under the authority of 70 O.S., Section 3311 et seq.; 59 O.S., Section 1750.1 et seq.; 59 O.S., Sections 1451-1476; 20 O.S., Section 1313.2, 21 O.S., Section 1289.9 and 21 O.S. Section 1290.1 et seq., and 59 O.S. 1350.1 et seq., CLEET may take Administrative Actions against the following parties for violations of said statutes and the Rules and Regulations of CLEET:

(1) Certified peace officers and applicants;
(2) Basic Peace Officer Academy students and applicants;
(3) Private security training schools and applicants;
(4) Armed and unarmed security guards, private investigators, security agencies, investigative agencies and applicants;
(5) Certified drug detector dogs, handlers and applicants;
(6) CLEET certified instructors for Law Enforcement;
(7) Counties, cities and towns involved in the penalty assessment program;
(8) Private security training instructors and applicants;
(9) Approved SDA Firearms Instructors;
(10) Retired municipal, county, state and federal peace officers;
(11) Certified Reserve Peace Officers and applicants; ~~and~~
~~(12) any other parties for which CLEET has statutory responsibility.~~
(12) Bail Enforcement training schools and applicants;
(13) Bail Enforcement training instructors and applicants;
(14) Bail Enforcement persons and applicants; and
(15) Any other parties for which CLEET has statutory authority.

(b) **Type of sanctions.** CLEET may take the following actions against the parties mentioned in (a) of this section:

(1) Oral Reprimand
(2) Written Reprimand
(3) Denial
(4) Suspensions
(5) Revocation and/or
(6) Disciplinary penalty or fine.

(c) **Disciplinary procedures.** In the event CLEET, or its designated agent, has determined that an action will be taken, the following procedures shall apply in accordance with the Administrative Procedures Act, Section 301, et. seq. Title 75 of the Oklahoma Statutes.

(1) The issuance or denial of a new license or new certification is not an individual proceeding, and is not subject to review by the administrative hearing process set forth below.
(2) CLEET or its designated agent shall serve by certified mail, return receipt requested, or by personal delivery by an individual authorized by CLEET, a "Notice of Council Action" containing information required by 75 O.S. Section 309 et. seq., to the party at his last known residential address as reflected by the records of CLEET

or current employing department or agency address if the personal address is unknown. If said letter is returned and notation of U.S. Postal Service indicates "unclaimed," "moved," "refused" or any non-delivery markings and the Council's records indicate no change of address as required by rule 390:35-5-13, and 70 O.S., §3311 (Q) the notice and any subsequent order shall be deemed served. Any order issued shall be deemed valid as if said individual or agency had been served.

(3) The notice shall provide that CLEET action shall commence and become effective fifteen (15) days after receipt of said notice by the party, unless the party timely files a written request for a hearing with CLEET except as follows:

(A) When CLEET determines that an allegation warrants immediate action, the commencement and effective date of fifteen (15) days will be waived and the action will be effective upon receipt of said notice.

(B) A request for hearing will be timely filed if said request is in writing and received by CLEET, its Director, or designated agent within ten (10) days of the date the party received notice.

(C) If a timely written request for a hearing is not received by CLEET, the allegations shall be deemed confessed by the party and the action will become final.

(D) If the written request for hearings is timely received by CLEET, such hearings shall be scheduled within sixty (60) days from the date said request is received.

(4) The timely filing of a written request for a hearing will stay CLEET's action pending disposition of the hearing, unless the notice and allegations fall within (3)(A) of this subsection.

(5) The hearings will be held at a location designated by the Council.

(6) The hearing officer will be designated by CLEET or the Director thereof, and each party shall be afforded an opportunity to be heard and present evidence.

(7) The hearing will be electronically recorded and the tapes of said hearing will be preserved until all avenues of appeal have expired or been exhausted. If a party desires a court reporter, or certified stenographer, it shall be the party's burden to provide and bear the cost of said services and subsequent transcription.

(8) If a party fails to appear at the scheduled hearings without prior notification or good cause, the hearing officer shall default the party, and enter an order sustaining the allegations set forth in the notice and imposing the sanctions set forth therein; or if the State sustains its burden, the hearing examiner shall rule accordingly.

(9) If the complaining party fails to show or the state otherwise fails to prove the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.

(10) The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.

(11) Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.

(12) A party may appeal the hearing officer's decision as set forth in 75 O.S. Section 301 et. seq. of the Administrative Procedures Act.

390:2-1-10. Conduct of hearings

(a) **Appearances.** Every party appearing at a hearing shall enter an appearance by stating their name and address. An individual may appear on their own behalf or be represented by an attorney.

(b) **Preliminary matters.** The following shall be taken up prior to receiving evidence:

(1) The licensee and other parties may offer preliminary exhibits, including pleadings necessary to present the issues to be heard.

(2) Ruling shall be made on any pending motions, including requests for delivery of documents.

(3) Stipulations of fact and stipulated exhibits shall be received.

(4) Parties shall make opening statements where appropriate.

(5) Any other preliminary matters appropriate for dispositions prior to offers of
evidence.

(c) **Rules of evidence.** Appeals from CLEET actions (pursuant to 59 O.S. Section 1750.1 et ~~seq.)~~seq. and 59 O.S. Section 1350.1 et seq.) shall be conducted generally in accordance with the Rules of Evidence applied in the District Courts of Oklahoma. The order of proof in cases brought under 390:2-1-2 (c) shall be as follows:

(1) Presentation of the State's case followed by examination.

(2) Responsive presentation by appellant, followed by cross examination.

(3) Closing Argument for The State.

(4) Closing Argument for Appellant.

(5) Submission of case.

(6) If requested, the parties may present rebuttal and surrebuttal evidence, in the proper turn.

(d) **Administrative Procedures Act.** Hearing of alleged violations of the Oklahoma Security Guard and Private Investigator ~~Act.~~Act, and the Oklahoma Bail Enforcement and Licensing Act
shall be conducted in accordance with the Administrative Procedures Act.

(e) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one representative for each party. The Hearing Examiner may designate the order of examination of witnesses and may limit the scope of examination and cross-examination.

(f) **Adverse party.** A party may call an adverse party or an officer or employee of an adverse party, in which case the witness may be impeached and otherwise cross-examined.

(g) **Prepared testimony.** Written testimony of a witness in the form of questions and answers, or a narrative statement

may be received in lieu of direct examination upon authentication by the witness under oath. The witness shall be subject to cross-examination. A written or oral statement or a communication from any person, or a statement or resolution without cross-examination, will be considered only as argument, and not as proof of any recitation of facts contained therein.

(h) **Documents.**

(1) A photographic copy of an instrument which is on file as part of the official records of CLEET will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his/her records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Hearing Examiner. Any document so received must be precisely identified.

(5) When evidence is offered which is contained in a book or document containing material not offered, the party offering the same shall extract or clearly identify the portion offered.

(6) The Hearing Examiner may permit a party to offer a document as part of the record within a designated time, after conclusion of the hearing.

(7) The Hearing Examiner may require or allow the filing of briefs by the parties, and may designate the order and time for filing briefs and reply briefs.

(8) The record shall be closed when all interested parties have had an opportunity to be heard and to present evidence, and the Hearing Examiner announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for a written decision to be rendered not more than fifteen (15) days following the close of the record.

[OAR Docket #14-591; filed 6-30-14]

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

[OAR Docket #14-592]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:10-1-3 [AMENDED]
390:10-1-4 [AMENDED]
390:10-1-6 [AMENDED]

AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., § 3311.2 through 3311.13.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments are necessary to include language passed last year that every law enforcement agency employing police, peace or tribal officers is required to submit to CLEET on or before October 1st of each year, a complete list of all commissioned employees with a current mailing address and phone number for each. Additionally rule changes require all peace officers, reserve peace officer and tribal officers to maintain a current residential address on file with CLEET and to notify CLEET in writing within 10 days of the effective change. Last change includes the Director's designee to award peace officer certification by reciprocity.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:10-1-3. Employment status reporting

(a) All state, county, and local law enforcement agencies affected by the rules of this chapter and 70 O.S. Section 3311, shall report to CLEET the employment and termination of any appointed or elected peace officer within ten (10) days of the date of employment or termination of employment of said officer. Such notification shall be in a format accepted by CLEET. Termination reports shall include resignations, discharges or dismissals, retirements, and deaths of officers covered under the rules of this chapter and laws. Failure to do so may disqualify a law enforcement agency from participating in training programs sponsored by the Council.

(b) Pursuant to 70 O.S., Section 3311(I) every law enforcement agency employing police, peace or tribal officers shall be required to submit on or before October 1 of each calendar year, a complete list of all commissioned employees, with a current mailing address and phone number for each such employee.

390:10-1-4. Peace officer employment standards

(a) A person shall comply with the requirements of 70 O.S. Section 3311(E)(F)(G) in order to be employed as a peace officer.

(b) Nothing herein shall preclude any law enforcement agency from establishing and implementing minimum employment standards in addition to those set forth by law and the rules of this chapter.

(c) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council, the current residential addresses and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name.

(d) Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.

390:10-1-6. Certification by reciprocity

Any officer seeking Oklahoma Peace Officer Certification, who has been certified by a state peace officer standards and training agency as a peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law, military service is generally not recognized as federal law enforcement employment.

(2) The officer must have been employed as a full time peace officer for at least three (3) months within the two (2) year period immediately preceding the request for Oklahoma certification.

(3) The officer must attend the legal block and training as specified by CLEET.

(4) The officer must successfully pass a certification examination.

(5) Officers may have one retest for the certification examination. Any retest would follow the guidelines listed in OAC 390:15-1-13.

(6) The director or the director's designee may, in the exercise of discretion, award a certificate to any person who has been duly certified under the laws of another state if, in the opinion of the director, the education, training and experience of that officer equal or exceed the qualifications required to complete satisfactorily the basic course of instruction required for Oklahoma certification. In any event, each officer must attend the legal refresher block of instruction as specified by CLEET.

[OAR Docket #14-592; filed 6-30-14]

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

[OAR Docket #14-593]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Basic Academy Programs
390:15-1-13 [AMENDED]
390:15-1-18.1 [AMENDED]
390:15-1-19 [AMENDED]
390:15-1-20 [NEW]
Subchapter 3. Collegiate Officer Program
390:15-3-11 [AMENDED]
Subchapter 5. Reserve Officer Bridge Academy [NEW]
390:15-5-1 [NEW]
390:15-5-2 [NEW]
390:15-5-3 [NEW]
390:15-5-4 [NEW]
390:15-5-5 [NEW]
390:15-5-6 [NEW]
390:15-5-7 [NEW]
390:15-5-8 [NEW]
390:15-5-9 [NEW]
390:15-5-10 [NEW]
390:15-5-11 [NEW]
390:15-5-12 [NEW]
390:15-5-13 [NEW]
390:15-5-14 [NEW]

AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13; 20 O.S., § 1313.2.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014

COMMENT PERIOD:
February 3, 2014 through March 10, 2014

PUBLIC HEARING:
March 10, 2014

ADOPTION:
March 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 15, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Amendments include authorizing the Director's designee to allow a student who has been suspended from the academy to return to the academy, and to approve a basic peace officer certification academy. Additionally authority is given to the Director's designee receive requests for firearms rescheduling, and requires students who fail remedial Custody Control or Law Enforcement Driver training block to repeat entire block of instruction. A new rule is added which allows municipalities and counties who have obtained Council approval to conduct Basic Peace Officer Certification for their own personnel, to also train personnel from a college or university law enforcement department if the college or university is located completely within the municipality of the approved Basic Peace Officer Academy and a written agreement is provided to CLEET signed by administrators from the college or university and the approve Peace Officer Academy. The new Subchapter 5 is necessary to set out

guidelines for a certified reserve officer who gains employment as a full time officer to attend a condensed version of the full time peace officer academy to gain full time certification, pursuant to changes to Title 70, O.S., § 3311 last legislative session.

CONTACT PERSON:

Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 1. BASIC ACADEMY PROGRAMS

390:15-1-13. Academic requirements

(a) In order to successfully complete the basic academy program, trainees must achieve a minimum passing score as designated by CLEET or a higher standard if so required by an approved academy entity. All training standards and academic requirements must be completed within the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes.

(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within a time frame established by CLEET.

(c) If the trainee fails the block examination a second time, the trainee's agency head may request that the trainee repeat the block of instruction and take the examination for a third time.

(d) If a trainee fails to complete any block of instruction the trainee will not be allowed to take the certification examination.

(e) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) business days. A second failure will necessitate reenrollment into a basic academy.

(f) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training sessions at a later time. If the trainee does not successfully complete remedial training, no further testing will be ~~allowed.~~allowed until student has retaken the entire block of instruction.

(g) If the trainee fails a proficiency test in the Firearms Block, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, within ninety (90) calendar days of the student's original academy completion date, in writing, notify the Director of CLEET or the director's designee that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. If the trainee does not successfully complete additional training, no further testing will be allowed until the student has retaken the entire firearms block of instruction.

(h) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(i) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed and the impact upon the instructional staff and class to remediate the trainee. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc. Absences of more than five (5) hours in any training block may require the trainee to attend the entire block in the next subsequent academy.

(j) Each applicant is required to attend all class sessions, subject to previously state exceptions. Unexcused absences or repeated tardiness requires makeup work during a current or future academy, and may result in administrative discipline. Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

(k) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

(l) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(m) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited.

(n) Approved academy entities shall establish their own requirements for academy testing, retesting, and attendance except that no academic standards shall be less than those established by CLEET in 390:15-1-13.

390:15-1-18.1. Suspension, dismissal and reinstatement to academy

(a) Trainees may be removed from active participation, but not dismissed from the academy by a CLEET instructor, for violations of academy rules, guidelines, safety rules or other justified reasons.

(b) Trainees will not be dismissed from the academy except upon instructions from the Director or Director's designee.

(c) The Director, or Director's designee, may take disciplinary action, up to and including, suspension and dismissal from the academy, for violations of academy rules, guidelines, safety rules, or other justified reasons.

(d) A trainee that has been suspended or dismissed from a basic academy and desires to return to the academy must make written request to the Director. The written request to return to the academy must also be signed by the head of the employing agency.

(e) Upon receipt of a written request to return to the academy, the Director or the director's designee will review the

request for readmittance together with the reasons for suspension or dismissal, and decide if and when the trainee may return. In the discretion of the Director, or the director's designee the trainee may or may not be placed into the same academy from which the trainee was suspended or dismissed.

390:15-1-19. Council-approved Basic Peace Officer Certification training

(a) Municipalities and counties who obtain Council approval to conduct Basic Peace Officer Certification training for their own personnel are only authorized to retain monies pursuant to provisions in 70 O.S., Section 3311.5(H)(I) and 20 O.S., Section 1313.2.

(b) Any municipal or county law enforcement agency that desires to obtain Council approval of said agency's Basic Peace Officer Certification training program must make written request to the Council, providing satisfactory evidence that the agency will conduct such training in accordance with the Council's prescribed minimum training standards, and utilize hiring practices in accordance with minimum employment standards designated by law, and in accordance with the rules of this chapter; that the agency maintains adequate training facilities and equipment; and that the agency will provide qualified instructors.

(c) This request shall be submitted to the Council. The Director or the director's designee, shall make written notification of the Council's approval or denial of the request. If approved, the notification shall include an agreement between the Council and the agency making the request. This agreement shall set forth the responsibilities of each party to the agreement, pursuant to 70 O.S. Section 3311 and 20 O.S. Section 1313.2 if applicable.

(d) Requests for Council approval to conduct Basic Peace Officer Certification training as authorized by 70 O.S., Section 3311.5(H) shall minimally include the following information:

(1) **Justification.** The agency making the request must demonstrate to the Council that it meets criteria set forth in 70 O.S., Section 3311.5(H)..

(2) **Employment standards.** The agency making the request shall report to CLEET, under oath, that all persons to be trained have satisfactorily met the peace officer employment standards set forth by 70 O.S. Section 3311, and in accordance with rules set forth by the Council, in a format approved by the Council.

(3) **Program documentation.** The agency making the request shall submit the following information not less than thirty (30) calendar days prior to the beginning of each Basic Peace Officer Certification Academy to be conducted:

(A) The name of the person designated as the Director or coordinator of that agency's Basic Peace Officer Certification training program;

(B) The proposed course schedule, clearly indicating the inclusion of CLEET mandated functional areas and units of instruction to include identified instructional objectives;

(C) The instructors for each unit of instruction;

(D) A statement as to the process of examination and testing to be used, and the process of evaluating instructors.

(E) Upon timely notification, CLEET shall administer the Basic Peace Officer Certification Examination to trainees of CLEET-approved Basic Peace Officer Certification Academies who are otherwise qualified to take the examination.

(e) Agencies conducting Council approved Basic Peace Officer Certification Training shall submit the following documentation to CLEET within fifteen (15) calendar days following the completion of each basic academy class:

(1) A final roster of graduates and their social security numbers;

(2) Trainee Academic and proficiency scores from all examinations and proficiency tests, including the Peace Officer Certification Examination.

(3) A final course schedule clearly indicating the actual instructors of each unit of instruction.

(4) A formal request that all trainees who successfully completed the Basic Academy class be granted full-time peace officer certification.

(f) Instructors who teach in Council approved Basic Peace Officer Academies shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in their assigned area of instruction.

(g) CLEET shall issue identification cards and certificates as evidence of peace officer certification to trainees who successfully complete Council-approved Basic Peace Officer Academies, and who have been certified by their employing agency to be otherwise qualified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes.

(h) The Council may revoke academy status for failure to adhere to the CLEET rules.

390:15-1-20. College and University Law Enforcement Officers Training

Municipalities and counties who have obtained Council approval to conduct Basic Peace Officer Certification training for their own personnel, are also authorized to train personnel from a college or university law enforcement department, pursuant to the following:

(1) The college or university is located completely within the municipality of the approved Basic Peace Officer Academy;

(2) Administrators from the college or university and the approved Peace Officer Academy, must provide a written agreement to CLEET prior to the start of the approved academy.

SUBCHAPTER 3. COLLEGIATE OFFICER PROGRAM

390:15-3-11. Psychological evaluations

(a) Prior to "Firearms" training, all students shall be administered a Minnesota Multi-Phasic Personality Inventory

(MMPI), or a CLEET approved equivalent psychological examination, by a person qualified to administer such examinations. Examinations shall be evaluated by a licensed psychologist of each student's choice and at each student's expense. The results of the psychological evaluations shall be forwarded to ~~CLEET and~~ the school coordinator, by the evaluating psychologist on forms to be provided by CLEET.

(b) If, after evaluating this initial psychological testing instrument, an evaluating psychologist is not able to form an opinion as to whether or not an applicant is "at risk" or "capable" of exercising appropriate judgement, restraint, and self-control in the use of a firearm, the Act directs the psychologist to "employ whatever other psychological measuring instruments or techniques deemed necessary to form his professional opinion". For the purposes of this subsection, an evaluating psychologist is not necessarily obliged to find an applicant "at risk", by virtue of deficiencies in any particular area (judgement, restraint, and self control), but may consider the applicant's psychological traits in light of all three areas in formulating his opinion.

(c) Any additional testing shall be done through mutual agreement between the psychologist and the applicant, and at the expense of the applicant.

(d) In the event that the evaluating psychologist is unable to form an opinion (either "at risk" or "capable"), or in the event an applicant does not agree to any further testing, the evaluating psychologist may so indicate on the "Notification of Psychological Evaluation for Peace Officers Full-Time and Reserve". In such cases, the applicant's psychological evaluation shall be treated in the same manner as an "at risk" evaluation, pursuant to the Act.

(e) No psychological evaluation shall be accepted as valid for the purposes of this Act when the following conditions have not been satisfied:

(1) The evaluation results may be used for up to one (1) year from the date of the evaluation; and

(2) The evaluation must have been performed for the specific purpose of evaluating an applicant's capability of exercising appropriate judgement, restraint, and self-control in the use of a firearm.

SUBCHAPTER 5. RESERVE OFFICER BRIDGE ACADEMY

390:15-5-1. Purpose

(a) This chapter is devoted to basic peace officer bridge certification training. Basic peace officer bridge certification requires curriculum and courses of study validation through testing, course file maintenance, academy participation and academy rules.

(b) This chapter also provides the employment, attendance and academic requirements for those enrolled in the Council's basic peace officer bridge academy.

390:15-5-2. Eligibility

(a) Beginning January 1, 2014, any reserve officer who has completed the two-hundred-forty-hour reserve peace officer certification program, and who has been in active service in a reserve capacity in the past two (2) years, shall be eligible to attend a Bridge Academy pursuant to 70 O.S., Section 3311(E)(2)(G) to become certified as a full-time police or peace officer.

(b) The individual officer must meet the full-time employment standards found in CLEET Rules 390:10-1-2.

390:15-5-3. Curriculum and courses of study

(a) The Council shall formulate and promulgate a program of instruction for peace officer bridge certification, comprised of fundamental law enforcement skills and knowledge, which shall be designated as the Basic Peace Officer Certification Bridge Academy, known herein as the Bridge Academy.

(b) The curriculum of the Bridge Academy is established by the Curriculum Review Board. The curriculum shall include functional areas as prescribed by the Council through the Curriculum Review Board. Functional areas may include, but shall not be limited to the following:

(1) Orientation/Legal Matters
(2) First Aid
(3) Firearms
(4) Criminal Investigation
(5) Custody Control and Defensive Tactics
(6) Traffic
(7) Patrol
(8) Community Relations
(9) Law Enforcement Driver Training
(10) DWI Detection and Standardized Field Sobriety Testing (SFST)
(11) Radar
(12) Ethics

(c) The Bridge Academy shall meet the hourly requirements as provided by 70 O.S. Section 3311 et seq.

(d) Additional hours of study and/or CLEET approved activity may be required to fulfill Bridge Academy requirements.

390:15-5-4. Examinations and testing; remedial training; missed time

(a) For objectives that demand performance of observable behavior by a trainee, the test method, where appropriate, shall be performance oriented and shall duplicate, to the extent possible, realistic job situations.

(b) For objectives that demand mastery of cognitive material, the test method shall involve a written examination and, wherever possible, the written examination should test a trainee's ability to apply methods, concepts, and techniques taught in the classroom.

(c) Examinations shall be given at designated intervals during the Bridge Academy to determine trainee achievement of objectives.

(d) Successful achievement on each cognitive examination or performance test shall be at a standard established by CLEET.

(e) Re-examination scores will be recorded on individual profile forms of peace officers.
(f) Practical application exercises may be evaluated at a standard established by CLEET.

390:15-5-5. Attendance; Academy administration

CLEET shall establish rules governing trainee conduct, attendance requirements, trainee equipment needs, and other matters necessary to the administration of the Bridge Academy.

390:15-5-6. Certification examination

CLEET shall develop and administer a final comprehensive examination to each trainee who otherwise successfully completes all phases of the Bridge Academy. This examination shall be known as the Oklahoma Basic Peace Officer Certification Examination. No person who is enrolled in a Bridge Academy, shall receive peace officer certification until satisfactorily passing such examination.

390:15-5-7. Bridge Academy participation

(a) All trainees shall be capable of full participation and fully participate in all Bridge Academy activities.
(b) All trainees shall be required to score a minimum of seventy percent (70%) on a reading, writing and comprehension examination pursuant to 70 O.S. 3311.11.
(c) All trainees shall be required to score a minimum of seventy percent (70%) on a physical assessment test pursuant to 70 O.S. 3311.11.
(d) All trainees shall execute a promissory note for academy training expenses pursuant to 70 O.S. 3311.11.
(e) The conduct of all trainees shall be consistent with the Law Enforcement Code of Ethics.

390:15-5-8. Administrative course files

CLEET shall maintain an administrative file that pertains to each Bridge Academy class it conducts. This file shall minimally include the following:

(1) A final course schedule showing the actual instructor used for each topic;
(2) Attendance records for each trainee;
(3) Disciplinary actions taken against any trainee, provided that the details of trainee misconduct shall be retained in the trainee's individual file;
(4) Examination and testing records, including retests and remedial training needed; and
(5) Additional training documentation as deemed necessary.

390:15-5-9. Safety rules

CLEET shall establish written safety rules for skills training.

390:15-5-10. Council instructors

(a) Instructors who teach in the Bridge Academy shall possess CLEET recognized instructor training, or shall possess professionally recognized training and experience in the assigned subject area.
(b) Bridge Academy instructors shall adhere to the performance objectives and lesson plans in all cases, except when changes in the law, or other circumstances dictate that more current instructional material be substituted. In such cases, proper revisions shall be made to the lesson plan in question as soon as possible. Such changes shall be forwarded to the appropriate instructors in a timely manner.
(c) CLEET shall establish written guidelines for CLEET, contract, adjunct and volunteer instructors regarding classroom demeanor and attire. All instructors who are scheduled to teach for the Council in a Bridge Academy program shall be provided with and comply with the written guidelines. Rules shall include but shall not be limited to the following:

(1) Instructors who are lodging or visiting facilities owned, operated, or rented by CLEET may not use or bring any alcoholic beverages, intoxicants, or any controlled dangerous substances, onto the property, grounds, or into the facilities.
(2) It shall be prohibited for any instructor to attend any training session while under the influence of any of the above named substances.
(3) Instructors who arrive at lodging, eating, classroom, or training facilities, who appear impaired, may be subject to standard field sobriety testing, or other tests, and to disciplinary action.

390:15-5-11. Bridge Academy Rules

(a) Specific rules governing the administration of Bridge Academy classes shall be published and have the same effect as the rules published herein. Said rules shall be designated as the Bridge Academy Rules and Regulations.
(b) All basic police trainees who have been accepted into a CLEET Bridge Academy program shall be provided with and comply with academy policies and procedures set forth by the Council.
(c) Failure of trainees to abide by the policies and procedures set forth by the Council may lead to disciplinary action and possible dismissal from the academy.

390:15-5-12. Academic requirements

(a) In order to successfully complete the bridge academy program, trainees must achieve a minimum passing score as designated by CLEET. All training standards and academic requirements must be completed within the time frame specified in Section 3311 of Title 70 of the Oklahoma Statutes.
(b) Any trainee who fails a specific block examination will be permitted to retake that block examination within a time frame established by CLEET.
(c) If the trainee fails the block examination a second time, the trainee's agency head may request that the trainee repeat the block of instruction and take the examination for a third time.
(d) If a trainee fails to complete any block of instruction the trainee will not be allowed to take the certification examination.

(e) Trainees who fail the certification examination will be permitted to retake the examination within ten (10) business days. A second failure will necessitate reenrollment into a basic academy.

(f) When a trainee fails a proficiency test in the Custody Control block, or the Law Enforcement Driver Training block, the trainee will not be certified, and will be scheduled for up to two remedial training sessions at a later time. If the trainee does not successfully complete remedial training, no further testing will be allowed.

(g) If the trainee fails a proficiency test in the Firearms Block, the trainee will not be certified, and shall be required to obtain additional firearms training through his/her employing agency; such training to be conducted by a CLEET certified firearms instructor within ninety (90) calendar days of the student's original academy completion date. Upon completion of such training, the student's employing agency administrator must, within ninety (90) calendar days of the student's original academy completion date, in writing, notify the Director of CLEET that the student is ready to be scheduled for firearms proficiency testing by CLEET firearms staff. Such testing shall be completed by allowing the student up to three (3) attempts to attain the CLEET required proficiency in firearms. If the trainee does not successfully complete additional training, no further testing will be allowed until the student has retaken the entire firearms block of instruction.

(h) Trainees are expected to attend all blocks of instruction. If a trainee misses any time during the academy, the trainee must state in writing the reasons for the absence.

(i) Absences due to unforeseen emergencies, illnesses, subpoenas, or other unusual circumstances may be approved by the Training Division Manager or Assistant Director for make-up during the current academy. Each case will be reviewed to evaluate the length of time missed and the impact upon the instructional staff and class to remediate the trainee. The trainee may be required to provide documentation for excused absences such as a copy of the subpoena, doctor's statement, etc. Absences of more than five (5) hours in any training block may require the trainee to attend the entire block in the next subsequent academy.

(j) Each applicant is required to attend all class sessions, subject to previously stated exceptions. Unexcused absences or repeated tardiness requires makeup work during a current or future academy, and may result in administrative discipline. Decisions that the Training Manager or Assistant Director make, regarding attendance and makeup requirements, may be appealed to the Director.

(k) It is mandated by the Council that all examinations, and all proficiency tests must be successfully completed to meet the requirements for peace officer certification.

(l) If a health condition or an injury exists, prohibiting a trainee from fully participating in any block of instruction, a signed release from the trainee's physician must be submitted before the trainee will be allowed to further participate in that block.

(m) If the trainee cannot be so released by a physician to fully participate in that block then participation is prohibited.

390:15-5-13. Administrative discipline

(a) In the event that a trainee's personal conduct or academic performance falls below accepted standards, appropriate reports shall be submitted by the academy coordinator to the training division manager. Reports shall outline the nature and scope of the trainee's substandard performance or conduct, the nature of any counseling or remedial action taken by coordinator/instructors, and recommendations for resolution of the matter. A copy of these reports shall be retained in the trainee's file.

(b) The training division manager shall make every effort to resolve the matter in the best interest of the trainee, the sponsoring agency, and CLEET. Should it become necessary, matters may be referred to the Assistant Director, and the trainee's agency head may be notified.

(c) Trainees who wish to register a complaint regarding some aspect of his or her treatment at the academy, shall make every effort to resolve the matter with the class coordinator. In the event this is not possible, the class coordinator shall consult with the Training Division Manager on the matter. If necessary, arrangements shall be made for the trainee to discuss the complaint with the manager. If the matter cannot be resolved, the manager shall consult with the Assistant Director. Students wishing to appeal the decision of the Assistant Director may submit a request for appeal in writing to the Director.

390:15-5-14. Suspension, dismissal and reinstatement to academy

(a) Trainees may be removed from active participation, but not dismissed from the academy by a CLEET instructor, for violations of academy rules, guidelines, safety rules or other justified reasons.

(b) Trainees will not be dismissed from the academy except upon instructions from the Director or Director's designee.

(c) The Director, or Director's designee, may take disciplinary action, up to and including, suspension and dismissal from the academy, for violations of academy rules, guidelines, safety rules, or other justified reasons.

(d) A trainee that has been suspended or dismissed from a bridge academy and desires to return to the academy must make written request to the Director. The written request to return to the academy must also be signed by the head of the employing agency.

(e) Upon receipt of a written request to return to the academy, the Director will review the request for readmittance together with the reasons for suspension or dismissal, and decide if and when the trainee may return. In the discretion of the Director, the trainee may or may not be placed into the same academy from which the trainee was suspended or dismissed.

[OAR Docket #14-593; filed 6-30-14]

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

[OAR Docket #14-594]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:20-1-2 [AMENDED]
390:20-1-3 [AMENDED]
390:20-1-3.1 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O. S., § 3311 through 3311.13; 11 O.S., § 34-101; 19 O.S., § 547; 63 O.S., § 683.1 et. seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments require all peace officers, reserve peace officers and tribal officers to maintain a current residential address on file with CLEET and to notify CLEET in writing of any change within 10 days of the effective change. Also requires marriage license or other court documents to change a name in the CLEET database. Changes also authorize the Director's designee to grant reserve officer reciprocity and reserve academy coordinator status to an individual.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:20-1-2. Reserve officer defined; employment standards

(a) For the purposes of this Chapter, and pursuant to 70 O.S., Section 3311, a reserve peace officer shall mean a law enforcement officer who:

(1) May be appointed by a municipality [11 O.S. 34-101], a duly elected sheriff [19 O.S. 547], or any other agency authorized by statute to appoint such reserve peace officers.

(2) May not work as a reserve peace officer more than one hundred forty (140) hours per month unless authorized by 11 O.S. 34-101 or 19 O.S. 547.

(3) May be paid a wage or salary, or may serve as a volunteer for the appointing agency.

(4) May be appointed by any political subdivision of this state to serve as an auxiliary police or peace officer pursuant to the Oklahoma Civil Defense Act [63 O.S. 683.1 et. seq].

(5) May have the same powers, duties, and functions as regular full-time peace officers, or as prescribed by state laws, or the ordinances of the appointing municipality.

(b) Employment standards for reserve peace officer certification shall be the same as the employment standards for full-time peace officers, as set forth in 70 O.S. Section 3311, and in 390:10-1-4.

(c) All peace officers, reserve peace officers and tribal officers are required to maintain with the Council, the current residential addresses and notify the Council, in writing of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name.

(d) Notice of change of address or telephone number must be made within ten (10) days of the effective change. Notices will not be accepted over the phone.

390:20-1-3. Reserve peace officer certification training

(a) The Council shall formulate a program of instruction for reserve peace officer certification, which shall be based on the Basic Peace Officer Academy, and which shall be known herein as the Reserve Academy.

(b) The lesson plans of each Reserve Academy shall be based upon the functional areas of the CLEET Reserve Academy curriculum. The total number of hours for all functional areas combined shall meet or exceed the number of hours required by 70 O.S., Section 3311 (E)(2) for Reserve certification.

(c) Trainee attendance is critical. One-hundred percent (100%) attendance is required in all blocks of instruction.

(d) Remedial training may be accomplished under the following conditions:

(1) The training is conducted in an academy setting and monitored by the academy coordinator as approved by CLEET.

(2) Trainees failing to successfully complete remedial training in the original academy shall be required to successfully complete remedial training within one (1) year from the date of hire.

(e) Trainees must successfully complete required classroom and/or skills proficiency testing prior to being administered the required progress or certification examinations.

(f) Trainees who fail to successfully complete any skills proficiency portion(s) of the academy will not be allowed to take the certification exam. Certification will be withheld until all requirements have been fulfilled.

(g) Any officer seeking Oklahoma Reserve Peace Officer Certification, who has been certified by a state peace officer

standards and training agency as a **full-time** peace officer in another state, or any officer who has been certified as a federal peace officer by a Council recognized federal law enforcement agency, may obtain reserve certification by reciprocity, under the following conditions:

(1) The officer must meet the minimum peace officer employment standards set forth by law, military service is generally not recognized as federal law enforcement employment.

(2) The officer must have been employed as a full time peace officer for at least three (3) months within the two (2) year period immediately preceding the request for Oklahoma Reserve Peace Officer Certification.

(3) The officer must attend the First Progress block of instruction and successfully pass all Progress and Certification examinations at a standard prescribed by the Council. Skills training functional areas shall not be tested. Officers may have one retest for each functional examination which they fail.

(4) If an officer fails both a test and a retest for any given functional area, then that officer must successfully complete the corresponding functional area in a CLEET Basic Reserve Academy, to include successfully passing the functional area examination(s).

(5) The director or the director's designee, may, in the exercise of discretion, award a certificate to any person who has been duly certified under the laws of another state, if in the opinion of the director, or the director's designee, the education, training and experience of that officer equal or exceed the qualifications required to complete satisfactorily, the basic reserve officer academy for reserve certification.

390:20-1-3.1. Reserve Coordinator Qualifications

(a) All reserve academy coordinators must:

(1) Be a certified full-time, salaried peace officer as set forth in 70 O. S. 3311.

(2) Have a minimum of two years of law enforcement experience after certification as a peace officer.

(3) Be employed by a municipal, county, state or tribal law enforcement agency.

(4) Be CLEET certified basic instructors.

(5) Successfully complete a CLEET Reserve Academy Coordinators' school prior to being given approval to conduct a reserve academy.

(b) The director or the director's designee may grant reserve academy coordinator status to an individual who has completed comparable training, education or experience that equal or exceed the qualifications for reserve academy coordinator.

[OAR Docket #14-594; filed 6-30-14]

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

[OAR Docket #14-595]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:25-1-7 [AMENDED]
390:25-1-11 [AMENDED]
390:25-1-13 [AMENDED]
390:25-1-20 [REVOKED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments are necessary to remove language reflecting that CLEET will send records electronically. All records from CLEET will be in paper form. Requires apprenticeship phase of CLEET training for any person awarded a specialized instructor certification or adjunct specialized instructor certification based on comparable training, education or experience. Allows Director's designee to approve such instructor certifications. Rule 390:25-1-20 is being revoked as it relates to a lapse of advanced or intermediate certification if an officer is inactive as a peace officer for a period of twelve months. This rule is not necessary as officer is granted advanced and intermediate certification based on experience and education, individual is still qualified for certification whether or not they are employed.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:25-1-7. Training records

(a) CLEET may provide ~~paper or electronic~~ copies of individual officers' training records upon written request, pursuant to the Oklahoma Open Records Act.

(b) Recognizing that law enforcement agencies must bear the ultimate responsibility for maintaining comprehensive

training records for their own personnel, nothing in these rules shall be construed to mean that CLEET assumes such responsibilities.

390:25-1-11. Requirements for specialized instructor certification

To qualify for specialized instructor certification, applicants must meet the following qualifications:

(1) Meet the qualifications for basic instructor certification as described in OAC 390:25-1-10; and

(2) Successfully complete a CLEET recognized or approved instructor development school in the specialized field for which application is made.

(3) The director or director's designee may, in the exercise of discretion, award special instructor certification to applicants who have completed comparable training, education or experience that equal or exceed the qualifications for specialized instructor certification. Applicants awarded special instructor certification will be required to complete the apprenticeship phase of CLEET training for the specialized instructor certification sought to demonstrate proficiency in the requisite skills.

390:25-1-13. Adjunct Instructor

(a) **Justification.** Realizing that it would be contrary to the best interests of law enforcement to restrict or discourage qualified private individuals from participating in law enforcement training, CLEET shall recognize such individuals as adjunct instructors.

(b) **Conditions for recognition.** CLEET shall recognize individuals who meet the following qualifications and under the following conditions:

(1) Individuals whose exceptional training, experience, or educational attainment qualifies him or her to teach particular subject areas without the benefit of Instructor Development Training.

(2) Applications shall be in writing and shall include the applicant's name, address, and biographical data; a description of the subject area(s) to be taught, and a resume' of the applicant's training, experience, and/or educational attainment in these subject areas.

(3) For the purpose of this subsection, CLEET will only recognize training, experience and educational attainment that can be classified as professionally recognized and formal in nature.

(c) The director or the director's designee may award instructor certification for non-law enforcement personnel who have completed comparable training, education, or experience that equal or exceed the qualifications for basic or specialized instructor certification. Applicants awarded special adjunct instructor certification will be required to complete the apprenticeship phase of CLEET training for the specialized instructor certification sought to demonstrate proficiency in the requisite skills.

390:25-1-20. Lapse of certification [REVOKED]

~~(a) An intermediate or advanced certification lapses if the holder is not employed as a law enforcement officer with an agency in this or another state or territory for a period of twelve consecutive months.~~

~~(b) A person may request reinstatement of a lapsed certificate after serving a twelve months probationary period. The council may require supplemental training as a condition of reinstatement. [Source: Added at 12 Ok Reg 2814, eff 7-13-95]~~

[OAR Docket #14-595; filed 6-30-14]

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

[OAR Docket #14-596]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:30-1-3 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments are necessary to specify forms of payment accepted by CLEET.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(5), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:30-1-3. Statutory requirements and fees

(a) Every canine team in the state trained to detect controlled dangerous substances shall be certified, by test, in the detection of such controlled dangerous substances and shall be recertified annually so long as the canine team is used for such detection purposes. The certification test and annual recertification test provisions of this section shall not be applicable to canine teams that are owned by a law enforcement agency and that are certified and annually recertified in the detection of controlled dangerous substances by the United State Custom Service.

(b) Each application shall be accompanied by the required fee established in 70 O.S. Section 3311 (L) before the tests are given. These fees are non-refundable.

(c) Payment must be in ~~the form of a money order, cashiers check, or if presented in person, United States Currency.~~a form specified in CLEET Rule 390:1-1-13. Checks and money orders should be made payable to CLEET.

[OAR Docket #14-596; filed 6-30-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 31. BOMB DETECTOR DOG CERTIFICATION

[OAR Docket #14-597]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:31-1-3 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., § 3311 through 3311.13.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments are necessary to specify forms of payment accepted by CLEET.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:31-1-3. Statutory requirements and fees

(a) Every canine team in the state trained to detect explosive substances shall be certified, by test, in the detection of such explosive substances and shall be recertified annually so long as the canine team is used for such detection purposes. The certification test and annual recertification test provisions of this section shall not be applicable to canine teams that are owned by a law enforcement agency and that are certified and annually recertified in the detection of explosives by the North American Police Work Dog Association, TSA National Explosives Detection Canine Program, National Tactical Police Dog Association, International Police Work Dog Association, National Police Canine Association, or United States Police Canine Association, Inc.

(b) No canine team will be dual certified in controlled dangerous substances and bomb detection.

(c) Each application shall be accompanied by the required fee established in 70 O.S. Section 3311 (L). These fees are non-refundable.

(d) Payment must be ~~in the form of a money order, cashiers check, or if presented in person, United States Currency.~~in a form specified in CLEET Rule 390:1-1-13. Checks and money orders should be made to CLEET.

[OAR Docket #14-597; filed 6-30-14]

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

[OAR Docket #14-598]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. License Requirements
390:35-5-1 [AMENDED]
390:35-5-2 [AMENDED]
390:35-5-3 [AMENDED]
390:35-5-4 [AMENDED]
Subchapter 7. Application Procedure
390:35-7-5 [AMENDED]
Subchapter 9. Violations and Investigations
390:35-9-6 [AMENDED]
Subchapter 13. Use of Firearms
390:35-13-1 [AMENDED]
Subchapter 15. Training Requirements
390:35-15-7 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 59 O.S., § 1750.1 though 1750.13; 70 O.S., § 3311 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments include requiring a licensed security guard or private investigative agency to provide proof of published phone number to CLEET. Allows CLEET to retain the right to inform an agency that the Agency Name they have submitted is a duplicate or too similar to an existing name in the CLEET database. Requires agency licenses that have been expired for more than five years to start the entire application process over. Changes the number of continuing education hours for security guards and private investigators to the number of hours listed in Title 59, O.S., Section 1750.3. Requires individuals seeking licensure through reciprocity to attend the "Legal Block" of Phase IV Firearms Training. The individual must also submit a letter of good standing from the original licensing state. Changes also include removing the requirement for photographs for conditional license applicants. The time frame to submit applications for special event licenses is extended from 48 hour notice to seven business days prior to the event. Overpayments of more than ten dollars will be returned to the remitter and overpayments of less than ten dollars will be retained by CLEET. Language is changed to reflect statutory maximum for a fine of Two-Thousand Dollars ($2,000.00), also allows CLEET to issue a citation and fine to an applicant at the next renewal of the license. Changes the language from the Director to CLEET, where related to imposing fines or disciplinary actions. The word weapon is changed to handgun in 390:35-13-1. Lastly, rule changes will allow approved testing centers to administer licensing examinations, corrects conflicting number of times an applicant may challenge a licensing examination. Three attempts will be allowed and then the training course must be retaken.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 5. LICENSE REQUIREMENTS

390:35-5-1. Agency license requirements

(a) All licensed security guard and private investigative agencies, shall maintain a place of business within the State of Oklahoma, and shall maintain an operative telephone having a published listing, in the agency name. The agency must also provide proof of published phone number in a format specified by CLEET. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state. The phone number shall be on file with CLEET. The office of such business may be maintained at the personal residence of the executive officer, manager, or supervisor of such office. Such notification shall include both the geographical location (street address) and the mailing address. Any changes in the above shall be submitted to CLEET within 10 days of the effective date of the change. Notice of change of address will not be accepted over the phone.

(b) The executive officer, manager, or other person in charge of supervising security guards and/or private investigators shall be a resident of the State of Oklahoma.

(1) The executive officer, manager, or other person in charge of supervising security guards in the performance of their duties shall be a licensed security guard.

(2) The executive officer, manager, or other person in charge of supervising private investigators in the performance of their duties shall be a licensed private investigator.

(c) Agency licenses are not transferrable upon the sale of a company. The Council may approve the transfer of a license to a new entity providing that one or more of the original licensees retain ownership in the new entity, and the new licensee meets the qualifications listed in (d) of this section. The licensee shall notify CLEET in writing within ten (10) days of any change of identity of the licensee, or as it relates to an agency license, any of its owners, partners, directors, or in the case of a corporation, officers and registered agents (branch managers); and any substitute in the person enumerated must satisfy the requirements listed in (d) of this section; and be approved by CLEET. CLEET retains the right to inform an agency that the Agency Name they are submitting is a duplicate or too similar to an existing agency name licensed in the state.

(d) Every applicant for an agency license, or any of its owners, partners, directors, or in the case of a corporation, each officer and registered agent (branch manager), shall meet the following qualifications before it may engage in any business licensed under this chapter:

(1) be 21 years of age;

(2) be a citizen of the United States or a resident alien;

(3) not have been convicted of a felony or crime involving moral turpitude unless waived by the Council pursuant to O.S. Title 59, Section 1750.5 (H);

(4) not have had his license revoked or application for such license denied by CLEET;

(5) be of good moral character; and

(6) in the case of a corporation, be incorporated under the laws of this state, or shall be duly qualified to do business within this state.

(e) Alarm Companies who respond to electrical, electronic or mechanical alarm signal devices, burglar alarms, television cameras or still cameras used to manually or automatically signal or detect burglary, fire, breaking or entering, shoplifting, pilferage, theft, or hold-up are required to be licensed as a Security Agency, and individually license employees as security guards, or armed security guards, who provide the response.

(f) Temporary employment agencies who provide guards or private investigators to its clients on a contractual basis falls

within the definition of a contract security or investigative company and must be licensed pursuant to the Act, and individually license employees utilized in this service.

(g) Employee leasing services who provide an administrative service only for handling the
payroll, employee's salaries, and benefits, who do not make assignments, supervise or direct the work of the employee, or select the employees, but who lease the employee back to the licensed agency, do not fall within the definition of a contract security or investigative company and are not required to obtain an agency license. Licensed agencies who utilize the employee leasing services, are responsible for the duties such as reporting employments, terminations, address changes to our agency, providing appropriate liability insurance coverage, etc., as if the employee were paid by the agency.

(h) Agency licenses that have expired for a period of more than five (5) years, must complete the entire application process.

390:35-5-2. Security guard, armed security guard, and private investigator licenses

(a) Applicants for security guard, private investigator, or armed security guard licenses must meet and satisfy the requirements set forth in 59 O.S., Section 1750.1 et seq., The Oklahoma Security Guard and Private Investigator Act.

(b) Applicants for Armed Security Guard or firearms authorized licenses must further:

(1) Successfully pass a psychological evaluation by a licensed psychologist; provided that the applicant shall bear the cost of such evaluation.

(2) Successfully complete the firearms phase of private security training;

(3) Be twenty-one (21) years of age, and

(4) Applicants for an armed security guard license must submit an affidavit that they are gainfully employed as an armed security guard and that a firearm is required within the scope of their employment.

(c) An Armed Security Guard License grants no authority to carry a firearm when not acting directly in the course and scope of employment.

(d) No licensee shall brandish, point, exhibit, or otherwise display a firearm at any time, except as authorized by law, and the rules of this Chapter.

(e) Continuing education training is required for renewal of an individual license.

(1) Private Investigators must complete a minimum ~~of sixteen (16)~~number of hours of continuing education training from an approved source, during the licensing period to maintain their ~~license.~~license, pursuant to Title 59, O.S., § 1750.3.

(2) Security Guards must complete a minimum ~~of eight (8)~~number of hours of continuing education training from an approved source, during the licensing period to maintain their ~~license.~~,pursuant to Title 59 O.S., § 1750.3.

(3) A person holding both a security guard license and private investigator license or a combination license must complete a ~~total of sixteen (16)~~minimum number of hours of continuing education training during the licensing period to maintain their ~~license.~~
license, pursuant to Title 59, O.S., § 1750.3.

(4) Any expenses incurred for continuing education courses by any licensee shall be the responsibility of the licensee.

(5) Firearms requalification courses will not count towards mandate training. Approved sources for mandated training are:

(A) College credit hours. Fifteen hours of mandate training will be granted for each successfully completed college hour. Proof of attendance needed is a certified copy of the grade report. Requests for credit must be submitted within one (1) calendar year from the date the college credit is obtained;

(B) Established Entities (Recognized county, state, and federal associations, professional associations, vocational-technical schools). One hour of training will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. Proof of attendance needed is a copy of a certificate, sign-in roster, electronic notification or other proof from the sponsor accepted by CLEET; or

(C) CLEET Accredited Schools, Seminars, and Conferences. One hour of mandate training credit will be granted for each hour of instruction. For approval to conduct mandate training, sponsors must:

(i) Submit a written request for program accreditation to CLEET;

(ii) Provide course outline, and course objectives;

(iii) Provide Resume for Instructors; and

(iv) After training, submit a roster of attendees completing the training to CLEET.

(D) Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license.

(6) Continuing education training may be reported to CLEET as it is completed or at the time of license renewal. Verification of the minimum hours of continuing education training will be made by CLEET when the licensee requests renewal. A licensee will be subject to the following disciplinary sanctions for failure to comply with the mandate training requirements:

(A) Written Reprimand

(B) Denial

(C) Suspension

(D) Revocation and/or

(E) Disciplinary penalty or fine

(7) A renewal license will be issued only after CLEET receives a request for renewal, the renewal fee, current photographs, verification of current insurance or bond coverage, verification of the minimum hours of continuing education training for the license period.

(8) A licensee who has timely submitted a request for renewal with payment and has failed to meet the minimum

training requirements will be issued official notification of CLEET's intent to impose a disciplinary action for failure to meet the mandated training requirements in compliance with Chapter 2 of this Title.

(9) A licensee who has failed to meet the minimum training requirements and continues to work will be subject to disciplinary action under Chapter 2 of this Title.

(f) Any person seeking an Oklahoma Security Guard or Private Investigators license, who has been licensed by a state whose training and standards have been deemed comparable to and approved by the Oklahoma Council on Law Enforcement Education and Training may obtain a license by reciprocity, under the following conditions:

(1) The applicant must meet the minimum license requirement standards set forth by Oklahoma Law including fingerprint requirements. Such fingerprints requirement may be waived by CLEET where a verified records check has been made within a reasonable period of time in the context of existing law requiring fingerprint checks. The individual must also complete the "Legal Block" of Phase IV Firearms Training.

(2) The applicant must have an active license in the original licensing state, and not be subject to any administrative action regarding the active status in the licensing state. A letter of good standing must be received from the original licensing state.

(3) The applicant receiving a license by reciprocity in Oklahoma shall at all times while working as a security guard or private investigator in Oklahoma be subject to all laws regarding security guards and private investigators including all applicable fees for such license.

(4) Reciprocity may be granted only from the state in which the applicant was originally licensed and not from any intervening state by reciprocity to the original licensing state.

(5) The applicant must sign a statement of irrevocable consent that service of process, in any complaint or disciplinary action filed against the applicant, arising out of the applicant's private investigative activities in the reciprocating state, may be made by the delivery of such process on the administrator of the private investigation regulatory agency in his/her/its state of residence.

(6) An armored car employee who is primarily employed by an armored car company in another state, and is properly licensed by that state to carry a weapon while acting in the services of that company in the home state, and meets the minimum home state requirements, would be exempt from other requirements of 59 O. S. Section 1750.1 et seq. during such time as the armored vehicle from that state is actively engaged in interstate commerce within Oklahoma pursuant to 15 U.S.C. Section 5901, the AArmored Car Industry Reciprocity Act of 1993."

390:35-5-3. Conditional licenses

(a) Conditional licenses may be issued only to employees of security or investigative agencies.

(b) Conditional licenses may be issued to such employees when the following requirements have been met:

(1) Receipt of an applicant's completed license application form. An application form shall be considered complete when all applicable spaces have been filled in properly, and it has been signed and notarized;

(2) Receipt of two (2) properly completed, CLEET-issued "applicant" fingerprint cards or fingerprints submitted electronically through a fingerprint system approved by CLEET;

(3) Receipt of correct license fees;

~~(4) Receipt of three (3)two (2) personal photographs, in color and of the prescribed size or submission of a photograph electronically such as a digital photograph or scanned photograph;~~

390:35-5-4. Special Event Licenses

(a) Special Event Licenses may be issued only to employees of security agencies.

(b) Applications for Special Event Status shall be made only by the security agency which has contracted to provide security guards for a particular event.

(c) Such applications shall be submitted on forms to be provided by CLEET, and not less than ~~forty-eight (48) hours~~seven business days prior to the event. Exceptions may be granted when good cause is shown that a timely request could not be made.

(d) Applications for Special Event Status shall contain information as prescribed by CLEET, but shall contain at least the following:

(1) The name and location of the event;

(2) The dates for which security guards will be provided at the event;

(3) The nature of the event;

(4) Justification for Special Event Status including an explanation as to why regularly licensed guards may not be used;

(5) Examples of duties to be performed by the licensees; and

(6) The projected number of guards to be licensed.

(e) When an application for Special Event Status has been approved, the contracting agency shall apply in writing, to CLEET, for individual licenses. Such applications for individual licenses shall contain information as prescribed by CLEET, but shall contain at least the following:

(1) Each applicant's name, race, gender, date of birth, social security number, home address, citizenship status;

(2) Certification that the employing agency has conducted a criminal history check with the sheriff in the county of residence of each applicant, and that such criminal history check was conducted within thirty (30) days prior to the date of the event to be licensed;

(3) Certification that each applicant is covered by the employing agency's bond or liability insurance, pursuant to the Act;

(4) Proper fee payment, which shall be seven dollars ($7.00) per individual applicant.

(f) Regularly licensed and conditionally licensed guards shall be exempt from the provisions of this section.

(g) No person shall be issued more than two (2) Special Event Licenses in any calendar year.

SUBCHAPTER 7. APPLICATION PROCEDURE

390:35-7-5. License fees

(a) Individual and Agency license fees shall be determined as set forth in 59 O.S., Section 1750.1 et seq.

(b) One fingerprint fee is required of each applicant. For example, if a private investigator also applies for an armed security guard license, the applicant need not pay another fingerprint fee. Applicant is responsible for paying any fees required by the F.B.I.

(c) No fingerprint fee is required for Special Event Licenses.

(d) ~~Overpayment~~Overpayments of more than Ten Dollars ($10.00)~~amounts~~ will be returned to the remitter.

(e) Overpayments less than Ten Dollars ($10.00) will be returned to the remitter upon receipt of a written request by the remitter.

SUBCHAPTER 9. VIOLATIONS AND INVESTIGATIONS

390:35-9-6. Disciplinary penalties and/or fines

~~The Director~~CLEET may impose a disciplinary penalty or fine for violations of O.S. Title 59, Section 1750.1 through 1750.11, or the rules promulgated hereunto, not to exceed ~~five thousand dollars ($ 5,000.00)~~two-thousand dollars ($2,000.00) per offense, if ~~the Director~~CLEET determines that such action better serves the purpose of this chapter.

(1) If, upon investigation, ~~the Director~~CLEET determines a violation has occurred, ~~the Director~~CLEET may issue a citation to the licensee, person or ~~registrant.~~registrant, or may assess the fine at the time of the next renewal of the license. The citation shall be in writing and shall describe the nature of the violation, including specific reference to the provision of the law or rule determined to have been violated.

(2) The citation shall inform the licensee, person or registrant that he is to contact CLEET within 15 days of receipt of the citation for disposition in one of the following manners:

(A) To pay a disciplinary penalty or fine.

(B) To contest the findings of the violation, and request a review by a Hearing Examiner, in accordance with Chapter 2 of this Title.

(3) Disciplinary penalties and fines disposed of by (2) (A) of this Section will be assessed according to the schedule provided in Appendix C of this Chapter.

(4) Disciplinary penalties and fines disposed of by (2) (B) of this Section will be assessed by the Hearing Examiner on a case-by-case basis.

(5) If the disposition of a violation by (2) (A) of this Section results in automatic referral for a hearing after successive violations, the disciplinary penalties and fines will be assessed by the Hearing Examiner on a case-by-case basis.

(6) If the licensee, person or registrant does not make disposition within 15 days of receipt of the citation, CLEET ~~will~~may initiate an action for revocation against the licensee, and/or file charges at the time of the next renewal of the license.

(7) The disciplinary fines and penalties collected shall be deposited in the General Revenue Fund.

SUBCHAPTER 13. USE OF FIREARMS

390:35-13-1. Authorized firearms

(a) 59 O.S., Section 1750.1 et seq. is not intended to be used as a means to obtain authority to carry a weapon except in the course and scope of gainful employment as an armed security guard.

(b) All armed security guards not in uniform apparel must carry their firearm concealed from view.

(c) Under no condition shall an armed security guard licensee carry an inoperative, unsafe, or replica model firearm while on duty or any firearm in violation of a federal or state law, while in the course and scope of his employment.

(d) No armed security guard or private investigator shall carry a type of firearm with which he has not been formally trained to handle and operate. Formal training must be conducted by an accredited and recognized firearms instructor and training program. Compliance with this requirement is incumbent upon the licensee and notification to CLEET shall be required by submitting a certificate of training or a copy thereof upon completion of said training. Said notification shall include:

(1) Type of firearms
(2) Entity and instructor providing training
(3) Number of training hours
(4) Qualification scores
(5) Date(s) of training

(e) The only weapons authorized by CLEET for use by armed security guards or armed private investigators are revolvers, semi-automatic ~~weapons,~~handguns, and shotguns. The prescribed revolver or semi-automatic ~~weapon~~handgun ammunition shall be "factory-loaded". Ammunition commonly referred to as "re-loads" is strictly prohibited for use as service ammunition.

(f) The pump (slide action) 12 gauge shotgun shall be the only authorized shotgun weapon. Pump shotguns which have a hammer safety are prohibited. The pump shotgun nomenclature shall be similar to the type indicated in Appendix B of this Chapter.

(g) The authorized shotgun service ammunition shall be the standard 12-gauge shell which is 2 3/4 inches in length and ordinarily carries from 1 to 1 5/8 ounces of shot with pellets ranging from light bird shot to heavy buckshot.

(h) The prescribed shotgun ammunition shall be "factory loaded". Ammunition commonly referred to as "re-loads" is strictly prohibited for use as service ammunition.

(i) No licensee shall brandish, point, exhibit, or otherwise display a firearm at anytime, except as authorized by law, and the rules of this subchapter.

SUBCHAPTER 15. TRAINING REQUIREMENTS

390:35-15-7. Attendance and administrative requirements

(a) School coordinators shall provide the following information to CLEET, thirty (30) days in advance of each training course conducted, on forms to be provided by CLEET:

(1) Training facility location;

(2) Chief Administrative Officer of the school;

(3) School coordinator and resume;

(4) Course schedule, to include dates, hours and instructors for each unit of instruction; and

(5) Resumes on all Instructors.

(b) Any changes in an approved school curriculum, instructors, or training schedules, shall be reported to CLEET in advance of the changes.

(c) Private security personnel enrolled in an approved training school are required to attend all prescribed units of instruction. Tardiness and absenteeism will not be permitted. Students will be required to make up any training missed.

(d) It shall be incumbent upon students enrolled at an approved school to comply with the rules and policies promulgated by the school and any rules established by, and within the authority of the school coordinator. If a school coordinator considers violations of such rules to be detrimental to the welfare of the school, the school coordinator may expel offending individuals from the school. Notification of such actions shall be reported immediately to the employing agency and to CLEET. School coordinators shall be responsible for ensuring compliance with the provisions of these rules and regulations.

(e) At the end of each training course, each student shall be given the opportunity to evaluate the performance of the school coordinator and each instructor on a form provided by CLEET. CLEET staff may conduct these evaluations, at their discretion.

(f) School coordinators shall submit a roster of graduating students, certifying that each student has met the requirements of the course conducted. This certification shall be submitted to CLEET within seven (7) days after the completion of the course, on a form provided by CLEET.

(g) Each training school coordinator will be required to maintain class files for a period of five (5) years from the completion date of each course conducted. Class files shall contain the following:

(1) Roster of students who attended and/or successfully complete the course;

(2) Accurate attendance records;

(3) Examination scores (including firearms familiarization scores), and

(4) Unit instructors.

(h) Applicants must successfully complete a licensing examination administered by CLEET, or an approved testing center, based on the official private security curricula, prior to issuance of a license.

~~(1) Applicants will be given five opportunities to successfully complete the state licensing examination.~~

(~~2~~1) If the applicant is unable to successfully pass the examination after three (3) attempts, he/she must retake the course.

(~~3~~2) After repeating the course, applicants will be given two opportunities to successfully pass the examination.

(~~4~~3) Training costs will be paid by the applicant.

[OAR Docket #14-598; filed 6-30-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 40. OKLAHOMA SELF-DEFENSE ACT

[OAR Docket #14-599]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Instructor Application Procedure
390:40-7-4 [AMENDED]
Subchapter 9. Training Standards and Requirements
390:40-9-4 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 21 O.S., § 1289.8 and 1290.1 et seq.; 70 O.S., § 3311 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments specify forms of payment accepted by CLEET. Additionally, changes allow a Self-Defense Act Instructor to charge a fee for an exemption certificate for an individual seeking a Self Defense Act License pursuant to Title 21, O.S., Section 1290.15.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 7. INSTRUCTOR APPLICATION PROCEDURE

390:40-7-4. Instructor fee schedule

(a) Applications for an SDA Firearm Instructor Approval Certificate shall be submitted with the fee established in O.S. 21, Section 1290.14(B).

~~(b) The following types of payment will be accepted:~~

~~(1) Money order;~~

~~(2) Cashier's check; or~~

~~(3) Cash.~~

(b) Payment must be in a form specified in CLEET Rule 390:1-1-13. Checks and money orders should be made to CLEET.

SUBCHAPTER 9. TRAINING STANDARDS AND REQUIREMENTS

390:40-9-4. Training exemptions

(a) The applicant shall present proof of training to be considered for exemption for all or part of the training requirements to an approved SDA Firearms Instructor.

(b) Proof of training must be within the guidelines established in Section 1290.15 of Title 21 of the Oklahoma Statutes. NRA Pistol Instructor training is recognized by CLEET to qualify for an exemption.

(c) The instructor shall issue a certificate of training exemption to each applicant whose proof of exemption of training is within these guidelines. The instructor may charge a fee for the exemption certificate in accordance with Section 1290.15 of Title 21 of the Oklahoma Statutes.

(d) The instructor shall maintain on file, a copy of the documents presented as proof of training with a copy of the certificate of training exemption for inspection by CLEET personnel.

[OAR Docket #14-599; filed 6-30-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 50. PENALTY ASSESSMENT FEES

[OAR Docket #14-600]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:50-1-6 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 20 O.S., § 1313.2; 11 O.S., §14-111.1; 19 O.S. § 220; and 70 O.S., Section 3311, et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments authorize Director's designee to waive penalty fees if deemed uncollectable and late fees associated with penalty assessment fees.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:50-1-6. Late fees

(a) Late fees will be assessed courts for failure to make timely deposits as provided in 20 O. S., § 1313.2 (D).

(b) Late fees are due upon receipt of the late fee notice.

(c) Courts may request that part or all late fees be waived as follows:

(1) A request for waiver of part or all of an assessed late fee must be submitted in writing to the Director.

(2) The written request must contain an explanation of the circumstances leading to the assessment of late fees and be signed by the Judge, Mayor, City Manager or Treasurer.

(3) A court requesting waiver of late fees must diligently respond to inquiry from CLEET requesting clarification of information included in the written request or for requests of supplemental documentation.

(4) Failure to timely respond to any request from CLEET for supplemental information in processing the request for waiver of late fees may result in denial of the request for waiver.

(5) Upon receipt by CLEET of a written request for waiver of late fees, accumulation of additional late fees shall be suspended until a decision on the written request has been issued by the Director or the director's designee.

(d) The Director or the director's designee will determine whether the request for waiver of late fees will be granted or denied.

(1) The Director or the director's designee shall take into consideration all information provided in the written request for waiver of late fees.

(2) The Director or the director's designee should grant a waiver of late fees if clear and convincing evidence is

found that late fees were incurred as a result of circumstances outside the control of the court requesting the waiver or for other good cause.

(3) If the Director or the director's designee is not convinced by clear and convincing evidence that good cause for the late pate payment of the penalty assessment fee has been shown, the request shall be denied.

(4) Unless a written notice or request for supplemental information has been given to the requesting court, the written request will be considered complete when received.

(5) The Director or the director's designee shall issue a ruling on a completed request for waiver within ten (10) days.

(6) The Director or the director's designee may waive all or part of any moneys due to the Council, if deemed uncollectable by the Council.

(e) Failure to respond to the second request within thirty days may result in additional attempts to force compliance including but not limited to filing a Writ of Mandamus and notification to the State Auditor's Office.

[OAR Docket #14-600; filed 6-30-14]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 55. FACILITIES MANAGEMENT

[OAR Docket #14-601]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
390:55-1-7 [AMENDED]
390:55-1-9 [AMENDED]
390:55-1-10 [AMENDED]
390:55-1-12 [AMENDED]
AUTHORITY:
Council on Law Enforcement Education and Training; 70 O.S., Section 3311(B)(13), and 70 O.S., Section 3311, et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 6, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 24, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Amendments authorize the Director's designee to set complex hours, grant exceptions to rules regarding weapons on campus, refunds of facility rental and posting of materials in conjunction with an event or exhibit.
CONTACT PERSON:
Norma Floyd, Council on Law Enforcement Education and Training, 2401 Egypt Road, Ada, Oklahoma 74820-0669, 405-239-5166.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

390:55-1-7. Complex access, operational hours and access requirements

(a) General business hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.

(b) During general business hours, the complex may be accessed by the public through the north entrance of the main campus in Building A.

(c) Upon entering the complex all persons shall check in with the Receptionist in the Administrative Offices located on the east side of the main lobby. Persons shall check out with the Receptionist upon exiting the complex.

(d) Persons entering the complex may be subject to security screening requirements.

(e) CLEET shall designate hours of access for scheduled functions upon confirmation of the function.

(f) Persons attending a scheduled function shall check in with a CLEET representative and/or a CLEET designated representative at the location of the function indicated on the confirmation.

(g) Persons in the complex shall at all times comply with the lawful direction of law enforcement and other authorized individuals.

(h) Public entrances, operating hours and access requirements for the complex are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director or the director's designee.

390:55-1-9. General Operating Procedures

(a) CLEET will post a list of rules and requirements in a public area and disseminate information upon confirmation of activities with regards to building operation information and regulations.

(b) The following requirements shall be performed pursuant to applicable state and federal laws and regulations:

(1) Parking. General parking is allowed in paved parking areas with adherence to all applicable restrictions. CLEET will designate special areas of parking for confirmed activities.

(2) Weapons. No person entering or while on-property shall carry or possess firearms or other dangerous or deadly weapons, unless authorized to do so by state or federal laws. For training purposes, the Director or

the director's designee may grant exceptions for law enforcement officers, military officers and other individuals involved with public safety.

(3) Intoxicating beverages, low-point beer and controlled substances. No intoxicating beverages, low-point beer, or controlled or non-prescribed substances are allowed inside the building or on property grounds.

(4) Disturbances. No conduct shall be allowed which creates a loud or unusual noise or nuisance; or which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots or which otherwise impede or prohibits the official duties of building occupants or impedes the safe evacuation for building occupants or access for emergency response personnel.

(5) Posting and/or distribution of printed materials. No notices, bulletins, circulars or other type information may be placed on any common area wall or door (common area is described herein as hall, lobby, elevator, restroom, break room or conference room). This includes all adjoining doors and door frames.

(A) This paragraph does not apply to meeting agendas posted in accordance with the Oklahoma Open Meeting Act unless alternate posting methods for public viewing become available, or information posted with the approval of the Director or the director's designee.

390:55-1-10. Reservation requests

(a) All events of the complex, whether for a public or private purpose, require prior written approval of CLEET.

(1) A sponsor shall submit an application for a reservation on a form designated by CLEET together with a check or purchase order for any applicable fees (Reference OAC 390:55-1-11) to CLEET at least ten (10) working days but no more than six (6) months prior to the beginning date of the proposed event or exhibit. Requests for individual lodging reservations shall be made at least five (5) working days in advance on a form designated by CLEET. Individual lodging reservations for CLEET sponsored events will not require advance payment or deposit. The application must be submitted during CLEET's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.

(2) The application shall include information regarding the desired date, time period, area of use, a description of the event and estimated number of participants.

(3) CLEET may restrict use of the skills training facilities for firearms, driving and defensive tactics.

(4) A member of CLEET shall be available at the complex during any event. Reservations shall be subject to the availability of CLEET staff to schedule functions after hours, on weekends or during a period that extends the staff beyond its normal capacity. Use of the skills training facilities shall require a staff member with knowledge in the area of operation to be available to ensure safety regulations are followed.

(5) If CLEET denies a request for a reservation, CLEET will notify the requesting sponsor or individual making the reservation of the reasons for denial.

(b) Prioritization of reservations. The training activities and events conducted or sponsored by CLEET shall take precedence over use of the complex by other organizations or businesses. Law enforcement activities shall receive priority over public activities when scheduling events.

(c) Cancellation of reservations. Facility reservations must be cancelled three days in advance. Lodging room reservations must be cancelled 24 hours in advance. Reservations not cancelled will be charged the full fee amount.

(d) The full fee amount for a reservation will be refunded in the event of a cancellation of a reservation by CLEET due to unforseen circumstances or at the request of the Director or the director's designee.

390:55-1-12. Provisions for events

The following provisions apply to all events:

(1) Sponsors shall confine events and exhibits to the areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the complex unless CLEET grants prior approval.

(2) No intoxicating beverage or low-point beer will be dispensed or consumed on state property. No tobacco use in any form will be allowed on state property.

(3) Use of cooking or heating elements of any kind is prohibited except for the contracted vendor providing cafeteria services for CLEET.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event or exhibit is prohibited unless written permission is obtained from the Director or the director's designee.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the complex is prohibited.

(6) CLEET prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money on the complex. Governmental agencies and non-profit organizations that sell goods or host fund raising events to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(7) CLEET may order or seek to cause cessation of an event which may pose a hazard, as determined by CLEET, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(8) A sponsor shall place electrical cords and cables used for events so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(9) Open flames (including candles) used in conjunction with events are prohibited except for the contracted vendor providing cafeteria services for CLEET.

(10) No outside catered events or food service will be allowed unless approved by the contracted vendor providing cafeteria services for CLEET. Arrangements must be made directly with the contracted vendor providing cafeteria services for CLEET if such food services are desired.
(11) Sponsors shall be responsible for providing expendable supplies or special equipment required for an event to include items such as ammunition, targets, hearing protection, eye protection, handcuffs and batons.
(12) CLEET reserves the right to inspect and approved any equipment and expendable supplies for the event for purposes of ensuring safety.

[OAR Docket #14-601; filed 6-30-14]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 30. PROBLEM GAMBLING VOLUNTARY SELF-EXCLUSION PROGRAM

[OAR Docket #14-504]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
429:30-1-1. [RESERVED]
429:30-1-2. Definitions [NEW]
429:30-1-3. Self-exclusion Program [NEW]
429:30-1-4. Agreement [NEW]
429:30-1-5. Contents of Agreement [NEW]
429:30-1-6. Lottery Commission Procedures [NEW]
AUTHORITY
Oklahoma Lottery Commission, 3A O.S., Section 709 and Section 710.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 11, 2013
COMMENT PERIOD:
January 2, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 19, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Rule 429: 30: The rule change will modify the permanent operating rules for the Lottery Commission by adding a new Section 30, related to a Voluntary Self-exclusion Program for problem gamblers. Authority is granted by the Oklahoma Statutes, Title 3A, Section 709 and Section 710.

Proposed Addition of 429:30-1-1 - As in other chapters of Title 429, section 1-1 of chapter 30 will be reserved for potential future use.

Proposed Addition of 429:30-1-2 - Establishes definitions related to this chapter.

Proposed Addition of 429:30-1-3 - Authorizes the Lottery Commission to offer a voluntary self-exclusion program for problem gamblers. The self-exclusion program is defined as voluntary, for the lifetime of the person self-excluding themselves, and applicable to any lottery prize greater than $600. The program is offered as a tool for those who categorize themselves as having gambling problems. Participation cannot be forced on anyone and the program is completely voluntary in nature. The person who chooses to exercise this option is doing so to provide themselves with a disincentive to play lottery games. Once signed up for this program, any lottery prize in excess of $600 will not be paid to the person, thus serving as the disincentive to play. Prizes of $600 or less may be paid at any retail location that sells lottery tickets and enforcement of any program of this type on those prizes is impossible, thus the program is designed to apply to any prize greater than $600.

Proposed Addition of 429:30-1-4 - Indicates that the Agreement to be signed by the person wishing to self-exclude themselves will be developed by the Executive Director of the Lottery Commission, with the assistance of the Office of the Attorney General, and will be approved by the Lottery Commission Board of Trustees. Any amendments to the Agreement must also be approved by the Board of Trustees.

Proposed Addition of 429:30-1-5 - This section outlines the minimum contents of the Agreement, including that the Agreement will collect enough personal information to properly identify the person; that the program is voluntary and for the lifetime of the person; and that if the person attempts to claim any lottery prize in excess of $600, it will be forfeited. The Agreement will also include a statement that it is the person's responsibility to not play lottery games or to participate in lottery drawings and it is also their responsibility to inform the Lottery if they (the person) start getting lottery-related marketing information.

Proposed Addition of 429:30-1-6 - This section states that on approval of the program by the Board of Trustees, the Lottery Commission will publish information related to the program on the Lottery web site and make the information available to appropriate responsible gambling and problem gambling treatment entities; include appropriate links on its website; and maintain a confidential list of persons in the program in order to disallow such persons from claiming lottery prizes greater than $600, from entering lottery drawings, or from receiving lottery marketing information.
CONTACT PERSON:
Rollo Redburn, Executive Director, Oklahoma Lottery Commission, 3817 N. Santa Fe, Oklahoma City, OK 73118-8508, 405-522-7700, Rollo.Redburn@lottery.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

429:30-1-1. [RESERVED]

429:30-1-2. Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than $600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars ($5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Drawing" means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

"Entry" means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

"Executive Director" means the chief executive officer and administrator of the Oklahoma Lottery Commission.

"High-Tier Prize" means a prize of $601 or more.

"Non-Cash Prize" means merchandise prizes offered in lottery games or lottery promotions.

"OLC" means the Oklahoma Lottery Commission.

"Prize" means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

"Prize Drawing" means a method for determining game or game promotion winners, as defined in OLC procedures.

"Problem Gambler" means a person who classifies themselves as someone who exhibits gambling behavior patterns that compromise, disrupt or damage personal, family or vocational pursuits.

"Retailer" means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

429:30-1-3. Self-exclusion Program

The OLC may offer a "Self-exclusion Program" (hereinafter "SEP") as a voluntary, lifetime program for those who classify themselves as a problem gambler. The program is designed to offer such individuals the option to voluntarily exclude themselves from collecting any lottery prize greater than $600 and thus provide a disincentive for playing lottery games.

429:30-1-4. Agreement

The Executive Director will develop a legal document with the assistance of the Office of the Attorney General. This document will serve as the legal, binding agreement between the person wishing to exclude themselves and the OLC. The SEP Agreement (hereinafter "Agreement") shall be presented to and approved by the Board of Trustees, and any amendments thereto shall be presented to the Board of Trustees for approval.

429:30-1-5. Contents of Agreement

The SEP Agreement shall at a minimum include the following information:

(1) A clear statement that the person wishing to exclude themselves is doing so on a voluntary basis;

(2) A clear statement that the Agreement is valid for the lifetime of the person entering into the Agreement, or until the OLC Board of Trustees cancels the SEP;

(3) A clear statement that it is the responsibility of the person wishing to enter into the Agreement to not purchase lottery products and not enter into any lottery drawing and that it is not the responsibility of the State, the OLC, any Lottery employee or any Lottery retailer to prevent such person from purchasing lottery products or from entering into lottery drawings;

(4) A clear statement that it is the responsibility of the person entering into an Agreement to inform the OLC if they are the recipient of any marketing information through email, so the OLC can remove their contact information from any marketing list;

(5) A clear statement that the person entering into the Agreement releases the aforementioned from any liability relating to the Agreement;

(6) A clear statement that the Agreement applies to any lottery prize valued in excess of $600;

(7) A clear statement that in the event that a person who has executed an Agreement with the OLC attempts to claim an applicable cash or non-cash prize at Lottery headquarters or any authorized Claim Center, the prize shall be forfeited and placed into the Unclaimed Prize Fund and used according to state law, or, if a prize in an applicable multi-state jackpot game is being claimed, the prize shall be handled according to the rules of the multi-state game;

(8) Appropriate information properly identifying the person wishing to enter into the Agreement including but not limited to the following: full name; addresses; phone numbers; email addresses; birthdate; government issued ID numbers; physical description.

429:30-1-6. Lottery Commission Procedures

On approval of the SEP, the Lottery Commission shall:

(1) Publish information related to the SEP on the Lottery Commission web site;

(2) Make SEP information available to appropriate responsible gambling and problem gambling treatment entities;

(3) Include appropriate links to responsible gambling and problem gambling treatment entities on the Lottery Commission web site;

(4) Maintain a confidential list of persons who have entered into an Agreement and use that list to:

(A) disallow collection of prizes valued greater than $600;

(B) disallow the entry of such persons into drawings conducted by the OLC;

(C) remove such persons from any marketing lists used by the OLC.

[OAR Docket #14-504; filed 6-24-14]

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

[OAR Docket #14-490]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 1. General provisions
435:10-1-4. Definitions [AMENDED]
Subchapter 7. Regulation of physician and surgeon practice
435:10-7-13. Telemedicine [NEW]

AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 8, 2013

COMMENT PERIOD:
December 2, 2013 through January 10, 2014
PUBLIC HEARING:
January 16, 2014
ADOPTION:
January 16, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
Amendments to OAC 435:10-1-4 define terms used in this Chapter. The proposed amendments define terms used in the practice of medicine via telemedicine. The amendments also add a reference to exceptions to the face-to-face requirements of the "physician/patient relationship" found in **OAC 435:10-7-12. Establishing a physician/patient relationship; exceptions.**
New rule OAC 435:10-7-13 sets out parameters for practicing telemedicine in Oklahoma. The parameters are based on standards endorsed by the American Telemedicine Association and Centers for Medicare and Medicaid Services. Utilizing telemedicine under these nationally recognized standards would promote increased access to medical care for people living in rural and medically underserved parts of Oklahoma, while ensuring the appropriateness and safety of medical care provided through telemedicine.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

435:10-1-4. Definitions

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

"Act" means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

"APA" means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

"Applicant" means a person who applies for licensure from the Board.

"Board" means the Oklahoma Board of Medical Licensure and Supervision.

"Distant site" means the location of medical doctor providing care via telecommunications systems.

"Foreign applicant" means an applicant who is a graduate of a foreign medical school.

"Foreign medical school" means a medical school located outside of the United States.

"Originating site" means the location of the patient at the time the service being furnished via a telecommunications system occurs.

"Patient" means the patient and/or patient surrogate.

"Physician/patient relationship" means a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled, actual face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except as allowed in OAC 435:10-7-12 in this Subchapter. The act of scheduling an appointment, whether by a physician or by a physician's agent, for a future evaluation will not in and of itself be considered to establish a physician/patient relationship.

"Supervision and Control" means the physical presence of the supervising physician in the office or operating suite before, during and after the treatment or procedure and includes diagnosis, authorization and evaluation of the treatment or procedure with the physician/patient relationship remaining intact.

"Surrogate" means individuals closely involved in patients' medical decision-making and care and include:

(A) spouses or partners;
(B) parents;
(C) guardian; and
(D) other individuals involved in the care of and/or decision-making for the patient.

"Telemedicine" means the practice of healthcare delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telemedicine management, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a consultation provided by telephone or facsimile machine (Oklahoma Statutes, Title 36, Sec. 6802). This definition excludes phone or Internet contact or prescribing and other forms of communication, such as web-based video, that might occur between parties that does not meet the equipment requirements as specified in OAC 435:10-7-13 and therefore requires an actual face-to-face encounter. Telemedicine physicians who meet the requirements of OAC 435:10-7-13 do not require a face to face encounter

SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE

435:10-7-13. Telemedicine

(a) Physicians treating patients in Oklahoma through telemedicine must be fully licensed to practice medicine in Oklahoma; and

(b) Must practice telemedicine in compliance with standards established in these rules. In order to be exempt from the

face-to-face meeting requirement set out in these rules, the telemedicine encounter must meet the following:

(1) **Telemedicine encounters.** Telemedicine encounters require the distant site physician to perform an exam of a patient at a separate, remote originating site location. In order to accomplish this, and if the distant site physician deems it to be medically necessary, a licensed healthcare provider trained in the use of the equipment may be utilized at the originating site to "present" the patient, manage the cameras, and perform any physical activities to successfully complete the exam. A medical record must be kept and be accessible at both the distant and originating sites, preferably a shared Electronic Medical Record, that is full and complete and meets the standards as a valid medical record. There should be provisions for appropriate follow up care equivalent to that available to face-to-face patients. The information available to the distant site physician for the medical problem to be addressed must be equivalent in scope and quality to what would be obtained with an original or follow-up face-to-face encounter and must meet all applicable standards of care for that medical problem including the documentation of a history, a physical exam, the ordering of any diagnostic tests, making a diagnosis and initiating a treatment plan with appropriate discussion and informed consent.

(2) **Equipment and technical standards**

(A) Telemedicine technology must be sufficient to provide the same information to the provider as if the exam has been performed face-to-face.

(B) Telemedicine encounters must comply with HIPAA (Health Insurance Portability and Accountability Act of 1996) security measures to ensure that all patient communications and records are secure and remain confidential.

(3) **Technology guidelines**

(A) Audio and video equipment must permit interactive, real-time communications.

(B) Technology must be HIPAA compliant.

(4) **Board Approval of Telemedicine.** In the event a specific telemedicine program is outside the parameters of these rules, the Board reserves the right to approve or deny the program.

[OAR Docket #14-490; filed 6-23-14]

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

[OAR Docket #14-492]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 4. Application and Examination Procedures for Licensure as Physician and Surgeon
435:10-4-6. Medical licensure examination
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 16, 2013 through November 5, 2013
PUBLIC HEARING:
November 7, 2013
ADOPTION:
November 7, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 12, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment updates the passing score language to reflect current reporting standards used by the United States Medical Licensing Examination (USMLE) program. As of April 1, 2013, scores are no longer reported to the Oklahoma Board of Medical Licensure & Supervision from the USMLE program in a 2-digit score scale format. Only the 3-digit score scale is used and reported.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, extension 122, email - kplant@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 4. APPLICATION AND EXAMINATION PROCEDURES FOR LICENSURE AS PHYSICIAN AND SURGEON

435:10-4-6. Medical licensure examination

(a) Upon submission and approval of a completed application for licensure by examination, and the payment of all fees, an applicant may sit for an examination approved by the Board. The Board has adopted the USMLE as its licensure examination. The passing score for the licensure examination is set at seventy-five percent (75%) or the 3-digit minimum passing score scale as set by the USMLE program.

(b) In order to sit for the licensure examination, the applicant shall provide the Board with all information required by 59 O.S. § 494.1 on a form created or approved by the Board.

(c) Submission of an application shall not guarantee an applicant the ability to sit for the licensure examination. No person shall sit for licensure examination until approved to do so by the Board.

(d) The Board recognizes as acceptable for licensure the USMLE, NBME, FLEX and LMCC examinations. However, the Board will not accept test scores or combined FLEX scores

from multiple sittings of the FLEX. In addition, the Board will accept the following combinations of those examinations:

(1) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** NBME part III or USMLE step 3;

(2) FLEX component 1 plus USMLE step 3; or

(3) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** FLEX component 2.

(e) The factoring of scores or combination of scores taken from separate examinations is acceptable only as set forth in (d)(1) through (d)(3) of this Section.

(f) All steps of the licensure examination must be passed within ten (10) years unless otherwise prohibited by applicable law.

(g) The following applies to all applicants regarding examination failures unless otherwise prohibited by applicable law:

(1) Any applicant who fails any part of a licensing examination three times will not be eligible for a license. A score of incomplete shall be considered a failing score. The USMLE Step2-Clinical Knowledge and Step2-Clinical Skills shall be considered as separate steps.

(2) If a combination of NBME, FLEX and/or USMLE is utilized, any applicant who has failed more than six (6) examinations will not be eligible for a license.

(3) If an applicant has achieved certification by an American Board of Medical Specialties (ABMS) Board, an exception to 435:10-4-6 (g)(1) and (2) may be granted by a vote of the Board.

(h) As with the initial application, the Board may make additional inquiry of the applicant to provide additional information as necessary.

[OAR Docket #14-492; filed 6-23-14]

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

[OAR Docket #14-491]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 7. Regulation of Physician and Surgeon Practice
435:10-7-12. Establishing a physician/patient relationship; exceptions [NEW]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
September 16, 2013 through November 5, 2013
PUBLIC HEARING:
November 7, 2013
ADOPTION:
November 7, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 12, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
435:10-7-12. Establishing a physician/patient relationship; exceptions [NEW]
Gubernatorial approval:
March 18, 2014
Register publication:
31 Ok Reg 582
Docket number:
14-386
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The proposed new rule at OAC 435:10-7-12 clarifies what constitutes establishment of a physician-patient relationship. It also includes circumstances when the face-to-face meeting between the physician and patient is not required. Circumstances would include physicians covering another physician's practice when issuing a refill if they have access to the complete medical record, hospice medical directors ordering medication as requested by licensed hospice employees with verification as being appropriate by the hospice record, providers treating either a laboratory-verified, sexually-transmitted disease or persons who have been in contact with an infectious bacterial disease, and physicians practicing via telemedicine under criteria outlined in OAC 435:10-7-13.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE

435:10-7-12. Establishing a physician/patient relationship; exceptions

A physician/patient relationship is established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled, face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except the following providers are not subject to the face-to-face encounter:

(1) Providers covering the practice of another provider may approve refills of previously ordered medications if they have access to the medical file of the patient.

(2) Hospice medical directors may initiate prescriptions based on requests from licensed health care providers and on information from Hospice records.

(3) Providers ordering appropriate medications for persons with laboratory-proven, sexually transmitted diseases and persons who have been in contact with certain infectious diseases.

(4) Telemedicine physicians who meet the criteria set out in OAC 435:10-7-13 of this Subchapter.

(5) Licensed healthcare providers providing medical immunizations, which may be implemented by means of standing order(s) and/or policies.

[OAR Docket #14-491; filed 6-23-14]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 40. REGISTERED ELECTROLOGISTS

[OAR Docket #14-494]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
435:40-1-2. Definitions [AMENDED]
435:40-1-3. Advisory committee [AMENDED]
435:40-1-4. Standards of practice; code of ethics [AMENDED]
435:40-1-4.1. Infection control standards [AMENDED]
435:40-1-6. Curriculum of study and internship requirements [AMENDED]
435:40-1-7. Application procedures [AMENDED]
435:40-1-8. Examination for electrology license [AMENDED]
435:40-1-9. License renewal and replacement [AMENDED]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 17, 2014
COMMENT PERIOD:
November 15, 2013 to January 3, 2014
PUBLIC HEARING:
January 6, 2014
ADOPTION:
January 16, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 17, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rule amendments add needed definitions and update the code of ethics, internship requirements and application procedure as referenced in 59 O.S. §§ 536.2, 536.4, 536.6, and 536.7. The amendments also clarify the application procedure and examination process. A reference to the Newberry degree program for continuing education credit is being removed since the program is no longer offered. Continuing education credit for certain courses also are being adjusted. References to the committee chairman maintaining records and providing notifications to licensees is being changed to the Board, since Board staff are the ones maintaining the information and sending the notifications.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, extension 122, email - kplant@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

435:40-1-2. Definitions

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

"Act" means the Registered Electrologist Act, 59 O.S. 1985, Section 536 et. seq.

"Association"or**"OSEA"** means the Oklahoma State Electrologists Association.

"Board" means the Oklahoma State Board of Medical Licensure and Supervision.

"Committee" means the Advisory Committee of Registered Electrologists.

435:40-1-3. Advisory committee

(a) **Purpose.** The rules in this section shall set out the organization and administration and other general procedures governing the operation of the advisory committee.

(b) **Meetings.**

(1) The advisory committee shall hold a meeting ~~prior to any regularly scheduled meeting set by the Board~~ at such designated date and time as may be determined by the chairman.

(2) Special meetings may be called by the chairman at such times and dates as become necessary for the transaction of advisory committee business.

(3) Meetings shall be announced and conducted under the provisions of the Oklahoma Open Meeting Law.

(c) **Quorum.** A quorum of the advisory committee necessary to conduct official business is two (2) members.

(d) **Transaction of official business.**

(1) The advisory committee may transact official business only when in a legally constituted meeting with a quorum present.

(2) The advisory committee shall not be bound in any way by any statement or action on the part of any advisory committee member except when a statement or action is in pursuance of specific instructions of the advisory committee.

(3) Advisory committee action shall require a majority vote of those members present and voting.

(e) **Impartiality.** Any advisory committee member who is unable to be impartial in any proceeding before the advisory committee such as that pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare his/her lack of impartiality to the advisory committee for the record and shall not participate in any advisory committee proceedings involving that individual.

(f) **Attendance.** The policy of the advisory committee is that members will attend regular ~~and~~ committee meetings as scheduled.

(g) **Rules of order.** Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by these rules.

(h) **Agendas.** The chairman shall prepare and submit to each member of the advisory committee prior to each meeting an agenda which includes items requested by the Board or by members of the advisory committee, items required by law, old business, and other matters of Board business which have been approved by any committee member.

(i) ~~**Liaison.** A member of the Board shall attend each meeting as a liaison of the Board.~~

~~(j)~~ **Minutes.**

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the advisory committee for review. At each meeting minutes of the pervious meeting shall be approved or corrected.

(2) The official minutes of advisory committee meetings shall be kept in the office of the Board and shall be available to any person desiring to examine them during regular office hours of the Board.

(~~k~~j) **Official records.**

(1) All official records of the advisory committee including application materials, except files containing investigative information and examinations shall be open for inspection during regular office hours of the Board.

(2) A person desiring to examine official records shall be required to identify himself/herself and sign statements listing the records requested and examined.

(3) Official records may not be taken from the Board offices, however, persons may obtain photocopies of files upon written request and by paying the fees established by the Board. Payment shall be made prior to release of the records and may be made by personal check.

(~~l~~k) **Elections.**

(1) At the first meeting of each fiscal year, the advisory committee shall elect by a majority vote of those members present, a chairman and vice-chairman.

(2) A vacancy which occurs in the office of chairman and vice-chairman may be filled by a majority vote of those members present and voting at the next advisory committee meet- ing.

(3) Absence from three regular meetings, without an acceptable reason, constitutes self-removal from the committee.

(~~m~~l) **Committees.**

(1) The advisory committee with the approval of the Board may establish sub-committees as deemed necessary to assist the advisory committee in carrying out its duties and responsibilities.

(2) The chairman may appoint the members of the advisory committee to serve on sub-committees and may designate the sub-committee chairman.

(3) The chairman of the advisory committee may appoint non- advisory committee members to serve as sub-committee members on a consultant or voluntary basis subject to Board approval.

(4) Sub-committee chairman shall make regular reports to the advisory committee in interim written reports and/or at regular meetings, as needed.

(5) Committees and sub-committees shall direct all reports or other materials to the chairman for distribution.

(6) Sub-committees shall meet when called by the chairman of the sub-committee or when directed by the advisory committee.

435:40-1-4. Standards of practice; code of ethics

The rules on the profession of electrologists shall be to establish standards of practice and code of ethics for electrologists.

(1) A licensee shall not misrepresent any professional qualifications or credentials.

(2) A licensee shall not make any false or misleading claims about the efficacy of any services or methods of treatment.

(3) A licensee shall not promote or endorse products and/or services through the press, circulation of advertising matter, radio, television, display signs or otherwise in a manner that is false or misleading or which is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

(4) A licensee shall maintain knowledge and skills required for continuing professional competence.

(5) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of electrolysis services.

(6) A licensee shall keep his/her Board file updated by notifying the Board of changes in preferred mailing address and practice address.

(7) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangement for payment which might affect the client's decision to enter into the relationship.

(8) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(9) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records.

(10) A licensee shall give the highest quality professional service of which he or she is capable at all times.

(11) A licensee shall use only medically approved equipment and techniques for epilation. Electrosurgical apparatuses shall be defined as needle type epilators that accomplish permanent hair removal, or any other devices that may be developed as proven to accomplish permanent hair removal.

(12) A licensee shall maintain high standards of personal conduct, honesty, integrity and dedication to service.

(13) No guaranty or warranty or anything beyond the professional competence of a licensee shall be offered a patient.

(14) All epilation devices or equipment must be approved by the Federal Communications Commission (F.C.C.) and bear the F.C.C. number assigned thereto.

(15) A licensee's office, including instruments and equipment contained therein, shall at all times be kept clean and free from any condition or surroundings that will make or tend to make the office unsanitary or unhygienic.

(16) A licensee shall conduct himself or herself as a medical ancillary in the allied health profession~~, and practice in or on premises where materials are limited to those necessary to render electrolysis services to the exclusion of any non-medically aligned practice or lay activity~~.

(17) A licensee shall not aid or abet, directly or indirectly, the practice of electrology by any person not duly authorized under the laws of Oklahoma.

435:40-1-4.1. Infection control standards

(a) **Purpose.** These standards have been developed for electrology students, licensed practicing electrologists, and approved electrology instructors in Oklahoma. These standards emphasize the need to consider all patient/clients as potentially infectious, minimize the risk of exposure to blood or body fluids, reduce the risk of transmitting infection or disease from patient/client to patient/client, practitioner to patient/client, and patient/client to practitioner.

(b) **Description.** Electrology is a superficially invasive procedure, which does not generate splashes or sprays of blood and body fluids. It is NOT necessary to wear masks, eye protection, a face shield, or gowns while practicing electrolysis. Electrolysis needles can become contaminated with blood, serum, or other material because of the insertion of the needles into the hair follicle and skin. All needles must be either single-use, pre-sterilized, disposable needles OR be properly sterilized in an autoclave or dry heat sterilizer according to the standards that follow. Any critical instrument re-used between patient/clients must be sterilized and monitored, for effectiveness, according to these standards. Each instrument or piece of equipment must be properly disposed of, disinfected, or sterilized depending on its use and contamination. Cleaning of surfaces, instruments, and equipment must precede appropriate disinfection or sterilization. During the treatment, a new pair of non-sterile, medical grade, disposable exam gloves must be worn by the electrologist to reduce the risk of transmitting disease or infection between the practitioner and the patient/client.

(c) **Blood-borne pathogens.**

(1) The three blood-borne pathogens of great concern to healthcare workers who could be at risk to blood and body fluids containing visible blood are Hepatitis B virus (HBV), Hepatitis C virus (HCV), and HIV/AIDS.

(2) HIV/AIDS is a threat to healthcare workers, but not as much as Hepatitis B. ~~The average seroconversion rate from exposures to HIV is 0.3%.~~

(3) ~~Hepatitis C is becoming more prevalent. Technology has allowed for the diagnosis of this disease since the late 1980's. The likelihood of contracting this virus from an exposure is not as great as Hepatitis B, but the prognosis for Hepatitis C is believed to be quite poor. Literature suggests nearly all persons who contract Hepatitis C will suffer effects of chronic liver disease, sometimes as late as 30 years after contracting the virus.~~

~~(4) Hepatitis B viruses also attack the liver. Most persons who contract Hepatitis B are symptomatic for a short while, but then recover from the illness. Only a small percentage of persons who contract Hepatitis B remain "carriers". It is presently the greatest threat to healthcare workers. Approximately one-third of all persons exposed to Hepatitis B Virus through a blood/body fluid exposure contract this illness.~~

~~(5)~~ Practitioners and electrology students should be vaccinated against HBV.

(~~6~~4) Risks among health care professionals vary during the training and working career, but are often highest during the training period. For this reason, vaccination should begin before starting training and be completed during training. If the student refuses to be vaccinated, they must sign a waiver before beginning training.

(~~7~~5) The immunization regimen consists of three doses of vaccine. The first dose is provided initially, followed at one month and six months.

~~(8) In 1986 the Food and Drug Administration (FDA) approved a new recombinant hepatitis B vaccine. It consists of highly purified hepatitis B surface antigen that is produced by cells of bakers' yeast. The vaccine is a result of a genetic recombinant technique and contains no human source materials; therefore there is no risk of acquiring a disease from the vaccine.~~

(~~9~~6) Students and non-immunized practicing electrologists should contact their personal physician or the City/County Health Department for appropriate immunization against hepatitis B.

(d) **Standards for hand washing.** Hand washing is one of the most important procedures for preventing the transmission of infections. Hand washing accomplishes a physical removal of microorganisms and a chemical inactivation of residual microorganisms on the surface of the skin. Fingers are thought to be the most important part of the hand in terms of the transfer and spread of pathogenic micro flora. ~~The 1985 CDC Guidelines for Hand Washing and Hospital Environmental Control recommends that plain soap can be used for routine hand washing. The 1995 APIC Guideline for Hand Washing and Hand Antisepsis in Health Care Settings recommends a vigorous rubbing of all surfaces of lathered hands and fingers for 10 to 15 seconds, followed by thorough rinsing under a stream of water.~~ Hand washing products can become contaminated or support the growth of microorganisms. Liquid products should be stored in closed containers and dispensed from either disposable containers or containers that are washed and dried thoroughly before refilling.

(1) A sink with hot and cold running water is located in each treatment room

(2) ~~Hands are washed~~Hands are cleansed with use of plain liquid soap and water or degermed by hand sanitizers using 60% - 70 % alcohol-based hand rubs (if hands are not visibly soiled):

(A) Before and after treatment of each patient/client

(B) Before donning gloves and immediately after gloves are removed

~~(C) Immediately if accidental bare handed contact with blood, body fluids, secretions, excretions, non-intact skin, mucous membranes or contaminated equipment occurs~~.

(3) ~~Hand washing includes use of plain soap. Reusable liquid containers are cleaned and dried before being refilled with fresh soap~~ Hands are thoroughly washed with liquid soap and water:

(A) When visibly soiled

(B) Immediately if accidental bare-handed contact with blood, body fluids, secretions, excretions, non-intact skin, mucous membranes or contaminated equipment occurs.

(4) Hand washing technique with liquid soap and water includes:

(A) Use of plain soap and water

(B) A vigorous rubbing together of all surfaces of lathered hands, especially between fingers and fingernail areas, for ~~10 to~~ 15 to 30 seconds

(C) A thorough rinsing under a stream of water

(D) Hands are dried thoroughly with a clean disposable paper towel

(E) Faucets are turned off with the paper towel

(F) Paper towel is disposed of in the appropriate covered receptacle in the treatment room.

(5) Hand washing technique using 60% to 70% alcohol-based antiseptic hand rubs includes:

(A) Apply product label-recommended amount of alcohol gel or rinse to the palm of one hand

(B) Vigorously rub hands together covering all surfaces of hands, especially between fingers and fingernail areas, between 15 to 25 seconds until the alcohol dries.

(e) **Standards for use of gloves.**

(1) Each patient/client must be treated with fresh unused gloves. Determine patient/client allergies before wearing latex gloves. Several conditions have been connected to latex sensitivity, including such allergic reactions as asthma, eczema, hay fever, allergies to cosmetic powders or foods, and frequency or duration of glove use/exposure. Non-sterile gloves are appropriate for electrology procedures and should be worn when hands are likely to become contaminated with potentially infective material such as blood, all body fluids, secretions, excretions, non-intact skin, and mucous membranes.

(2) The consistent wearing of gloves will decrease the risk of potential exposure. Wearing gloves will also protect the patient/client from potential exposure to the microbial flora of the electrologist, including blood-borne organisms should there be cuts, scrapes, or micro-lesions on the electrologist's hands. When gloves are worn, hand washing is recommended after removal because gloves may become perforated during use and bacteria can multiply rapidly on gloved hands. Gloves that are torn or knowingly perforated during a treatment should be removed immediately and hands washed before donning fresh gloves.

(3) Wearing latex powder-free, reduced protein content gloves will reduce the risk of a latex allergy. When wearing latex gloves, do not use oil-based hand creams or lotions, which causes glove deterioration, unless they have been shown to reduce latex-related problems and maintain glove barrier protection. If the electrologist or patient/client is allergic to latex, there are other non-latex glove materials available such as vinyl.

(4) Washing gloves while treating the same patient/client is not recommended. This can cause "wicking", the enhanced penetration of liquids through microscopic holes in the gloves. Deterioration of the glove material can also occur with the use of disinfecting agents or oils. Wearing gloves will not guarantee protection as gloves may have micro tears.

(5) Use a fresh pair of non-sterile, medical grade, disposable exam gloves during the treatment of each patient/client. Gloves are disposed of in an appropriate receptacle in the treatment room.

(6) Wash hands in accordance with the above hand washing standards before putting on gloves and immediately after gloves are removed.

(f) **Standards for patient/client health history.** A complete past and current health history is obtained from each patient/client before treatment. The general health status of the patient/client may be a factor in susceptibility to infection and normal healing. It will also have an affect on the outcome of the treatment plan due to any hormonal disorders or disease states. Professional interpretations require careful observation and good judgment. The patient/client's health status should be updated and evaluated on an on-going basis and referred to an appropriate physician as indicated.

(g) **Standards for patient/client skin preparation.**

(1) Treatment should be delayed if actual or potential signs or symptoms of infection are present. The practitioner should refer to the appropriate physician when the health history or skin assessment indicates

(2) Before treatment, the treatment area should be thoroughly cleansed to remove makeup or grime if present and reduce the bacterial count on the skin.

(3) Wipe the treatment area with an antiseptic skin preparation.

(4) After treatment, the treatment area should be wiped with an appropriate product, taking into consideration the patient/client's skin type and any skin allergies.

(5) Patient/clients are instructed on appropriate post-treatment care to promote healing.

(h) **Standards for cleaning and sterilization of instruments/items.**

(1) Coordinating the cleaning, sterilization, and disinfection of instruments/items to maintain asepsis technique is required. Precautions should be taken to avoid puncture injuries from instruments.

(2) All instruments that will penetrate tissue should be either pre-sterilized disposable or thoroughly cleaned and then sterilized before reuse to reduce the risk of transmission of infection and disease.

(3) The endodontic dry heat sterilizer (glass bead sterilizer) is no longer cleared to market by the Food and Drug Administration (FDA). The endodontic dry heat sterilizer should not be used in the practice of electrology.

(4) Some high-level disinfectants, including glutaraldehyde-based germicides, are not recommended as

an applicable method of sterilization of instruments and items, based on their toxicity level, instability, and impracticality. Sterilization with liquid chemical germicides is not capable of being biologically monitored. If a medical device is heat-stable, the proper method of reprocessing is by using a heat-based method such as a steam autoclave or dry heat oven.

(5) Carbon rollers are porous and cannot be sterilized or disinfected, therefore, they should not be used.

(6) Cleaning is the basic first step for all decontamination. Cleaning physically removes debris and reduces the number of microorganisms present. Cleaning is the removal of organic material or soil from objects and is usually done by using protein-dissolving enzyme detergent and water. Generally, cleaning is designed to remove rather than kill microorganisms. Technology has provided cleaning products and devices that are especially appropriate for the cleaning of instruments used in electrology. A meticulous physical cleaning is always done before sterilization or disinfection. For sterilization or disinfection, refer to the manufacturers' instructions for exposure times and conditions as well as recommendations for rinsing and subsequent handling of processed items.

(7) Low-level and intermediate-level disinfectants used in the practice of electrology should be registered with the Environmental Protection Agency (EPA), whereas high-level disinfectants/liquid chemical sterilants are cleared by the FDA for use in sterilizing or disinfecting medical and dental instruments. Disinfectants are to be used according to the manufacturer's instructions.

(8) An intermediate-level disinfectant is capable of killing M. tuberculosis var. bovis, but not bacterial spores. It will also inactivate organisms such as most vegetative bacteria and fungi as well as viruses such as hepatitis B virus (HBV) and HIV. Examples of intermediate-level disinfectants include alcohols (70 to 90% ethanol or isopropanol), chlorine compounds, and certain phenolic or iodophor preparations.

(9) A high-level disinfectant inactivates some, but not necessarily all, bacterial spores. It will kill M. tuberculosis var. bovis, bacteria, fungi, and viruses. High-level disinfection is the minimum treatment recommended by the CDC guidelines for reprocessing of semi-critical instruments or devices. Examples of high-level disinfectants include glutaraldehyde-, chlorine dioxide-, hydrogen-peroxide, orthophthaldehyde-, and peracetic acid-based formulations.

(10) Chlorine solutions in concentrations of 0.05 to 0.5% free chlorine are generally considered intermediate-level disinfectants for specific site disinfection. Solutions of 0.5% (household bleach contains approximately 5% sodium hypochlorite) have broad-spectrum germicidal activity, and exhibit sporicidal activity, are tuberculocidal, inactivate vegetative bacteria, and are fungicidal and virucidal. Klein and Deforest (1965) reported that all 25 viruses were inactivated in 10 minutes by as little as 0.02% available chlorine. Bleach solutions used to process tips for epilator needle holder are freshly made by mixing one tablespoon household bleach to one quart tap water. Discard bleach solution after each use.

(11) Critical items.

(A) Instruments

(i) Needles

(I) Single-use, pre-sterilized, disposable

(II) Pre-sterilized, re-useable

(ii) Forceps

(B) Processing

(i) Single-use and re-useable needles

(I) Stored in a manner that will maintain sterile condition, away from wetness or humidity extremes.

(II) Not to be recapped, bent, or manipulated by hand prior to disposal to avoid accidental puncture injury.

(III) Place in a sharps container immediately after use, or when opened and found damaged, or when not used before expiration date.

(IV) When the sharps container is full, it is to be sealed securely and disposed of properly as specified by state and local health regulations as an item of regulated medical waste. According to the Oklahoma Dept. of Labor's OSHA division, sharps containers can be disposed of in the regular trash only after being filled with cement. They recommend a more practical solution of taking them to a local hospital or clinic that will include it with their regular biohazard waste materials to be picked up by a biohazard waste company. They may charge a small fee for this service.

(ii) Forceps and re-useable needles

(I) Forceps are cleaned and then sterilized before their initial use.

(II) Used critical items are placed in an ultrasonic unit, empty covered container or a holding container, which holds either a liquid detergent solution or protein-dissolving enzyme detergent, following manufacturer's instructions for dilution.

(III) The holding container is held under warm running water to rinse off detergent and debris, then drained.

(IV) Forceps and re-useable needles are then placed in the basket of an ultrasonic unit using transfer forceps. If a protein-dissolving enzyme detergent was not used in the holding container, it must be used now in the ultrasonic unit for proper cleaning, following manufacturer's instructions for dilution and immersion time.

(V) Basket is removed from ultrasonic unit, rinsed under running water and drained. Forceps are dried with disposable paper towels. Needles are drained and air-dried on disposable paper towels.

(VI) Forceps and needles are packaged individually or in small multiples for the sterilization process. If sterilized in multiples, any instruments not used whose package has been opened must be resterilized.

(VII) Place packaged instruments in an autoclave or dry heat sterilizer using a chemical indicator on each package or one with each individual load. This only indicates items have been exposed to a sterilization process, it does not guarantee sterility. Biological indicators are used no less than once a month (per sterilizer) according to manufacturer's instructions to ensure proper mechanical function. Lab reports are filed in a permanent Sterility Assurance file to be kept in your office records.

(VIII) Autoclaves and dry heat sterilizers are loaded, operated and maintained according to manufacturer's instructions. Sterilizers must have visible physical indicators (thermometers, timers).

(IX) Cleaned, dried and packaged instruments are sterilized by either dry heat at 340 degrees F (170 C) for 1 hour; 320 degrees F (160 C) for 2 hours or by following directions by the manufacturer of the unit or by autoclave (steam under pressure) for 15-20 minutes at 250 degrees F (121 C); 15 psi (pounds per square inch). The above temperature and exposure times for dry heat sterilizers and autoclaves relate only to the time of exposure after attainment of the specific temperature and do not include a penetration or heat-up lag time. Exposure time does not include drying and cool-down time. Follow the manufacturer's instructions for the unit you have if times and temperatures differ from those given above.

(12) Semi-critical items.

(A) Instruments

(i) Tips for epilator needle holders

(ii) Anaphoresis/cataphoresis rollers

(B) Processing

(i) Tips for epilator needle holders

(I) Must be processed before initial use and after use between each patient/client. Tips that are contaminated (e.g. dropping or touching unsterilesurface) must be reprocessed before use.

(II) Follow same processing directions described earlier for re-useable critical items concerning holding container and ultrasonic cleaning.

(III) Package tips individually or in small multiples for sterilization in an auto-clave or disinfect by submersing in a fresh solution of an intermediate- level disinfectant for 10 minutes or follow manufacturer's directions. Dry the tips with disposable paper towels.

(IV) Store tips in a clean, dry, covered container to prevent contamination.

(ii) Anaphoresis/cataphoresis rollers.

(I) Must be processed before initial use and after use between each patient/ client.

(II) Rollers are cleaned, dried and disinfected in the same manner as tips.

(13) Non-critical Items.

(A) Instruments/Items

(i) Indifferent electrodes

(ii) Needle cords

(B) Processing

(i) These items are cleaned, dried and subjected to a low-level disinfection after each treatment.

(ii) Low-level disinfectants are capable of inactivating most bacteria, some Viruses and fungi, but not bacterial spores or M. tuberculosis var. bovis. Examples are quaternary ammonium compounds and certain iodophors or phenolics.

(i) **Standards for environmental control and housekeeping.**

(1) A variety of microorganisms are normal contaminants of environmental surfaces, most of which are non-pathogens. Conscientious sanitation and disinfection techniques control cross-infection.

(2) Hospital-grade disinfectants registered with the Environmental Protection Agency (EPA) should be used for environmental surface cleaning. Product labels give the EPA registration number and should give adequate safety and precautionary information. Manufacturer's instructions on the use of the product should be followed. Information on specific manufacturer label claims and the classification of disinfectants can be obtained by writing the Anti Microbial Division, EPA 751 OC, Office of Pesticides Programs, 401 M Street SW, Washington, DC 20460. http://www.epa.gov/.

(3) Adequate levels of safety for surfaces of medical equipment (non-critical surfaces) may be achieved by simple washing or scrubbing with detergent and warm water or, depending on the equipment surface and the nature and degree of contamination, cleaning followed by an application of an intermediate- to low-level chemical germicide. Follow manufacturer's instructions for application and exposure times of disinfectant products.

(4) Cleaning schedules and methods vary according to the type of surface to be cleaned and the amount and type of soil present. Items on countertops should be maintained in a sanitary manner. Sinks and toilet facilities should be clean at all times. Environmental surfaces in the treatment room should be cleaned on a regular basis. Equipment surfaces, doorknobs, telephones, and treatment tables should be cleaned on a regular basis. Protective barrier film or appropriate disinfectants should be used on surfaces touched during the treatment. Treatment tables should be covered with either cloth or paper drapes and changed after each patient/client. Floors and carpets should be vacuumed and

cleaned regularly. Walls, blinds and curtains should be cleaned when visibly soiled.

(j) **Standards for potential exposures to blood-borne pathogens.**

(1) Health care workers who have percutaneous or mucous membrane exposure to blood and other body fluids are at risk for infection, including HBV, HCV AND HIV infection. The Centers for Disease Control and Prevention (CDC) concludes in a continuing study that, while HIV infection is a real risk to health care workers, the risk is low and can be minimized by taking appropriate precautions.

(2) Identified risk factors for HIV and HCV transmission are almost identical to those for HBV transmission. Despite the similarities in modes of transmission, the risk of HBV infection in health care settings far exceeds that for HIV or HCV infection.

(3) The following steps are to be taken when a puncture injury has occurred:

(A) Remove and discard gloves.

(B) Milk the puncture site to expel blood. Clean the wound vigorously with one-half teaspoon of soap and water for 10 to 15 seconds, using friction.

(C) Immediate contact is made to practitioner's personal physician for appropriate consultation, and for necessary post-exposure strategies.

(D) Documentation of the exposure is made including: date, route of expo-sure, circumstance under which exposure occurred, name of source patient/client, HIV and/or hepatitis status of source patient/client, status of practitioner's testing, follow-up testing and any necessary post-exposure prophylaxis.

435:40-1-6. Curriculum of study and internship requirements

(a) **Preceptorship.**

(1) Applicants for licensure as registered electrologists shall successfully complete a minimum of six months curriculum of study and internship established by the Board.

(2) The preceptorship shall include successful completion of a minimum of 600 hours of study and clinical practice under the direct supervision of a preceptor.

~~(A) At least 50 of the 600 hours shall be spent in each modality (multi needle Galvanic, Thermolysis, and the Blend).~~

~~(B)~~ At least 300 hours of the training ~~(including the minimum of 150 clinical hours required in (A) of this subsection)~~ must be conducted on-site and in-person at the training facility.

(b) **Preceptors.** Except as provided in (c) below:

(1) Preceptors shall be registered electrologists approved by the Board.

(2) The preceptor must be licensed to practice electrolysis in the state of Oklahoma and must have actively practiced in the state for at least four years (at least two years immediately prior to beginning as a preceptor). The Board may reduce or waive this requirement at the recommendation of the Committee.

(3) Preceptors shall make training facilities available for inspection upon request by members of the Board, the Committee or their representative.

(4) Preceptors shall teach ~~on modern~~ equipment~~,~~ in good working condition, as verified by submission of the equipment manufacturer's recommended maintenance schedule and proof of continued compliance with that schedule. Submittals shall be on forms approved by the Board and reviewed by the Committee for acceptability.

(5) Hygienic practices must conform to the Oklahoma Infection Control Standards for Electrologists.

(c) **Out-of-State Applicants for Licensure.** An applicant for licensure who holds a current
license in good standing from another state, and who has received electrolysis study and internship of at least 600 hours may receive credit for the preceptorship requirement by providing sufficient proof of training and apprenticeship or internship program from the licensing state, based on the Committee's recommendation to the Board of the program's equivalency to the requirements for licensure in Oklahoma and the Board's approval of the program. An out-of-state preceptorship, apprenticeship or internship program may be approved by the Board under the following conditions:

(1) The applicant must provide a copy of the Curriculum of Study to the Board and the
Curriculum of Study must be the equivalent of that required in Oklahoma, as recommended by the Committee and approved by the Board.

(2) The preceptor must be licensed or registered in electrolysis in the State where the preceptorship was completed by applicant and have been actively practicing in the field for at least four years, with at least two of those years coming immediately prior to becoming the preceptor. Any exceptions to this requirement must be approved by the Board.

(3) All other requirements for licensure must be met by the applicant.

435:40-1-7. Application procedures

(a) The purpose of this section is to set out the application procedures for examination and licensure as a registered electrologist.

(1) Unless otherwise indicated, the applicant shall submit all required information of credentials on forms provided by the office of the Board.

(2) The Board will not consider an application as officially submitted until the applicant pays appropriate fees established by the Board. The Board assumes no responsibility for cash remittances which are not forwarded by registered mail. Application fees, processing fees and annual renewal fees are not refundable.

(3) The applicant for licensure shall obtain and complete the application form providing evidence of age and academic requirements to be reviewed by the Committee and approved by the Board.

(4) Approved applicants will fulfill the curriculum of study and internship requirements under the direct supervision of a registered electrologist, except as provided in 40-1-6(c) above.

(5) Upon completion of the curriculum of study and internship requirements, the supervising registered electrologist shall submit to the Board a notarized completion report, except as provided in 40-1-7(b) below.

(6) Upon completion of the ~~academic,~~ curriculum and internship requirements, the applicant shall be eligible for the licensure examination in electrology. The applicant shall complete the remaining portions of the application and submit the application to the Board not later than forty-five (45) days before the date of the examination. Applications for the examination may be submitted ~~after completion of at least ten and one-half months of the internship~~prior to completion of the internship with verification from the supervising registered electrologist that the applicant is expected to satisfactorily complete the remaining ~~one-and-one-half months of~~ training. This does not waive the requirement for a notarized completion report as required in this section.

(7) The Board shall notify an applicant of his/her eligibility for examination at least 10 days prior to the next scheduled examination.

(b) Applicants currently licensed in another state.

(1) An applicant from another state who has met the requirements of the Registered Electrologists Act, may be issued a license by the Board under the following circumstances:

(A) The applicant must furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with that state;

(B) Any out-of-state preceptorship, apprenticeship or internship program must be approved by the Board. An out-of-state preceptor must provide a notarized affidavit on forms approved by the t he Board, attesting to the preceptor's credentials and the applicant's successful completion of the preceptorship, as described in 40-1-6(c). If the out-of-state preceptor is not available to provide these affidavits, notarized letters of recommendations from at least three (3) persons acceptable to the Board who can sufficiently attest to the proficiency of the applicant, as recommended by the Committee and approved by the Board, must be provided by the applicant. Acceptable reference sources may include, but are not limited to:

(i) Referring physicians
(ii) Other licensed electrologists
(iii) Professional electrology associations
(iv) Electrology instructors
(v) Electrology preceptors

(2) Applicants trained out-of-state must take and successfully complete the Oklahoma licensing examination~~, except that applicants may not be required to take the International Board of Electrologist Certification (IBEC) portion of the licensing exam if they have passed the American Electrology Association/IBEC examination and are currently certified as a Certified Professional Electrologist (CPE)~~.

(3) Applicants trained out-of-state may also be required to meet one or more of the following:

(A) Personal appearance.

(B) Additional continuing education units (CEUs).

(C) Practice under the direct supervision of a Registered Electrologist licensed in the state of Oklahoma, with the exact number of hours to be established by the Committee. The supervising Registered electrologist will provide reports to the Committee on the applicant's progress.

435:40-1-8. Examination for electrology license

(a) **Purpose.** This section on licensure examination sets out the Board's rules governing the administration, content, grading, and other procedures for examination for licensure as a registered electrologist.

(b) **Frequency.** The Board shall set the dates the examination is to be administered. The licensure examination shall be administered at least every 6 months.

(c) **Content.**

(1) To qualify for a license, an applicant shall pass an examination in the English language which shall cover the following areas:

(A) Human Anatomy
(B) Human Physiology
(C) Microbiology
(D) ~~General~~ Chemistry
(E) Dermatology
(F) Hygiene
(G) Sterilization
(H) Electricity
(I) Electrolysis (theory and practice).

(2) The examination for licensure shall be prepared by the Committee and approved by the Board, or shall be any other form of examination prescribed by the Board.

(d) **Grading.**

(1) If in the judgment of the majority of the Board, the examinee obtains an average of seventy-five percent (75%) on the total examination and not less than sixty-five percent (65%) in each subject on the examination, he or she shall be entitled to receive from the Board a license to practice electrolysis for the remainder of that calendar year.

(2) Licensure examinations administered by the Board shall be graded by the Committee or by a designee of the Board.

(e) **Results.**

(1) The ~~Chairman~~Board shall notify each examinee of the results of the examination within seven (7) days of the grade meeting held by the Committee to determine the pass/fail status of candidates.

(2) No matter what numerical or other scoring system the Board may use in arriving at examination results, the official notice of results to applicants shall be stated in

terms of "pass" or "fail" in addition to numerical scores being provided.

(f) **Failures.** If an applicant fails to pass the examination a maximum of three (3) times, the individual shall not be permitted to re-apply for licensure. An examination fee must accompany each examination as set by the Board.

435:40-1-9. License renewal and replacement

(a) **Purpose.** The purpose of this section is to set out the rules governing electrologist license renewal and replacement.

(b) **Date required to renew.**

(1) A licensee must renew the license annually.

(2) The application and fee for the renewal of the license shall be postmarked or hand delivered to the Board office not later than December 31st.

(3) Each licensee is responsible for renewing the license on or before the required date and shall not be excused from paying additional fees or penalties.

(c) **Renewal procedure.**

(1) At least thirty (30) days prior to December 31st, the Board will send an application for renewal of the license, and the amount of the renewal fee due. The licensee must complete the application and return it to the Board office with the required fee. The timely return of the completed renewal form shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for all licensees shall require in addition to other information, the preferred mailing address and primary practice address.

(3) The Board shall not consider a license to be renewed until it receives both the completed license renewal form and the required fees set by the Board.

(4) The Board shall issue to a licensee who has met all requirements for renewal a renewal of license identification card.

(d) **Late renewal.**

(1) The ~~chairman~~Board shall notify a person who has not renewed a license after a period of more than thirty (30) days that their license is inactive.

(2) A person whose license is inactive for not more than thirty (30) days may renew the license by paying to the Board the required renewal fee and a penalty fee that is one-half of the renewal fee in the form of a certified check or money order.

(3) A person whose license has been inactive for more than thirty (30) days but less than one (1) year of the last day for renewal of the license may renew the license by paying to the Board the unpaid licensure renewal fees, plus a late penalty that is equal to the renewal fee, in the form of a certified check or money order.

(4) A person whose license has been lapsed more than twelve months wishing to re-enter the practice of Electrology will be required to file an application on forms provided by the Board of Medical Licensure and Supervision and pay fees as set by the Board of Medical Licensure and Supervision. Electrologists may be required to meet one or more of the following:

(A) Personal appearance.

(B) One (1) continuing education unit (CEU) for each three (3) years out of practice, not to exceed six (6) CEU's, prorated based on the number of years license expired.

(C) Practice under the direct supervision of a Registered Electrologist licensed in the state of Oklahoma for up to forty (40) hours for each year license lapsed, with the exact number of hours to be established by the Committee. The supervising Registered Electrologist will provide reports to the Committee on the applicant's progress prior to each Advisory Committee meeting.

(D) Retake licensing examination.

(5) **Surrender of a license certificate.** A person who fails to renew a license after one (1) year is required to surrender the license certificate and license identification card to the Board.

(e) **Replacement of license.** The Board will replace a lost, damaged or destroyed license certificate or license identification card upon application by the licensee and payment of fees established by the Board. Applications must include an affidavit detailing the loss or destruction of the licensee's original license or license identification card, or be accompanied by the damaged certificate or card.

(f) **Continuing education.**

(1) Requirements. Applicants for renewal of their certificate as a Registered Electrologist must provide evidence to show successful completion of continuing education and compliance with the following requirements:

(A) A continuing education unit (CEU) is the equivalent of ten contact hours.

(B) The Advisory Committee of Registered Electrologists will oversee the program. CEUs will be awarded by the Committee or the Committee chairperson with ratification by the Committee at the next meeting.

(C) CEUs will be approved according to the established guidelines and accepted proposal or at the discretion of the Committee when the aforementioned are inadequate or inapplicable.

(D) CEUs must be obtained over the designated accounting period for licensure.

(E) CEUs acquired beyond the requirement cannot be credited to the next accounting period.

(F) The accounting period shall be three (3) years and 1.5 CEUs will be required during that period. Licensees shall report to the Committee earned CEUs no later than October 31 of the third year of the accounting period prior. The final two months of the accounting period shall be used by the Committee to review the reported CEUs earned by licensees prior to the renewal date to which the reported CEUs apply.

(G) Submittals must be made on standardized submittal cards signed by the sponsor of the program or activity being submitted for credit.

(H) Submittal cards may be obtained through the Oklahoma State Board of Medical Licensure and Supervision or the O.S.E.A.

(I) Submittals must be made to the Committee through the Board.

(J) The ~~Committee~~Board will account for acquired CEUs and yearly notify each Registered Electrologist of the number acquired and the number lacking.

(K) New licentiates will be required to obtain CEUs on a pro rata basis depending upon when they are licensed during the accounting period. Furthermore, no CEUs will be required during the full calendar year in which one is just licensed.

(2) **Traditional methods of CEUs.**

(A) Workshops

(B) Seminars

(C) Conferences

The above are given by National, Regional or State electrolysis organizations.

(D) Programs attended at OSEA quarterly meetings

(E) Electrolysis related workshop, seminar or conference given by Committee approved school or other Assigned value = 0.1 CEU per hour of program attended.

(F) Journal of Electrology articles and other courses approved by the American Electrology Association.

(3) **Alternative Methods of CEUs.**

(A) Presentation of electrolysis programs

(i) Presentation at National, Regional or State electrolysis organizational workshops, seminar or conference.

(ii) Other presentation as approved by the Committee Assigned value = .05 to 0.2 CEUs per presentation.

(B) Publications (published or accepted for publication)

(i) Authorship or co-authorship of a book relating to electrolysis. 0.3 CEUs

(ii) Authorship of a chapter in a book or journal article that appears in a professional electrolysis or health journal. 0.2 CEUs

(iii) Authorship of an article, book review or abstract in a National, Regional or State electrolysis or health newsletter or magazine. 0.5 CEUs

(iv) Production of other media such as videotape, slide/ tape presentation, etc. that is available for general viewing as approved by the Committee. Assigned value = 0.05 to 0.3 CEUs per publication or finished product.

(C) Research

(i) Principal or co-investigator, project director or research assistant. Research proposal and final results submitted to Committee for approval.

(ii) Quality assurance studies completed and published in a journal, newsletter or professional magazine. Assigned value = ~~0.2~~up to 0.4 CEUs per project.

(D) Formal course work

(i) College and university course work directly relating to improvement~~,~~and advancement ~~licensure or those in the Newberry degree program)~~in the allied health field.

(ii) College and university courses that are indirectly related, yet support skills and knowledge will be evaluated individually and assigned value accordingly by the Committee (i.e. business, improving human relations, etc.). Assigned value = 0.1 to 0.3 CEUs as approved.

(E) Independent study

(i) Independent reading of articles, books, or journals followed by written or oral review.

(ii) Watching relevant videotapes or programs followed by a written or oral review.

(iii) Listening to electrolysis or other health related seminar tapes followed by a written or oral review.

(iv) Other self-study relevant to the practice of Electrology.

(v) Values will be assigned for each submittal based on relevance to one's practice and the complexity of the material. Assigned value = .05 to 0.1 as approved, not to exceed 0.2 CEUs in one accounting period.

(F) National certification - C.C.E. or C.P.E. Achievement of a National certification by a recognized body such as AEA or SCME will be awarded 0.2 CEUs one time only. Assigned value = 0.2 CEUs one time only.

(G) Cardiopulmonary resuscitation certification or recertification. Assigned value = ~~.2~~up to 0.4 CEUs per accounting period.

[OAR Docket #14-494; filed 6-23-14]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 40. REGISTERED ELECTROLOGISTS

[OAR Docket #14-493]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
435:40-1-5. Academic requirements for examination and licensure

AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a

COMMENT PERIOD:
September 16, 2013 through November 5, 2013

PUBLIC HEARING:
November 7, 2013

ADOPTION:
November 7, 2013

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 12, 2013

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to **OAC 435:40-1-5. Academic requirements for examination and licensure** update the educational requirements required in order to qualify for a Registered Electrologist license to match those set out in the law at 59 O.S. 536.7 as amended in Senate Bill 422 (2013).
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, extension 122, email - kplant@okmedicalboard.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

435:40-1-5. Academic requirements for examination and licensure

The purpose of this section is to set out the academic requirements for examination and licensure as a registered electrologist.

(1) The Board shall accept as meeting licensure requirements ~~baccalaureate degrees and~~or course work received from American colleges or universities ~~which~~that held accreditation, at the time the ~~degree was conferred~~courses were completed, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(2) ~~Degrees and~~ course work received at foreign colleges and universities shall be acceptable only if such work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(3) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated by the applicant through course descriptions in official school catalogs or bulletins or by other means acceptable to the Board.

(4) Persons applying for licensure must ~~possess a baccalaureate degree with a major course of study approved by the Board. An approved major course of study shall be defined as a minimum of 30 credit hours in the allied health or biological-life sciences, including the satisfactorycompletion of college courses, including laboratory credit, in: Human Anatomy, Human Physiology, Microbiology, General Chemistry~~.

~~(A) A baccalaureate degree in the allied health or biological-life sciences with the satisfactory completion of a minimum of 30 credit hours in the allied health or biological-life sciences. Of the 30 credit hours, a minimum of 4 credit hours each, including laboratory, shall be completed in General Chemistry and Microbiology and a minimum of four (4) hours total, including laboratory, shall be completed in Human Anatomy and Human Physiology, or equivalent courses as determined by the Board. The remaining credit hours shall be in the allied health or biological-life sciences and subject to the approval of the Board.~~

~~(B) A baccalaureate degree other than in the allied health or biological-life sciences with the satisfactory completion of a minimum of 30 credit hours in the allied health or biological-life sciences. Of the 30 credit hours, a minimum of 4 credit hours each, including laboratory, shall be completed in General Chemistry and Microbiology and a minimum of four (4) hours total, including laboratory, shall be completed in Human Anatomy and Human Physiology. The remaining credit hours shall be in the allied health or biological-life sciences and subject to the approval of the Board.~~ satisfactorily complete college courses in human anatomy, human physiology, microbiology and chemistry or equivalent courses as determined by the Board as recommended by the Committee. Medical terminology may be required at the discretion of the Board as recommended by the Committee.

(5) The college courses in Human Anatomy, Human Physiology, Microbiology, and ~~General~~ Chemistry shall be comprehensive in content and designed for the allied health or biological-life science major. ~~If a complete course is divided into more than one part, such as Human Anatomy and Physiology I & II, the applicant must satisfactorily complete all parts.~~ Satisfactory completion shall be defined as a grade of C or its equivalent, or above (grade of A or B).

[OAR Docket #14-493; filed 6-23-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #14-542]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Information
450:1-1-1.1. [AMENDED]
Subchapter 3. Contracts for Mental Health, Substance Abuse, and Residential Care Services
Part 1. Eligibility to Contract
450:1-3-5. [AMENDED]
Subchapter 9. Certification and Designation of Facility Services
450:1-9-5.1. [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. The proposed rules clarify existing and are intended to comply with statutory changes.

Proposed Revisions to Chapter 1 include deleting references to Behavioral Health Rehabilitation Specialists (BHRS) since the provider designation will no longer exist after July 1, 2014, at which point all providers of psychosocial rehabilitation services must be a Licensed Behavioral Health Professional (LBHP) or certified through ODMHSAS as a Behavioral Health Case Manager II (CM II). Other revisions include updates to terminology based on previous rule changes as well as administrative changes to certain provider certification processes.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

The following words or terms, as defined below, when used in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70, shall have the following meaning, unless the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 24, 27, 30, 50, 53, 55, 60, 65 and 70:

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Behavioral Health Aide (BHA)" means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

(A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and

(C) treatment plans must be overseen and approved by a LBHP; and

(D) must function under the general direction of a LBHP and/or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

~~**"Behavioral Health Rehabilitation Specialist (BHRS)"**~~

~~(A) On or after 7/01/13, BHRS must be either a LBHP, CADC or certified as a Case Manager II pursuant to Chapter 50 of Title 450.~~

~~(B) BHRS designations made between July 1, 2010 through June 30, 2013 under the following criteria will continue to be recognized until June 30, 2014:~~

~~(i) Bachelor degree or above, and ODMHSAS training as a Behavioral Health Rehabilitation Specialist; or~~

~~(ii) ODMHSAS letter reflecting that grandfathering application requirements have been met; or~~

~~(iii) CPRP (Certified Psychiatric Rehabilitation Practitioner) credential; or~~

~~(iv) Certification as an Alcohol and Drug Counselor (CADC). CADC's are allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or drug dependencies or addictions as primary or secondary DSM-IV Axis diagnosis.~~

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Alcohol and Drug Counselor (CADC)" means Oklahoma certification as an Alcohol and Drug Counselor.

"Certified Behavioral Health Case Manager" or **"CM"** means any person who is certified by the ODMHSAS as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a written notice of the deficiencies developed by ODMHSAS Provider Certification.

"COA" means the Council on Accreditation of Services for Families and Children, Inc.

"Contractor" or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"Employment Consultant (EC)" means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

"Entities" or **"entity"** means sole proprietorships, partnerships and corporations.

"Facilities" or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Family Support and Training Provider (FSP)" means

(A) have a high school diploma or equivalent;

(B) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(C) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS;

(D) pass OSBI background check;

(E) treatment plans must be overseen and approved by a LBHP; and

(F) must function under the general direction of a LBHP or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"Institutional Review Board" or **"IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

"Intensive Case Manager (ICM)" means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are a LBHP, CADC, or certified as a Behavioral Health Case Manager II, and have:

(A) a minimum of two (2) years Behavioral Health Case Management experience,

(B) crisis diversion experience, and

(C) successfully completed ODMHSAS ICM training.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

"Levels of performance" or **"level of performance"** means units of service by types of service.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(i) Psychology;

(ii) Social Work (clinical specialty only);

(iii) Professional Counselor;

(iv) Marriage and Family Therapist;

(v) Behavioral Practitioner; or

(vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed dietitian" means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

"ODMHSAS" or **"Department"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. §

256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Peer Recovery Support Specialist" or **"PRSS"**means an individual certified by ODMHSAS as a Peer Recovery Support Specialist pursuant to requirements found in OAC 450:53.

"Probationary certification" means a certification status granted for a period less than three (3) years.

"Psychiatrist" means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

~~**"Recovery Support Specialist"** or **"RSS"** means an individual who has completed the ODMHSAS RSS training (also referred to as Peer Recovery Support Specialist (PRSS) training) and has passed the ODMHSAS RSS exam.~~

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health [43A O.S. § 3-302(1)].

"Service Provider" means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

"Site Review Protocol" means an ODMHSAS document developed as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

"Support Services Provider (SSP)" means an individual age eighteen (18) or older with a high school diploma or equivalent.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND RESIDENTIAL CARE SERVICES

PART 1. ELIGIBILITY TO CONTRACT

450:1-3-5. Staff qualifications for contracted entities

(a) All staff who provide clinical or supportive services for an agency contracting with ODMHSAS shall have documented qualifications, licensing or training specific to the clinical services they provide.

(b) The following service providers, as defined in 450:1-1-1.1, may provide behavioral health treatment and support services as agreed upon per ~~contact~~contract between ODMHSAS and the contractor:

(1) Behavioral Health Aide (BHA);
(2) Behavioral Health Case Manager (CM);
~~(3) Behavioral Health Rehabilitation Specialist (BHRS);~~
(~~4~~3) Certified Alcohol and Drug Counselor (CADC);
(~~5~~4) Employment Consultant (EC);
(~~6~~5) Family Support and Training Provider (FSP);
(~~7~~6) Intensive Case Manager (ICM);
(~~8~~7) Licensed Behavioral Health Professional (LBHP);
(~~9~~8) Licensed Mental Health Professional (LMHP);
(~~10~~9) Licensed Physician;
(~~11~~10) Licensed Practical Nurse;
(~~12~~11) Paraprofessional;
(~~13~~12) Psychiatrist;
(~~14~~13) Peer Recovery Support Specialist ~~(RSS)~~(PRSS);
(~~15~~14) Registered Nurse;
(16) Support Services Provider (SSP).

(c) Compliance with 450:1-3-5 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:1-3-5 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-5.1. Types and duration of certification status for facilities and programs

(a) The ODMHSAS may grant the following types of certification for the durations specified below.

(1) **Permit for Temporary Operations.** Permits for temporary operations may be granted upon ODMHSAS's verification that the organization has complied with all Core Organizational Standards and Core Operational Standards applicable to the related type of services for which certification is sought. In addition, for facilities that have provided services for 30 days or longer applicable to this type of certification ODMHSAS may review compliance with applicable Quality Clinical Standards. The Permit will expire at the end of six (6) months or if a subsequent certification is achieved by the organization and subsequently granted by ODMHSAS prior to the expiration of the Permit. ODMHSAS may extend a Permit for no more than 60 days in the event of extenuating circumstances as determined by ODMHSAS.

(2) **Probationary Certification.** Probationary Certification may be awarded for a one (1) year period by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS verifies that all conditions in 450:1-9-5.1(a)(3) exist but the program initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required. Organizations awarded Probationary Certification must apply for and be awarded Probationary Certification for two additional one (1) year terms, prior to being considered for other categories of ODMHSAS Certification.

(3) **Certification.** ODMHSAS may award Certification for a one (1) year or two (2) year period beyond the period approved for a Permit for Temporary Operations or as a renewal of a previously awarded Certification in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS determines that the organization has met minimal compliance with each type of standard (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards). To qualify for Certification, programs must meet the following:

(A) Demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS and within timeframes stipulated by ODMHSAS; and,

(B) For a one (1) year certification, demonstrate compliance with at least 51% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3; or,

(C) For a two (2) year certification, demonstrate compliance with at least 75% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Programs with fewer than five (5) active cases for which clinical records could be reviewed can be recommended for no more than a one (1) year certification.

(~~D~~E) Community Residential Mental Health Programs can be recommended for no more than a one (1) year certification.

(~~E~~F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(3) until all conditions of 450:1-9-5.1(2) have been satisfied.

(4) **Certification with Distinction.** Certification with Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) Programs must have provided services with an approved ODMHSAS Certification as described in 450:1-9-5.1(3) for one (1) year or longer in addition to the time services were provided under an approved Permit for Temporary Operations or a Probationary Certification.

(B) Programs must demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS; and,

(C) Programs must also demonstrate compliance with at least 90% of all Quality Clinical Standards on the initial renewal site visit and review as verified by ODMHSAS. Compliance may be determined during initial site reviews or during additional site reviews following the implementation of a plan of correction as required ODMHSAS, in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Programs for which ODMHSAS determines compliance with all standards as required in (a), (b), and (c) may be recommended for Certification with Distinction for a three (3) year period.

(E) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(F) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.

(G) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.

(5) **Certification with Special Distinction.** Certification with Special Distinction may be awarded for up

to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) The program must meet all conditions for Certification with Distinction as outlined in 1-9-5.1 (4); and,

(B) The program has attained national accreditation (COA, CARF, or TJC) for the services to which ODMHSAS Certification applies.

(C) Certification with Special Distinction will be reduced by ODMHSAS to Certification with Distinction by ODMHSAS if during the certification period for which the Special Distinction was approved, the program fails to maintain national accreditation status.

(D) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(E) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.

(F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.

(b) Permits for Temporary Operations granted to applicants for initial certification of a facility, location, or level of service shall be for a period of six (6) months and shall become effective immediately upon approval by the ODMHSAS Board, the Commissioner or designee.

(c) Certification, other than Permits for Temporary Operations, granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, the Board may waive this requirement and make the Certification effective immediately.

[OAR Docket #14-542; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 16. STANDARDS AND CRITERIA FOR COMMUNITY RESIDENTIAL MENTAL HEALTH FACILITIES

[OAR Docket #14-543]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 21. Personnel, Staffing, and Training
450:16-21-4. Residential care staff licensure and training requirements, administrator [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-108 and 2-109.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 16 are part of the Department's review of Title 450. The proposed rules clarify existing rules.

Proposed revisions to Chapter 16 are made to reflect changes related to licensure of residential care administrators through the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA).
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 21. PERSONNEL, STAFFING, AND TRAINING

450:16-21-4. Residential care staff licensure and training requirements, administrator

(a) The administrator of the RCF shall maintain current licensure as a Residential Care (RC) Administrator, or a Residential Care (RC) / Assisted Living (AL) Administrator, through the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA).

(b) The administrator of the RCF ~~shall receive a total of twenty four (24) hours of training credit annually, provided by an Oklahoma institution of higher learning or ODMHSAS. This training will consist of~~annually complete eight (8) hours of training on mental ~~health related~~health and substance use disorder-related subjects~~, including~~. These eight (8) hours of training are in addition to the hours of training required to maintain licensure through OSBELTCA, and must include at least one (1) hour of training regarding ~~co-occurring~~ substance use disorders and intervention strategies; and three (3)~~ of the eight (8)~~ hours of ~~mental health related~~

training must be in techniques and philosophies within a ~~training~~ curriculum that has been pre-approved by the Director of ~~DMHSAS~~ODMHSAS Provider Certification which addresses appropriate non-violent intervention and potentially aggressive interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention~~; and, sixteen (16) hours required by the OSDH, in addition to CPR (cardiopulmonary resuscitation), and first aid provided by certified instructors~~.

(~~b~~c) The administrator of the RCF shall receive CPR (cardiopulmonary resuscitation), and first aid provided by certified instructors.

(d) Compliance with 450:16-21-4 shall be determined by a review of the administrator's personnel file.

[OAR Docket #14-543; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

[OAR Docket #14-544]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:17-1-2. [AMENDED]
Subchapter 3. Required Services
Part 5. Emergency Services
450:17-3-41. [AMENDED]
450:17-3-42. [AMENDED]
Part 7. Outpatient Therapy Services
450:17-3-62. [AMENDED]
Part 9. Medication Clinic Services
450:17-3-85. [AMENDED]
Part 11. Case Management
450:17-3-106. [AMENDED]
Part 21. Peer Recovery Support Services
450:17-3-191. [AMENDED]
Subchapter 5. Optional Services
Part 21. Gambling Disorder Treatment Services [NEW]
450:17-5-128. [NEW]
450:17-5-129. [NEW]
450:17-5-130. [NEW]
450:17-5-131. [NEW]
450:17-5-132. [NEW]
Subchapter 21. Staff Development and Training
450:17-21-1. [AMENDED]
450:17-21-6. [NEW]
Subchapter 23. Facility Environment
450:17-23-2. [NEW]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §85.9G.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 17 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

Proposed revisions to Chapter 17 are made to clarify that, in addition to case managers, licensed behavioral health professionals (LBHPs) and Certified Alcohol and Drug Counselors (CADCs) can provide behavioral health case management without certification. Rules are also revised to reflect that a Young Adult in Transition includes children 16 - 18 with Serious Emotional Disturbance (SED) and adults 18 - 25 with Serious Mental Illness (SMI). Community Mental Health Center (CMHC) certification standards are revised to incorporate standards and criteria for gambling disorder treatment services as optional services within CMHCs. Rules are also revised throughout to update terminology to reflect recent changes to the Diagnostic and Statistical Manual of Mental Disorders as well as to identify certification standards that are so critical to the operation of a CMHC that failure to meet the standard would be grounds for immediate suspension, denial or termination of certification.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Adults who have a serious mental illness" means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious mental illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious mental illness.

(C) The adult must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"AOA" means American Osteopathic Accreditation

"ASAM" means the American Society of Addiction Medicine.

"ASAM criteria" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"CARF" means Commission on Accreditation of Rehabilitation Facilities

"Child with Serious Emotional Disturbance" or **"SED"** means a child under the age of 18 who shows evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition or serious emotional disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance ~~abuse~~use disorders, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a serious mental illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy,

expulsion, property damage or violence toward others).

"Chronic Homelessness" refers to an individual with a disabling condition who has either: (a) been continuously homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance ~~abuse~~use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance ~~abuse~~use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via

telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

~~**"Emergency detention"** means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period as provided by 43A of the Oklahoma Statutes.~~

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;

(B) Treatment planning and revision, as necessary;

(C) Individual, group and family therapy;

(D) Case management;

(E) Psychosocial rehabilitation; and

(F) Discharge planning.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Gambling disorder treatment professional" means:

(A) an individual holding a valid NCGC I or II certification;

(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months; or

(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.

"General psychiatric rehabilitation" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Historical timeline" means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

"~~Homebased~~Home-based services to children and adolescents" means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"ICCD" means the International Center for Clubhouse Development.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician

if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means a physician who is a graduate of a school of medicine or osteopathy and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"PICIS System" means a management information system based on national standards for mental health and substance abuse databases. Information gathered through PICIS is used for prior authorizations, service utilization management and continuous quality improvement processes. PICIS data is reported throughout the treatment episode to ensure service recipients receive appropriate types and levels of care and are making satisfactory progress. Numerous reports are developed using PICIS data and are provided to clinicians, administrators and the general public.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

~~**"Recovery Support Specialist"** or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.~~

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function.

The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S.§3-302(1)].

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Young Adults in Transition" are persons between sixteen to twenty-five (16-25) years of age who have a ~~serious mental illness~~Serious Mental Illness (ages 18 - 25), ~~and/or~~or~~serious emotional disturbance, and meet the following criteria:~~ Serious Emotional Disturbance (ages 16 - 18).

~~(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within the current version of DSM with the exception of substance abuse disorders and developmental disorders, unless they co-occur with another diagnosable serious mental illness; and~~

~~(B) Based on a client assessment scale, (1) moderate impairment in at least four, or (2) severe impairment in at least two, or (3) extreme impairment in one of the following areas:~~

~~(i) Feeling, mood and affect;~~
~~(ii) Thinking;~~
~~(iii) Substance use disorder~~
~~(iv) Family and family relationships;~~
~~(v) Interpersonal skills; Community life functioning~~
~~(vi) Role performance; Social connectedness~~
~~(vii) Social~~
~~(viii) Self care and basic needs; or~~
~~(ix) Caregiver resources; or~~

~~(C) Has duration of illness of at least one year and (1) at least moderate impairment in two, or (2) severe impairment in one of the following areas:~~

~~(i) Feeling, mood and affect;~~
~~(ii) Thinking;~~
~~(iii) Family relationships;~~
~~(iv) Interpersonal skills; Community life functioning~~
~~(v) Role performance; Social connectedness~~
~~(vi) Social~~
~~(vii) Self Care and basic needs~~
~~(viii) Substance use disorder~~

SUBCHAPTER 3. REQUIRED SERVICES

PART 5. EMERGENCY SERVICES

450:17-3-41. Emergency services

(a) CMHCs shall provide, on a twenty-four (24) hour basis, accessible co-occurring disorder capable services for substance ~~abuse~~use disorders and/or psychiatric emergencies.

(b) This service shall include the following:

(1) 24-hour assessment and evaluation, including emergency examinations, characterized by welcoming engagement of all individuals and families;

(2) Availability of 24-hour inpatient referral;

(A) CMHC staff shall be actively involved in the emergency services and referral process to state-operated psychiatric inpatient units.

(B) Referral to state-operated psychiatric inpatient units by the CMHC shall occur only after all other community resources are explored with the individual and family if family is available and the consumer gives written consent for release.

(C) Prior notification to the state-operated psychiatric inpatient unit of all referrals from CMHCs is required.

(3) Availability of assessment and evaluation in external settings unless immediate safety is a concern. This shall include but not be limited to schools, jails, and hospitals;

(4) Referral services, which shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A O.S. §§ 5-201 through 5-407);

(5) CMHCs serving multiple counties shall provide or arrange for on-site assessment of persons taken into protective custody [43A O.S. § 5-206 et seq.] in each county;

(6) The CMHC's emergency telephone response time shall be less than fifteen (15) minutes from initial contact, unless there are extenuating circumstances;

(7) Face-to-face strength based assessment, unless there are extenuating circumstances, addressing both mental health and substance ~~abuse~~use disorder issues which include a description of the client's strengths in managing mental health and/or substance ~~abuse~~use issues and disorders during a recent period of stability prior to the crisis;

(8) Intervention and resolution; and

(9) No arbitrary barriers to access an evaluation based on active substance use or designated substance levels.

(c) Compliance with 450:17-3-41 shall be determined by a review of policy and procedures, and clinical records.

450:17-3-42. Emergency examinations

(a) The CMHC shall provide or otherwise ensure the capacity for performing emergency examinations. This capacity must be available 24 hours per day, seven days a week.

(b) Compliance with 450:17-3-42 shall be determined by a review of the following: policy and procedures; emergency contact records; clinical records; PI documentation; and staff on-call schedules.

(c) Failure to comply with 450:17-3-42 will result in the initiation of procedures to deny, suspend and/or revoke certification.

PART 7. OUTPATIENT THERAPY SERVICES

450:17-3-62. Outpatient therapy services, substance ~~abuse~~use disorder, co-occurring

(a) Facilities shall provide co-occurring disorder capable outpatient substance ~~abuse~~use disorder therapy services.

(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and

(2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;

(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and

(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(c) Compliance with 450:17-3-62 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 9. MEDICATION CLINIC SERVICES

450:17-3-85. Pharmacy Services

(a) The CMHC shall provide specific arrangements for pharmacy services to meet consumers' psychiatric needs. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through the CMHC's own Oklahoma licensed pharmacy.

(b) Compliance with 450:17-3-85 shall be determined by a review of the following: clinical records; written agreements for pharmacy services; on-site observation of in-house pharmacy; and State of Oklahoma pharmacy license.

(c) Failure to comply with 450:17-3-85 will result in the initiation of procedures to deny, suspend and/or revoke certification.

PART 11. CASE MANAGEMENT

450:17-3-106. Case management services, staff credentials

(a) Individuals providing case management services shall be a LBHP, CADC or certified as a behavioral health case

manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.
(b) Facility supervisors must be a certified behavioral health case manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50 if they directly supervise the equivalent of two (2) or more FTE certified behavioral health case managers who provide case management services as part of their regular duties.
(c) Compliance with 450:17-3-106 shall be determined by a review of the facility personnel records and credentialing files.

PART 21. PEER RECOVERY SUPPORT SERVICES

450:17-3-191. Peer Recovery support services
(a) Peer recovery support services are provided as a program integrated within the overall structure of Community Mental Health Center services and must be offered to children ages 16 and 17 with SED, and adults age 18 and older with ~~serious mental illnesses~~(SMI), including co-occurring disorders.
(b) Peer recovery support services may be offered to other consumers of the community mental health center and their families.
(c) These services shall
(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;
(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;
(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings;
(4) Have written policies specific to these services; and,
(5) Be provided by Peer Recovery Support Specialist(s) as defined by 450:17-3-192.
(d) Each CMHC shall have in place provisions for direct supervision and other supports for staff providing this service.
(e) Compliance with 450:17-3-191 shall be determined by a review of the following: documentation of linkage activities and agreements; clinical records; PICIS reporting data; and, CMHC policy and procedures.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 21. GAMBLING DISORDER TREATMENT SERVICES

450:17-5-128. Gambling Disorder Treatment Services
The purpose of this Part is to set forth, in addition to all other applicable rules, rules regulating program requirements, activities, and services for CMHCs who opt to provide gambling disorder treatment services. These rules implement 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.

450:17-5-129. Level of Care
Any CMHC providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Part.

450:17-5-130. Admission criteria
(a) Receipt of gambling disorder treatment services shall be conditioned upon a determination by the gambling disorder treatment professional in partnership with the consumer, and based on the problem gambling issues of the consumer utilizing ASAM criteria.
(b) Compliance with this Section may be determined by a review of the following:
(1) Policy and procedures;
(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:17-5-131. Discharge criteria
(a) Discharge from gambling disorder treatment services shall be determined by the following:
(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM criteria;
(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and
(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.
(b) Compliance may be determined by a review of the following:
(1) Policy and procedures;
(2) Continuing Care Plans;
(3) Discharge assessments;
(4) Discharge summaries;
(5) Progress notes;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility documentation.

450:17-5-132. Treatment services
(a) Any CMHC choosing to provide gambling disorder treatment services shall provide, at a minimum, the following:

(1) Screening and Assessment. Each presenting consumer shall be assessed using the Southern Oaks Gambling Screen (SOGS). CMHCs must ensure that a consumer's refusal of a particular service does not preclude them from accessing other treatment services. The assessment shall be completed during the admission process and within specific timelines established by the CMHC, but no later than by the end of the fourth visit.

(2) Biopsychosocial assessment. A biopsychosocial assessment gathers sufficient information to assist the consumer in developing an individualized service plan. The assessment used shall contain, but not be limited to, the following:

(A) Identification of the consumer's strengths, needs, abilities, and preferences;

(B) History of the presenting problem;

(C) Previous treatment history to include mental health and substance-related and addictive disorders;

(D) Health history and current biomedical conditions and complications;

(E) History of substance use, including past treatment, and history of other behavioral addictions and past treatment;

(F) Gambling history, including type, amount, frequency and duration of gambling activity, and family history of gambling disorders;

(G) History of trauma;

(I) Family and social history, including family history of alcohol and drug use;

(J) Educational attainment, difficulties, and history;

(K) Cultural and religious orientation;

(L) Vocational, occupational and military history;

(M) Sexual history, including HIV, AIDS and STD at-risk behavior;

(N) Marital or significant other relationship history;

(O) Recreational and leisure history;

(P) Legal history;

(Q) Present living arrangement;

(R) Economic resources;

(S) Level of functioning;

(T) Current support system including peer and other recovery supports;

(U) Current medications, if applicable, and shall include obtainable information regarding the name of prescribing physician, name of medication, strength and dosage, and length of time consumer was on the medication;

(V) Consumer's expectations in terms of service; and

(W) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.

(2) Service planning and revision.

(3) Individual therapy. Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one on one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.

(4) Group therapy. Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.

(5) Family therapy. Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service plan and use generally accepted treatment methods for this modality of treatment.

(6) Case management.

(7) Education and/or educational groups.

(8) Discharge planning.

(b) Compliance with this Section may be determined by a review of the following:

(1) Consumer records;

(2) Progress notes;

(3) Interviews with staff; and

(4) Other facility documentation.

SUBCHAPTER 21. STAFF DEVELOPMENT AND TRAINING

450:17-21-1. Staff qualifications

(a) All staff who provide clinical services shall have documented qualifications or training specific to the clinical services they provide within the CMHC.

(b) Staff qualifications for contracted entities shall be in compliance with 450:1-1-1.1 and 450:1-3-5.

(c) Compliance with 450:17-21-1 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:17-21-1 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:17-21-6. Clinical supervision

(a) Clinical supervision is a vital component of the provision of quality treatment. Clinical supervision shall be provided

for those delivering direct services and shall be provided by persons knowledgeable of clinical services as determined by the program.

(b) All facilities shall have written policies and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. These policies shall include, but are not limited to:

(1) Credentials required for the clinical supervisor;

(2) Specific frequency for case reviews with treatment and service providers;

(3) Methods and time frames for supervision of individual, group, and educational treatment services; and

(4) Written policies and procedures defining the program's plan for appropriate counselor-to-consumer ratio, and a plan for how exceptions may be handled.

(c) Ongoing clinical supervision should address:

(1) The appropriateness of treatment selected for the consumer;

(2) Treatment effectiveness as reflected by the consumers meeting their individual goals; and

(3) The provision of feedback that enhances the clinical skills of service providers.

(d) Compliance with this Section may be determined by a review of the following:

(1) Policies and procedures;

(2) Clinical services manuals;

(3) Clinical supervision manuals;

(4) Documentation of clinical supervision;

(5) Personnel records;

(6) Interviews with staff; and

(7) Other facility documentation.

(c) Failure to comply with this Section will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 23. FACILITY ENVIRONMENT

450:17-23-2. Technology

(a) The CMHC shall have a written plan regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.

(2) Security.

(3) Confidentiality.

(4) Backup policies.

(5) Assistive technology.

(6) Disaster recovery preparedness.

(7) Virus protection.

(b) Compliance with this Section shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

[OAR Docket #14-544; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

CHAPTER 18. STANDARDS AND CRITERIA FOR ~~ALCOHOL AND DRUG TREATMENT PROGRAMS~~SUBSTANCE RELATED AND ADDICTIVE DISORDER TREATMENT SERVICES

[OAR Docket #14-545]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Chapter 18. Standards and Criteria for ~~Alcohol and Drug Treatment Programs~~ Substance Related and Addictive Disorder Treatment Services [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 16, 2014 through February 19, 2014

PUBLIC HEARING:
February 21, 2014

ADOPTION:
March 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
October 1, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

Proposed revisions to Chapter 18 are made to update terminology and definitions to be more encompassing of more addiction disorders, rather than just drugs and alcohol, as well as to incorporate changes made to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Proposed rules also incorporate certification standards and criteria for gambling disorder treatment services as optional services for entities certified under Chapter 18. Further, revisions add more clarity and detail to service requirements in residential levels of treatment, including qualified providers of each service. Revisions also identify certification standards that are so critical to the operation of the entity that failure to meet the identified standards would be grounds for immediate suspension, denial or revocation of certification.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:18-1-1. Purpose

This chapter sets forth the standards and criteria used in the certification of facilities and organizations providing ~~substance abuse~~ treatment services for ~~alcohol or drug dependent~~ consumers with substance-related and addictive disorders and implements 43A O.S. §§ 3-403, 3-415, 3-416, 3-417, 3-417.1, 3-601, 3-602 and 3-603. The rules regarding the certification processes, including, but not limited to, the application process, fees, and administrative sanctions are found in OAC 450:1, Subchapters 5 and 9.

450:18-1-2. Definitions

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

"Acute intoxication or withdrawal potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's withdrawal patterns and current level of intoxication and potential for withdrawal complications as it impacts level of care decision making.

"Admission" means the acceptance of a consumer by a treatment program to receive services at that program.

"Admission criteria" means those criteria which shall be met for admission of a consumer for services.

"Adult" means any individual eighteen (18) years of age or older.

"ASAM" means the American Society of Addiction Medicine.

"ASAM levels of care" means the different options for treatment as described in the current edition of the ASAM ~~PPC~~criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"ASAM ~~patient placement~~ criteria" or **"ASAM ~~PPC~~"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Assessment" means those procedures by which a program provides an on-going evaluation process with the consumer as outlined in applicable rules throughout OAC 450 to collect pertinent information needed as prescribed in applicable rules and statutes to determine courses of actions or services to be provided on behalf of the consumer. Assessment may be synonymous with the term evaluation.

"Behavioral health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of mental illness, substance ~~abuse~~use disorders, and co-occurring disorders.

"Biomedical condition and complications" means one dimension to be considered in placement, continued stay, and discharge and is an evaluation of the consumer's current physical condition and history of medical and physical functioning as it impacts level of care decision making.

"Biopsychsocial assessment" means face-to-face interviews conducted by a qualified service provider designed to elicit historical and current information regarding the behaviors, experiences, and support systems of a consumer, and identify the consumer's strengths, needs, abilities, and preferences for the purpose of guiding the consumer's recovery plan.

"Case management services" means planned referral, linkage, monitoring, support, and advocacy provided in partnership with a consumer to assist that consumer with self-sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a gambling disorder.

"Child" or **"Children"** means any individuals under eighteen (18) years of age.

"Client" See "Consumer.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development, and increased self-awareness.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance ~~abuse~~use disorder crisis stabilization as authorized by 43A O.S. §3-317 including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary, for inpatient psychiatric or substance ~~abuse~~use disorder treatment services. This service is limited to CMHCs who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental of Substance Abuse Services.

"Community education, consultation, and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on ~~mental health, alcohol and other drugs~~substance-related and addictive disorders, domestic violence, sexual assault, and other related issues to the general public, the target population, or to other agencies serving the target population. These services include presentations to human services agencies, community organizations, and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and certain services at the option of the center including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process

of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose of problem solving or enhancing their capacities to manage consumers or facilities.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate, and promote transition from a current level of services to support ongoing recovery.

"Contract" means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance ~~abuse~~use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumer's with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody include juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial. Programs which are providing treatment services within a correctional facility may be exempt from certain services described in this chapter which cannot be provided due to circumstance.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis intervention" means actions taken and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitor; medication errors; residential consumers that have absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Day school" means the provision of therapeutic and accredited academic services on a regularly scheduled basis.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

"DHS" or **"OKDHS"** means the Oklahoma Department of Human Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria and in accordance with commonly accepted professional practice standards.

"Dietitian" or **"Dietician"** means an individual trained and licensed in the development, monitoring, and maintenance of food and nutrition in accordance with the Oklahoma State Board of Medical Licensure and Supervision.

"Discharge criteria" means individualized measures by which a program and the consumer determine readiness for discharge or transition from services being provided by that facility. These may reference general guidelines as specified in facility policies or procedures and/or in published guidelines including, but not limited to, the current ASAM ~~PPC~~criteria for individuals with substance use disorders, but should be individualized for each consumer and articulated in terms of consumer behaviors, resolutions of specific problems, and attainment of goals developed in partnership with the participant and the provider.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs. Discharge planning may or may not include a document identified as a discharge plan.

"Dischargesummary" means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"DOC" or **"ODOC"** means the Oklahoma Department of Corrections.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, and announcements.

~~**"Drug abuse"** means the use of a drug in a manner inconsistent with or unrelated to acceptable medical practice.~~

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning mental health, ~~substance abuse~~substance-related and addictive disorders, or other related problems and services related to the specific focus of treatment.

"Educational group" means groups in which information is provided to consumers or consumers in a teaching or instructional format and typically related to the current focus of treatment, designated to positively impact a consumer's recovery. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate education groups.

"Efficiency" means a program's measure of cost-benefit or cost effectiveness through a comparison to some alternative method.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, detoxification, individual and group consultation, and medical assessment.

"Emotional, behavioral or cognitive conditions and complications" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's historical and current emotional, behavioral, or cognitive status including the presence and severity of any diagnosed mental illnesses, as well as, the level of anxiety, depression, impulsivity, guilt, and behavior that accompanies or follows these emotional states and historical information, as it impacts on level of care decision making.

"Evaluation" See "Assessment."

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Executive director" means the person hired by the governing authority to direct all the activities of the organization; may be used synonymously with administrative director, administrator, chief executive officer, and director.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities" or "facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling ~~addiction~~disorder treatment, and narcotic treatment programs.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Psychosocial rehabilitation; and
(F) Discharge planning.

"Gambling treatment professional" means:

(A) an individual holding a valid NCGC I or II certification;
(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.
(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Goals" means broad general statements of purpose or intent that indicates the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Halfway house" means low intensity substance ~~abuse~~use disorder treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Corresponding ASAM ~~PPC~~ Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Halfway house for persons with children" means a halfway house that includes services for the recovering person's children who will reside with him or her in the house. Corresponding ASAM ~~PPC~~ Treatment Level: Level III.1, Clinically managed Low Intensity Residential Services.

"Infant" means any child from birth up to 3 years of age.

"Initial contact" means a person's first contact with the facility, e.g., a request for information or service by telephone or in person.

"Inpatient services" means the process of providing care to persons who require twenty-four (24) hour supervision in a hospital or other suitably equipped medical setting as a result of acute or chronic medical or psychiatric illnesses and professional staff providing medical care according to a treatment plan based on documentation of need.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

~~**"Integrated consumer information system"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators, and consumers. It includes unique identifiers for agencies, staff, and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.~~

"Intervention" means a process or technique intended to facilitate behavior change.

"Length of stay" means the number of days or number of sessions attended by consumers in the course of treatment.

"Licensed Behavioral Health Professional" or "LBHP" means:

(A) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor.

(C) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(D) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the State of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Licensure" means the process by which an agency of government grants permission to persons or health facilities meeting qualifications to engage in a given occupation or business or use a particular title.

"Life skills" means abilities and techniques necessary to function independently in society.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the facility is located, can only be provided or supervised by a licensed physician.

"Medical detoxification " means diagnostic and treatment services performed by licensed facilities for acute alcohol or drug intoxication, delirium tremens, and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns, and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol or drugs. [43 A O.S. § 3-403(5)] It is an organized service delivered by medical and nursing professionals that provides for twenty-four (24)-hour medically directed evaluation and withdrawal management in an acute care inpatient setting. Services are delivered under a defined set of physician-approved policies and physician-managed procedures or medical protocols. Corresponding ASAM ~~PPC~~

Treatment Level: Level IV-D, Medically Managed Intensive Inpatient Detoxification.

"Medical services" means the administration of medical procedures by a physician, registered nurse, nurse practitioner, physician's assistant, or dentist and in accordance with a documented treatment plan and medical supervision available to provide the consumer with the service necessitated by the prevalent problem identified and includes physical examinations, detoxification from alcohol or drugs, methadone maintenance, dental services, or pharmacy services, etc.

"Medically supervised detoxification" means detoxification outside of a medical setting, directed by a physician who has attendant medical personnel including nurses for intoxicated consumers, and consumer's withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances that would require hospitalization as determined by an examining physician. Corresponding ASAM ~~PPC~~ Treatment Level: Level III, 7-D, Medically Monitored Inpatient Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"Medication" means any prescription or over-the-counter drug that is taken orally, injected, inserted, applied topically, or otherwise administered by staff or self- administered by the consumer for the appropriate treatment or prevention of medical or psychiatric issues.

"Medication error" means an error in prescribing, dispensing, or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, or incorrectly transcribing medication orders.

"Medication-self administration" means the consumers administer their own medication to themselves, or their children, with staff observation.

"Minutes" means a record of business introduced, transactions and reports made, conclusions reached, and recommendations made during a meeting.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

"Non-medical detoxification" means detoxification services for intoxicated consumers and consumers withdrawing from alcohol or other drugs presenting with no apparent medical or neurological symptoms as a result of their use of substances. Corresponding ASAM ~~PPC~~ Treatment Level: Level III, 2-D, Clinically managed Residential Detoxification. Detoxification is intended to stabilize and prepare consumers in accessing treatment.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. For substance use disorder treatment services, the ~~Corresponding~~corresponding ASAM ~~PPC~~ Treatment Level~~:~~is Level I, Outpatient Treatment.

"Outreach" means the process of reaching into a community systematically for the purposes of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter into and accept the service delivery system.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided, but performs prescribed functions under the general supervision of that discipline.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms, include continuous quality improvement, continuous improvement, organization-wide quality improvement, and total quality management.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee or volunteer activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials, etc.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators, and consumers. It includes unique identifiers for agencies, staff, and consumers that provide the ability to monitor the course of consumer services throughout the

statewide ODMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, community residential mental health facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Play therapy" means a form of action therapy that uses, but is not limited to, sand play, fairy tales, art and puppetry to encourage communication in children who have inadequate or immature verbalization skills or who verbalize excessively due to defensiveness.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of services.

"Prevention" means the assessment, development, and implementation of strategies designed to prevent the adverse effects of mental illness, substance ~~abuse~~use disorders, addiction, and trauma.

"Procedures" means the written methods by which policies are implemented.

"Process" means information about what a program is implementing and the extent to which the program is being implemented as planned.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the consumers or patients.

"Program effectiveness outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities, and consumer outcomes.

"Progress notes" means a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychiatrist" means a licensed physician who specializes in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology or has equivalent training or experience.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"Readiness to change" means one dimension to be considered in consumer placement, continued stay, and transition and is an evaluation of the consumer's current emotional and cognitive awareness of the need to change, coupled with a commitment to change.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized, and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Recovery/living environment" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's current recovery environment, current relationships, degree of support for recovery, current housing, employment situation, availability of alternatives, and historical information as it impacts on level of care decision making.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to practice as a registered nurse.

"Rehabilitation services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Relapse" means the process which may result in the return to the use of substances after a period of abstinence.

"Relapse potential, continued use, or continued problem potential" means one dimension to be considered in consumer placement, continued stay, and discharge and is an evaluation of the consumer's attitudes, knowledge, and coping skills, as well as the likelihood that the consumer will relapse from a previously achieved and maintained abstinence and/or stable and healthy mental health function. If an individual has not yet achieved abstinence and/or stable and healthy mental health function, this dimension assesses the likelihood that the individual will continue to use alcohol or other drugs and/or continue to have mental health problems.

"Residential treatment~~"~~ -substance abuse" means treatment for a consumer in a live-in setting which provides a regimen consisting of twenty-four (24) treatment hours per week. This level of care should correspond with the ASAM ~~PPC~~ Treatment Level: Level III.5, Clinically managed High-Intensity Residential Services.

"Residential treatment for persons with children~~"~~ -substance abuse"means a residential treatment facility that includes services for the recovering person's children who will reside with him or her in the residential facility. Corresponding ASAM ~~PPC~~ Treatment Level (Parent Only): Level III.5 Clinically Managed High-Intensity Residential Services.

"Safety officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to~~:~~ suicide, homicide, criminal activity, assault and other forms of violence, including domestic

violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Service Provider" means a person who is allowed to provide ~~substance abuse~~treatment services within the regulation and scope of their certification level or license.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

~~**"Social detoxification "** See "Non-medical detoxification."~~

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social, and recreational skills and can include consumer education.

"Staff privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substance-related and addictive disorders" means a substance-related disorder involving problems related to the use of ten distinct classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; tobacco; and other (unknown) substances. Substance-related disorders fall into one of two categories, substance use disorders and substance induced disorders. A substance use disorder is a cluster of cognitive, behavioral and physiological symptoms indicating the consumer continues using the substance(s) despite significant substance-related problems. A substance-induced disorder is a reversible substance-specific syndrome due to the recent ingestion of a substance. Addictive disorders involve repetitive clusters of behaviors that activate reward systems similar to those activated by drugs and create behavioral symptoms comparable to those produced by substance use disorders such as compulsive gambling.

"Substance ~~abuse~~use disorder treatment services" means the coordination of treatment activities for consumers by service provider that includes, but is not limited to, the following:

(A) Intake including screening, diagnostic impression, and assessment.

(B) Treatment planning and revision, as necessary.

(C) Continuing care review to assure continuing stay and discharge criteria are met.

(D) Case management services.

(E) Reports and record keeping of consumer related data.

(F) Consultation that facilitates necessary communication in regard to consumers.

(G) Discharge planning that assists consumers in developing continuing care plans and facilitates transition into post-treatment recovery.

(H) Group and individual therapy.

(I) Education, as necessary.

"Substance-use disorders" means alcohol or drug dependence or psychoactive substance use disorder as defined by current DSM criteria or by other standardized and widely accepted criteria.

"Substance withdrawal" means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"Supportive services" refers to assistance with the development of problem-solving and decision making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Therapeutic hour(s)" means the amount of time in which the consumer is engaged with a service provider identifying, addressing, and/or resolving issues that are related to the consumer's treatment plan.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation, and career counseling. [43A O.S. § 3-403(11)].

"Treatment hours - residential" means the structured hours in which a consumer is involved in receiving professional services to assist in achieving recovery.

"Treatment session-outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental, and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Withdrawal Management" means the process of eliminating the toxic effects of substances from the body. Withdrawal management methods include social detoxification and medical monitoring or medical management and are intended to avoid withdrawal complications.

450:18-1-4. Applicability

This chapter is applicable to all ~~substance abuse~~substance-related and addictive disorder treatment facilities and organizations providing treatment, therapy, rehabilitation services, and ~~substance abuse~~substance-related and addictive disorder treatment services which are statutorily required to be certified by the ODMHSAS.

450:18-1-9. Staff qualifications

(a) All staff who provide clinical services shall have documented qualifications or training specific to the clinical services they provide.

(b) Staff qualifications for contracted entities shall be in compliance with 450:1-1-1.1 and 450:1-3-5.

(c) Compliance with 450:18-1-9 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:18-1-9 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 5. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:18-5-2. Applicability

The rules set forth in this subchapter are applicable only to those facilities providing ~~substance abuse~~substance-related and addictive disorder treatment services.

450:18-5-2.1. Organizational and facility description

(a) The facility shall have a written organizational description, which is reviewed annually and minimally includes:

(1) Target population to be served;

(2) The overall mission statement of the program which shall address the manner in which the facility welcomes all consumer with ~~substance abuse issues~~substance-related and addictive disorders, including those with co-occurring mental health conditions; and

(3) The annual facility goals and objectives, including the goal of continued progress for the agency in providing recovery oriented, culturally competent, trauma informed, and co-occurring capable services.

(b) The facility's governing authority shall review and approve the mission statement and annual goals and objectives and document its approval.

(c) The facility shall make the organizational description, mission statement, and annual goals available to staff.

(d) The facility shall make the organizational description, mission statement, and annual goals available to the general public upon request.

(e) Each facility shall have in writing, by program component or service, the following:

(1) Philosophy and description of services, including the philosophy of recovery oriented and welcoming service delivery;

(2) Identity of the professional staff that provides these services;

(3) Admission and exclusionary criteria that identifies the type of consumers for whom the services are primarily intended;

(4) Goals and objectives, including making progress toward co-occurring capable, trauma informed, and culturally competent service delivery; and

(5) Delineation of processes to assure welcoming accessible, integrated, and co-occurring capable services and a plan for how each program component will address the needs of individuals with co-occurring disorders.

(f) The facility shall have a written statement of the quality improvement processes, procedures, and plans for attaining the organization's goals and objectives. These procedures and plans shall define specific tasks, including actions regarding the organization's co-occurring capability, set target dates, and designate staff responsible for carrying out the procedures and plans.

(g) Compliance with ~~OAC 450:18-5-2.1~~this Section shall be determined by a review of the facility's target population definition; facility policy and procedures; mission statement; written plan for professional services; other stated required documentation; and any other supporting documentation.

450:18-5-6. Day school

(a) Facilities providing a day school (i.e., an academic formal educational program) either as a primary focus of their services or as an ancillary service, shall be in compliance with all applicable rules and regulations of the Oklahoma State Department of Education (OSDE) and of the local school district in which the day school is located.

(b) In addition, the facility shall provide the following documentation:

(1) Academic services provided are accredited by the local school district or the OSDE;

(2) All teachers shall have a valid license or certificate from the OSDE for the teaching position they are employed to fill;

(3) Therapeutic units are provided by staff trained in the issues of substance ~~abuse~~use disorders;

(4) Each student shall have a home school; and

(5) Each student shall have a daily activity schedule and individualized treatment plan based on assessment of need and formulated for both educational and therapy needs.

(c) Compliance with 450:18-5-6 may be determined by a review of facility policy and procedures, relevant personnel records, other facility supporting documentation, and interviews with staff and consumers .

450:18-5-10. Community information, consultation, outreach, and street outreach

(a) Each facility shall, as a regular part of consumer-based planning and services provision, provide the community with information, consultation, and outreach services to aid in reaching and attracting its specified target populations. These

outreach efforts shall be conducted by staff members or program approved volunteers.

(b) These services shall be designed to:

(1) Reach and attract the facility's target population;

(2) Provide information on substance ~~abuse~~use disorders and related issues to the public; and

(3) Provide information to the public regarding the facility's services.

(c) These services include, but are not limited to, presentations or outreach efforts to community groups, organizations, and individuals.

(d) Written documentation of all community information, consultation, and outreach services shall be maintained and shall include the following:

(1) Names of persons or organizations receiving the services;

(2) Names of persons providing the service;

(3) Number of persons attending;

(4) Locations at which the services were provided;

(5) Date services were provided; and

(6) Description of the services provided.

(e) Facilities providing street outreach services shall have written policies and procedures describing the processes for systematically reaching a community for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating needed services, and enabling persons to enter and accept the treatment services system.

(f) Compliance with 450:18-5-10 may be determined by a review of facility policy and procedures, documentation of community information, consultation, and outreach services, ~~ICIS~~PICIS documentation and reports, and any other supporting facility documentation.

450:18-5-11. Technology

(a) The facility shall have a written plan regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.

(2) Security.

(3) Confidentiality.

(4) Backup policies.

(5) Assistive technology.

(6) Disaster recovery preparedness.

(7) Virus protection.

(b) Compliance with 450:18-5-11 shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

PART 1. RECORD SYSTEM

450:18-7-3.1. Confidentiality of ~~mental health and drug or alcohol abuse treatment information~~substance-related and addictive disorder treatment information

Confidentiality policies, procedures, and practices must comply with federal and state law, guidelines, and standards.

PART 3. SCREENING, INTAKE, AND ASSESSMENT

450:18-7-21. Clinical record content, screening, intake, and assessment

(a) All facilities shall complete a face-to-face screening with each individual to determine appropriateness of further assessment.

(b) The facility shall maintain written screening policies and procedures that, at a minimum include: (1) how the screening is to be conducted; (2) that the screening conducted is an integrated screening to identify both immediate and ongoing needs; (3) how the process is designed to help welcome and engage the consumer, identify what they would like to accomplish through participation in treatment, and offer hope that treatment can result in positive change; and (4) how the consumer is assisted with admission for services, and/or with accessing other appropriate services.

(c) All facilities shall assess each consumer for appropriateness of admission to the ~~substance abuse~~ treatment program. Each presenting consumer for substance use disorder treatment shall be assessed, according to ASAM ~~PPC~~ criteria, which includes a list of symptoms for all six dimensions and each level of care, to determine a clinically appropriate placement in the least restrictive level of care. For facilities with gambling disorder treatment programs certified under Subchapter 15, each presenting consumer for gambling disorder treatment shall be assessed using the Southern Oaks Gambling Screen (SOGS). Facilities must ensure that a consumer's refusal of a particular service does not preclude the consumer from accessing other needed mental health or ~~substance abuse services~~substance-related or addictive disorder treatment services. Should the service provider determine the consumer's needs cannot be met within the facility, clinical assessments and referrals for the consumer shall be documented.

(d) Any consumer seeking admission to inpatient or residential services, including medically-supervised detoxification and non-medical detoxification while under the influence or undergoing withdrawal of alcohol or drugs, shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment of persons under the influence or undergoing withdrawal of alcohol or drugs, shall be approved by the facility's consulting physician.

(e) Upon determination of appropriate admission, consumer assessment demographic information shall contain, but not be limited to, the following:

(1) Date of initial contact requesting services;

(2) Date of the intake;

(3) Consumer's name;

(4) Gender;

(5) Birthdate;
(6) Home address;
(7) Telephone number;
(8) Referral source;
(9) Reason for referral;
(10) Significant other to be notified in case of emergency; and
(11) ~~ICIS~~PICIS intake data core content, if the facility reports on ~~ICIS~~PICIS.

(f) Compliance with 450:18-7-21 may be determined by a review of the following:
(1) Policies and procedures;
(2) Intake protocols;
(3) Intake assessment instruments;
(4) Treatment records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:18-7-23. Biopsychsocial assessment

(a) All programs shall complete a biopsychsocial assessment which gathers sufficient information to assist the consumer in developing an individualized service plan. The program shall develop a biopsychsocial evaluation which contains, but is not limited to, the following:
(1) Identification of the consumer's strengths, needs, abilities, and preferences;
(2) History of the presenting problem;
(3) Previous treatment history to include ~~substance abuse and~~ mental health and substance-related and addictive orders;
(4) Health history and current biomedical conditions and complications;
(5) ~~Alcohol and drug use history~~History of substance use, including past treatment, and history of other behavioral addictions and past treatment;
(6) Gambling history, if applicable, including type, amount, frequency and duration of gambling activity, and family history of gambling disorder.
(~~6~~7) History of trauma;
(~~7~~8) Family and social history, including family history of alcohol and drug use;
(~~8~~9) Educational attainment, difficulties, and history;
(~~9~~10) Cultural and religious orientation;
(~~10~~11) Vocational, occupational and military history;
(~~11~~12) Sexual history, including HIV, AIDS and STD at-risk behaviors;
(~~12~~13) Marital or significant other relationship history;
(~~13~~14) Recreational and leisure history;
(~~14~~15) Legal history;
(~~15~~16) Present living arrangement;
(~~16~~17) Economic resources;
(~~17~~18) Level of functioning;
(~~18~~19) Current support system including peer and other recovery supports;
(~~19~~20) Current medications, if applicable, and shall include obtainable information regarding the name of prescribing physician, name of medication, strength and dosage, and length of time consumer was on the medication;
(~~20~~21) Consumer's expectations in terms of service; and
(~~21~~22) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.

(b) Compliance with 450:18-7-23 may be determined by a review of the following:
(1) Policy and procedures;
(2) Biopsychsocial assessment instruments;
(3) Consumer records;
(4) Case management assessments;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:18-7-25. Biopsychsocial assessments of children accompanying a parent into treatment

(a) All programs shall document biopsychsocial assessments for the parent and for children accompanying their parent into treatment:
(1) Assessments of children (including infants) accompanying their parent into treatment (residential or halfway house levels of care) shall include, but not be limited to the assessment of:
(A) substance ~~abuse~~use disorder issues;
(B) mental health issues;
(C) parent-child relationship;
(D) physical and psychological development;
(E) educational needs;
(F) parent related issues,
(G) family issues related to the child,
(H) history of trauma; and
(I) medical history/needs.
(2) Assessments of the parent bringing their children into treatment (residential or halfway house levels of care) shall include the following items, in addition to the requirements of 450:18-7-23:
(A) parenting skills (especially in consideration of the child's issues);
(B) knowledge of age appropriate behaviors;
(C) parental coping skills;
(D) personal issues related to parenting; and
(E) family issues as related to the child.

(b) Compliance with 450:18-7-25 may be determined by a review of the following:
(1) Policy and procedure;
(2) Biopsychsocial assessment instruments;
(3) Treatment records;
(4) Case management assessments;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

PART 7. CASE MANAGEMENT

450:18-7-61. Case management services

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development

and consumer advocacy provided in various settings based on consumer need.

(b) As allowed per Title 43A O.S. Section 3-318, case management services shall be offered to all adults and children who have ~~substanceabuse/dependency~~substance-related disorders, and to their family members, if applicable, to ensure access to needed services.

(c) Case management shall be co-occurring disorder capable.

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of individual plan of care development, which shall include evidence that the following were evaluated:

(A) Consumer's level of functioning within the community;

(B) Consumer's job skills and potential; and/or educational needs;

(C) Consumer strengths and resources;

(D) Consumer's financial needs;

(E) Consumer's legal needs;

(~~D~~F) Consumer's present living situation and support system;

(~~E~~G) Consumer's use of substances and orientation to changes related to substance use;

(~~F~~H) Consumer's medical and health status;

(~~G~~I) Consumer's needs or problems which interfere with the ability to successfully function in the community; and

(~~H~~J) Consumer's goals.

(2) Development of case management care plan which can be reflected as a part of the comprehensive service plan;

(3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;

(4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc.;

(5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;

(6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and

(7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.

(e) Compliance with 450:18-7-61 shall be determined by on-site observation and a review of the clinical records and written policies and procedures.

450:18-7-63. Case management services for consumers admitted to higher levels of care

(a) Case managers from the outpatient ~~substance abuse~~ facilities to which the consumer will be discharged shall assist the consumer and detox/residential/halfway house facility, psychiatric inpatient unit, and/or CBSCC, with discharge planning for consumer returning to the community, pursuant to appropriately signed releases and adherence to applicable privacy provisions:

(b) Consumers discharging from a detox/residential/halfway house facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.

(c) Compliance with 450:18-7-63 shall be determined by a review of the clinical records; staff interviews; and information from ODMHSAS detox/residential/halfway house facilities, operated psychiatric inpatient unit, and CBSCC facilities.

450:18-7-65. Case management services, staff credentials

(a) Individuals providing case management services shall be an LBHP, CADC or certified as a behavioral health case manager pursuant to OAC, Title 450, Chapter 50.

(b) Compliance with 450:18-7-65 shall be determined by a review of the facility personnel records and credentialing files.

PART 9. SERVICE PLANNING

450:18-7-81. Service Plan

(a) The service plan is performed with the active participation of the consumer and a support person or advocate, if requested by the consumer. In the case of children under the age of eighteen (18), it is performed with the participation of the parent or guardian, if allowed by law, and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges, and problems.

(b) The service plan is developed after and based on information obtained in the assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Comprehensive service plan contents shall address the following:

(1) Consumer strengths, needs, abilities, and preferences;

(2) Identified presenting challenges, needs, and diagnosis;

(3) Goals for treatment with specific, measurable, attainable, realistic, and time-limited objectives;

(4) Type and frequency of services to be provided;

(5) Description of consumer's involvement in, and response to, the service plan and his or her signature and date;

(6) The service provider who will be rendering the services identified in the service plan; and

(7) Discharge criteria that are individualized for each consumer and beyond that which may be stated in the ASAM ~~PPC~~criteria.

(e) Service plan updates shall address the following:

(1) Progress on previous service plan goals and/or objectives;

(2) A statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(3) Change in goals and/or objectives based upon consumer's progress or identification of new needs and challenges;

(4) Change in frequency and/or type of services provided;

(5) Change in staff who will be responsible for providing services on the plan; and

(6) Change in discharge criteria.

(f) Service plan updates should occur at a minimum of every six (6) months during which services are provided.

(g) Service plans, both comprehensive and update, must include dated signatures for the consumer (if over age 14), the parent/guardian (if under age 18 and allowed by law), and the primary service practitioner.

(h) Compliance with 450:18-7-81 shall be determined by a review of the clinical records, interviews with staff and consumers, and other facility documentation.

PART 13. DISCHARGE PLANNING

450:18-7-121. Discharge assessment

(a) All facilities shall assess each consumer for appropriateness of discharge from a ~~substance abuse~~ treatment program. Each consumer shall be assessed using ASAM ~~PPC~~criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific level of care based on the consumer's severity of symptoms and current situations.

(b) Compliance with 450:18-7-121 may be determined by a review of the following:

(1) Policies and procedures;

(2) Continuing care plans;

(3) Discharge assessments;

(4) Discharge summaries;

(5) Progress notes;

(6) Consumer records;

(7) Interviews with staff and consumers; and

(8) Other facility documentation.

450:18-7-122. Continuing care plan

(a) The facility shall assist the consumer to obtain services that are needed, but not available within the facility, and/or in transitioning from one level of care to another, and/or discharging from a facility. A written plan of recommendations and specific referrals for implementation of continuing care services, including medications, shall be prepared for each consumer who meets the ASAM ~~PPC~~ dimensional continued service criteria, in each level of care. Continuing care plans shall be developed with the knowledge and cooperation of the consumer. The continuing care plan may be included in the discharge summary. The consumer's response to the continuing care plan shall be noted in the plan or a note shall be made that the consumer was not available and why. In the event of the death of a consumer, a summary statement including this information shall be documented in the record.

(b) Compliance with 450:18-7-122 may be determined by a review of the following:

(1) Policies and procedures;

(2) Continuing care plans;

(3) Discharge assessments;

(4) Discharge summaries;

(5) Progress notes;

(6) Consumer records;

(7) Interviews with staff and consumers; and

(8) Other facility information.

SUBCHAPTER 9. SERVICES SUPPORT AND ENHANCEMENT

PART 1. STAFF SUPPORT

450:18-9-2. Clinical supervision

(a) Clinical supervision is a vital component of the provision of quality ~~substance abuse~~ treatment. Clinical supervision shall be provided for those delivering direct services and shall be provided by persons knowledgeable of clinical services as determined by the program.

(b) All facilities shall have written policies and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. These policies shall include, but are not limited to:

(1) Credentials required for the clinical supervisor;

(2) Specific frequency for case reviews with treatment and service providers;

(3) Methods and time frames for supervision of individual, group, and educational treatment services; and

(4) Written policies and procedures defining the program's plan for appropriate counselor-to-consumer ratio, and a plan for how exceptions may be handled.

(c) Ongoing clinical supervision should address:

(1) The appropriateness of treatment selected for the consumer;

(2) Treatment effectiveness as reflected by the consumers meeting their individual goals; and

(3) The provision of feedback that enhances the clinical skills of service providers.

(d) Compliance with 450:18-9-2 may be determined by a review of the following:

(1) Policies and procedures;
(2) Clinical services manuals;
(3) Clinical supervision manuals;
(4) Documentation of clinical supervision;
(5) Personnel records;
(6) Interviews with staff; and
(7) Other facility documentation.

(c) Failure to comply with 450:18-9-2 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 13. SUBSTANCE ~~ABUSE~~USE DISORDER TREATMENT SERVICES

PART 1. LEVELS OF CARE

450:18-13-1. Levels of care and optional programs

Facilities shall document the provision of one or more of the following levels of care and/or optional programs in policies and procedures. All facilities shall include the requirements found in Subchapter 7, Facility Clinical Records.

(1) Outpatient services;
(2) Medically supervised detoxification;
(3) Non-medical detoxification;
(4) Residential treatment for adults;
(5) Residential treatment for persons with dependent children;
(6) Residential treatment for adults with co-occurring disorders;
(7) Residential treatment for adolescents;
(8) Halfway house services;
(9) Halfway house services for persons with dependent children; ~~and~~
(10) Halfway house services for adolescents~~.~~; and
(11) Gambling disorder treatment program.

PART 3. OUTPATIENT SERVICES

450:18-13-21. Outpatient services

(a) Outpatient services shall be organized non-residential services with scheduled treatment sessions that accommodate employed and parenting consumers' schedules and offer treatment services during the day, evening, or weekends. Services shall be designed to provide a variety of professional diagnostic and primary ~~alcohol and other drug abuse~~substance-related and/or addictive disorder treatment services for consumers their families, and significant others, whose emotional and physical statuses allows them to function in their usual environments.

(b) The program shall maintain written programmatic descriptions and operational methods that address the following:

(1) Environment:

(A) The facility shall be publicly accessible and accommodate office space, individual and group space, secure record storage, protect consumer confidentiality, and provide a safe, welcoming, culturally, and age appropriate environment.

(B) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

(C) For facilities that do not provide twenty-four (24) hour services, the facilities' hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(2) Support system:

(A) The facility shall maintain written policies and procedures for handling medical emergencies and an emergency medical number shall be posted for use by staff; and

(B) The facility shall have available specialized professional consultation or professional supervision.

(3) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding biopsychsocial dimensions of ~~substance abuse~~substance-related and addictive disorders, evidenced based practices, cultural, age, and gender specific issues, and co-occurring disorder issues.

(B) Staff shall be, at least, eighteen (18) years of age.

(C) The facility shall document in personnel records all education, training, and experience stated above prior to service providers providing direct care services.

(4) Treatment services:

(A) ~~Substance abuse~~Substance-related and addictive disorder treatment services shall be provided to assess and address the individual needs of each consumer. These services shall include, but not be limited to, therapy, rehabilitation services, educational group, case management services, and crisis intervention;

(B) Frequency of services shall be determined by mutual agreement between the service provider and the consumer; and

(C) When appropriate, and with the consumer's consent, the treatment program coordinates with other treatment providers that the consumer is currently utilizing.

(c) Compliance with 450:18-13-21 may be determined by a review of the following:

(1) Policies and procedures;
(2) Licenses;
(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;
(5) Treatment records;
(6) Interviews with staff and consumers; and
(7) Other supporting facility records.

450:18-13-22. Outpatient services, admission criteria

(a) Admission to outpatient substance use disorder services shall be determined according to 450: 18-7-21. Admission to outpatient gambling disorder treatment services, if provided, shall be determined according to 450:18-15-3. These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-13-22 may be determined by a review of the following:
(1) Policy and procedures;
(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:18-13-23. Outpatient services, discharge criteria

(a) Programmatic discharge from outpatient substance use disorder services shall be determined according to 450: 18-7-121. Programmatic discharge from outpatient gambling disorder treatment services shall be determined according to 450:18-15-4. These criteria shall be a part of the program's written policy and procedures.

(b) Compliance with 450:18-3-23 may be determined by a review of the following:
(1) Policy and procedures;
(2) Discharge protocol;
(3) Discharge assessment instruments;
(4) Continuing care plans;
(5) Discharge summaries;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility records.

PART 7. MEDICALLY SUPERVISED DETOXIFICATION

450:18-13-61. Medically-supervised detoxification

(a) Medically supervised detoxification shall be provided outside a medical facility, but under the direction of a licensed physician and a licensed registered nurse supervisor, for consumers who are withdrawing or are intoxicated from alcohol or other drugs. Presenting consumers shall be assessed as currently experiencing no apparent medical or neurological symptoms as a result of their substance use that would require hospitalization.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall provide for beds, food service, monitoring/documenting vital signs, food, and liquids. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.
(2) Support system:
(A) A licensed physician providing supervision of detoxification shall be on site or on call twenty-four (24) hours per day, seven (7) days per week;
(B) The facility shall maintain a written plan for emergency procedures which shall be approved by a licensed physician; and
(C) The facility shall have supplies, as designated in the written emergency procedures, which shall be accessible to the staff.
(3) Staff:
(A) Staff members shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, the implication of those vital signs, and emergency procedures.
(B) Oklahoma licensed nurses shall provide twenty-four (24) hour monitoring, and statutorily approved personnel shall administer medications in accordance with physician's orders;
(C) Staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies; and
(D) The facility shall document in personnel records all education, training, and experience stated in (A), (B), and (C) above prior to staff providing direct care services.
(E) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.
(4) Treatment services:
(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance ~~abuse~~use disorder detoxification treatment services shall be provided which shall include, but are not limited to, oral intake of fluids, three (3) meals a day, taking of vital signs (temperature, pulse, respiration rate, blood pressure), documentation of fluid and food intake a minimum of one (1) time every six (6) hours or more often as indicated by the consumer's condition.
(B) Medications are to be prescribed if needed during detoxification. The medications are to include those needed for physical health issues and mental impairment if acquired during the detoxing process.
(5) Assessment:
(A) An individualized case management plan shall be developed for each consumer prior to discharge;
(B) A medical assessment for appropriateness of placement shall be completed and documented by a licensed physician during the admission process to the program.

(c) Compliance with 450:18-13-61 may be determined by a review of the following:
(1) Licenses;
(2) Policies and procedures;

(3) Treatment protocols;
(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;
(5) Treatment records;
(6) Interviews with staff; and
(7) Other supporting facility documentation.

PART 9. NON-MEDICAL DETOXIFICATION

450:18-13-81. Non-medical detoxification

(a) Non-medical detoxification shall be provided in a non-medical setting, with trained paraprofessionals, for intoxicated consumers and consumers withdrawing from alcohol and other drugs, who present with no apparent medical or neurological symptoms as a result of their substance abuse.

(b) The facility shall maintain written programmatic descriptions and policy and procedures addressing the following:

(1) Environment: The facility shall provide beds, food service, and monitor/document vital signs, and food and liquids intake. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be on call twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall have a written plan for emergency procedures approved by a licensed physician; and

(C) Supplies, as designated by the written emergency procedures, shall be available and accessible to the staff;

(3) Staff:

(A) The service provider assigned shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs, the implication of those vital signs, and emergency procedures. Service providers shall be trained and competent to implement physician-approved protocols for consumer observation and supervision, determination of appropriate level of care, and facilitation of the consumer's transition to continuing care;

(B) The staff shall be knowledgeable regarding facility-required education, evidenced based practices, training, and policies; and

(C) The facility shall document in personnel records all education, training, and experience stated in (A) and (B) above prior to staff providing direct care services.

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(4) Treatment services: Daily (twenty-four [24] hours a day, seven [7] days a week) substance ~~abuse~~use disorder detoxification treatment services shall be provided, to include oral intake of fluids, three (3) meals a day, and the taking of vital signs (temperature, pulse, respiration rate, blood pressure), and fluid and food intake a minimum of one (1) time every six (6) hours or more often as indicated by the consumer's condition.

(5) Assessment:

(A) The consumer shall have an addiction-focused history, obtained as part of the initial assessment and reviewed with a physician during the admission process if physician-developed protocols indicate concern; and

(B) An individualized case management plan shall be developed prior to discharge to the appropriate level of care.

(c) Compliance with 450:18-13-81 may be determined by a review of the following:

(1) Licenses;
(2) Policies and procedures;
(3) Treatment protocols;
(4) Physician-approved detoxification procedures;
(5) Personnel records, documentation of professional licensure~~,~~ or certification~~ or licensure as an alcohol and drug counselor~~, documentation of professional work experience, and ongoing in-service trainings;
(6) Treatment records; and
(7) Interviews with staff.

PART 11. RESIDENTIAL TREATMENT

450:18-13-101. Residential treatment for adults

(a) Substance ~~abuse~~use disorder treatment in a residential setting shall provide a planned regimen of twenty-four (24) ~~hour~~hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least twenty-four (24) treatment hours of substance ~~abuse~~use disorder treatment services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be conspicuously posted for staff use; and

(C) The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility.

(2) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding the ~~biopsychsocial~~biopsychosocial dimensions of

substance ~~abuse~~use disorders, evidenced-based practices, cultural, age, and gender specific issues, and co-occurring disorder issues.

(B) Staff shall be at least eighteen (18) years of age.

(C) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(3) Treatment services~~:~~. Daily (twenty-four [24] hours a day, seven [7] days a week) substance ~~abuse~~use disorder treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to~~, therapy, rehabilitation services, educational groups, case management services, and crisis intervention.~~:

(A) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least one (1) hour per week.

(B) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(D) **Educational groups.** Education groups must be conducted by a LBHP, CADC, CM II or Peer Recovery Support Specialist (PRSS). Only seven (7) hours per week of education group may be counted toward the required treatment hours. Education groups may include but are not limited to learning experiences regarding living skills, budgeting, educational/vocational skills, etc.

(E) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinically indicated.

(F) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(4) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals, and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service providers providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

(B) Documentation shall reflect each consumer has received a minimum of twenty four (24) hours of treatment services each week, including the treatment services required in 18-13-101(b)(3), in addition to life skills, recreational, and self-help supportive meetings.

(5) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting, and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-13-101 may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel record, documentation of professional licensure,or certification~~ or licensure as an alcohol and drug counselor~~, documentation of professional work experience, and ongoing in-service trainings;

(5) Treatment records; and

(6) Interviews with staff and consumers.

450:18-13-101.1. Intensive residential treatment for adults

(a) Intensive substance use disorder treatment in a residential setting shall provide a planned regimen of twenty four (24) hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least thirty-seven (37) treatment hours of substance use disorder treatment services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be conspicuously posted for staff use; and

(C) The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility.

(2) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding the biopsychosocial dimensions of substance use disorders, evidenced-based practices, cultural, age, and gender specific issues, and co-occurring disorder issues.

(B) Staff shall be at least eighteen (18) years of age.

(C) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.

(3) Treatment services. Daily (twenty-four [24] hours a day, seven [7] days a week) substance use disorder treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to:

(A) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a generally accepted clinical approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six. Therapy must be provided at least four (4) hour per week.

(B) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). These services includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. Rehabilitation services must be provided at least seven (7) hours per week. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(D) **Educational groups.** Only eleven (11) hours per week of education group may be counted toward the required treatment hours. Education groups may include but are not limited to learning experiences regarding living skills, budgeting, educational/vocational skills, etc.

(E) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinically indicated.

(F) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(4) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals, and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;
(iv) Consumer response to overall treatment services;
(v) Total number of treatment hours and types of services attended for the week;
(vi) Any new problems, goals, or objectives identified during the week;
(vii) List of all service providers providing treatment hours;
(viii) Signature and credentials of the service provider completing the documentation; and
(ix) Consumer's name.

(B) Documentation shall reflect each consumer has received a minimum of thirty-seven (37) hours of treatment services each week, including the treatment services required in 18-13-101.1(b)(3), in addition to life skills, recreational, and self-help supportive meetings.

(5) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.
(B) Quarterly meetings between consumers and the program personnel.
(C) Recreational activities to be utilized on personal time.
(D) Personal space for privacy.
(E) Security of consumer's property.
(F) A clean, inviting, and comfortable setting.
(G) Evidence of individual possessions and decorations.
(H) Daily access to nutritious meals and snacks.
(I) Policy addressing separate sleeping areas for the consumers based on:
(i) Gender;
(ii) Age; and
(iii) Needs.

(c) Compliance with 450:18-13-101.1 may be determined by a review of the following:

(1) Licenses;
(2) Policies and procedures;
(3) Treatment protocols;
(4) Personnel record, documentation of professional licensure or certification, documentation of professional work experience, and ongoing in-service trainings;
(5) Treatment records; and
(6) Interviews with staff and consumers.

PART 13. RESIDENTIAL TREATMENT FOR PERSONS WITH DEPENDENT CHILDREN

450:18-13-121. Residential treatment for persons with dependent children

(a) Substance ~~abuse~~use disorder treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) ~~hour~~hours a day, seven (7) days a week of professionally directed evaluation, care, and treatment in a permanent setting and under a defined set of policies and procedures. Consumers shall participate in at least twenty-four (24) treatment hours of substance ~~abuse~~use disorder treatment, parenting, and child development services per week for adults [Exception: (1) TANF recipients with Oklahoma Department of Human Services (OKDHS) approved documentation shall participate in least twenty-one (21) hours of treatment; documentation should be reflected in consumer record], and twelve (12) structured hours for children [Exception: (2) unless clinically indicated, structured services may be reduced to six (6) hours per week for children attending school.]

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall provide family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational and leisure space. The facility shall provide for materials and space appropriate for ages and development of children receiving services. (43A O.S. §3-417). The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week.
(B) The facility shall promote and facilitate children's access to the fullest possible range of medical services available such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verify immunization records.
(C) Access to emergency health care shall be provided as necessary.

(3) Staff:

(A) The facility shall maintain documentation that service providers are knowledgeable regarding biopsychsocial dimensions of substance ~~abuse~~use disorders, evidenced based practices, cultural, age and gender-specific issues, co-occurring disorder issues and treatment of infants, toddlers, preschool children, and school-age children.
(B) The facility shall document that service providers have training in the following:
(i) trauma issues, identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive, and sexual abuse of children;
(ii) child development and age appropriate behaviors;
(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children; and
(iv) the impact of substances and substance ~~abuse~~use disorders on parenting and family units.
(C) The facility shall document that staff working with children shall have ongoing training in the following and demonstrate job appropriate functional comprehension of:
(i) the impact of prenatal drug and alcohol exposure on child development;

(ii) the effect of substance ~~abuse~~use disorders on parenting children and families;

(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children;

(iv) common children's behavioral and developmental problems;

(v) appropriate play activities according to developmental stage;

(vi) recognition of sexual acting-out behavior; and

(vii) the substance ~~abuse~~use disorder recovery process, especially as related to family units.

(D) The facility shall document that staff are knowledgeable regarding facility-required education, and training requirements and policies;

(E) The facility shall have staff on site twenty-four (24) hours a day;

(F) Staff shall be at least eighteen (18) years of age; and

(G) The facility shall document in personnel records, all education, training, and experience stated above prior to the provision of services.

(4) Treatment services:

(A) The facility shall provide (twenty-four [24] hours a day, seven [7] days a week) substance ~~abuse~~use disorder treatment services to assess and address individual needs of each consumer. Treatment services, shall include, but are not limited to, therapy, rehabilitation services, educational groups, case management services, and crisis intervention, parenting, and child development; and

(B) The facility shall provide treatment services for children ages four (4) to twelve (12) years, including a minimum of twelve (12) structured hours per week for each child (see 450:18-13-121 (a), Exception #2), including, but not limited to, assessment and age appropriate individual, family and group therapy (topics can include, but are not limited to, poor impulse control, anger management, peer interaction, understanding feelings, problem/conflict resolution), education groups (topics can include, but are not limited to, effects of alcohol on the body, roles of the family, safety planning, grief and loss), recreational activities, prevention techniques, and support groups, according to the development of the child. Structured activities do not include time spent watching television and watching videos. Special attention shall be given to the high risk of sexual abuse, sexual acting-out by children, suicide risk, and the treatment of toddlers and preschool children; and

(C) Children's services, excluding infants, shall address the significant issues and needs documented in the child's and/or parent's assessment utilizing both structured and unstructured therapeutic activity. Services shall create and enhance positive self-image and feelings of self-worth, promote family unity, teach personal body safety, and positive school interactions, and to prevent alcohol, tobacco, and other drug use; and

(D) Services for infants (ages birth to three [3] years of age) shall include, at a minimum, developmentally appropriate parent-child interactive bonding activities and developmentally appropriate structured activities that promote and nurture the growth and well being of the infant; and

(E) Case management services for each adult and each child that include assessment of and planning and arranging for recovery needs.

(5) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service providers providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

(B) Documentation shall reflect that each adult consumer has received a minimum of twenty-four (24) hours of treatment services each week, unless the woman is pregnant and the consumer record contains physician-approved permission for less than twenty-four (24) hours of service, or as permitted in 450:18-13-121 (a), Exception #1. Should the consumer be unable to participate in twenty-four (24) treatment hours for two (2) or more weeks, a review of appropriate placement shall be conducted weekly and documented by the executive director of the facility and shall include observations of parent and child interactions, especially those indicative of therapeutic need or progress.

(C) Documentation shall reflect each child has received a minimum of twelve(12) structured hours of service each week addressing needs and issues documented in either, or both, the child's or parent's assessments; the child's response to those services; and an assessment and planning of recovery needs. Exception: As few as six (6) hours each week as permitted by 450:18-13-121(a).

(6) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumer and the program personnel.
(C) Recreational activities to be utilized on personal time.
(D) Personal space for privacy.
(E) Security of consumer's property.
(F) A clean, inviting, and comfortable setting.
(G) Evidence of individual possessions and decorations.
(H) Daily access to nutritious meals and snacks.
(I) Policy addressing separate sleeping areas for the consumers based on:
(i) Gender;
(ii) Age; and
(iii) Needs.

(c) Compliance with 450:18-13-121 may be determined by a review of the following:
(1) Licenses;
(2) Policies and procedures;
(3) Treatment protocols;
(4) Personnel record, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;
(5) Records;
(6) Interviews with staff; and
(7) Other facility documentation.

PART 15. RESIDENTIAL TREATMENT FOR ADULTS WITH CO-OCCURRING DISORDERS

450:18-13-141. Adult residential treatment for consumers with co-occurring disorders

(a) Substance ~~abuse~~use disorder and mental health treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour structured evaluation, care, and treatment, under a defined set of policy and procedures, and shall have a permanent setting. Consumers shall participate in at least twenty-four (24) treatment hours of mental health or substance ~~abuse~~use disorder treatment services per week, including medication therapy, case management services that address medical and/or dental needs, or any other service identified on the consumer's service plan, excluding community support groups. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.

(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:
(1) Support system:
(A) The facility shall maintain availability of a licensed physicians, who is knowledgeable in substance ~~abuse~~use disorders and mental health issues to provide evaluation, treatment and follow-up; and will be available by telephone twenty-four (24) hours per day, seven (7) days per week;
(B) The facility shall make available medication evaluation, administration, or monitoring; and
(C) The facility shall provide case management services.
(2) Staff:
(A) Service providers shall be knowledgeable regarding substance ~~abuse~~use diosrders, mental health, evidenced based practices, co-occurring issues, cultural, age, and gender specific issues.
(B) All staff shall be knowledgeable regarding facility-required education, training, and policies;
(C) Staff shall be at least eighteen (18) years of age; and
(D) The facility shall document in personnel records, prior to the provision of treatment services, all education, training, and experience stated above.
(3) Treatment services:
(A) Daily treatment service shall be provided to assess and address individual needs of each consumer. These services shall include, but not limited to~~,~~:~~medication monitoring, therapy, rehabilitation services, educational groups, case management services, and crisis intervention.~~
(i) Medication monitoring.
(ii) Therapy. See 18-13-101(b)(3)(A) for requirements.
(iii) Rehabilitation services. See 18-13-101(b)(3)(B) for requirements.
(iv) Educational groups. See 18-13-101(b)(3)(D) for requirements.
(v) Case management services. See 18-3-101(b)(3)(E) for requirements.
(vi) Crisis intervention. See 18-13-101(b)(3)(F) for requirements
(B) Psychiatric and/or psychological and/or mental health evaluations shall be completed on all consumers;
(4) Treatment documentation:
(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:
(i) Date;
(ii) Specific problems, goals, and objectives addressed;
(iii) Summary of progress made toward goals and objectives, or lack of;
(iv) Consumer response to overall treatment services;
(v) Total number of treatment hours and types of services attended for the week;
(vi) Any new problems, goals, or objectives identified during the week;
(vii) List of all service providers providing treatment hours;
(viii) Signature and credentials of the service provider completing the documentation;
(ix) Consumer's name; and

(x) Consumer's medication and response to medication therapy, if used, shall be documented.

(5) The program provides documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting, and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-13-141 may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel record, documentation of professional licensure~~,~~ or certification~~ or licensure as an alcohol and drug counselor~~, documentation of professional work experience and ongoing in-service trainings;

(5) Treatment records;

(6) Interviews with staff; and

(7) Other facility documentation.

PART 17. RESIDENTIAL TREATMENT FOR ADOLESCENTS

450:18-13-161. Residential treatment for adolescents

(a) Residential treatment for adolescents shall provide a planned regimen of twenty-four (24) hour, seven (7) days a week, professionally directed evaluation, care, and treatment for chemically dependent adolescents, under written policies and procedures in a permanent facility. Adolescents not attending academic training shall participate in at least twenty-one (21) substance ~~abuse~~use disorder treatment related hours per week. Adolescents attending academic training shall participate in at least fifteen (15) hours of substance ~~abuse~~use disorder treatment related hours per week. At a minimum, ten (10) hours shall be devoted to therapeutic treatment services including, but not limited to, group, individual, and family therapy provided by a qualified service provider. The remaining hours shall be devoted to life skills, prosocial skills, and recreational activities. Other activities such as self help support groups, meetings, and religious participation shall be in addition to required hours.

(b) The residential treatment program shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment:

(A) The facility shall maintain an environment which is supportive of physical and emotional growth and development which is appropriate to the needs of adolescents;

(B) The facility shall provide space, both indoor and outdoor, for the recreational and social needs of adolescents;

(C) The facility shall group consumers appropriately by age, developmental level, gender, and treatment needs;

(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;

(E) The program shall provide study areas within the facility and shall provide ancillary study materials such as encyclopedias, dictionaries, and educational resource texts and materials; and

(F) The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support systems:

(A) The facility shall make available a licensed physician by telephone twenty-four (24) hours per day, seven (7) days per week;

(B) The facility shall have specialized professional consultation or supervision available;

(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and

(D) The facility shall provide emergency services and crisis interventions.

(3) Staff:

(A) The facility shall document that service providers are knowledgeable regarding the biopsychsocial aspects of substance ~~abuse~~use disorders, cultural, gender, and age specific issues, co-occurring disorder issues, child and adolescent development and, evidenced based practices.

(B) Maintain documentation that service providers are knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(C) Ensure at least two (2) staff members are awake and on duty twenty-four (24) hours a day, seven (7) days a week;

(D) If educational services are provided, the facility shall maintain documentation to verify that providing staff meets all state requirements for education or special education;

(E) Staff shall be knowledgeable regarding the facility required education, and training requirements and policies;

(F) Staff shall be least eighteen (18) years of age; and

(G) The facility shall document in personnel records all education training and experience stated in above prior to the provision of direct care service.

(4) Treatment services:

(A) A multidisciplinary team approach shall be utilized in providing daily substance ~~abuse~~use disorder treatment services to assess and address the individual needs of each adolescent;

(B) Services shall include, but not be limited to~~,~~:~~therapy, educational groups, and rehabilitation services, case management services, and crisis intervention.~~

(i) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For all children under the age of eighteen, the total group size is limited to six.

(ii) **Rehabilitation Services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is eight to one for children under the age of eighteen.

(iii) **Educational groups.** Education groups must be conducted by a LBHP, CADC, CM II or Peer Recovery Support Specialist (PRSS).

(iv) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinical indicated.

(v) **Crisis intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(C) Services shall be provided in appropriate groups according to age, gender, developmental level, treatment status, and individual needs;

(D) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma law;

(E) Consumers shall participate in educational programs within the community, when clinically indicated, including extracurricular activities; and

(F) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information, when appropriate, on the educational progress of the consumer, and shall assess and respond to the needs for changes in the educational plans.

(5) Assessments:

(A) A physical examination shall be conducted by a licensed physician, to include physical assessment, health history, immunization status, and evaluation of motor development and function, speech, hearing, visual, and language functioning; and

(B) The facility shall facilitate and document the involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer;

(6) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service providers providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) The consumer's name.

(B) Progress notes in the consumer's record shall clearly reflect the implementation of treatment and case management plans and services provided;

(C) Progress notes shall include the consumer's name; and

(D) Documentation shall reflect that each consumer receives a minimum of twenty-one (21) hours of treatment-related hours each week or fifteen (15)

or more treatment-related hours if participating in academic training.

(7) Documentation of the following community living components:

(A) A written daily schedule of activities.

(B) Quarterly meetings between consumers and the program personnel.

(C) Recreational activities to be utilized on personal time.

(D) Personal space for privacy.

(E) Security of consumer's property.

(F) A clean, inviting, and comfortable setting.

(G) Evidence of individual possessions and decorations.

(H) Daily access to nutritious meals and snacks.

(I) Policy addressing separate sleeping areas for the consumers based on:

(i) Gender;

(ii) Age; and

(iii) Needs.

(c) Compliance with 450:18-13-161 may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment and service protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility documentation.

PART 19. HALFWAY HOUSE SERVICES

450:18-13-181. Halfway house services

(a) Halfway house services shall provide low intensity treatment in a supportive living environment to facilitate reintegration into the community. Major emphasis shall be on continuing substance ~~abuse~~use disorder care and follow-up, and community ancillary services in an environment supporting continued abstinence. Consumers shall participate in a minimum of six (6) hours of structured substance ~~abuse~~use disorder treatment per week.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available, by telephone twenty-four (24) hours a day, seven (7) days a week;

(B) The facility shall have a written plan for emergency procedures, approved by a licensed physician;

(C) The facility shall have supplies, as designated by the written emergency procedures plan, which shall be accessible to staff at all times; and

(D) Specialized professional consultation or professional supervision shall be available.

(3) Staff:

(A) Service providers shall be knowledgeable regarding biopsychsocial dimensions of substance ~~abuse~~use disorders, evidenced based practices, co-occurring disorder issues gender, cultural, and age-specific issues;

(B) Staff shall be knowledgeable regarding facility-required education, training, and policies;

(C) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;

(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week;

(E) Staff shall be at least eighteen (18) years of age; and

(F) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(4) Treatment services. The facility shall have scheduled rehabilitation services to assess and address the individual needs of each consumer. Such services shall include, but not limited to~~, crisis intervention, therapy, vocational services, case management services, and educational groups.~~:

(A) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a clinical approach generally accepted as reliable in the relevant community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six.

(B) **Rehabilitation Services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized

service plan. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(D) **Educational Groups.** Education groups must be conducted by a LBHP, CADC, CM II or Peer Recovery Support Specialist (PRSS).

(E) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinically indicated.

(F) **Crisis Intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(G) **Vocational services.** Any level of provider can provide vocational services (Employment consultants, or other staff who have completed some form of job coach training, are preferred). Vocational services include the process of developing or creating appropriate employment situations for individuals who desire employment to include, but not be limited to: the identification of employment positions, conducting job analysis, matching individuals to specific jobs, facilitating job expansion or advancement and communicating with employers about training needs.

(5) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problem(s), goals, and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service provider providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

(B) Documentation shall reflect that the consumer works or attempts to find work while receiving halfway house services.

(c) Compliance with 450:18-13-181 may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility records.

PART 20. ADOLESCENT HALFWAY HOUSE SERVICES

450:18-13-190. Adolescent halfway house services

(a) Adolescent halfway house treatment shall provide low intensity substance ~~abuse~~use disorder treatment in a supportive living environment to facilitate reintegration into the home or community. Emphasis shall be on applying recovery skills, relapse prevention, independent living skills, and educational and vocational skills. Consumers shall participate in at least six (6) hours of structured substance ~~abuse~~use disorder treatment and rehabilitation services weekly. Self-help meetings are not included in the required hours.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment:

(A) The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents;

(B) The facility shall maintain an environment supportive of physical and emotional growth and development, and appropriate to the needs of adolescents;

(C) The facility shall provide space, both indoor and outdoor. In co-ed treatment, the facility shall maintain separate sleeping quarters for males and females;

(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;

(E) The program shall provide study areas within the facility~~,~~ and shall provide ancillary study materials, such as encyclopedias, dictionaries, and educational resource texts and materials;

(F) The facility shall be licensed by the Oklahoma State Department of Human Services (OKDHS) as a "Residential Child Care Facility"; and

(G) The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support systems:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) Specialized professional consultation or supervision, emergency services, and crisis intervention shall be available;

(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and

(D) The facility shall have a written plan for emergency procedures and staff shall have access to supplies as designated in this plan.

(3) Staff:

(A) Service providers shall be knowledgeable regarding the biopsychsocial aspects of substance ~~abuse~~use disorders, evidenced based practices, co-occurring disorder issues, child and adolescent development issues, and gender, cultural, and age-specific issues.

(B) Service providers shall be knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;

(C) The facility shall have staff members on duty twenty-four (24) hours per day, seven (7) days a week;

(D) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;

(E) If educational services are provided, documentation shall be maintained to verify providing staff meet all state requirements for education or special education;

(F) Staff shall be knowledgeable regarding the facility-required education, training requirements, and policies;

(G) Staff shall be at least eighteen (18) years of age; and

(H) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) The facility shall provide substance ~~abuse~~use disorder treatment services to assess and address the individual needs of each adolescent, to include, but not be limited to~~, therapy, educational groups, rehabilitation services, case management services, and crisis intervention.~~:

(i) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For all children under the age of eighteen, the total group size is limited to six.

(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is eight to one for children under the age of eighteen.

(iii) **Educational groups.** Education groups must be conducted by a LBHP, CADC, CM II or Peer Recovery Support Specialist (PRSS).

(iv) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinically indicated.

(v) **Crisis intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(B) The facility shall provide services in appropriate groups according to age, gender, developmental level, and individual needs;

(C) The facility shall provide for clinically appropriate public educational services in compliance with applicable Oklahoma law;

(D) Consumers may participate in educational programs in the community, when clinically indicated, including extracurricular activities; and

(E) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information when appropriate, on the educational progress of the consumer and shall assess and respond to the needs for changes in the educational plans.

(5) Assessment;

(A) A physical examination shall be conducted by a licensed physician to include physical assessment, health history, immunization status, and evaluation of motor development and functioning, speech, hearing, visual and language functioning, if no records are available on admission reflecting such examination within the previous year; and

(B) The facility shall facilitate involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer.

(6) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service providers providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) Consumer's name.

(c) Compliance with the above may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility records.

PART 21. HALFWAY HOUSE SERVICES FOR PERSONS WITH DEPENDENT CHILDREN

450:18-13-201. Halfway house services for persons with dependent children

(a) Halfway house services for persons with dependent children shall provide substance ~~abuse~~use disorder treatment services in a residential setting and shall include a planned regimen of twenty-four (24) hour, seven (7) days a week, supervised living arrangements, to include professionally directed evaluation, care, and treatment, under a defined set of policy and procedures, in a permanent setting. Consumers shall participate in at least six (6) hours of treatment, supportive services, parenting, and child development services per week for adults, and six (6) therapeutic hours of services for children, excluding infants.

(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:

(1) Environment: The facility shall be a freestanding facility providing family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational space. The facility shall provide materials and space appropriate for ages of children receiving services. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.

(2) Support system:

(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;

(B) The facility shall ensure children's access to the fullest possible range of medical services available, such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verification of immunization records;

(C) The facility shall have access to emergency health care provided as necessary;

(D) The facility shall have access to public schools for school age children, and facilitation of the child's receiving the benefits of Public Laws 99-142; and

(E) The facility staff shall document a liaison with the local Oklahoma Department of Human Service (OKDHS) offices to:

(i) Promote preservation of families;

(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by the Oklahoma Department of Human Services (OKDHS) and with parental consent, provide daily observations of parent-child interaction;

(iii) Expedite investigations in a timely manner; and

(iv) Ensure prompt facility response to situations which require immediate intervention.

(3) Staff:

(A) Service providers shall be knowledgeable regarding Biopsychsocial dimensions of substance ~~abuse~~use disorders, evidenced-based practices, cultural, age, and gender specific issues, co-occurring disorder issues, and services for infants, toddlers, preschool, and school-age children.

(B) Service providers are minimally trained in:

(i) The identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive and sexual abuse of children.

(ii) Child development and age appropriate behaviors.

(iii) Parenting skills appropriate to infants, toddlers, pre-school, and school age children.

(iv) The impact of substances and substance ~~abuse~~use disorders on parenting and family units.

(C) Service providers working with children shall be knowledgeable and demonstrate job appropriate functional comprehension of:

(i) The impact of prenatal drug and alcohol exposure on child development.

(ii) The effect of substance ~~abuse~~use disorders on parenting, children, and families.

(iii) Parenting skills appropriate to infants, toddlers, pre-school, and school age children.

(iv) Common child behavioral and developmental problems.

(v) Appropriate play activities according to developmental stage.

(vi) Recognition of sexual acting out behavior.

(vii) The substance ~~abuse~~use disorder recovery process, especially as related to family units.

(D) The facility shall have staff members on site and awake twenty-four (24) hours per day, seven (7) days per week;

(E) Staff shall be knowledgeable regarding facility-required education and training requirements and policies.

(F) Staff shall be at least eighteen (18) years of age; and

(G) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.

(4) Treatment services:

(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance ~~abuse~~use disorder services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to~~, crisis intervention, therapy, vocational services, case management services, parenting, child development, and educational groups;~~:

(i) **Therapy.** Therapy must be provided by a Licensed Behavioral Health Professional (LBHP) who must use and document a clinical approach generally accepted as reliable in the relevant clinical community, such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. The therapy must be goal directed utilizing techniques appropriate to the individual consumer's service plan and the consumer's developmental and cognitive abilities. This service does not include social skill development or daily living skill activities. For adults, group therapy is limited to a total of eight adult individuals. For all children under the age of eighteen, the total group size is limited to six.

(ii) **Rehabilitation services.** Rehabilitation services must be provided by a LBHP, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II). This service includes educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices (including relapse prevention). Services provided typically take the form of curriculum based education and skills practice, and should be goal specific in accordance with an individualized service plan. The maximum staffing ratio for group rehabilitation services is fourteen members for each qualified provider for adults and eight to one for children under the age of eighteen.

(iii) **Educational groups.** Education groups must be conducted by a LBHP, CADC, CM II or Peer Recovery Support Specialist (PRSS).

(iv) **Case Management.** Case management may be provided by a LBHP, CADC, CM II or CM I.

(v) **Crisis intervention.** Crisis intervention services must be provided by a LBHP. Crisis intervention services are provided as needed for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or imminent danger of substance relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented in the consumer's record.

(vi) **Case Management.** Case management must be provided by a LBHP, CADC, CM II or CM I as clinically indicated.

(vii) **Vocational services.** Any level of provider can provide vocational services (Employment consultants, or other staff who have completed some form of job coach training, are preferred. Vocational services include the process of developing or creating appropriate employment situations for individuals who desire employment to include, but not be limited to: the identification of employment positions, conducting job analysis, matching individuals to specific jobs, facilitating job expansion or advancement and communicating with employers about training needs.

(viii) **Parenting and child development.**

(B) Services for children shall be provided and include a minimum of six (6) hours per week of therapeutic units for each child consisting of, but not limited to, assessment, therapy via art and recreational activities, etc. according to the development of the child. Documentation of all needs identified for each child shall be identified on that child's case management service plan and/or service plan.

(C) Children's services, excluding infants, shall be provided which address the significant issues and needs documented in either or both the child's and the parent's assessment and shall utilize both structured and unstructured therapeutic activity. Services shall address the significant issues and needs documented in the parent's or child's assessment and create and enhance positive self image and feelings of self-worth, promote family unity, teach personal body safety and positive school interactions, and to prevent alcohol, tobacco, and other drug use;

(D) Infant services, ages birth to three (3) years of age, shall be provided and shall consist, at a minimum, of developmentally appropriate parent-child bonding (interactive) activities and play therapy as determined by mother's service plan; and

(E) Case management services for each adult and each child shall be provided, which include the assessment of and planning and arranging for recovery needs.

(5) Treatment documentation:

(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:

(i) Date;

(ii) Specific problems, goals, and objectives addressed;

(iii) Summary of progress made toward goals and objectives, or lack of;

(iv) Consumer response to overall treatment services;

(v) Total number of treatment hours and types of services attended for the week;

(vi) Any new problems, goals, or objectives identified during the week;

(vii) List of all service providers providing treatment hours;

(viii) Signature and credentials of the service provider completing the documentation; and

(ix) The consumer's name.

(B) Progress notes in consumer's and his or her children's records shall clearly reflect case management assessments, plans, and implementation of plans, and implementation of the service plan and services provided, in addition to the consumer's, parent and child, response to treatment;

(C) Progress notes shall document observations of parent and child interactions especially those indicative of therapeutic need or progress; and

(D) Documentation shall reflect each consumer, adult, and child, has received a minimum of six (6) hours of service each week addressing issues and needs indicated in the assessments (parent or child).

(c) Compliance with 450:18-13-201 may be determined by a review of the following:

(1) Licenses;

(2) Policies and procedures;

(3) Treatment protocols;

(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;

(5) Treatment records;

(6) Interviews with staff and consumers; and

(7) Other facility documentation.

PART 23. PEER RECOVERY SUPPORT SERVICES

450:18-13-221. Peer recovery support services

(a) Peer recovery support services are provided as a program integrated within the overall structure of ~~substance abuse~~substance-related and addictive disorders agency services and may be offered to ~~adults~~consumers age ~~eighteen (18)~~sixteen (16) and older with substance ~~abuse~~use disorders, including co-occurring disorders.

(b) Peer recovery support services may be offered to other consumers of the ~~substance abuse~~ agency and their families.

(c) These services shall:

(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;

(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;

(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to, assisting re-entry into the community after a hospitalization or other residential setting;

(4) Have written policies specific to these services; and,

(5) Be provided by Recovery Support Specialists as defined by OAC 450:18-13-222.

(d) Each ~~substance abuse~~ agency shall have in place provisions for direct supervision and other supports for staff providing this service.

(e) Compliance with 450:18-13-221 shall be determined by a review of documentation of linkage activities and agreements, clinical records, ~~ICIS~~PICIS reporting data, and policies and procedures.

450:18-13-222. Peer Recovery Support Specialists staff requirements

(a) Peer Recovery Support Services shall be provided only by ~~staff who have completed the ODMHSAS RSS training and have passed the ODMHSAS RSS exam~~Peer Recovery Support Specialists meeting the requirements and certified pursuant to OAC 450:53.

(b) Each ~~substance abuse~~ agency shall document and maintain records to verify current credentialing of each provider of this service.

(c) Compliance for 450:17-3-192 shall be determined by a review of the facility personnel records and ODMHSAS credentialing files.

450:18-13-223. Peer Recovery Support services: Locale and frequency

(a) Peer Recovery Support services can be provided in any location. The majority of contacts should be face-to-face, however, services may be provided over the telephone as necessary to help the consumer achieve his or her goals.

(b) Compliance for 450:18-13-223 shall be determined by a review of the agency policies and procedures, ~~ICIS~~PICIS, consumer records, consumer interviews, and observation.

SUBCHAPTER 15. GAMBLING DISORDER TREATMENT SERVICES

450:18-15-1. Purpose

The purpose of this Subchapter is to set forth additional rules regulating program requirements, activities, and services for agencies certified under this Chapter who opt to also provide gambling disorder treatment services and implements 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.

450:18-15-2. Level of care

Agencies providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Subchapter.

450:18-15-3. Admission criteria

(a) Admission to the program shall be determined by the gambling disorder treatment professional in partnership with the consumer based on the problem gambling issues of the consumer utilizing ASAM placement criteria.

(b) Compliance with this Section may be determined by a review of the following:

(1) Policy and procedures;
(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:18-15-4. Discharge criteria

(a) Discharge from a the program shall be determined by the following:

(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM placement criteria;
(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and
(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.

(b) Compliance may be determined by a review of the following:

(1) Policy and procedures;
(2) Continuing Care Plans;
(3) Discharge assessments;
(4) Discharge summaries;
(5) Progress notes;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility documentation.

450:18-15-5. Treatment services

(a) Facilities providing gambling treatment services shall have a group of services herein designated as core services. Facilities certified under this Chapter may have specific additional services herein designated as optional gambling disorder treatment services. Required services include, but are not necessarily limited to:

(1) **Screening and Assessment.** See Sections 18-7-21 through 18-7-27 for requirements.
(3) **Service planning and revision.** See Sections 18-7-81, 18-7-82 and 18-7-101 for requirements.
(4) **Individual therapy.** Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one on one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.
(5) **Group therapy.** Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.
(6) **Family therapy.** Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service plan and use generally accepted treatment methods for this modality of treatment.
(5) **Case management.** See Sections 18-7-61 through 18-7-65 for requirements.
(6) **Education and/or educational groups.** Education and educational groups can be provided by any level of provider.
(7) **Discharge planning.** See Sections 18-7-121 through 18-7-123.

(b) Compliance with this Section may be determined by a review of the following:

(1) Consumer records;
(2) Progress notes;
(3) Interviews with staff; and
(4) Other facility documentation.

[OAR Docket #14-545; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 23. STANDARDS AND CRITERIA FOR COMMUNITY-BASED STRUCTURED CRISIS CENTERS

[OAR Docket #14-546]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:23-1-2 [AMENDED]
Subchapter 3. CBSCC Services
Part 1. Facility Based-Crisis Stabilization [NEW]
450:23-3-1 [AMENDED]
450:23-3-2 [AMENDED]
450:23-3-3 [AMENDED]
450:23-3-5 [AMENDED]
450:23-3-6 [AMENDED AND RENUMBERED TO 450:23-9-4]
450:23-3-6.1 [AMENDED AND RENUMBERED TO 405:23-9-5]
450:23-3-9 [AMENDED]
Part 2. Urgent Recovery Clinic Services [NEW]
450:23-3-20 through 450:23-3-24 [NEW]
Subchapter 5. CBSCC Clinical Records
450:23-5-4 [AMENDED]
450:23-5-5 [AMENDED]
450:26-5-6 [AMENDED]
Subchapter 9. Consumer Rights
450:23-9-4 [AMENDED AND RENUMBERED FROM 405:23-3-6]
450:23-9-5 [AMENDED AND RENUMBERED FROM 405:23-3-6.1]
Subchapter 11. Organizational Management
450:23-11-1 [AMENDED]
Subchapter 19. Staff Development and Training
450:23-19-1 [AMENDED]
450:23-19-2 [AMENDED]
450:23-19-3 [AMENDED]
Subchapter 21. Facility Environment
450:23-21-4 [NEW]
AUTHORITY:
43A O.S. § 3-317; Board of Mental Health and Substance Abuse Services.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 23 are part of the Department's review of Title 450. These actions are intended to create standards and criteria for urgent recovery clinic services and distinguish these services from traditional facility based crisis stabilization services. Other proposed revisions clarify existing rules and ensure compliance with statutory provisions.

Proposed revisions to Chapter 23 include an update to the definition of "Emergency Detention" to correspond with changes made to Oklahoma Statute 43A, as well as to incorporate new certification standards and criteria related to the use of technology. Proposed revisions also create two levels of care within Community Based Structured Crisis Centers (CBSCC): 1) facility based crisis stabilization for overnight crisis stabilization stays; 2) Urgent Recovery Clinic Services which provide up to 23 hours and 59 minutes of crisis intervention. Revisions also identify certification standards that are so critical to the operation of the entity that failure to meet the identified standards would be grounds for immediate suspension, denial or revocation of certification.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:23-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance ~~abuse~~use disorder crisis stabilization as authorized by O.S. 43A 3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance ~~abuse~~use disorder treatment services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the

Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons.

"Co-occurring disorder" means any combination of mental health and substance ~~abuse~~use disorder symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health and/or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and referral.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Emergency detention"~~For adults: means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes. For minors: means the detention of a minor who appears to be a minor in need of treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detainment after the completion on an initial assessment and determination that emergency detention is warranted for a period not to exceed five (5) days excluding weekends and holidays, except upon a court order authorizing detention pending a hearing requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.~~as defined by 43A § 5-206 means the detention of a person who appears to be a person requirement treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatment s provided by 43A of the Oklahoma Statutes.

"Emergency examination" For adults: means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Homeless" a homeless person is a person who; a) lacks a fixed, regular and adequate night time residence AND b) has a primary nighttime residence that is a supervised publicly or privately operated shelter designated to provide temporary living accommodations including welfare hotels, congregate shelters, half way houses, and transitional housing for the mentally ill; or an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, not limited to people living on the streets. Individuals are considered homeless if they have lost their permanent residence, and are temporarily living in a shelter to avoid being on the street.

"Initial Assessment" means examination of current and recent behaviors and symptoms of a person or minor who appears to be mentally ill or substance dependent.

~~**"Integrated Client Information System"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.~~

"Intervention plan" means a description of services to be provided in response to the presenting crisis situation that incorporates the identified problem(s), strengths, abilities, needs and preferences of the individual served.

"Licensed mental health professional" or **"LMHP"**~~means:~~

~~(A) psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;~~

~~(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is~~

~~experienced in performing mental health therapeutic, diagnostic, or counseling functions;~~

~~(C) a licensed clinical psychologist;~~

~~(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;~~

~~(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;~~

~~(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;~~

~~(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or~~

~~(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.~~as defined in Title 43A § 1-103(11).

"Linkage services" means the communication and coordination with other service providers that assure timely appropriate referrals between the CBSCC and other providers.

"Minor" means any person under eighteen (18) years of age.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness and/or substance abuse disorders. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"PICIS" means a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"~~Psychsocial~~Psychosocial evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body. For minors: mechanical restraints shall not be used.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Triage" means a dynamic process of evaluating and prioritizing the urgency of crisis intervention needed based on the nature and severity of consumers' presenting situations.

"Trauma Informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of all consumers.

SUBCHAPTER 3. CBSCC SERVICES

PART 1. FACILITY BASED-CRISIS STABILIZATION

450:23-3-1. Required services

Each CBSCC shall provide facility based co-occurring disorder capable crisis intervention and stabilization services.

450:23-3-2. ~~Crisis~~ Facility based crisis stabilization

(a) The CBSCC shall provide crisis stabilization to individuals who are in crisis as a result of a mental health and/or substance ~~abuse~~use disorder related problem. Each crisis stabilization program must be specifically accessible to individuals who present with co-occurring disorders. The CBSCC must have the capability of providing services to individuals who are in emergency detention status. The CBSCC may provide services in excess of 24 hours during one episode of care.

(b) Crisis stabilization services shall be provided in the least restrictive setting possible. Services should be provided

within, or as close to the community in which they reside as possible.

(c) A physician shall be available at all times for the crisis unit, either on-duty or on call. If the physician is on call, he or she shall respond by telephone or in person to the licensed staff on duty at the crisis unit within 20 minutes.

(d) Crisis stabilization services shall include, but not be limited to, the following service components and each shall have written policy and procedures and each shall be co-occurring disorder capable and trauma informed, with policies and procedures that support this capability:

(1) Triage crisis response;

(2) Co-occurring capable Psychiatric crisis stabilization; and

(3) Co-occurring capable Drug/alcohol crisis stabilization.

(e) The CBSCC shall have written policy and procedures addressing mechanical restraints for adults only, and these shall be in compliance with ~~450:23-3-6~~450:23-9-4.

(f) Compliance with 450:23-3-2 shall be determined by on-site observation, and a review of the following: clinical records; ICIS information; and the CBSCC policy and procedures.

450:23-3-3. Crisis stabilization, triage response

(a) Crisis stabilization services shall include twenty-four (24) hour triage response and emergency examination.

(b) Qualified staff providing triage crisis response services shall be:

(1) Clinically privileged pursuant to the CBSCC's privileging requirements for crisis stabilization services; and

(2) Knowledgeable about applicable laws, ODMHSAS rules, facility policy and procedures, and referral sources.

(c) Components of this service shall minimally include the capacity to provide:

(1) Immediate response, on-site and by telephone;

(2) Integrated screening for the presence of co-occurring disorders;

(3) On-site emergency integrated mental health and/or substance ~~abuse~~use disorder examination; and

(4) Referral, linkage, or a combination of the two services.

(d) The CBSCC shall have written policy and procedures minimally:

(1) Providing twenty-four (24) hour, seven (7) days per week, triage crisis response services; and

(2) Defining methods and required content for documentation of each triage crisis response service provided.

(3) Ensuring that individuals who present in crisis with co-occurring disorders are identified, and that there are no barriers to access triage crisis response based on arbitrary alcohol or drug levels, types of diagnosis or medications.

(e) Compliance with 450:23-3-3 shall be determined by a review of the following: clinical privileging records; personnel files and job descriptions; policy and procedures, program description; on-site observation; and clinical documentation of services provided.

450:23-3-5. Crisis stabilization, psychiatric, substance ~~abuse~~use disorder and co-occurring services

(a) Crisis stabilization services shall provide continuous twenty-four (24) hour evaluation, crisis stabilization, and social services intervention seven (7) days per week for consumers experiencing substance ~~abuse~~use disorder related crises; consumers in need of assistance for emotional or mental distress; or those who present with co-occurring disorders.

(b) Licensed ~~registered~~ nurses and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) Crisis stabilization services shall be provided by a co-occurring disorder capable multidisciplinary team of medical, nursing, social services, clinical, administrative, and other staff adequate to meet the clinical needs of the individuals served.

(d) Staff members assigned to a medical supervised detoxification component shall be knowledgeable about the physical signs of withdrawal, the taking of vital signs and the implication of those vital signs, and emergency procedures as well as demonstrating core competencies in addressing the needs of individuals receiving detoxification services who may have co-occurring mental health disorders and be on psychotropic medication.

(e) Services shall minimally include:

(1) Medically-supervised substance ~~abuse~~use disorder and mental health screening, observation and evaluation;

(2) Initiation and medical supervision of rapid stabilization regimen as prescribed by a physician, including medically monitored detoxification where indicated;

(3) Medically-supervised and co-occurring disorder capable detoxification, in compliance with procedures outlined in OAC Title 450, Subchapter 18;

(4) Intensive care and intervention during acute periods of crisis stabilization;

(5) Motivational strategies to facilitate further treatment participation for mental health and/or substance abuse needs; and,

(6) Providing referral, linkage or placement, as indicated by consumer needs.

(f) Crisis stabilization services, whether psychiatric, substance ~~abuse~~use disorder, or co-occurring, shall be utilized only after less restrictive community resources have been determined to be inadequate to meet the current needs of the consumer.

(g) Compliance with 450:23-3-5 shall be determined by a review of the following: personnel files and clinical privileges records; clinical records; ICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

450:23-3-6. Mechanical restraints for adult consumers only [AMENDED AND RENUMBERED TO 450:23-9-4]

~~(a) Mechanical restraints shall not be used on a non-consenting individual unless a licensed CBSCC physician personally examines the individual and determines their use to be required for the safety and protection of the consumer or other persons.~~

~~This shall not prohibit the emergency use of restraint pending notification of the physician.~~

~~(b) The CBSCC shall have a written protocol for the use of mechanical restraints which includes, but is not limited to:~~

~~(1) Criteria to be met prior to authorizing the use of mechanical restraints;~~

~~(2) Signature of the licensed physician authorizing use is required;~~

~~(3) Time limit of said authorizations;~~

~~(4) Circumstances which automatically terminate an authorization;~~

~~(5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a designated staff under the on-site supervision of a registered nurse;~~

~~(6) Requiring in every use of mechanical restraints documentation the specific reason for such use, the actual start and stop times of use, authorizing licensed CBSCC physician signature, and record of times the consumer was observed and checked and by whom;~~

~~(7) A chronological log including the name of every consumer placed in mechanical restraints, and the occurrence date. In accordance with 43 A O.S. § 4-106, the CBSCC director, or designee shall be responsible for insuring compliance with record keeping mandates;~~

~~(8) A process of peer review to evaluate use of mechanical restraints; and~~

~~(9) The items listed in (1) through (6) of this rule shall be made a part of the consumer record.~~

~~(c) Compliance with 450:23-3-6 shall be determined by on-site observation and a review of the following: CBSCC policy and procedures; the mechanical restraint log; seclusion and restraint logs; clinical record; critical incident reports; and any other supporting CBSCC documentation.~~

450:23-3-6.1. Mechanical restraints will not be used for minors in treatment [AMENDED AND RENUMBERED TO 450:23-9-5]

~~(a) Mechanical restraints will not be used on minors~~

~~(b) Seclusion and restraint policy and procedures for minors should at the minimum meet federal, state, and accrediting guidelines and standards~~

450:23-3-9. Pharmacy services

(a) The CBSCC shall provide specific arrangements for pharmacy services to meet consumers' needs. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through the CBSCC's own Oklahoma licensed pharmacy.

(b) Compliance with 450:23-3-9 shall be determined by a review of the following: clinical records; written agreements for pharmacy services; and State of Oklahoma pharmacy license.

(c) Failure to comply with 450:23-3-9 will result in immediate denial, suspension and/or revocation of certification.

PART 2. URGENT RECOVERY CLINIC SERVICES

450:23-3-20. Applicability

The services in this Part are optional services. However, if the services in this Part are provided, either on the initiative of the facility, or as an ODMHSAS contractual requirement of the facility, all rules and requirements of this Part shall apply to the facility's certification.

450:23-3-21. Urgent Recovery Clinic services

(a) Urgent Recovery Clinics (URC) offer services aimed at the assessment and immediate stabilization of acute symptoms of mental illness, alcohol and other drug abuse, and emotional distress or in response to acts of domestic violence or abuse/neglect. Each facility must be specifically accessible to individuals who present with co-occurring disorders. URCs shall not provide more than twenty-three (23) hours and fifty-nine (59) minutes of services to a consumer during one episode of care.

(b) URC services shall include, but not be limited to, the following service components and each shall have written policy and procedures and each shall be co-occurring disorder capable and trauma informed, with policies and procedures that support this capability:

(1) Triage crisis response;

(2) Crisis intervention;

(3) Crisis assessment;

(4) Crisis intervention plan development; and

(5) Linkage.

450:23-3-22. Triage crisis response

(a) URC services shall include twenty-four (24) hour triage response and emergency examination.

(b) Qualified staff providing triage crisis response services shall be:

(1) Clinically privileged pursuant to the facility's privileging requirements for crisis stabilization services; and

(2) Knowledgeable about applicable laws, ODMHSAS rules, facility policy and procedures, and referral sources.

(c) Components of this service shall minimally include the capacity to provide:

(1) Immediate response, face to face, by telephone and by the provision of mobile services;

(2) Integrated screening for the presence of co-occurring disorders;

(3) On-site emergency integrated mental health and/or substance use disorder examination;

(4) Referral, linkage, or a combination of the two services.

(d) The URC shall have written policy and procedures minimally:

(1) providing twenty-four (24) hour, seven (7) days per week, triage crisis response services;

(2) Defining methods and required content for documentation of each triage crisis response service provided; and

(3) Ensuring that individuals who present in crisis with co-occurring disorders are identified, and that there are no barriers to access triage crisis response based on arbitrary alcohol or drug levels, types of diagnosis or medications.

(e) Compliance with this Section shall be determined by a review of the following: Clinical privileging records, personnel files and job descriptions; policy and procedures, program description; on-site observation; and clinical documentation of services provided.

450:23-3-23. Crisis intervention

(a) URCs shall provide up to twenty-three (23) hours fifty-nine (59) minutes of evaluation, crisis stabilization, and social services intervention per consumer per episode of care and must be available seven (7) days per week for consumers experiencing substance abuse related crisis; consumers in need of assistance for emotional or mental distress; or those with co-occurring disorders.

(b) Licensed behavioral health professionals and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) The URC shall provide or otherwise ensure the capacity for a practitioner with prescriptive authority at all times for consumers in need of medication services.

(d) Crisis intervention services shall be provided by a co-occurring disorder capable team of social services, clinical, administrative, and other staff adequate to meet the clinical needs of the individuals served and make appropriate clinical decisions to:

(1) Determine an appropriate course of action;

(2) Stabilize the situation as quickly as possible; and

(3) Guide access to inpatient services or less restrictive alternatives, as necessary.

(e) Compliance with this Section shall be determined by a review of the following: personnel files and clinical privileges records; clinical records; PICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

450:23-3-24. Linkage Services to higher or lower levels of care, or longer term placement and services to homeless individuals.

(a) URCs services shall provide Linkage as set forth in 450:23-3-7.

(b) URCs shall provide services to homeless individuals as set forth in 450:23-3-8.

SUBCHAPTER 5. CBSCC CLINICAL RECORDS

450:23-5-4. Clinical record content, intake and assessment

(a) The CBSCC shall assess each individual to determine appropriateness of admission. Initial assessments by an LMHP are to be completed on all minors voluntary or involuntary prior to admission.

(b) Consumer intake information shall contain, but not be limited to the following identification data:

(1) Consumer name;

(2) Name and identifying information of the legal guardian(s)

(3) Home address;

(4) Telephone number;

(5) Referral source;

(6) Reason for referral;

(7) Significant other to be notified in case of emergency;

(8) ~~ICIS~~PICIS intake data core content;

(9) Presenting problem and disposition;

(10) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities shall be obtained during intake and kept in a highly visible location in or on the record; and

(11) Screening for co-occurring disorders, trauma, and homelessness, medical and legal issues.

(c) Consumer assessment information for ~~admitted~~ consumers admitted to facility-based crisis stabilization shall be completed within 72 hours of admission~~ to the CBSCC and shall contain, but not be limited to, the following:~~. Assessment information for consumers in a URC, if applicable, shall be completed within twelve (12) hours of arrival.

(1) Integrated mental health and substance abuse psychosocial evaluation that minimally addresses:

(A) The consumer's strengths and abilities to be considered during community re-entry;

(B) Economic, vocational, educational, social, family and spiritual issues as indicated; and

(C) An initial discharge plan.

(2) Interpretive summary of relevant assessment findings that results in the development of an intervention plan addressing mental health, substance ~~abuse~~use disorder, and other related issues contributing to the crisis;

(3) An integrated intervention plan that minimally addresses the consumer's:

(A) Presenting crisis situation that incorporates the identified problem(s);

(B) Strengths and abilities;

(C) Needs and preferences; and

(D) Goals and objectives.

(d) Compliance with 450:23-5-4 shall be determined by a review of the following: intake assessment instruments and other intake documents of the CBSCC; clinical records; and, other agency documentation of intake materials or requirements.

450:23-5-5. Health, mental health, substance abuse, and drug history

(a) A health and drug history shall be completed for each consumer at the time of admission in facility-based crisis stabilization and as soon as practical in the URC. The medical history shall include obtainable information regarding:

(1) Name of medication;

(2) Strength and dosage of current medication;

(3) Length of time patient was on the medication if known;

(4) Benefit(s) of medication;

(5) Side effects;

(6) The prescribing medical professional if known; and

(7) Relevant drug history of family members.

(b) A mental health history, including symptoms and safety screening, shall be completed for each consumer at the time of admission.

(c) A substance abuse history, including checklist for use, abuse, and dependence for common substances (including nicotine and caffeine) and screening for withdrawal risk and IV use shall be completed for each consumer at the time of admission

(d) Compliance with 450:23-5-5 shall be determined by a review of clinical records.

450:23-5-6. Progress notes

(a) The CBSCC shall have a policy and procedure mandating the chronological documentation of progress notes for consumers admitted to facility-based crisis stabilization.

(b) Progress notes shall minimally address the following:

(1) Person(s) to whom services were rendered;

(2) Activities and services provided and as they relate to the goals and objectives of the intervention plan, including ongoing reference to the intervention plan;

(3) Documentation of the progress or lack of progress in crisis resolution as defined in the intervention plan;

(4) Documentation of the intervention plan's implementation, including consumer activities and services;

(5) The consumer's current status;

(6) Documentation of the consumer's response to intervention services, changes in behavior and mood, and outcome of intervention services;

(7) Plans for continuing therapy or for discharge, whichever is appropriate; and

(b) Progress notes shall be documented according to the following time frames:

(1) Intervention team shall document progress notes daily; and

(2) Nursing service shall document progress notes on each shift.

(d) Compliance with 450:23-5-6 shall be determined by a review of clinical records.

SUBCHAPTER 9. CONSUMER RIGHTS

450:23-9-4. Mechanical restraints for adult consumers only

(a) Mechanical restraints shall not be used on a non-consenting individual unless a licensed CBSCC physician personally examines the individual and determines their use to be required for the safety and protection of the consumer or other persons. This shall not prohibit the emergency use of restraint pending notification of the physician.

(b) The CBSCC shall have a written protocol for the use of mechanical restraints which includes, but is not limited to:

(1) Criteria to be met prior to authorizing the use of mechanical restraints;

(2) Signature of the licensed physician authorizing use is required;

(3) Time limit of said authorizations;

(4) Circumstances which automatically terminate an authorization;

(5) Setting a time period, not to exceed every fifteen (15) minutes, an individual in mechanical restraints shall be observed and checked by a designated staff under the on-site supervision of a registered nurse;

(6) Requiring in every use of mechanical restraints documentation the specific reason for such use, the actual start and stop times of use, authorizing licensed CBSCC physician signature, and record of times the consumer was observed and checked and by whom;

(7) A chronological log including the name of every consumer placed in mechanical restraints, and the occurrence date. In accordance with 43 A O.S. § 4-106, the CBSCC director, or designee shall be responsible for insuring compliance with record keeping mandates;

(8) A process of peer review to evaluate use of mechanical restraints; and

(9) The items listed in (1) through (6) of this rule shall be made a part of the consumer record.

(c) Compliance with 450:23-3-6 shall be determined by on-site observation and a review of the following: CBSCC policy and procedures; the mechanical restraint log; seclusion and restraint logs; clinical record; critical incident reports; and any other supporting CBSCC documentation.

(d) Failure to comply with 450:23-3-6 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:23-9-5. Mechanical restraints will not be used for minors in treatment

(a) Mechanical restraints will not be used on minors

(b) Seclusion and restraint policy and procedures for minors should at the minimum meet federal, state, and accrediting guidelines and standards

(c) Failure to comply with 450:23-3-6.1 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 11. ORGANIZATIONAL MANAGEMENT

450:23-11-1. Organizational description

(a) The CBSCC shall have a written organizational description which is reviewed annually and minimally includes:

(1) The overall target population, specifically including those individuals with co-occurring disorders, for whom services will be provided;

(2) The overall mission statement;

(3) The ~~CBSCC's~~ annual facility goals and objectives, including the goal of continued progress for the facility in providing person centered, culturally competent, trauma informed and co-occurring capable services;

(b) The CBSCC's governing body shall approve the mission statement and annual goals and objectives and document their approval.
(c) The CBSCC shall make the organizational description, mission statement and annual goals and objectives available to staff.
(d) The CBSCC shall make the organizational description, mission statement and annual goals and objectives available to the general public upon request.
(e) Each CBSCC shall have a written plan for professional services which shall have in writing the following:
(1) Services description and philosophy;
(2) The identification of the professional staff organization to provide these services;
(3) Written admission and exclusionary criteria to identify the type of clients for whom the services are primarily intended; and
(4) Written goals and objectives.
(5) Delineation of processes to assure accessible, integrated, and co-occurring capable services and a plan for how each program component will address the needs of individuals with co-occurring disorders.
(f) There shall be a written statement of the procedures/plans for attaining the organization's goals and objectives. These procedures/plans should define specific tasks, including actions regarding the organization's co-occurring capability, set target dates and designate staff responsible for carrying out the procedures or plans.
(g) Compliance with 450:23-11-1 shall be determined by a review of the following: CBSCC target population definition; CBSCC policy and procedures; mission statement; written plan for professional services; other stated required documentation; and any other supporting documentation.

SUBCHAPTER 19. STAFF DEVELOPMENT AND TRAINING

450:23-19-1. Staff qualifications

(a) The CBSCC shall document the qualifications and training of staff providing crisis stabilization services which shall be in compliance with the CBSCC's clinical privileging process.
(b) Compliance with 450:23-19-1 shall be determined by a review of personnel files, clinical privileging records and other supporting documentation provided.
(c) Failure to comply with 450:23-19-1 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:23-19-2. Staff development

(a) The CBSCC shall have a written plan for the professional growth and development of all administrative, professional clinical and support staff.
(b) This plan shall include but not be limited to:
(1) orientation procedures;
(2) ~~inservice~~in-service training and education programs;
(3) availability of professional reference materials; and
(4) mechanisms for insuring outside continuing educational opportunities for staff members.
(c) The results of performance improvement activities and accrediting and audit findings and recommendations shall be addressed by and documented in the staff development and clinical privileging processes.
(d) Staff competency development shall be aligned with the organization's goals related to co-occurring capability, and incorporate a training plan, training activities, and supervision designed to improve co-occurring core competencies of all staff.
(e) Staff education and ~~inservice~~in-service training programs shall be evaluated by the CBSCC at least annually.
(f) Compliance with 450:23-19-2 shall be determined by a review of the staff development plan, clinical privileging processes, documentation of inservice training programs, and other supporting documentation provided.

450:23-19-3. ~~Inservice~~In-service

(a) ~~Inservice~~In-service trainings are required annually for all employees who provide clinical services within the CBSCC program on the following topics:
(1) Fire and safety;
(2) Infection Control and universal precautions;
(3) Consumer's rights and the constraints of the Mental Health Consumer's Bill of Rights;
(4) Confidentiality;
(5) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101 et seq., and Protective Services for the Elderly and for Incapacitated Adults Act, 43A O.S. §§ 10-101 et seq.;
(6) Facility policy and procedures;
(7) Cultural ~~diversity~~competence;
(8) Co-occurring disorder competency and treatment principles; and
(9) Trauma informed and age and developmental specific trainings.
(b) All staff providing clinical services shall have a current certification in basic first aid and in Cardiopulmonary Resuscitation (CPR).
(c) All clinical staff shall have training in non-physical intervention techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within 30 days of being hired with annual updates thereafter.
(d) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. The employee shall successfully complete this training within 30 days of being hired, with annual updated thereafter.
(e) The training curriculum for 450:23-19-3 (c) and (d) must be approved by the ODMHSAS commissioner or designee in writing prior to conducting of any training pursuant to this provision.

(f) Compliance with 450:23-19-3 shall be determined by a review of the following: inservice training records; personnel records; and other supporting written information provided.

SUBCHAPTER 21. FACILITY ENVIRONMENT

450:23-21-4. Technology

(a) The facility shall have a written plan regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.
(2) Security.
(3) Confidentiality.
(4) Backup policies.
(5) Assistive technology.
(6) Disaster recovery preparedness.
(7) Virus protection.

(b) Compliance with 450:23-21-4 shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

[OAR Docket #14-546; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 24. STANDARDS AND CRITERIA FOR COMPREHENSIVE COMMUNITY ADDICTION RECOVERY CENTERS

[OAR Docket #14-547]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 24. Standards and Criteria for ComprehensiveCommunity Addiction Recovery Centers [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-415.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 24 are part of the Department's review of Title 450. The proposed rules clarify existing rules, improve existing processes and are intended to comply with statutory changes.

Proposed revisions to Chapter 24 include changes to terminology based on recent updates to the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as to incorporate new certification standards and criteria related to the use of technology. Proposed revisions also eliminate details for levels of care and instead are cross referenced to Chapter 18 as applicable. Revisions also identify certification standards that are so critical to the operation of the entity that failure to meet the identified standards would be grounds for immediate suspension, denial or revocation of certification.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:24-1-2. Definitions

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

"Ambulatory Detoxification without extended on-site monitoring" means detoxification within an outpatient setting, directed by a physician and has attendant medical personnel including nurses for intoxicated consumers, and consumers withdrawing from alcohol and other drugs, presenting with no apparent medical or neurological symptoms as a result of their use of substances require ambulatory detoxification as determined by an examining physician. This corresponds to ASAM ~~Patient Placement Criteria~~ Treatment Level: Level I-D Ambulatory detoxification without extended on-site monitoring.

"ASAM ~~patient placement~~ criteria" or **"ASAM ~~PPC~~"** means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Comprehensive Community Addiction Recovery Center" or **"CCARC"** means a facility offering a comprehensive array of community-based substance ~~abuse~~use disorder treatment services, including but not limited to, outpatient services, Intensive outpatient services, ambulatory detoxification services, emergency care, consultation and education; and , certain services at the option of the center, including but not limited to, prescreening, rehabilitative services, aftercare, training programs, research and evaluation.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance ~~abuse~~use disorder crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance ~~abuse~~use disorder treatment services. This service is limited to CCARC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance ~~abuse~~use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance ~~abuse~~use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Gambling disorder treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;
(B) Treatment planning and revision, as necessary;
(C) Individual, group and family therapy;
(D) Case management;
(E) Psychosocial rehabilitation; and
(E) Discharge planning.

"Gambling treatment professional" means:

(A) an individual holding a valid NCGC I or II certification;
(B) any clinician licensed in a behavioral health field with documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.
(C) any individual under supervision for licensure by an individual who meets the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve hours of problem gambling specific continuing education every twelve months.

"Gambling related disorders/problems" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as defined by the most recent edition of the DSM.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Intensive outpatient services" means an organized, non-residential outpatient treatment services with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week for adults or six (6) to twelve (12) treatment hours per week for children. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the consumer participates in daytime treatment services but goes home at night. This corresponds to ASAM patient Placement Criteria Treatment Level: Level II.1 Intensive outpatient.

"Levels of care" means the different options for treatment as described in the current edition of the ASAM ~~PPC~~criteria that vary according to the services offered. Each treatment option is a level of care.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

(A) allopathic or osteopathic physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;

(B) practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor;

(C) advanced practice nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided; or

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CCARC and other providers.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Outpatient services"means an organized, non-residential treatment service in regularly scheduled session intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens. This corresponds to ASAM ~~Patient Placement Criteria~~criteria Treatment Level I, Outpatient Treatment. Services can address early intervention needs and increase in frequency and intensity up to 9 treatment hours per week.

"Peer Recovery Support Specialist" or**"PRSS"**means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

~~**"Recovery Support Specialist"** or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.~~

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance ~~abuse~~use disorder treatment services [43A O.S.§3-302(1)].

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Substance withdrawal"means a state of being in which a group of symptoms of variable clustering and degree of severity occur on cessation or reduction of use of a psychoactive substance that has been taken repeatedly, usually for a prolonged period and/or in high doses. The syndrome may be accompanied by signs of physiological disturbance. Onset and course of the withdrawal state are time-limited and are related to the type of substance and the dose being used immediately before abstinence.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle

SUBCHAPTER 3. REQUIRED SERVICES

PART 1. CCARC REQUIRED CORE SERVICES

450:24-3-2. Core community addiction recovery services

(a) All services required pursuant to the rule in OAC 450:24 shall provide in accordance with criteria established by the most current edition of the ASAM ~~PPC~~criteria as applicable to that specific service.

(b) Each CCARC shall provide the following services:

(1) Screening intake and referral services;

(2) Emergency services;

(3) Outpatient services based on ASAM ~~PPC~~criteria;

(4) Intensive Outpatient services based on the ASAM ~~PPC~~criteria

(5) Case management services;

(6) Rehabilitation services;

(7) Medication clinic services;

(8) Facilitation to medical detoxification services based on the ASAM ~~PPC~~criteria;

(9) Facilitation to residential substance ~~abuse~~use disorder treatment based on the ASAM ~~PPC~~criteria;

(10) Service to homeless individuals;

(11) Peer Recovery Support Services, and

(12) Wellness Activities and Support.

(13) Ambulatory Detoxification (Adults only) based on ASAM ~~PPC~~criteria.

(c) Compliance with 450:24-3-2 shall be determined by a review of the following:

(1) On-site observation;

(2) Staff interviews;

(3) Written materials;

(4) Program policies;

(5) Program Evaluations;

(6) Data reporting; and
(7) Clinical records.

PART 5. EMERGENCY SERVICES

450:24-3-41. Emergency services

(a) CCARCs shall provide, on a twenty-four (24) hour basis, accessible co-occurring disorder capable services for substance ~~abuse~~use disorder related emergencies.

(b) This service shall include the following:

(1) 24-hour assessment and evaluation, including crisis intervention, characterized by welcoming engagement of all individuals and families;

(2) Availability of referral to 24-hour medical detoxification, residential treatment, and half-way house services;

(3) Availability of assessment and evaluation in external settings unless immediate safety is a concern. This shall include but not be limited to schools, jails, and hospitals;

(4) Referral services, which shall include actively working with local sheriffs and courts regarding the appropriate referral process and appropriate court orders (43A O.S. §§ 5-201 through 5-407);

(5) CCARC's serving multiple counties shall provide or arrange for on-site assessment of persons taken into protective custody [43A O.S. § 5-206 et seq.] for substance ~~abuse~~use disorder related emergencies in each county;

(6) The CCARC's emergency telephone response time shall be less than fifteen (15) minutes from initial contact, unless there are extenuating circumstances;

(7) Face-to-face strength based assessment, unless there are extenuating circumstances, addressing substance ~~abuse~~use disorder and/or co-occurring issues which include a description of the client's strengths in managing substance ~~abuse~~use disorder issues and disorders during a recent period of stability prior to the crisis;

(8) Intervention and resolution; and

(9) No arbitrary barriers to access an evaluation based on active mental health symptoms or designated substance levels.

(c) Compliance with 450:24-3-41 shall be determined by a review of policy and procedures, and clinical records.

450:24-3-42. Emergency Crisis Intervention

(a) The CCARC shall provide or otherwise ensure the capacity for performing emergency assessment of substance ~~abuse~~use disorder related crisis. This capacity must be available 24 hours per day, seven days a week.

(b) Compliance with 450:24-3-42 shall be determined by a review of the following: policy and procedures; emergency contact records; clinical records; PI documentation; and staff on-call schedules.

(c) Failure to comply with 450:24-3-42 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:24-3-43. Crisis Intervention, staffing

(a) Staff providing crisis intervention shall be an LBHP which shall include core competency in emergency evaluation of co-occurring disorders and meet the CCARC's privileging requirements for the provision of emergency services, with the availability of an LMHP as defined in 43A O.S. § 1-103 for emergency examinations when warranted.

(b) Compliance with 450:24-3-43 shall be determined by a review of clinical privileging records and personnel records.

(c) Failure to comply with 450:24-3-43 will result in the initiation of procedures to deny, suspend and/or revoke certification.

PART 7. AMBULATORY DETOXIFICATION SERVICES

450:24-3-61. Ambulatory detoxification services without extended on-site monitoring services

~~(a)~~ Ambulatory detoxification shall be provided outside a medical facility in an outpatient setting, but under the direction of a licensed physician for consumers who are withdrawing or are intoxicated from alcohol or other drugs.

(1) Presenting consumers shall be assessed as currently experiencing no apparent medical or neurological symptoms as a result of their substance use that would require a higher level of care using the ASAM ~~PPC~~criteria.

(2) Treatment services: Services shall occur daily (seven [7] days a week during hours of operation). Substance ~~abuse~~use disorder ambulatory detoxification treatment services shall be provided which shall include, but are not limited to, oral intake of fluids, food if indicated, taking of vital signs (temperature, pulse, respiration rate, blood pressure), documentation of fluid and food intake a minimum of one (1) time per visit or more often as indicated by the consumer's condition.

450:24-3-65. Ambulatory detoxification without extended on-site monitoring, substance ~~abuse~~use disorder, co-occurring

(a) Facilities shall provide co-occurring disorder capable intensive ambulatory detoxification without extended on-site monitoring treatment services.

(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and

(2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;

(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and

(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(c) Compliance with 450:24-6-0 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 9. OUTPATIENT ~~COUNSELING~~TREATMENT SERVICES

450:24-3-81. Outpatient ~~therapy~~treatment services

(a) Outpatient services shall be determined as necessary using the ASAM ~~PPC~~criteria and shall include a range of services to consumers based on their needs regarding emotional, social and behavioral problems. These outpatient ~~therapy~~ services shall be provided or arranged for, and shall include, but not be limited to the following:

(1) Individual therapy;
(2) Group therapy;
(3) Family therapy;
(4) Rehabilitation services;
(5) Case management services;
(6) Peer recovery support services; and
(7) Wellness services and related activities.

(b) Compliance with 450:24-3-81 shall be determined by a review of written policy and procedures; clinical records; and data reported by facilities.

450:24-3-82. Outpatient ~~therapy~~treatment services, substance ~~abuse~~use disorder, co-occurring

(a) Facilities shall provide co-occurring disorder capable outpatient substance ~~abuse~~use disorder~~therapy~~treatment services.

(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and
(2) Provide or refer all drug dependent persons, and their identified significant other(s), for HIV/STD/AIDS testing and counseling;
(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and
(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(c) Compliance with 450:24-3-82 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 11. INTENSIVE OUTPATIENT SERVICES

450:24-3-101. Intensive outpatient treatment services

(a) Intensive outpatient services shall be determined as necessary using the ASAM ~~PPC~~criteria and shall include a range of nine (9) to fifteen (15) treatment services per week for adults or six (6) to twelve (12) treatment hours per week for children based on their needs regarding emotional, social and behavioral problems. These intensive outpatient services shall be provided or arranged for, and should include, but not be limited to the following:

(1) Individual therapy;
(2) Group therapy;
(3) Family therapy;
(4) Rehabilitation services;
(5) Case management services;
(6) Peer recovery support services; and
(7) Wellness services and related activities.

(b) Compliance with 450:24-3-101 shall be determined by a review of written policy and procedures; clinical records; and data reported by facilities.

450:24-3-102. Intensive outpatient treatment services, substance ~~abuse~~use disorder, co-occurring

(a) Facilities shall provide co-occurring disorder capable intensive outpatient substance ~~abuse~~use disorder treatment services.

(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and
(2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;
(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and
(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(c) Compliance with 450:24-3-62 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 15. CASE MANAGEMENT

450:24-3-141. Case management services

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development

and consumer advocacy provided in various settings based on consumer need.

(b) Case management services shall be offered to all adults who are receiving services and, to each child (or their parent/guardian).

(c) Case management shall be co-occurring disorder capable.

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a client to support that client in self sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of individual plan of care development, which shall include evidence that the following were evaluated:

(A) Consumer's level of functioning within the community;

(B) Consumer's job skills and potential; and/or educational needs;

(C) Consumer strengths and resources;

(D) Consumer's financial needs;

(E) Consumer's legal needs;

(~~D~~F) Consumer's present living situation and support system;

(~~E~~G) Consumer's use of substances and orientation to changes related to substance use;

(~~F~~H) Consumer's medical and health status;

(~~G~~I) Consumer's needs or problems which interfere with the ability to successfully function in the community; and

(~~H~~J) Consumer's goals.

(2) Development of case management care plan;

(3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;

(4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc;

(5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;

(6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and

(7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.

(e) Compliance with 450:24-3-141 shall be determined by on-site observation and a review of the following: clinical records, and written policy and procedures.

450:24-3-143. Case management services for consumers admitted to higher levels of care

(a) Case managers shall maintain contact with existing CCARC consumers, and establish contact with newly referred persons who are receiving services in residential treatment settings, Community Based Crisis Stabilization Centers, (CBCSC), or 24-hour settings providing substance ~~abuse~~use disorder detoxification treatment.

(b) Each CCARC shall assign at least one (1) staff member who is responsible for linkage between CBSCCs, detoxification center and/or the residential substance ~~abuse~~use disorder treatment facility and the CCARC. Linkage shall include, but not limited to, the following activities, pursuant to appropriately signed releases and adherence to applicable privacy provisions:

(1) Regular visits or communication with the CBCSC, detoxification setting, and/or residential substance ~~abuse~~use disorder treatment facility to monitor progress of those consumers in a CBCSC, detoxification setting and/or in facility-based substance ~~abuse~~use disorder treatment from the CCARC's service area.

(2) Provide knowledge and communication to other CCARC staff regarding CBCSC, detoxification setting, and/or residential substance ~~abuse~~use disorder treatment facility and discharge procedures.

(c) Case managers from the CCARC to which the consumer will be discharged shall assist the consumer and unit, CBCSC, and/or substance ~~abuse~~use disorder treatment facility with discharge planning for consumers returning to the community.

(d) Individuals discharging from an inpatient setting, CBCSC, and/or substance ~~abuse~~use disorder treatment facility shall be offered case management and other supportive services. This shall occur as soon as possible, but shall be offered no later than one (1) week post-discharge.

(e) Compliance with 450:24-3-143 shall be determined by a review of the following: clinical records; staff interviews; information from ODMHSAS operated psychiatric inpatient unit; CBCSC facilities, substance ~~abuse~~use disorder treatment facilities; meetings minutes (CCARC or state-operated psychiatric inpatient unit); and a review of a minimum of ten (10) clinical records of consumers who received services at an inpatient unit, CBSS, and/or 450-hour setting providing substance ~~abuse~~use disorder treatment within the past twelve (12) months.

450:24-3-144. Case management services, staff credentials

(a) Individuals providing case management services shall be an LBHP, CADC, or certified as a behavioral health case manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

(b) Facility supervisors must be a certified behavioral health case manager pursuant
to Oklahoma Administrative Code, Title 450, Chapter 50 if they directly supervise the equivalent of two (2) or more FTE certified behavioral health case managers who provide case management services as part of their regular duties.

(c) Compliance with 450:24-3-144 shall be determined by a review of the facility personnel records and credentialing files.

PART 21. PEER RECOVERY SUPPORT SERVICES

450:24-3-201. Peer recovery support services

(a) Peer recovery support services are provided as a program integrated within the overall structure of Comprehensive Community Addiction Center services and must be offered to children ages 16 and 17, and adults age 18 and older with addiction disorders, including co-occurring disorders.

(b) Peer recovery support services may be offered to other consumers of the CCARC and their families.

(c) These services shall

(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;

(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;

(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after residential treatment or other institutional settings;

(4) Have written policies specific to these services; and,

(5) Be provided by certified Peer Recovery Support Specialist(s) as defined by 450:24-3-202.

(d) Each CCARC shall have in place provisions for direct supervision and other supports for staff providing this service.

(e) Compliance with 450:24-3-201 shall be determined by a review of the following: documentation of linkage activities and agreements; clinical records; reporting data; and, CCARC policy and procedures.

450:24-3-202. Peer Recovery Support Specialists staff requirements

(a) Peer Recovery Support Services shall be provided only by ~~staff who have completed the ODMHSAS RSS training and have passed the ODMHSAS RSS exam~~ Peer Recovery Support Specialists meeting the requirements and certified pursuant to OAC 450:53.

(b) Each CCARC shall document and maintain records to verify compliance with training and testing requirements of each provider of this service.

(c) Compliance for 450:24-3-202 shall be determined by a review of the facility personnel records and ODMHSAS files.

450:24-3-203. Peer Recovery Support services: Locale and frequency

(a) Peer Recovery Support services can be provided in any location. The majority of contacts should be face-to-face; however, services may be provided over the telephone as necessary to help the consumer achieve his/her goals.

(b) Compliance for 450:24-3-203 shall be determined by a review of the agency policy and procedures, data reporting system, consumer records, consumer interviews, and observation.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 2. MEDICALLY-SUPERVISED AND NON-MEDICAL DETOXIFICATION

450:24-5-11. Medically-supervised detoxification

If provided, Medically-supervised detoxification shall be provided pursuant to OAC 450:18-13-61 through 18-13-63.

450:24-5-13. Non-medical detoxification

If provided, non-medical detoxification shall be provided pursuant to OAC 450:18-13-81 through 18-13-83.

PART 3. RESIDENTIAL TREATMENT

450:24-5-21. Residential treatment for adults

~~(a) Substance abuse treatment in a residential setting shall provide a planned regimen of twenty-four (24) hour professionally directed evaluation, care, and treatment in a permanent program location. Consumers shall participate in at least twenty-four (24) treatment hours of substance abuse use disorder services per week. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

~~(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) Support system:~~

~~(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week;~~

~~(B) The facility shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be conspicuously posted for staff use; and~~

~~(C) The facility shall maintain written policies and procedures for the handling of clinical issues during times in which clinical staff are not at the facility.~~

~~(2) Staff:~~

~~(A) The facility shall maintain documentation that service providers are knowledgeable regarding the biopsychsocial dimensions of substance abuse, evidenced based practices, cultural, age, and gender specific issues, and co-occurring disorder issues.~~

~~(B) Staff shall be at least eighteen (18) years of age.~~

~~(C) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

~~(D) The facility shall have staff members on site twenty-four (24) hours per day, seven (7) days per week.~~

~~(3) Treatment services: Daily (twenty-four [24] hours a day, seven [7] days a week) substance abuse treatment services shall be provided to assess and address individual needs of each consumer. Services shall include, but are~~

~~not limited to, therapy, rehabilitation services, educational groups, case management services, and crisis intervention.~~

~~(4) Treatment documentation:~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals, and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) Consumer's name.~~

~~(B) Documentation shall reflect each consumer has received a minimum of twenty-four (24) hours of treatment services each week, including treatment services required in 24-5-21(b)(3), in addition to life skills, recreational, and self-help supportive meetings.~~

~~(5) The program provides documentation of the following community living components:~~

~~(A) A written daily schedule of activities.~~

~~(B) Quarterly meetings between consumers and the program personnel.~~

~~(C) Recreational activities to be utilized on personal time.~~

~~(D) Personal space for privacy.~~

~~(E) Security of consumer's property.~~

~~(F) A clean, inviting, and comfortable setting.~~

~~(G) Evidence of individual possessions and decorations.~~

~~(H) Daily access to nutritious meals and snacks.~~

~~(I) Policy addressing separate sleeping areas for the consumers based on:~~

~~(i) Gender;~~

~~(ii) Age; and~~

~~(iii) Needs.~~

~~(c) Compliance with 450:24-5-21 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel record, documentation of professional licensure, or certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;~~

~~(5) Treatment records; and~~

~~(6) Interviews with staff and consumers.~~

Facilities providing substance use disorder treatment services for adults in the residential setting must meet the requirements found in Sections 450:18-13-101 through 18-13-103.

PART 5. RESIDENTIAL TREATMENT FOR PERSONS WITH DEPENDENT CHILDREN

450:24-5-41. Residential treatment for persons with dependent children

~~(a) Substance abuse treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour professionally directed evaluation, care, and treatment in a permanent setting and under a defined set of policies and procedures. Consumers shall participate in at least twenty-four (24) treatment hours of substance abuse, parenting, and child development services per week for adults [Exception: (1) TANF recipients with Oklahoma Department of Human Services (OKDHS) approved documentation shall participate in least twenty-one (21) hours of treatment; documentation should be reflected in consumer record], and twelve (12) structured hours for children [Exception: (2) unless clinically indicated, structured services may be reduced to six (6) hours per week for children attending school.]~~

~~(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) Environment: The facility shall provide family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational and leisure space. The facility shall provide for materials and space appropriate for ages and development of children receiving services. (43A O.S. §3-417). The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

~~(2) Support system:~~

~~(A) A licensed physician shall be available, at least by telephone, twenty-four (24) hours per day, seven (7) days per week.~~

~~(B) The facility shall promote and facilitate children's access to the fullest possible range of medical services available such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verify immunization records.~~

~~(C) Access to emergency health care shall be provided as necessary.~~

~~(3) Staff:~~

~~(A) The facility shall maintain documentation that service providers are knowledgeable regarding biopsychsocial dimensions of substance abuse, evidenced based practices, cultural, age and gender specific issues, co-occurring disorder issues and treatment of infants, toddlers, preschool children, and school-age children.~~

~~(B) The facility shall document that service providers have training in the following:~~

~~(i) trauma issues, identification of domestic violence, spousal or partner abuse, and child abuse~~

~~and neglect, with special emphasis on failure to thrive, and sexual abuse of children;~~

~~(ii) child development and age appropriate behaviors;~~

~~(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children; and~~

~~(iv) the impact of substances and substance abuse on parenting and family units.~~

~~(C) The facility shall document that staff working with children shall have ongoing training in the following and demonstrate job appropriate functional comprehension of:~~

~~(i) the impact of prenatal drug and alcohol exposure on child development;~~

~~(ii) the effect of substance abuse on parenting children and families;~~

~~(iii) parenting skills appropriate to infants, toddlers, preschool, and school age children;~~

~~(iv) common children's behavioral and developmental problems;~~

~~(v) appropriate play activities according to developmental stage;~~

~~(vi) recognition of sexual acting out behavior; and~~

~~(vii) the substance abuse recovery process, especially as related to family units.~~

~~(D) The facility shall document that staff are knowledgeable regarding facility required education, and training requirements and policies;~~

~~(E) The facility shall have staff on site twenty-four (24) hours a day;~~

~~(F) Staff shall be at least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records, all education, training, and experience stated above prior to the provision of services.~~

~~(4) Treatment services:~~

~~(A) The facility shall provide (twenty-four [24] hours a day, seven [7] days a week) substance abuse treatment services to assess and address individual needs of each consumer. Treatment services, shall include, but are not limited to, therapy, rehabilitation services, educational groups, case management services, and crisis intervention, parenting, and child development; and~~

~~(B) The facility shall provide treatment services for children ages four (4) to twelve (12) years, including a minimum of twelve (12) structured hours per week for each child (see 450:24-5-41 (a), Exception #2), including, but not limited to, assessment and age appropriate individual, family and group therapy (topics can include, but are not limited to, poor impulse control, anger management, peer interaction, understanding feelings, problem/conflict resolution), education groups (topics can include, but are not limited to, effects of alcohol on the body, roles of the family, safety planning, grief and loss), recreational activities, prevention techniques, and support groups, according to the development of the child. Structured activities do not include time spent watching television and watching videos. Special attention shall be given to the high risk of sexual abuse, sexual acting out by children, suicide risk, and the treatment of toddlers and preschool children; and~~

~~(C) Children's services, excluding infants, shall address the significant issues and needs documented in the child's and/or parent's assessment utilizing both structured and unstructured therapeutic activity. Services shall create and enhance positive self-image and feelings of self-worth, promote family unity, teach personal body safety, and positive school interactions, and to prevent alcohol, tobacco, and other drug use; and~~

~~(D) Services for infants (ages birth to three [3] years of age) shall include, at a minimum, developmentally appropriate parent-child interactive bonding activities and developmentally appropriate structured activities that promote and nurture the growth and well-being of the infant; and~~

~~(E) Case management services for each adult and each child that include assessment of and planning and arranging for recovery needs.~~

~~(5) Treatment documentation:~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) Consumer's name.~~

~~(B) Documentation shall reflect that each adult consumer has received a minimum of twenty-four (24) hours of treatment services each week, unless the woman is pregnant and the consumer record contains physician-approved permission for less than twenty-four (24) hours of service, or as permitted in 450:24-5-41 (a), Exception #1. Should the consumer be unable to participate in twenty-four (24) treatment hours for two (2) or more weeks, a review of appropriate placement shall be conducted weekly and documented by the executive director of the facility; and shall include observations of parent~~

~~and child interactions, especially those indicative of therapeutic need or progress.~~

~~(C) Documentation shall reflect each child has received a minimum of twelve(12) structured hours of service each week addressing needs and issues documented in either, or both, the child's or parent's assessments; the child's response to those services; and an assessment and planning of recovery needs. Exception: As few as six (6) hours each week as permitted by 450:24-5-41(a).~~

~~(6) The program provides documentation of the following community living components:~~

~~(A) A written daily schedule of activities.~~

~~(B) Quarterly meetings between consumer and the program personnel.~~

~~(C) Recreational activities to be utilized on personal time.~~

~~(D) Personal space for privacy.~~

~~(E) Security of consumer's property.~~

~~(F) A clean, inviting, and comfortable setting.~~

~~(G) Evidence of individual possessions and decorations.~~

~~(H) Daily access to nutritious meals and snacks.~~

~~(I) Policy addressing separate sleeping areas for the consumers based on:~~

~~(i) Gender;~~

~~(ii) Age; and~~

~~(iii) Needs.~~

~~(c) Compliance with 450:24-5-41 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel record, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;~~

~~(5) Records;~~

~~(6) Interviews with staff; and~~

~~(7) Other facility documentation.~~

Facilities providing substance use disorder treatment services for persons with dependent children in the residential setting must meet the requirements found in Sections 450:18-13-121 through 18-13-123.

PART 7. RESIDENTIAL TREATMENT FOR ADULTS WITH CO-OCCURRING DISORDERS

450:24-5-61. Adult residential treatment for consumers with co-occurring disorders

~~(a) Substance abuse and mental health treatment shall be provided in a residential setting offering a planned regimen of twenty-four (24) hour structured evaluation, care, and treatment, under a defined set of policy and procedures, and shall have a permanent setting. Consumers shall participate in at least twenty-four (24) treatment hours of mental health or substance abuse services per week, including medication therapy, case management services that address medical and/or dental needs, or any other service identified on the consumer's service plan, excluding community support groups. The facility shall provide beds, food service, and a safe, welcoming, and culturally/age appropriate environment.~~

~~(b) The facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) Support system:~~

~~(A) The facility shall maintain availability of a licensed physicians, who is knowledgeable in substance abuse and mental health issues to provide evaluation, treatment and follow-up; and will be available by telephone twenty-four (24) hours per day, seven (7) days per week;~~

~~(B) The facility shall make available medication evaluation, administration, or monitoring; and~~

~~(C) The facility shall provide case management services.~~

~~(2) Staff:~~

~~(A) Service providers shall be knowledgeable regarding substance abuse, mental health, evidenced based practices, co-occurring issues, cultural, age, and gender specific issues.~~

~~(B) All staff shall be knowledgeable regarding facility required education, training, and policies;~~

~~(C) Staff shall be at least eighteen (18) years of age; and~~

~~(D) The facility shall document in personnel records, prior to the provision of treatment services, all education, training, and experience stated above.~~

~~(3) Treatment services:~~

~~(A) Daily treatment service shall be provided to assess and address individual needs of each consumer. These services shall include, but not limited to, medication monitoring, therapy, rehabilitation services, educational groups, case management services, and crisis intervention.~~

~~(B) Psychiatric and/or psychological and/or mental health evaluations shall be completed on all consumers;~~

~~(4) Treatment documentation:~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals, and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation;~~

~~(ix) Consumer's name; and~~

~~(x) Consumer's medication and response to medication therapy, if used, shall be documented.~~

~~(5) The program provides documentation of the following community living components:~~

~~(A) A written daily schedule of activities.~~

~~(B) Quarterly meetings between consumers and the program personnel.~~

~~(C) Recreational activities to be utilized on personal time.~~

~~(D) Personal space for privacy.~~

~~(E) Security of consumer's property.~~

~~(F) A clean, inviting, and comfortable setting.~~

~~(G) Evidence of individual possessions and decorations.~~

~~(H) Daily access to nutritious meals and snacks.~~

~~(I) Policy addressing separate sleeping areas for the consumers based on:~~

~~(i) Gender;~~

~~(ii) Age; and~~

~~(iii) Needs.~~

~~(c) Compliance with 450:24-5-61 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel record, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience and ongoing in-service trainings;~~

~~(5) Treatment records;~~

~~(6) Interviews with staff; and~~

~~(7) Other facility documentation.~~

Facilities providing treatment services for adults with co-occurring disorders in the residential setting must meet the requirements found in Sections 450:18-13-141 through 18-13-143.

PART 9. RESIDENTIAL TREATMENT FOR ADOLESCENTS

450:24-5-81. Residential treatment for adolescents

~~(a) Residential treatment for adolescents shall provide a planned regimen of twenty-four (24) hour, seven (7) days a week, professionally directed evaluation, care, and treatment for chemically dependent adolescents, under written policies and procedures in a permanent facility. Adolescents not attending academic training shall participate in at least twenty-one (21) substance abuse treatment related hours per week. Adolescents attending academic training shall participate in at least fifteen (15) hours of substance abuse treatment related hours per week. At a minimum, ten (10) hours shall be devoted to therapeutic treatment services including, but not limited to, group, individual, and family therapy provided by a qualified service provider. The remaining hours shall be devoted to life skills, prosocial skills, and recreational activities. Other activities such as self-help support groups, meetings, and religious participation shall be in addition to required hours.~~

~~(b) The residential treatment program shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) **Environment:**~~

~~(A) The facility shall maintain an environment which is supportive of physical and emotional growth and development which is appropriate to the needs of adolescents;~~

~~(B) The facility shall provide space, both indoor and outdoor, for the recreational and social needs of adolescents;~~

~~(C) The facility shall group consumers appropriately by age, developmental level, gender, and treatment needs;~~

~~(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;~~

~~(E) The program shall provide study areas within the facility and shall provide ancillary study materials such as encyclopedias, dictionaries, and educational resource texts and materials; and~~

~~(F) The facility shall provide a safe, welcoming, and culturally/age appropriate environment.~~

~~(2) **Support systems:**~~

~~(A) The facility shall make available a licensed physician by telephone twenty-four (24) hours per day, seven (7) days per week;~~

~~(B) The facility shall have specialized professional consultation or supervision available;~~

~~(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and~~

~~(D) The facility shall provide emergency services and crisis interventions.~~

~~(3) **Staff:**~~

~~(A) The facility shall document that service providers are knowledgeable regarding the biopsychsocial aspects of substance abuseuse disorders, cultural, gender, and age specific issues, co-occurring disorder issues, child and adolescent development and, evidenced based practices.~~

~~(B) Maintain documentation that service providers are knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;~~

~~(C) Ensure at least two (2) staff members are awake and on duty twenty-four (24) hours a day, seven (7) days a week;~~

~~(D) If educational services are provided, the facility shall maintain documentation to verify that providing staff meets all state requirements for education or special education;~~

~~(E) Staff shall be knowledgeable regarding the facility required education, and training requirements and policies;~~

~~(F) Staff shall be least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records all education training and experience stated in above prior to the provision of direct care service.~~

~~(4) **Treatment services:**~~

~~(A) A multidisciplinary team approach shall be utilized in providing daily substance abuse treatment services to assess and address the individual needs of each adolescent;~~

~~(B) Services shall include, but not be limited to, therapy, educational groups, and rehabilitation services, case management services, and crisis intervention;~~

~~(C) Services shall be provided in appropriate groups according to age, gender, developmental level, treatment status, and individual needs;~~

~~(D) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma law;~~

~~(E) Consumers shall participate in educational programs within the community, when clinically indicated, including extracurricular activities; and~~

~~(F) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information, when appropriate, on the educational progress of the consumer, and shall assess and respond to the needs for changes in the educational plans.~~

~~(5) **Assessments:**~~

~~(A) A physical examination shall be conducted by a licensed physician, to include physical assessment, health history, immunization status, and evaluation of motor development and function, speech, hearing, visual, and language functioning; and~~

~~(B) The facility shall facilitate and document the involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer;~~

~~(6) **Treatment documentation:**~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) The consumer's name.~~

~~(B) Progress notes in the consumer's record shall clearly reflect the implementation of treatment and case management plans and services provided;~~

~~(C) Progress notes shall include the consumer's name; and~~

~~(D) Documentation shall reflect that each consumer receives a minimum of twenty-one (21) hours of treatment related hours each week or fifteen (15) or more treatment related hours if participating in academic training.~~

~~(7) **Documentation of the following community living components:**~~

~~(A) A written daily schedule of activities.~~

~~(B) Quarterly meetings between consumers and the program personnel.~~

~~(C) Recreational activities to be utilized on personal time.~~

~~(D) Personal space for privacy.~~

~~(E) Security of consumer's property.~~

~~(F) A clean, inviting, and comfortable setting.~~

~~(G) Evidence of individual possessions and decorations.~~

~~(H) Daily access to nutritious meals and snacks.~~

~~(I) Policy addressing separate sleeping areas for the consumers based on:~~

~~(i) Gender;~~

~~(ii) Age; and~~

~~(iii) Needs.~~

~~(c) Compliance with 450:24-5-81 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment and service protocols;~~

~~(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service training(s);~~

~~(5) Treatment records;~~

~~(6) Interviews with staff and consumers; and~~

~~(7) Other facility documentation.~~

Facilities providing substance use disorder treatment services for adolescents in the residential setting must meet the requirements found in Sections 450:18-13-161 through 18-13-163.

PART 11. HALFWAY HOUSE SERVICES

450:24-5-101. Halfway house services

~~(a) Halfway house services shall provide low intensity treatment in a supportive living environment to facilitate reintegration into the community. Major emphasis shall be on continuing substance abuse care and follow up, and community ancillary services in an environment supporting continued abstinence. Consumers shall participate in a minimum of six (6) hours of structured substance abuse treatment per week.~~

~~(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) **Environment:** The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.~~

~~(2) **Support system:**~~

~~(A) A licensed physician shall be available, by telephone twenty-four (24) hours a day, seven (7) days a week;~~

~~(B) The facility shall have a written plan for emergency procedures, approved by a licensed physician;~~

~~(C) The facility shall have supplies, as designated by the written emergency procedures plan, which shall be accessible to staff at all times; and~~

~~(D) Specialized professional consultation or professional supervision shall be available.~~

~~(3) **Staff:**~~

~~(A) Service providers shall be knowledgeable regarding biopsychsocial dimensions of substance abuse, evidenced based practices, co-occurring disorder issues gender, cultural, and age specific issues;~~

~~(B) Staff shall be knowledgeable regarding facility required education, training, and policies;~~

~~(C) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;~~

~~(D) The facility shall have staff members on site twenty four (24) hours per day, seven (7) days per week;~~

~~(E) Staff shall be at least eighteen (18) years of age; and~~

~~(F) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

~~(4) **Treatment services.** The facility shall have scheduled rehabilitation services to assess and address the individual needs of each consumer. Such services shall include, but not limited to, crisis intervention, therapy, vocational services, case management services, and educational groups.~~

~~(5) **Treatment documentation:**~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problem(s), goals, and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service provider providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) Consumer's name.~~

~~(B) Documentation shall reflect that the consumer works or attempts to find work while receiving halfway house services.~~

~~(c) Compliance with 450:24-5-101 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;~~

~~(5) Treatment records;~~

~~(6) Interviews with staff and consumers; and~~

~~(7) Other facility records.~~

Facilities providing halfway house services must meet the requirements found in Sections 450:18-13-181 through 18-13-183.

PART 13. ADOLESCENT HALFWAY HOUSE SERVICES

450:24-5-121. Adolescent halfway house services

~~(a) Adolescent halfway house treatment shall provide low intensity substance abuse treatment in a supportive living environment to facilitate reintegration into the home or community. Emphasis shall be on applying recovery skills, relapse prevention, independent living skills, and educational and vocational skills. Consumers shall participate in at least six (6) hours of structured substance abuse treatment and rehabilitation services weekly. Self help meetings are not included in the required hours.~~

~~(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) **Environment:**~~

~~(A) The facility shall be a freestanding facility or portion of a related healthcare facility having at least one (1) each of toilet, lavatory, and bathing facilities for each eight (8) residents;~~

~~(B) The facility shall maintain an environment supportive of physical and emotional growth and development, and appropriate to the needs of adolescents;~~

~~(C) The facility shall provide space, both indoor and outdoor. In co-ed treatment, the facility shall maintain separate sleeping quarters for males and females;~~

~~(D) The program may provide transportation to activities in the community as appropriate. Vehicles used for transportation should not be labeled in any way that calls attention to the facility or the vehicle's occupants;~~

~~(E) The program shall provide study areas within the facility, and shall provide ancillary study materials, such as encyclopedias, dictionaries, and educational resource texts and materials;~~

~~(F) The facility shall be licensed by the Oklahoma State Department of Human Services (OKDHS) as a "Residential Child Care Facility"; and~~

~~(G) The facility shall provide a safe, welcoming, and culturally/age-appropriate environment.~~

~~(2) **Support systems:**~~

~~(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;~~

~~(B) Specialized professional consultation or supervision, emergency services, and crisis intervention shall be available;~~

~~(C) The facility shall provide clinically appropriate public educational services in compliance with applicable Oklahoma laws; and~~

~~(D) The facility shall have a written plan for emergency procedures and staff shall have access to supplies as designated in this plan.~~

~~(3) **Staff:**~~

~~(A) Service providers shall be knowledgeable regarding the biopsychsocial aspects of substance abuse, evidenced based practices, co-occurring disorder issues, child and adolescent development issues, and gender, cultural, and age-specific issues.~~

~~(B) Service providers shall be knowledgeable regarding the identification of violence and domestic violence, spousal or partner abuse, child abuse and neglect, parent and sibling abuse, normal and abnormal adolescent development, and family dynamics;~~

~~(C) The facility shall have staff members on duty twenty-four (24) hours per day, seven (7) days a week;~~

~~(D) Staff shall be knowledgeable about emergency procedures as specified in the emergency procedures plan;~~

~~(E) If educational services are provided, documentation shall be maintained to verify providing staff meet all state requirements for education or special education;~~

~~(F) Staff shall be knowledgeable regarding the facility required education, training requirements, and policies;~~

~~(G) Staff shall be at least eighteen (18) years of age; and~~

~~(H) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

~~(4) **Treatment services:**~~

~~(A) The facility shall provide substance abuse services to assess and address the individual needs of each adolescent, to include, but not be limited to, therapy, educational groups, rehabilitation services, case management services, and crisis intervention.~~

~~(B) The facility shall provide services in appropriate groups according to age, gender, developmental level, and individual needs;~~

~~(C) The facility shall provide for clinically appropriate public educational services in compliance with applicable Oklahoma law;~~

~~(D) Consumers may participate in educational programs in the community, when clinically indicated, including extracurricular activities; and~~

~~(E) Service providers shall confer on a regular basis with school personnel, including the provision of necessary information when appropriate, on the educational progress of the consumer and shall assess and respond to the needs for changes in the educational plans.~~

~~(5) **Assessment:**~~

~~(A) A physical examination shall be conducted by a licensed physician to include physical assessment, health history, immunization status, and evaluation of motor development and functioning, speech, hearing, visual and language functioning, if no records are available on admission reflecting such examination within the previous year; and~~

~~(B) The facility shall facilitate involvement and participation of family members or significant others in the assessment, treatment, rehabilitation, and continuing treatment needs of each consumer.~~

~~(6) **Treatment documentation:**~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) Consumer's name.~~

~~(c) Compliance with 450:24-5-121 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, ongoing in-service trainings;~~

~~(5) Treatment records;~~

~~(6) Interviews with staff and consumers; and~~

~~(7) Other facility records.~~

Facilities providing adolescent halfway house services must meet the requirements found in Sections 450:18-13-190 through 18-13-192.

PART 15. HALFWAY HOUSE SERVICES FOR PERSONS WITH DEPENDENT CHILDREN

450:24-5-141. Halfway house services for persons with dependent children

~~(a) Halfway house services for persons with dependent children shall provide substance abuse treatment services in a residential setting and shall include a planned regimen of twenty-four (24) hour supervised living arrangements, to include professionally directed evaluation, care, and treatment, under a defined set of policy and procedures, in a permanent setting. Consumers shall participate in at least six (6) hours of treatment, supportive services, parenting, and child development services per week for adults, and six (6) therapeutic hours of services for children, excluding infants.~~

~~(b) Each facility shall maintain written programmatic descriptions and operational methods addressing the following:~~

~~(1) **Environment:** The facility shall be a freestanding facility providing family-style living arrangements, indoor recreational space for children and families, and safe, protected outdoor recreational space. The facility shall provide materials and space appropriate for ages of children receiving services. The facility shall provide a safe, welcoming, and culturally/age appropriate environment.~~

~~(2) **Support system:**~~

~~(A) A licensed physician shall be available by telephone twenty-four (24) hours per day, seven (7) days a week;~~

~~(B) The facility shall ensure children's access to the fullest possible range of medical services available, such as health screening, well-child health care, screening in speech, language, hearing, and vision, and verification of immunization records;~~

~~(C) The facility shall have access to emergency health care provided as necessary;~~

~~(D) The facility shall have access to public schools for school-age children, and facilitation of the child's receiving the benefits of Public Laws 99-142; and~~

~~(E) The facility staff shall document a liaison with the local Oklahoma Department of Human Service (OKDHS) offices to:~~

~~(i) Promote preservation of families;~~

~~(ii) In cases of investigation of abuse, provide instruction in positive parenting behavior, if requested by the Oklahoma Department of Human Services (OKDHS) and with parental consent, provide daily observations of parent-child interaction;~~

~~(iii) Expedite investigations in a timely manner; and~~

~~(iv) Ensure prompt facility response to situations which require immediate intervention.~~

~~(3) **Staff:**~~

~~(A) Service providers shall be knowledgeable regarding Biopsychsocial dimensions of substance abuse, evidenced-based practices, cultural, age, and gender-specific issues, co-occurring disorder issues, and services for infants, toddlers, preschool, and school-age children.~~

~~(B) Service providers are minimally trained in:~~

~~(i) The identification of domestic violence, spousal or partner abuse, and child abuse and neglect, with special emphasis on failure to thrive and sexual abuse of children.~~

~~(ii) Child development and age appropriate behaviors.~~

~~(iii) Parenting skills appropriate to infants, toddlers, pre-school, and school-age children.~~

~~(iv) The impact of substances and substance abuse on parenting and family units.~~

~~(C) Service providers working with children shall be knowledgeable and demonstrate job-appropriate functional comprehension of:~~

~~(i) The impact of prenatal drug and alcohol exposure on child development.~~

~~(ii) The effect of substance abuse on parenting, children, and families.~~

~~(iii) Parenting skills appropriate to infants, toddlers, pre-school, and school-age children.~~

~~(iv) Common child behavioral and developmental problems.~~

~~(v) Appropriate play activities according to developmental stage.~~

~~(vi) Recognition of sexual acting out behavior.~~

~~(vii) The substance abuse recovery process, especially as related to family units.~~

~~(D) The facility shall have staff members on site and awake twenty-four (24) hours per day, seven (7) days per week;~~

~~(E) Staff shall be knowledgeable regarding facility required education and training requirements and policies.~~

~~(F) Staff shall be at least eighteen (18) years of age; and~~

~~(G) The facility shall document in personnel records all education, training, and experience stated above prior to the provision of direct care services.~~

~~(4) **Treatment services:**~~

~~(A) Daily (twenty-four [24] hours a day, seven [7] days a week) substance abuse services shall be provided to assess and address individual needs of each consumer. Services shall include, but are not limited to, crisis intervention, therapy, vocational services, case management services, parenting, child development, and educational groups;~~

~~(B) Services for children shall be provided and include a minimum of six (6) hours per week of therapeutic units for each child consisting of, but not limited to, assessment, therapy via art and recreational activities, etc. according to the development of the child. Documentation of all needs identified for each child shall be identified on that child's case management service plan and/or service plan.~~

~~(C) Children's services, excluding infants, shall be provided which address the significant issues and needs documented in either or both the child's and the parent's assessment and shall utilize both structured and unstructured therapeutic activity. Services shall address the significant issues and needs documented in the parent's or child's assessment and create and enhance positive self-image and feelings of self-worth, promote family unity, teach personal body safety and positive school interactions, and to prevent alcohol, tobacco, and other drug use;~~

~~(D) Infant services, ages birth to three (3) years of age, shall be provided and shall consist, at a minimum, of developmentally appropriate parent-child bonding (interactive) activities and play therapy as determined by mother's service plan; and~~

~~(E) Case management services for each adult and each child shall be provided, which include the assessment of and planning and arranging for recovery needs.~~

~~(5) **Treatment documentation:**~~

~~(A) Consumer records shall contain progress notes which outline any issues related to treatment and services provided. Progress notes shall document treatment services in a weekly summary to include the following:~~

~~(i) Date;~~

~~(ii) Specific problems, goals, and objectives addressed;~~

~~(iii) Summary of progress made toward goals and objectives, or lack of;~~

~~(iv) Consumer response to overall treatment services;~~

~~(v) Total number of treatment hours and types of services attended for the week;~~

~~(vi) Any new problems, goals, or objectives identified during the week;~~

~~(vii) List of all service providers providing treatment hours;~~

~~(viii) Signature and credentials of the service provider completing the documentation; and~~

~~(ix) The consumer's name.~~

~~(B) Progress notes in consumer's and his or her children's records shall clearly reflect case management assessments, plans, and implementation of plans, and implementation of the service plan and services provided, in addition to the consumer's, parent and child, response to treatment;~~

~~(C) Progress notes shall document observations of parent and child interactions especially those indicative of therapeutic need or progress; and~~

~~(D) Documentation shall reflect each consumer, adult, and child, has received a minimum of six (6) hours of service each week addressing issues and needs indicated in the assessments (parent or child).~~

~~(c) Compliance with 450:24-5-141 may be determined by a review of the following:~~

~~(1) Licenses;~~

~~(2) Policies and procedures;~~

~~(3) Treatment protocols;~~

~~(4) Personnel records, documentation of professional licensure, certification or licensure as an alcohol and drug counselor, documentation of professional work experience, and ongoing in-service trainings;~~

~~(5) Treatment records;~~

~~(6) Interviews with staff and consumers; and~~

~~(7) Other facility documentation.~~

Facilities providing halfway house services for persons with dependent children must meet the requirements found in Sections 450:18-13-201 through 18-13-203.

PART 19. GAMBLING DISORDER TREATMENT SERVICES

450:24-5-162. Gambling Disorder Treatment Services

The purpose of this Part is to set forth, in addition to all other applicable rules, the criteria for CCARCs who opt to provide gambling disorder treatment services. These rules implement 43A O.S. §§ 3-322 which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Gambling Treatment Programs.

450:24-5-163. Level of Care

Any CCARC providing gambling disorder treatment services shall do so at the outpatient level of care, and have written policies and procedures. Written policies shall define the procedures for the implementation of the requirements of this Part.

450:24-5-164. Admission criteria

(a) Receipt of gambling disorder treatment services shall be conditioned upon a determination by the gambling disorder treatment professional in partnership with the consumer, and based on the problem gambling issues of the consumer utilizing ASAM criteria.

(b) Compliance with this Section may be determined by a review of the following:

(1) Policy and procedures;

(2) Admission protocols;
(3) Admission assessment instruments;
(4) Consumer records;
(5) Interviews with staff and consumers; and
(6) Other facility documentation.

450:24-5-165. Discharge criteria

(a) Discharge from gambling disorder treatment services shall be determined by the following:
(1) Discharge assessment to determine achievement of consumer's treatment goals and consumer's continued need for treatment services, utilizing ASAM criteria;
(2) Reduction in problem gambling behaviors for at least 30 days prior to discharge; and
(3) Completion of a Continuing Care Plan with linkage to community gambling support groups, or other community services.

(b) Compliance may be determined by a review of the following:
(1) Policy and procedures;
(2) Continuing Care Plans;
(3) Discharge assessments;
(4) Discharge summaries;
(5) Progress notes;
(6) Consumer records;
(7) Interviews with staff and consumers; and
(8) Other facility documentation.

450:24-5-166. Treatment services

(a) Any CCARC choosing to provide gambling disorder treatment services shall provide, at a minimum, the following:
(1) **Screening and Assessment.** Each presenting consumer shall be assessed using the Southern Oaks Gambling Screen (SOGS). CCARCs must ensure that a consumer's refusal of a particular service does not preclude them from accessing other treatment services. The assessment shall be completed during the admission process and within specific timelines established by the CCARC, but no later than by the end of the fourth visit.
(2) **Biopsychosocial assessment.** A biopsychosocial assessment gathers sufficient information to assist the consumer in developing an individualized service plan. The assessment used shall contain, but not be limited to, the following:
(A) Identification of the consumer's strengths, needs, abilities, and preferences;
(B) History of the presenting problem;
(C) Previous treatment history to include mental health and substance-related and addictive disorders;
(D) Health history and current biomedical conditions and complications;
(E) History of substance use, including past treatment, and history of other behavioral addictions and past treatment;
(F) Gambling history, including type, amount, frequency and duration of gambling activity, and family history of gambling disorders;
(G) History of trauma;
(I) Family and social history, including family history of alcohol and drug use;
(J) Educational attainment, difficulties, and history;
(K) Cultural and religious orientation;
(L) Vocational, occupational and military history;
(M) Sexual history, including HIV, AIDS and STD at-risk behavior;
(N) Marital or significant other relationship history;
(O) Recreational and leisure history;
(P) Legal history;
(Q) Present living arrangement;
(R) Economic resources;
(S) Level of functioning;
(T) Current support system including peer and other recovery supports;
(U) Current medications, if applicable, and shall include obtainable information regarding the name of prescribing physician, name of medication, strength and dosage, and length of time consumer was on the medication;
(V) Consumer's expectations in terms of service; and
(W) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.
(2) **Service planning and revision.**
(3) **Individual therapy.** Individual therapy is a face-to-face therapeutic session conducted by a Gambling Treatment Professional (GTP) with one on one interaction between the GTP and a consumer to promote emotional or psychological change to alleviate disorders. Therapy must be goal directed and use a generally accepted approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment, in accordance with an individualized service plan.
(4) **Group therapy.** Group therapy is a face-to-face therapeutic session with a group of individuals and a GTP using the interaction of the GTP and two or more consumers to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives of the individual customer service plan and use a generally accepted framework for this modality of treatment. This service does not include social skill development or daily living skill activities. Group psychotherapy for adults is limited to eight total consumers. Group size is limited to a total of six consumers for all children. A group may not consist solely of related individuals.
(5) **Family therapy.** Family therapy is a face-to-face therapeutic session conducted by a GTP with family members/couples conducted in accordance with a documented service plan focusing on treatment family/marital problems and goals. The service must be provided to specifically benefit the consumer as identified in a service

plan and use generally accepted treatment methods for this modality of treatment.

(6) **Case management.**

(7) **Education and/or educational groups.**

(8) **Discharge planning.**

(b) Compliance with this Section may be determined by a review of the following:

(1) Consumer records;

(2) Progress notes;

(3) Interviews with staff; and

(4) Other facility documentation.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:24-7-11. Discharge assessment

(a) All facilities shall assess each consumer for appropriateness of discharge from a substance ~~abuse~~use disorder treatment program. Each consumer shall be assessed using ASAM ~~PPC~~criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific level of care based on the consumer's severity of symptoms and current situations.

(b) Compliance with 450:24-7-11 may be determined by a review ~~of closed clinical records.~~the following:

(1) Policies and procedures;

(2) Continuing care plans;

(3) Discharge assessments;

(4) Discharge summaries;

(5) Progress notes;

(6) Consumer records;

(7) Interviews with staff and consumers; and

(8) Other facility documentation.

SUBCHAPTER 21. FACILITY ENVIRONMENT

450:24-21-2. Technology

(a) The facility shall have a written plan regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.

(2) Security.

(3) Confidentiality.

(4) Backup policies.

(5) Assistive technology.

(6) Disaster recovery preparedness.

(7) Virus protection.

(b) Compliance with 450:24-21-2 shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

[OAR Docket #14-547; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 27. STANDARDS AND CRITERIA FOR MENTAL ILLNESS SERVICE PROGRAMS

[OAR Docket #14-548]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:27-1-2 [AMENDED]
Subchapter 3. Organization Structure and Administrative Operations
Part 1. Services and Facility Organization
450:27-3-4 [NEW]
Part 3. Human Resources Organization
450:27-3-24 [AMENDED]
Subchapter 7. Clinical Services
Part 3. Additional or Optional Services
450:27-7-26 [AMENDED]
450:27-7-27 [AMENDED]
450:27-7-28 [AMENDED]
450:27-7-33 [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-323A.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 16, 2014 through February 19, 2014

PUBLIC HEARING:
February 21, 2014

ADOPTION:
March 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
October 1, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 27 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.

Proposed revisions to Chapter 27 include changes to terminology based on recent updates to the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as update terminology and requirements related to the provision of case management services to comply with rule revisions made to other chapters during the 2013 legislative session. Revisions also identify certification standards that are so critical to the operation of the entity that failure to meet the identified standards would be grounds for immediate suspension, denial or revocation of certification.

CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:27-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance abuse symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" or "Incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are missing or considered in to have eloped; neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. An incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect

an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted as defined in Title 43A O.S. Section 5-206.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Evidence based practice" means programs or practices that are supported by research methodology and have produced consistently positive patterns of results when replicated within the intent of the published guidance.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Recovery Support Specialist" or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service

provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

SUBCHAPTER 3. ORGANIZATION STRUCTURE AND ADMINISTRATIVE OPERATIONS

PART 1. SERVICES AND FACILITY ORGANIZATION

450:27-3-4. Technology

(a) The agency shall have a written plan regarding the use of technology and systems to support and advance effective and efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.
(2) Security.
(3) Confidentiality.
(4) Backup policies.
(5) Assistive technology.
(6) Disaster recovery preparedness.
(7) Virus protection.

(b) Compliance with this Section shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

PART 3. HUMAN RESOURCES ORGANIZATION

450:27-3-24. Staff qualifications

(a) The facility shall maintain, for each staff who provides clinical services, documentation of qualifications or training specific to the clinical services they provide within the facility.

(b) Documentation shall be organized within a clinical privileging framework that is based on policies and procedures approved by the governing authority.

(c) Compliance with 450:27-5-24 shall be determined by a review of staff personnel files and other supporting documentation provided.

(d) Failure to comply with 450:27-3-24 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 7. CLINICAL SERVICES

PART 3. ADDITIONAL OR OPTIONAL SERVICES

450:27-7-26. Pharmacy services

(a) If medication services are provided, the facility shall make available access to pharmacy services to meet consumers' psychiatric needs. Provision of services may be made through agreement with another program, through a pharmacy in the community, or through their own Oklahoma licensed pharmacy.

(b) Compliance with 450:27-7-26 may be determined by a review of the following: clinical records; written agreements for pharmacy services; on-site observation of in-house pharmacy; and State of Oklahoma pharmacy license.

(c) Failure to comply with 450:27-7-26 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:27-7-27. Peer recovery support services

(a) If provided, the facility shall have written policies specific to peer recovery support services.

(b) Peer recovery support services shall be provided in accordance with OAC 450:53 and other provisions stipulated in OAC 450 and state statute.

(c) These services shall

(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;

(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;

(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings;

(d) Behavioral health providers offering these services shall have provisions in place for direct supervision and other supports for staff providing this service.

(e) Compliance with 450:27-7-27 shall be determined by a review of the following: documentation of linkage activities and agreements; clinical records; policy and procedures.

450:27-7-28. Peer Recovery Support Specialists, staff credentials

(a) Peer Recovery Support Services shall be provided only by staff certified as a Peer Recovery Support Specialist (PRSS) in accordance with OAC 450:53.

(b) The facility shall retain records to verify compliance with training and certification requirements of each provider of this service.

(c) Compliance for 450:27-7-28 shall be determined by a review of the facility personnel records.

450:27-7-33. Behavioral health rehabilitation services, staff credentials

(a) Staff providing this service shall ~~have proof that they meet current ODMHSAS requirements as a Behavioral Health Rehabilitation Specialist (BHRS)~~be a LBHP, CADC or certified by ODMHSAS as a Behavioral Health Case Manager (CM) II pursuant to OAC 450:50.

(b) Compliance with 450:27-7-33 will be determined by a review of facility personal files, individual staff records, and verification with organizations providing required training.

[OAR Docket #14-548; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS

[OAR Docket #14-549]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Behavioral Health Case Manager Certification Application
450:50-3-1. [AMENDED]
450:50-3-2. [AMENDED]
Subchapter 5. Behavioral Health Case Manager Certification Training and Web-based Competency Exams
450:50-5-1. [AMENDED]
450:50-5-5. [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-318.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 50 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes and legislative intent.

Proposed revisions to Chapter 50 include changes to case manager (CM) certification requirements which reflect legislative intent expressed during the 2013 legislative session. These changes would allow individuals with degrees in education to be eligible for CM certification through ODMHSAS without an additional nine hours of coursework in a behavioral health related field. Changes would also make eligible for CM certification, individuals who have non-behavioral health related bachelor's or master's degrees, but who have a Children's Certificate in Psychiatric Rehabilitation from the US Psychiatric Rehabilitation Association as well as individuals who are actively progressing toward obtaining a behavioral health related Master's or Doctoral degree.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 3. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION APPLICATION

450:50-3-1. Qualifications for certification

(a) Each applicant for certification as a behavioral health case manager shall:

(1) Be currently employed at a mental health facility, or a drug or alcohol treatment facility that is operated by the Department or contracts with the State to provide behavioral health services;

(2) Possess good moral turpitude;

(3) Be at least 21 years of age; and

(4) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-318.

(b) In addition to the qualifications specified by subsection (a) of this rule, an applicant for a certification as a Certified Behavioral Health Case Manager must meet either (1) or (2) below:

(1) Certified Behavioral Case Manager II (CM II):

(A) A Bachelor's or Master's degree in Education or a behavioral health related field earned from a regionally accredited college or university recognized by the United States Department of Education (USDE)~~ or an education degree earned from a regionally accredited college or university recognized by the United States Department of Education with at least nine (9) hours of college credit in a behavioral health related field~~; or

(B) a current license as a registered nurse in the State of Oklahoma with experience in behavioral health care; or

(C) a Bachelor's or Master's degree in any field earned from a regionally accredited college or university recognized by the USDE~~ and a current certification as a Certified Psychiatric Rehabilitation Practitioner (CPRP).~~; and a current certification or Children's Certificate in Psychiatric Rehabilitation from the United States Psychiatric Rehabilitation Association (USPRA); or

(D) A Bachelor's or Master's degree in any field and proof of active progression toward obtaining a clinical licensure Master's or Doctoral degree from a regionally accredited college or university recognized by the USDE.

(2) Certified Behavioral Health Case Manager I (CM I) must meet the requirements in (A) or (B) below:

(A) 60 college credit hours; or

(B) a high school diploma, or equivalent, from a regionally accredited institution recognized by the United States Department of Education with a total of 36 months of direct, documented experience working with persons who live with mental illness and/or substance abuse issues.

450:50-3-2. Applications for certification

(a) Applications for certification as a Certified Behavioral Health Case Manager shall be submitted electronically to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) Depending on the type of CM certification that the applicant is applying for; the application shall include the following items:

(1) CM II must include (A), (B) and (E) and one of (C) or (D) as applicable:

(A) Application form completed in full according to its instructions.

(B) Official college or university transcript(s) or an electronic copy submitted to the Department by the college or university.

(C) Documentation of current licensure as a registered nurse in the State of Oklahoma.

(D) Current certification ~~as a CPRP~~ or Children's Certificate in Psychiatric Rehabilitation from USPRA.

(E) Fees.

(2) CM I must include (A), (D) and either (B) or (C):

(A) Application form completed in full according to its instructions.

(B) Official College or university transcript(s) or an electronic copy submitted to the Department by the college or university.

(C) Official high school transcript(s) or an electronic copy submitted to the Department by the high school and verification of work experience or volunteer experience.

(i) Verification shall only be submitted using a Department approved form.

(ii) Verification form(s) must be sent to the Department directly from the employer or volunteer agency.

(iii) Volunteer work must be time spent directly with persons who have a mental illness, co-occurring or substance abuse disorder.

(D) Fees.

(c) An application must be submitted and approved by the Department prior to attending any web-based or face-to-face Certified Behavioral Health Case Manager certification training.

(d) Applications shall only be valid for a period up to six (6) months from the date of application.

(e) Applicants shall have no violations of moral turpitude or misconduct as set forth in these rules during time of application process.

(f) An applicant, who meets the requirements for certification and otherwise complied with this Chapter, shall be eligible for certification.

SUBCHAPTER 5. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION TRAINING AND WEB-BASED COMPETENCY EXAMS

450:50-5-1. Case management certification training

(a) The purpose of this section is to delineate the training requirements for each of the classifications of Certified Behavioral Health Case Managers (CMs).

(b) The Department shall have the authority and responsibility for providing case management and behavioral health rehabilitation services training classes on a regular basis but no less than six times during the year.

(c) Certified Behavioral Health Case Managers I (CM I) must complete two days of case management training as specified by the Department.

(d) Certified Behavioral Health Case Manager II (CM II) Training requirements:

(1) Complete the behavioral health case management web-based training as specified by the Department;

(2) Applicants who have not received a certificate in children's psychiatric rehabilitation from the US Psychiatric Rehabilitation Association (USPRA) or a CPRP, must complete the behavioral health rehabilitation web-based training as specified by the Department;

(3) Complete one day of face-to-face behavioral health case management training; and

(4) ~~Non-CPRP candidates~~Candidates who have not received a certificate in children's psychiatric rehabilitation or certification through USPRA, must complete two days of face-to-face behavioral health rehabilitation training.

(e) Case management certification training must be completed within six (6) months of the date of application. Once the six (6) month period has ended, an applicant that has not completed the training must wait a period of sixty (60) days before reapplying, and shall submit a new application.

(f) Approval to take the web-based competency exam is not permitted without completion of all training requirements.

450:50-5-5. Web-based competency exams

(a) Successful completion of web-based competency exams for behavioral health rehabilitation and behavioral health case management is required prior to certification as CM II. ~~CPRP applicants~~Applicants certified through USPRA and applicants to be a CM I need only successfully complete the web-based competency exam for behavioral health case management.

(b) The web-based competency exam shall not be administered until all application and training requirements are met and approval from ODMHSAS has been received.

(c) Applicants shall comply with the rules of the examination process as outlined by the contracted testing site.

(d) Applicants who fail to complete and pass the web-based competency exam within six (6) months of the date of application must reapply.

[OAR Docket #14-549; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 53. STANDARDS AND CRITERIA FOR CERTIFIED PEER RECOVERY SUPPORT SPECIALISTS

[OAR Docket #14-550]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Peer Recovery Support Specialists Certification Application
450:53-3-1 [AMENDED]
450:53-3-2 [AMENDED]
Subchapter 5. Peer Recovery Support Specialist Certification, Training, Exam and CEU's
450:53-5-2 [AMENDED]
Subchapter 7. Rules of Professional Conduct
450:53-7-2 [AMENDED]
450:53-7-6 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-326.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 53 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.

Proposed revisions to Chapter 53 include incorporating language that was added to legislation added during the 2013 legislative session that allows an individual to become certified as a Peer Recovery Support Specialist (PRSS) if they are employed by a provider certified by ODMHSAS. Previous rules only allowed for certification of individuals employed by the State or for providers contracting with the State.

CONTACT PERSON:

Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 3. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION APPLICATION

450:53-3-1. Qualifications for certification

Each applicant for certification as a Peer Recovery Support Specialists shall:

(1) Possess a High School Diploma or General Equivalency Diploma (GED);

(2) Have demonstrated recovery from a mental illness, substance abuse disorder or both;

(3) Be at least 18 years of age;

(4) Be willing to self disclose about their own recovery;

(5) Be employed by or volunteer with the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services, or a behavioral health services provider certified by ODMHSAS.

(6) Possess good moral character;

(7) Pass an examination based on standards promulgated by ODMHSAS pursuant to 43A O.S. § 3-326;

(8) Not be engaged in any practice or conduct which would be grounds for denying, revoking or suspending a certification pursuant to this title; and

(9) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-326.

450:53-3-2. Applications for certification

(a) Applications for certification as a Peer Recovery Support Specialist shall be submitted to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) An application shall include the following items:

(1) Application form completed in full according to its instructions;

(2) Application fee shall be submitted in an amount up to $50.00;

(3) Documentation of current status as being employed by the state of Oklahoma, by a behavioral service provider~~,~~

or advocacy agency contracting with the state to provide behavioral health services, or by a behavioral health services provider certified by ODMHSAS;

(4) The employment status verification form(s) from the employer must be sent to ODMHSAS by the employer;

(5) Official high school transcript or General Equivalency Diploma (GED);

(6) Documentation of age; and

(7) Detailed information, as requested on the application, demonstrating recovery from a mental illness, substance abuse disorder or both.

(c) An applicant, who meets the requirements for certification and otherwise complied with the Chapter, shall be eligible for certification.

(d) A complete application must be submitted at least fourteen (14) days prior to attending Peer Recovery Support Specialists training.

(e) Applications shall be submitted and approved by the Department prior to eligibility of taking the C-PRSS training.

(f) Applications shall only be valid for a period up to six (6) months.

SUBCHAPTER 5. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION, TRAINING, EXAM AND CEU'S

450:53-5-2. Peer Recovery Support Specialists certification examination

Examinations shall be held at such times, at such places and in such manner as the Commissioner or designee directs. The examination shall cover such technical, professional and practical subjects as relate to the practice of a Certified Peer Recovery Support Specialist.

~~(1) Certification exams are scheduled approximately one (1) week following the forty (40) hour training block.~~

(~~2~~1) Certification exams consist of a written exam covering all aspects of the training block.

(~~3~~2) An applicant must score at least a seventy-five percent (75%) to pass the exam and be certified. A score of seventy-four percent (74%) or less will result in an applicant being required to test again at the next scheduled test date.

(~~4~~3) Applicants who fail to complete and pass the certification exam within six (6) months of application must reapply.

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

450:53-7-2. Competence and scope of practice

(a) Peer Recovery Support services are an EBP model of care which consists of a qualified peer recovery support provider (PRSS) who assists individuals with their recovery from behavioral health disorders.

(b) A C-PRSS must possess knowledge about various mental health settings and ancillary services (i.e., Social Security, housing services, and advocacy organizations). Certified Peer Recovery Support Specialist (C-PRSS) provides peer support services; serves as an advocate; provides information and peer support. The C-PRSS performs a wide range of tasks to assist consumers in regaining control of their lives and recovery processes. The C-PRSS will possess the skills to maintain a high level of professionalism and ethics in all professional interactions. Examples of a PRSS' scope of practice would including the following:

(1) Utilizing their knowledge, skills and abilities the PRSS will:

(A) Teach and mentor the value of every individual's recovery experience;

(B) Model effective coping techniques and self-help strategies;

(C) Assist service recipients in articulating personal goals for recovery;

(D) Assist service recipients in determining the objectives needed to reach his/her recovery goals;

(2) Utilizing ongoing training the PRSS may:

(A) Proactively engage consumers and possess communication skills / ability to transfer new concepts, ideas, and insight to others;

(B) Facilitate peer support groups;

(C) Assist in setting up and sustaining self-help (mutual support) groups;

(D) Support consumers in using a ~~WRAP – Wellness Recovery Action Plan~~wellness plan;

(E) Assist in creating a crisis plan/ Psychiatric Advanced Directive as instructed in the PRSS Training;

(F) Utilize and teach problem solving techniques with consumers.

(G) Teach consumers how to identify and combat negative self-talk and fears;

(H) Support the vocational choices of consumers and assist him/her in overcoming job-related anxiety;

(I) Assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(J) Assist other staff in identifying program and service environments that are conducive to recovery;

(K) Attend treatment team and program development meetings to ensure the presence of the consumer voice and to promote the use of self-directed recovery tools.

(3) Possess knowledge about various behavioral health settings and ancillary services (i.e. Social Security, housing services, advocacy organizations);

(4) Maintain a working knowledge of current trends and developments in the behavioral health field;

(A) Attend continuing education assemblies when offered by/approved by the Office of Wellness and Advocacy;

(B) Develop and share recovery-oriented material with other PRSS's at consumer-specific continuing education trainings.

(5) Serve as a PRSS by:

(A) Providing and advocating for effective recovery oriented services;

(B) Assist consumers in obtaining services that suit that individual's recovery needs;

(C) Inform consumers about community and natural supports and how to utilize these in the recovery process; and

(D) Assist consumers in developing empowerment skills through self-advocacy.

450:53-7-6. Reimbursement for services rendered

Certified Peer Recovery Support Specialists shall ~~practice~~be reimbursed for Recovery Support Services only if employed by the State, by behavioral health services providers or an advocacy agency contracting with the state to provide behavioral health services. Reimbursement for services rendered will not be collected outside of the agency's system of service reimbursement.

[OAR Docket #14-550; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 55. STANDARDS AND CRITERIA FOR PROGRAMS OF ASSERTIVE COMMUNITY TREATMENT

[OAR Docket #14-551]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:55-1-2 [AMENDED]
Subchatper 3. Program Description and Pact Services
450:55-3-2 [AMENDED]
450:55-3-5 [AMENDED]
450:55-3-6 [AMENDED]
450:55-3-7 [AMENDED]
450:55-3-8 [AMENDED]
450:55-3-9 [AMENDED]
Subchapter 5. Pact Clinical Documentation
450:55-5-5 [AMENDED]
450:55-5-6 [AMENDED]
450:55-5-7 [AMENDED]
450:55-5-11 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306 and 3-319.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 55 are part of the Department's review of Title 450. The proposed rules clarify existing rules and improve existing processes.

Proposed revisions to Chapter 55 include updating provider terminology and revising provider qualifications for case management services based on changes made to other chapters last legislative session. Other proposed revisions are made to the standards and criteria for Program of Assertive Community Treatment (PACT) that will allow greater access to PACT services for consumers in need of this level of treatment.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:55-1-2. Definitions

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

"Advanced Practice Nurse" or **"APN"** means an individual who is a licensed registered nurse with current certification of recognition to practice as an Advanced Practice Nurse issued by the Oklahoma Board of Nursing.

"Certified behavioral health case manager" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services as one of the three (3) classifications of case manager within the confines of a mental health facility or drug or alcohol treatment facility that is operated by the Department or contracts with the State to provide behavioral health services.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to

provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment and other credentials.

"Consumer" means an individual who has applied for, is receiving, or has received services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Co-occurring disorder" means any combination of mental health and substance abuse symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Credentialed Recovery Support Specialist" is a member of the PACT team who is working as a Recovery Support Specialist and has completed the ODMHSAS approved training and testing.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the current Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"FTE" means an employee, or more than one, who work(s) the time equivalent to the number of hours per week, month or year of one (1) employee working full-time.

"Governing Agency" means the facility or specific community based behavioral health provider under which the PACT program is operated.

"Historical time line" means a method by which a specialized form is used to gather, organize and evaluate historical information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Individual Treatment Team" or **"ITT"** means the primary case manager and a minimum of two other clinical staff on the PACT team who are responsible to keep the consumer's treatment coordinated, monitor their services, coordinate staff activities and provide information and feedback to the whole team.

~~**"Integrated Client Information System"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.~~

"Licensed Behavioral Health Professional" or **"LBHP"** means: 1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry. 2) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards: (A) Psychology; (B) Social Work (clinical specialty only); (C) Professional counselor; (D) Marriage and Family Therapist; (E) Behavioral Practitioner; or (F) Alcohol and Drug Counselor. 3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided. 4) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103 (11).

"Linkage services" means the communication and coordination with other service providers pursuant to a valid release that assure timely appropriate referrals between the PACT program and other providers.

"Longitudinal Face Sheet" means a process that is used to track a PACT consumer's specific demographic, personal contact, treatment history and other relevant information from the time of admission until discharge.

"Licensed Practical Nurse" or **"LPN"** means an individual who is currently licensed by the Oklahoma Board of Nursing to provide a directed scope of nursing practice.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any person with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf and hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"PICIS" is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Primary Case Manager" is a certified behavioral health case manager assigned by the team leader to coordinate and monitor activities of the ITT, has primary responsibility to write the treatment plan and make revisions to the treatment plan and weekly schedules.

"Program Assistant" is a member of the PACT team providing duties supportive of the Team and may include organizing, coordinating, and monitoring non-clinical operations of the PACT, providing receptionist activities and coordinating communication between the team and consumers.

"Program of Assertive Community Treatment" or **"PACT"** means a clinical program that provides continuous treatment, rehabilitation and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or lack of, and documentation of the consumer's response related to the intervention plan.

"Recovery Support Specialist" is a member of the PACT team who is or has been a recipient of mental health services for a serious mental illness and is willing to use and share his or her personal, practical experience, knowledge, and first-hand insight to benefit the team and consumers.

"Team Leader" is the clinical and administrative supervisor of the PACT team who also functions as a practicing clinician. The team leader is responsible for monitoring each consumer's clinical status and response to treatment as well as supervising all staff and their duties as specified by their job descriptions.

"Trauma informed" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

SUBCHAPTER 3. PROGRAM DESCRIPTION AND PACT SERVICES

450:55-3-2. Admission criteria

(a) The PACT program shall maintain written admission policies and procedures that, at a minimum include the following:

(1) Priority shall be given to people with a primary diagnosis of schizophrenia or other psychotic disorders, such as schizoaffective disorder or bipolar disorder with psychotic features as defined by the current DSM~~;~~. Individuals without a psychotic disorder shall be evaluated and admitted based on the consumer's need.

(2) At least four psychiatric hospitalizations in the past 24 months or cumulative lengths of stays totaling over 30 days in the past ~~12~~24 months which can include admissions to Community-Based Structured Crisis Care; or frequent ER and/or CBSCC encounters, or incarcerated and receiving mental health care; with at least three (3) of the following:

(A) Persistent or recurrent severe affective, psychotic or suicidal symptoms;

(B) Coexisting substance abuse disorder greater than six (6) months;

(C) High risk of or criminal justice involvement in the past 12 months which may include frequent contact with law enforcement personnel, incarcerations, parole or probation;

(D) Homeless, imminent risk of being homeless or residing in substandard or unsafe housing;

(E) Residing in supported housing but clinically assessed to be able to live in a more independent living situation if intensive services are provided; or requiring supported housing if more intensive services are not available;

(F) Inability to participate in traditional office-based services or evidence that they require a more assertive and frequent non-office based services to meet their clinical needs;

(G) Inability to consistently perform the range of practical daily living tasks required for basic adult functioning in the community.

(3) Individuals with a sole primary diagnosis of substance abuse, brain injury, or Axis II disorders are not appropriate for PACT.

(4) Individuals with a history of violent behaviors may or may not be considered for admission.

(b) Compliance with 450:55-3-2 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

450:55-3-5. Hours of operation and staff coverage

(a) The PACT program shall assure adequate coverage to meet consumers' needs including but not limited to:

(1) The PACT team shall be available to provide treatment, rehabilitative and support services seven days per week, including holidays and evenings, according to the following:

(A) For weekdays, Monday through Friday, the PACT team hours of operation for a team size greater than 8 FTEs, excluding the psychiatrist, the APN and program assistant, shall be two overlapping eight-hour-shifts for a total of ~~12~~10 hours of coverage per day~~.~~and~~The hours of operation~~ for a team size of 8 FTE or less, excluding the psychiatrist, the APN and program assistant, shall be a single eight-hour shift; with consumer needs as specified in the treatment plans driving any extended hours of operation.

(B) For weekends and holidays, regardless of the number of FTE's, for all teams ~~serving ten (10) to fifty (50) consumers~~, there shall be eight (8) hours of coverage per day with a minimum of one (1) clinical staff. ~~For teams serving more than fifty (50) consumers, there shall be eight (8) hours of coverage per day with a minimum of two (2) clinical staff.~~Staff will be available on weekends and holidays as needed OR staff who are regularly scheduled to provide the necessary services on a client-by-client basis on weekends and holidays and evenings.

(2) The PACT team shall operate an after-hours on-call system. PACT shall regularly schedule PACT staff for on-call duty to provide crisis and other services during the assigned on-call hours when staff is not working to personally respond to consumers by telephone or in person on a 24 hour per day, 7 day a week basis.

(3) Psychiatric or APN backup shall also be available and on-call during all after-hours periods. If availability of the PACT team's psychiatrist during all hours is not feasible, alternative psychiatric backup shall be arranged.

(b) Compliance with 450:55-3-5 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

450:55-3-6. Service intensity

(a) The PACT team is the primary provider of services and has the responsibility to meet the consumer's multiple treatment, rehabilitation and supportive needs with minimal referrals to external agencies or programs within the governing agency for services.

(b) The PACT team shall have the capacity to provide multiple contacts per week to consumers experiencing severe symptoms or significant problems in daily living.

(c) The PACT team shall minimally provide an average of three contacts per week for consumers.

(d) Each team shall provide at least 75 percent of service contacts in the community, in non-office or non-facility based settings.

(e) The PACT team shall provide ongoing contact when permitted by consumers who are hospitalized for drug and alcohol, physical, or psychiatric reasons. To ensure continuity of care the PACT team shall:

(1) Assist in the admission process if at all possible;

(2) Have contact with the consumer and inpatient treatment providers within 48 hours of knowing of the inpatient admission to provide information, assessment, assist with the consumer's needs and begin discharge planning;

(3) Maintain a minimum of weekly face-to-face contact with the consumer and treatment team staff~~;~~. If face-to-face contact is not possible, telephone contact is acceptable;

(4) Transition the consumer from the inpatient setting into the community; and

(5) Maintain at least three (3) face-to-face contacts per week for ~~one month~~two weeks, or as often as clinically indicated, for consumers who are discharged from an inpatient facility. The team shall document any failed attempts.

(f) Telephone answering devices will not be used as a primary method to receive phone calls. PACT clients shall have ~~direct~~ phone access to the PACT office Monday through Friday, 8:00 a.m. to 5:00 p.m. The program assistant or other PACT staff shall be available to personally answer all incoming phone calls.

(g) Compliance with 450:55-3-6 shall be determined by on-site observation; and a review of the following: clinical records; ~~ICIS~~PICIS information; and the PACT policy and procedures.

450:55-3-7. Staffing requirements

(a) The PACT team shall include individuals qualified to provide the required services while closely adhering to job descriptions as defined in the "PACT Start-up Manual, most recent edition as published by the National Alliance for the Mentally Ill."

(b) Each PACT team shall have the following minimum staffing configuration:

(1) One (1) full-time team leader who is the clinical and administrative supervisor of the team and also functions as a practicing clinician in the PACT team. The team leader shall be a ~~Licensed Mental Health Professional~~Licensed Behavioral Health Professional.

(2) A Board Certified or Board Eligible psychiatrist providing a minimum of 16 hours per week of direct care to minimally include: initial and psychiatric assessments, daily organizational staff meetings, treatment planning, home visits, pharmacological management, collaboration

with nurses, crisis intervention, and liaison with inpatient facilities. In the initial build-up phase, a minimum of 8 hours per week shall be provided until the team is serving ten or more clients. For teams serving over 50 consumers, the Psychiatrist shall provide an additional three (3) hours per week for every fifteen (15) additional consumers admitted to the program. On-call time is not included; or An ~~Advanced Nurse Practitioner~~Advanced Practice Nurse (APN) currently certified in a psychiatric mental health specialty with current certification of recognition of prescriptive authority issued by the Oklahoma Board of Nursing, and who practices under the supervision of a licensed psychiatrist may perform the duties of the psychiatrist as allowed by State Law. The APN must provide a minimum of 16 hours per week of direct care to minimally include: initial and psychiatric assessments, daily organizational staff meetings, treatment planning, home visits, pharmacological management, collaboration with nurses, crisis intervention, and liaison with inpatient facilities. In the initial build-up phase, a minimum of 8 hours per week shall be provided until the team is serving ten or more clients. For teams serving over 50 consumers, the APN shall provide an additional three (3) hours per week for every fifteen (15) additional consumers admitted to the program. On-call time is not included.

(3) At least ~~one (1) full-time registered nurses and one (1)~~two (2) full-time licensed practical ~~nurse~~nurses or registered nurses. Each nurse shall have at least one (1) year of mental health experience or work a total of forty (40) hours at a psychiatric medication clinic within the first three (3) months of employment.

(4) At least one (1) full-time Licensed Behavioral Health Professional.

(5) At least two (2) full-time certified behavioral health case managers.

(6) At least one (1) staff member on the team, excluding the psychiatrist or APN, team leader and program assistant shall be qualified as a substance abuse treatment specialist, and at least one (1) staff member on the team, excluding the psychiatrist or APN, team leader and program assistant, shall be qualified as an employment specialist.

(7) A minimum of one (1) full-time or two (2) half-time (0.5 FTE) Recovery Support Specialist(s) or Credentialed Recovery Support Specialist(s). The Recovery Support Specialist(s) is/are to complete all qualifications to become a Credentialed Recovery Support Specialist within one (1) year of employment to the PACT team.

(8) A minimum of one (1) program assistant.

(c) Teams serving greater than 65 consumers shall include the following additional staff:

(1) A full-time assistant team leader who is the back-up clinical and administrative supervisor of the team and also functions as a practicing clinician in the PACT team.

(2) One (1) additional full-time ~~registered~~ nurse.

(3) One (1) additional full-time Licensed Behavioral Health Professional or Case Manager II.

(4) One (1) additional full-time certified behavioral health case manager, when serving greater than 85 consumers on the team.

(d) The PACT program shall have policies and procedures addressing the use of students, medical residents, osteopathic residents, psychiatric residents and volunteers on the team.

(1) Psychiatric residents shall not replace the clinical work of the PACT psychiatrist or APN such as on-call coverage, pharmacological management, treatment planning or crisis intervention.

(2) The hours a psychiatric resident works on a PACT team shall not be counted towards the standard hours of the PACT psychiatrist or APN.

(e) Compliance with 450:55-3-6 shall be determined by on-site observation; and a review of the following: clinical records; ~~ICIS~~PICIS information; and the PACT policy and procedures.

450:55-3-8. Staff communication and planning

(a) The PACT team shall have daily organizational staff meetings at regularly scheduled times as prescribed by the team leader. Daily organizational staff meetings shall be conducted in accordance with the following procedures:

(1) A review of the daily log, to update staff on the treatment contacts which occurred the day before and to provide a systematic means for the team to assess the day-to-day progress and status of all consumers;

(2) A review by the shift manager of all the work to be done that day as recorded on the daily staff assignment schedule. During the meeting, the shift manager shall assign and supervise staff to carry out the treatment and service activities scheduled to occur that day, and the shift manager shall be responsible for assuring that all tasks are completed; and

(3) Revise treatment plans as needed, plan for emergency and crisis situations, and add service contacts to the daily staff assignment schedule per the revised treatment plans.

(b) The PACT team shall maintain a written daily log, using a computer, notebook or cardex. The daily log shall document:

(1) A roster of the consumers served in the program; and,

(2) For each consumer, brief documentation of their status and any treatment or service contacts which have occurred since the last daily organizational staff meeting ~~and a concise, behavioral description of the consumer's daily status~~.

(c) The PACT team, under the direction of the team leader, shall maintain a weekly schedule for each consumer. The weekly consumer schedule is a written schedule of all treatment and service contacts which staff must carry out to fulfill the goals and objectives in the consumer's treatment plan. The team shall maintain a central file of all weekly consumer schedules.

(d) The PACT team, under the direction of the team leader, shall develop a daily staff assignment schedule from the central file of all weekly consumer schedules. The daily staff assignment schedule is a written timetable for all consumer

treatment and service contacts, to be divided and shared by the staff working on that day.

(e) Compliance with 450:55-3-8 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

450:55-3-9. Clinical supervision

(a) Each PACT team shall have a written policy for clinical supervision of all staff providing treatment, rehabilitation, and support services. A component of the supervision shall include assisting all staff to have basic core competency in working with clients who have co-occurring substance abuse disorders. The team leader or a clinical staff designee shall assume responsibility for supervising and directing all PACT team staff activities. This supervision and direction shall minimally consist of:

(1) Periodic observation, in which the supervisor accompanies an individual staff member to meet with consumers in regularly scheduled or crisis meetings to assess the staff member's performance, give feedback, and model alternative treatment approaches; and

(2) Participation with team members in daily organizational staff meetings and regularly scheduled treatment planning meetings to review and assess staff performance and provide staff direction regarding individual cases.

(b) Compliance with 450:55-3-9 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

(c) Failure to comply with 450:55-3-9 will result in the initiation of procedures to deny, suspend and/or revoke certification.

SUBCHAPTER 5. PACT CLINICAL DOCUMENTATION

450:55-5-5. Comprehensive assessment

(a) The consumer's psychiatrist or APN, primary PACT case manager, and individual treatment team members shall prepare the written comprehensive assessment(s) within six (6) weeks of admission.

(b) The comprehensive assessments shall include a written narrative report on ODMHSAS approved forms for each of the following areas:

(1) Psychiatric and substance abuse history, mental status, and a current DSM diagnosis, to be completed by the PACT psychiatrist or APN;

(2) Medical, dental, and other health needs to be completed by a PACT registered nurse;

(3) Extent and effect of any violence within the consumer's living situation(s) or personal relationships;

(4) The current version of the Alcohol Severity Index (ASI) within the first 6 weeks of admission and as clinically indicated thereafter;

(5) Education and employment;

(6) Social development and functioning by a team professional as approved by the team leader;

(7) Activities of daily living, to be completed by the team professional or Recovery Support specialist under the supervision of the team leader;

(8) Family structure and relationships by a team professional as approved by the team leader; and

(9) Historical timeline by all team members under the supervision of the team leader.

(c) The historical timeline shall contain, but not be limited to, the following information:

(1) Psychiatric Inpatient/Outpatient Services history:

(A) Timeline dates;

(B) Admission/Discharge dates;

(C) Institution/provider;

(D) Presenting problem/legal status;

(E) Diagnosis, symptoms, and significant events;

(F) Medications

(G) Services received; and

(H) Reasons for discharge.

(2) Psychosocial History of:

(A) Living situation(s);

(B) Employment; and

(C) Other (Alcohol/drug info, family, significant others, medical info, other info).

(d) Compliance with 450:55-5-5 shall be determined by on-site observation and a review of the clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

450:55-5-6. Treatment team meeting

(a) The PACT team shall conduct treatment planning meetings under the supervision of the team leader, or designee. These treatment planning meetings shall minimally:

(1) Convene at regularly scheduled times per a written schedule maintained by the team leader; and

(2) Occur with sufficient frequency and duration to develop written individual consumer treatment plans and to review ~~and rewrite~~ the individual treatment plan to discuss the consumer's progress and make any recommended changes or updates every six months and rewrite the treatment plans every 12 months.

(b) Prior to writing the treatment plan, the team shall meet to develop the treatment plan by discussing and documenting:

(1) The specifics of all information learned from the comprehensive assessments or course of treatment; and

(2) Recommendations made to the treatment plan from the consumer, family members and PACT staff.

(c) Treatment planning meetings shall be scheduled in advance of the meeting and the schedule shall be posted. The team shall assure that consumers and others designated by the consumers may have the opportunity to attend treatment planning meetings, if desired by the consumer. At each treatment planning meeting to rewrite the treatment plan, the following staff should attend: team leader, psychiatrist or APN, primary case manager, individual treatment team members, and all other PACT team members involved in regular tasks with the consumer. For the treatment plan review, the following

staff should attend: team leader, primary case manager and individual treatment team members.

(d) Compliance with 450:55-5-6 shall be determined by on-site observation and a review of the following: clinical records, ~~ICIS~~PICIS information and the PACT policy and procedures.

450:55-5-7. Treatment planning

(a) The PACT team shall evaluate each consumer and develop an individualized comprehensive treatment plan within eight (8) weeks of admission, which shall identify individual needs and problems and specific measurable goals along with the specific services and activities necessary for the consumer to meet those goals and improve his or her capacity to function in the community. The treatment plan shall be developed in collaboration with the consumer or guardian when feasible. The consumer's participation in the development of the treatment plan shall be documented.

(b) Individual treatment team members shall ensure the consumer is actively involved in the development of treatment and service goals.

(c) The treatment plan shall clearly specify the services and activities necessary to meet the consumer's needs and who will be providing those services and activities.

(d) The following key areas shall be addressed in every consumer's treatment plan: symptom management, physical health issues, substance abuse, education and employment, social development and functioning, activities of daily living, and family structure and relationships.

(e) The primary case manager and the individual treatment team shall be responsible for reviewing and revising the treatment goals and plan whenever there ~~is a~~are major decision ~~point~~points in the consumer's course of treatment, e.g., significant change in consumer's condition, etc., ~~or~~ at least ~~every six (6) months a treatment plan review and~~ every twelve (12) months a new comprehensive treatment plan will be developed. The revised treatment plan shall be based on the results of a treatment planning meeting. The plan and review will be signed by the consumer, the primary case manager, individual treatment team members, the team leader, the psychiatrist, and all other PACT team members.

(f) The PACT team shall maintain written assessment and treatment planning policies and procedures to assure that appropriate, comprehensive, and on-going assessment and treatment planning occur.

(g) Compliance with 450:55-5-7 shall be determined by review of the clinical records.

450:55-5-11. Other records content

(a) The consumer record shall contain copies of all consultation reports concerning the consumer.

(b) When psychometric or psychological testing is done, the consumer record shall contain a copy of a written report describing the test results and implications and recommendations for treatment.

(c) The consumer record shall contain any additional information relating to the consumer that has been secured from sources outside the PACT program.

(d) Before any person can be admitted for treatment on a voluntary basis, a signed consent for treatment shall be obtained.

~~(e) The PACT program shall maintain a current and up-to-date Longitudinal Face Sheet on every admitted consumer. The Longitudinal Face Sheet will track all of the following ongoing information from the time of admission until discharge. The information shall include but is not limited to:~~

~~(1) Residence;~~
~~(2) Significant others;~~
~~(3) Children;~~
~~(4) Education;~~
~~(5) Legal involvement;~~
~~(6) Financial benefits;~~
~~(7) Health insurance benefits;~~
~~(8) Psychiatric diagnosis;~~
~~(9) Legal status;~~
~~(10) Institutional admissions, including associated dates and lengths of stay;~~
~~(11) Employment; and~~
~~(12) Special risks.~~

(~~f~~e) In the case where a PACT consumer is re-admitted back into the same PACT program, the PACT team will adhere to all PACT standards for admission except comprehensive assessments shall only be updated for the time-frame the consumer did not participate in PACT.

(~~g~~f) In the case where a consumer transfers from one PACT program to another, the receiving PACT program shall adhere to all PACT standards for admission except comprehensive assessments shall only be updated for the time-frame the consumer did not participate in PACT unless the receiving PACT program is not able to access prior PACT records. Prior PACT records may be accessed with the consent of the consumer.

(~~h~~g) Compliance with 450:55-5-11 shall be determined by a review of clinical records.

[OAR Docket #14-551; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 60. STANDARDS AND CRITERIA FOR CERTIFIED EATING DISORDER TREATMENT PROGRAMS

[OAR Docket #14-552]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 19. Staff Development and Training
450:60-19-1 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-108 and 2-109.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 60 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.

Proposed revisions to Chapter 60 to identify certification standards that are so critical to the operation of Certified Eating Disorder Treatment Programs that failure to meet the standards would be grounds for immediate suspension, denial or revocation of certification.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 19. STAFF DEVELOPMENT AND TRAINING

450:60-19-1. Staff qualifications

(a) All staff who provides clinical services shall have documented qualifications or training specific to the clinical services they provide within the CEDT.

(b) Failure to comply with 450:60-19-1 will result in the initiation of procedures to deny, suspend, and/or revoke certification.

[OAR Docket #14-552; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 65. STANDARDS AND CRITERIA FOR GAMBLING TREATMENT PROGRAMS

[OAR Docket #14-553]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:65-1-2 [AMENDED]
Subchapter 3. Gambling Treatment Services and Documentation
450:65-3-1 [AMENDED]
450:65-3-2 [AMENDED]
450:65-3-5 [AMENDED]
Subchapter 7. Organizational and Facility Management
450:65-7-10 [NEW]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-108 and 2-109.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 65 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.

Proposed revisions to Chapter 65 are made to update terminology based on recent revisions to the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as to clarify eligible provider qualifications. Additional revisions are proposed which identify certification standards that are so critical to the operation of Gambling Treatment Programs that failure to meet the standards would be grounds for immediate suspension, denial or revocation of certification.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

450:65-1-2. Definitions

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

"Admission" means the acceptance of a consumer by a treatment program.

"Admission criteria" means those criteria which shall be met for admission of a consumer to gambling treatment.

"Assessment" means those procedures by which a gambling treatment program provides an on-going evaluation process with the consumer to collect his or her historical information, and identify strengths, needs, abilities, and preferences in order to determine a plan for recovery.

"Case management" means actions such as planned linkage, advocacy and referral assistance provided in partnership with a consumer to support that consumer in self sufficiency and community tenure and may occur in the consumer's home, in the community, or in the facility.

"Certified Gambling Addiction Treatment" or **"CGAT"** means programs certified by ODMHSAS to provide treatment to individuals diagnosed with a problem gambling disorder.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance which leads to professional growth, clinical skills development and increased self-awareness.

"Community education, consultation and outreach" means services designed to reach the facility's target population, to promote available services, and to give information on problem gambling and other related issues to the general public, the target population or to other agencies serving the target population. These services include presentations to human services agencies, community organizations and individuals, other than individuals in treatment, and staff. These services may take the form of lecture presentations, films or other visual displays, and discussions in which factual information is disseminated. These presentations may be made by staff or trained volunteers.

"Consumer" means an individual, adult or adolescent, who is receiving evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 Chapters 16, 17, 18, 19, 23, and 65 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer record" means the collection of written information about a consumer's evaluation or treatment that includes the intake data, evaluation, treatment or service plan, description of treatment or services provided, continuing care plan, and discharge information on an individual consumer.

"Continuing care" means providing a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary treatment services to ongoing recovery.

"Contact" means any encounter with a consumer who is inquiring about or seeking services.

"Contract" means a document adopted by the governing authority of an approved treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program as well as the monies to be expended in exchange.

~~**"Counseling"** means a method of using various commonly accepted clinical approaches provided face to face by a treatment professional with consumers in individual, group or family settings to promote positive emotional or behavioral change.~~

"Crisis intervention" means an immediately available service to meet the psychological, physiological and safety aspects of mental health, problem gambling, and substance abuse related crisis. These unscheduled face-to-face interventions are in response to emergencies to resolve acute emotional and physical dysfunction, secure appropriate placement in the least restrictive setting, provide crisis resolution, and stabilize functioning.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a treatment facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumer or a treatment facility; other unexpected occurrences or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communication, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Diagnosis" means the determination of a disorder as defined by current DSM criteria.

"Discharge criteria" means general guidelines to inform the judgment of the gambling treatment professional which shall be considered in order for the consumer to be appropriately discharged from a treatment program.

"Discharge planning" means the process, begun at admission, of determining a consumer's continued need for treatment services and of developing a plan to address ongoing consumer post-treatment and recovery needs.

"Discharge summary" means a clinical document in the gambling treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to community services.

"Documentation" means the provision of written, dated, and authenticated evidence to substantiate compliance with CGAT standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, treatment records, policies, procedures, and announcements.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning gambling issues and services. A systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, and to examine attitudes or behaviors which may stimulate social action or community support of the program and the consumers.

"Educational group" means groups in which information focuses on topics that impact a consumer's recovery from problem and pathological gambling. Topics should be gender and age specific and should include, but not be limited to, information regarding their diagnosis or identified problems on their treatment plan. This service may involve teaching skills in communication, relapse prevention, self-care, and social skills to promote recovery. Paraprofessionals and/or professionals in fields related to the education topic may facilitate educational groups.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Gambling treatment services" means treatment activities for consumers by a gambling treatment professional that include, but are not limited to, the following:

(A) Assessment and diagnostic impression, ongoing;

(B) Treatment planning and revision, as necessary;

(C) Individual, group and family ~~counseling~~therapy;

(D) Case management;

(E) Discharge planning.

"Gambling treatment professional" means:

(A) an individual holding a valid NCGC I or II certification;

(B) any clinician licensed in a behavioral health field with documented completion of at least thirty (30) hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve (12) hours of problem gambling specific continuing education every twelve (12) months; or

~~(C) any licensed or certified alcohol and drug counselor with documented completion of at least thirty (30) hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve (12) hours of problem gambling specific training; or~~

(~~D~~C) any individual under supervision for licensure by an individual who ~~otherwise~~ meets ~~this definition.~~the requirements of (A) or (B), and has documented completion of at least thirty hours of ODMHSAS recognized core problem gambling training requirements and documented completion of twelve (12) hours of problem gambling specific continuing education every twelve (12) months.

"Gambling related disorders/problems" means gambling related issues or problems which impact the normal functioning of an individual.

"Goals" means broad general statements of purpose or intent that indicate the general effect the facility or service is intended to have.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more consumers that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the consumer's treatment goals and objectives, and does not include social or daily skill development as described in educational group counseling.

"Individual ~~counseling~~therapy" means a method of using various evidence based/commonly accepted treatment approaches provided face-to-face by a gambling treatment professional with one consumer to promote positive emotional or behavioral change.

"Intake" means the overall process by which information is collected to determine the needs of the consumer.

~~**"Integrated Client Information System"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.~~

"Intervention" means a process or technique intended to facilitate behavior change.

"Levels of care" means the different options for treatment that vary according to the intensity of the services offered. Each treatment option is a level of care.

"Licensed Alcohol/Drug Abuse Counselor" or **"LADC"** means an individual licensed to provide substance abuse counseling pursuant to Title 59 O.S., Chapter 43B, Licensed Alcohol and Drug Counselors Act.

"Licensed mental health professional" or **"LMHP"**~~means:~~

~~(A) a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology;~~
~~(B) a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;~~
~~(C) a licensed clinical psychologist;~~
~~(D) a licensed professional counselor as defined in Section 1906 of Title 59 of the Oklahoma Statutes;~~
~~(E) a person licensed as a clinical social worker pursuant to the provisions of Section 1250 et seq. of Title 59 of the Oklahoma Statutes;~~
~~(F) a licensed marital and family therapist as defined in Section 1925.2 of Title 59 of the Oklahoma Statutes;~~
~~(G) a licensed behavioral practitioner as defined in Section 1931 of Title 59 of the Oklahoma Statutes; or~~
~~(H) an advanced practice nurse as defined in Section 567.3a of Title 59 of the Oklahoma Statutes specializing in mental health.~~as defined in Title 43A §1-1-3(11).

"Linkage" refers to the communication and coordination with consumers and other service providers to assure timely and appropriate referrals between the CGAT program and other providers.

"Mental health services" means a wide range of diagnostic, therapeutic, and rehabilitative services used in the treatment of problem and pathological gambling, and other mental disorders including substance abuse.

"NCGC" means Nationally Certified Gambling Counselor, offered at levels I or II through the National Council on Problem Gambling.

"Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care that results or may result in physical or mental injury to a consumer.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1) (a) and maintained in the Office of Administrative Rules.

"OSDH" means the Oklahoma State Department of Health.

"Outpatient services" means an organized, nonresidential treatment service in regularly scheduled sessions intended for individuals not requiring a more intensive level of care or those who require continuing services following more intensive treatment regimens.

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Pathological gambling diagnosis" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits, as defined by the most recent edition of the DSM.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others.

"Personnel record" means a chart or file containing the employment history and actions relevant to individual employee activities within an organization and may contain application, evaluation, salary data, job description, citations, credentials and training information.

~~**"Integrated Client Information System"** or **"ICIS"**~~**"PICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ODMHSAS network. ~~ICIS~~PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ODMHSAS.

"Policy" means statements of facility intent, strategy, principle, or rules in the provision of services; a course of action leading to the effective and ethical provision of gambling treatment services.

"Procedures" means the methods by which policies are implemented.

"Problem Gambling" means a persistent and recurrent maladaptive gambling behavior that disrupts personal, family, or vocational pursuits as defined by the most recent edition of the DSM.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of consumers served by the facility.

"Program effectiveness-outcome" means a written plan and operational methods of determining the effectiveness of services provided that objectively measures facility resources, activities and consumer outcomes.

"Progress notes" mean a complete chronological written description of services provided to a consumer and includes the consumer's response and is written by the individual or clinical team delivering the gambling treatment services.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self-defined, individualized and may contain some, if not all, of the fundamental components of recovery as outlined by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Safety Officer" means the individual responsible for ensuring the safety policies and procedures are maintained and enforced within the facility.

"Screening" means the process to determine whether the person seeking assistance needs further assessment for problem or pathological gambling.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

"Significant others" means those individuals who are, or have been, significantly involved in the life of the consumer.

"Staff privileging" means an organized method for CGAT facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Treatment planning" means the process by which a gambling treatment professional and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Treatment session-outpatient" means each face-to-face contact with a consumer in a therapeutic setting whether individually or in a group.

"Update" means a dated and signed review of a report, plan or document with or without revision.

"Volunteer" means any person providing direct consumer rehabilitative services and who is not on the facility payroll, but fulfills a defined role within the approved treatment facility. This includes, but is not limited to, court ordered community services, practicum students, interns, and ministers; it excludes professionals and entities with which the facility has a written affiliation.

"Walk through" means an exercise in which staff members of a facility walk through the CGAT program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

SUBCHAPTER 3. GAMBLING TREATMENT SERVICES AND DOCUMENTATION

450:65-3-1. Gambling treatment professional requirements and privileging

(a) Each CGAT provider shall use clinical privileging to identify gambling treatment professionals.

(b) Each CGAT provider shall have written policies and procedures to evaluate the professional qualifications of treatment professionals providing gambling treatment services.

(c) All gambling treatment services must be provided by gambling treatment professionals as defined in this chapter.

(d) Failure to comply with 450:65-3-1 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:65-3-2. Treatment Services

Facilities providing gambling treatment services shall have a group of services herein designated as core services. CGAT programs may have specific additional services herein designated as optional services. Required services include, but are not necessarily limited to:

(1) Screening;
(2) Assessment and diagnostic impression, ongoing;
(3) Treatment planning and revision, as necessary;
(4) Group, individual and family ~~counseling~~therapy;
(5) Case management;
(6) Education regarding gambling addiction, pathological gambling and related problems; and
(7) Discharge planning.

450:65-3-5. Individual, group and family ~~counseling~~therapy services

(a) CGAT programs shall offer a range of services to consumers based on their needs regarding emotional, social and behavioral problems. Outpatient ~~counseling~~therapy services shall be provided and shall include, but not be limited to, the following:

(1) Individual ~~counseling~~therapy shall consist of a goal-oriented process in which the consumer is counseled by and in the presence of a gambling treatment professional, in accordance with the treatment plan, to relieve symptoms and resolve problems related to gambling disorders or problems.

(2) Group ~~counseling~~therapy shall consist of activities, directly related to the attainment of objectives as defined in the written treatment plan that the gambling treatment professional provides to a minimum of two consumers, non-related.

(3) Family ~~counseling~~therapy shall consist of sessions in which the identified gambler and a minimum of one other person in a committed relationship with the identified gambler, is counseled by a gambling treatment professional in accordance with the identified consumer's treatment plan.

(b) Compliance with 450:65-3-5 may be determined by a review of the following:

(1) Consumer records;
(2) Progress notes;
(3) Interviews with staff; and
(4) Other facility documentation.

SUBCHAPTER 7. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:65-7-10. Technology

(a) The facility shall have a written plan regarding the use of technology and systems to support and advance effective and

efficient service and business practices. The plan shall include, but not be limited to:

(1) Hardware and software.
(2) Security.
(3) Confidentiality.
(4) Backup policies.
(5) Assistive technology.
(6) Disaster recovery preparedness.
(7) Virus protection.

(b) Compliance with 450:65-7-10 shall be determined by a review of the facility policies, performance improvement plans and technology and system plan.

[OAR Docket #14-553; filed 6-27-14]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOID TREATMENT PROGRAMS

[OAR Docket #14-554]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Services Support and Enhancement
Part 1. Staff Support
450:70-4-2 [AMENDED]
450:70-4-4.4 [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 3-601 through 3-603.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 19, 2014
PUBLIC HEARING:
February 21, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
October 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 70 are part of the Department's review of Title 450. The proposed rules clarify existing rules, improve existing processes and are intended to comply with statutory changes.

Proposed revisions to Chapter 70 are made to identify certification standards that are so critical to the operation of Opioid Treatment Programs that failure to meet the standards would be grounds for immediate suspension, denial or revocation of certification.

CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-2053.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2014:

SUBCHAPTER 4. SERVICES SUPPORT AND ENHANCEMENT

PART 1. STAFF SUPPORT

450:70-4-2. Clinical supervision

(a) All OTPs shall provide clinical supervision for those delivering direct services and shall be provided by persons qualified to provide clinical supervision as determined by state licensure or certification.

(b) All OTPs shall have written policy and procedures, operational methods, and documentation regarding clinical supervision for all direct treatment staff and service staff. These policies shall include, but are not limited to:

(1) Credentials required for the clinical supervisor;
(2) Specific frequency for case reviews with treatment and service providers;
(3) Methods and time frames for supervision of individual, group, and educational treatment services; and
(4) Written policy and procedures defining the program's plan for appropriate counselor-to-patient ratio, and a plan for how exceptions may be handled.

(c) Ongoing clinical supervision should address:

(1) The appropriateness of services selected for the patient;
(2) Service effectiveness as reflected by the patient meeting his/her individual goals; and
(3) The provision of feedback that enhances the clinical skills of direct service staff and service providers.

(d) Compliance with 450:70-4-2 may be determined by:

(1) A review of policies and procedures,
(2) Clinical services manuals,
(3) Clinical supervision manuals,
(4) Documentation of clinical supervision,
(5) Personnel records,
(6) Treatment records,
(7) Interviews with staff; and
(8) Other facility documentation.

(e) Failure to comply with 450:70-4-2 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:70-4-4.4. Staffing - Qualifications

(a) The OTP shall have written policy and procedure requiring opioid agonist or partial agonist treatment medications

be administered or dispensed only by a practitioner licensed and registered under the appropriate State and Federal laws to administer or dispense such drugs.

(b) The facility shall maintain documentation verifying the qualifications for the service providers.

(c) Staff shall be, at least, twenty one (21) years old (excluding student interns).

(d) Compliance with 450:70-4-4.4 may be determined by:

(1) A review of policies and procedures,

(2) Credentialing and privileging documents,

(3) Interviews with staff, and

(4) Other facility documentation.

(e) Failure to comply with 450:70-4-4.4 will result in the initiation of procedures to deny, suspend and/or revoke certification.

[OAR Docket #14-554; filed 6-27-14]

TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION

[OAR Docket #14-798]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Operations Procedures
460:1-3-2 [AMENDED]
Subchapter 7. Oklahoma Miner Training Institute
460:1-7-1 [AMENDED]

AUTHORITY:
45 O. S. § 1 Et seq., 75 O. S. §302 Et seq., Oklahoma Mining Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014

COMMENT PERIOD:
November 15, 2013 through December 15, 2013

PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and Wagoner, Oklahoma

ADOPTION:
February 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTION:
N/A

INCORPORATED BY REFERENCE:
N/A

ANALYSIS:
In 460:1-3-1,the location of the Oklahoma Mining Commission and mailing address' of the Oklahoma Mining Commissioners were revised to reflect the relocation of the Department of Mines' Oklahoma City office to 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. In 460:1-7-1, the word advise was corrected to advice. A new Subsection (d) requires any outside instructor providing State Surface Supervisor re-certification training to notify OMTI of each employee trained, along with any other information required by the OMTI Director, and to provide notification that it shall be unlawful for any instructor or student to falsify training records.

CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. OPERATIONAL PROCEDURES

460:1-3-2. Location

The Commission shall maintain at its offices in Oklahoma City, Oklahoma, all papers, records, and data necessary to the operation of the Commission. All official communications should be addressed to the Chairman of the Oklahoma Mining Commission, ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105~~ 2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106, or to the Director of the Oklahoma Department of Mines, ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105~~2915 North Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106.

SUBCHAPTER 7. OKLAHOMA MINER TRAINING INSTITUTE

460:1-7-1. Operational authority

(a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and ~~advise~~advice of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates receiving certificates of competency have complied with all state, federal, and local permitting and licensing requirements.

(b) The Commission shall ensure the following:

(1) All blasting certifications be conducted by OMTI.

(2) All original certification for state supervisor cards shall be issued only by OMTI.

(c) The Commission may approve re-certification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:

(1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.

(2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class. The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.

(3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.

(A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma Safety Standards.

(B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval ~~for~~of the program's accreditation.

(C) Once a complete application is filed, the review, the recommendation, and the issuance of the ~~Certificate Recognition~~ Certification of Recognition shall be completed within a ninety (90) day time-period.

(D) Once training is completed, a notification of recertification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the re-certification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.

(E) The Commission's approval for the recertification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.

(4) All existing and established time frames for recertification, every two years, are not altered by the approval of outside contractors or private instructors pursuant to this Section.

(d) If training is administered by an instructor other than at OMTI, the instructor shall notify OMTI of each employee that has received such training and other information as required by the Director of OMTI. It shall be unlawful for any instructor or student to falsify training records.

[OAR Docket #14-798; filed 7-18-14]

TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION

[OAR Docket #14-799]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Oklahoma Miners Training Institute
460:1-7-1 [AMENDED]
AUTHORITY:
45 O. S. § 1 Et seq., 75 O. S. §302 Et seq., Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 1, 2013 through March 6, 2013
PUBLIC HEARINGS:
March 4, 2013 in McAlester, OK and on March 6, 2013 in Oklahoma City, OK **ADOPTION:**
March 28, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 5, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYIS:
This amendment adds a paragraph (5) to 460:1-7-1(c). Pursuant to the guidelines in (c) for approving re-certification training for Oklahoma State Surface Supervisor's cards through outside contractors or private instructors, the new (5) states that approval for supervisor re-certification shall not be given to any training facilities or training by individuals affiliated with, or employed by, any permitted operation within the State of Oklahoma
CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014.

SUBCHAPTER 7. OKLAHOMA MINERS TRAINING INSTITUTE

460:1-7-1. Operational authority

(a) The Oklahoma Mining Training Institute (OMTI) shall operate under the control and advise of the Oklahoma Mining Commission. The Commission shall establish and approve curriculum standards for all courses taught at OMTI. The Commission shall ensure that all courses taught at OMTI will meet current MSHA and OSM standards and that all graduates receiving certificates of competency have complied with all state, federal, And local permitting and licensing requirements.

(b) The Commission shall ensure the following:

(1) All blasting certifications be conducted by OMTI.

(2) All original certifications for state supervisor cards shall be issued only by OMTI.

(c) The Commission may approve re-certification training for the Oklahoma State Surface Supervisor's card through outside contractors or private instructors, if the following guidelines are met:

(1) A resume, including experience and education, must be submitted on each instructor utilized to the Commission for review.

(2) Training plans must be submitted that include, at a minimum, an outline of the topics to be addressed and a list of the instruction aids that will be utilized during class. The training outline must address the Surface Safety Standards requirements in Title 45 of the Oklahoma Statutes.

(3) A copy of the resume and training plan of each instructor must be filed, accompanied by a letter of request

for Certification of Recognition, with the Oklahoma Department of Mines (ODM) and OMTI for review.

(A) The ODM and OMTI review shall determine whether the program offered is consistent with the OMTI's program and that the program adequately emphasizes the State of Oklahoma Safety Standards.

(B) After the review, OMTI and ODM shall submit a recommendation to the Commission for approval or disapproval for the program's accreditation.

(C) Once a complete application is file, the review, the recommendation, and the issuance of the Certificate Recognition shall be completed within a ninety (90) day time-period.

(D) Once training is completed, a notification of re-certification for each individual shall be submitted to OMTI for action, on forms developed by OMTI. OMTI shall then issue the re-certification for authentication of the training received and the card issued shall identify the contractor or private instructor who provided the training.

(E) The Commission's approval for the re-certification training of the Oklahoma State Surface Supervisor's card by any outside contractors or private instructors shall be for a one (1) year approval period only.

(4) All existing and established time frames for re-certification, every two years, are not altered by the approval of outside contractors or private instructors pursuant to this section.

(5) Approval for supervisor re-certification shall not be given to any training facilities or training by individuals affiliated with, or employed by, any permitted operation within the State of Oklahoma.

[OAR Docket #14-799; filed 7-18-14]

TITLE 460. DEPARTMENT OF MINES CHAPTER 2. RULE OF PRACTICE AND PROCEDURE FOR THE COAL RECLAMATION ACT OF 1979

[OAR Docket #14-800]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
460:2-1-10. Service [AMENDED]
Subchapter 8. Petitions for Review of Proposed Individual Civil Penalty Assessment
460:2-8-2. Who may file [AMENDED]
AUTHORITY:
45 O. S§ § 1.5,721,732 Et seq. and 75 O. S § 302 Et seq., Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014
COMMENT PERIOD:
November 15, 2013 through December 15, 2013
PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and Wagoner, Oklahoma
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
February 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration of June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
This amendment revised Subchapter 1 and Subchapter 8. In 460:2-1-10, Service, the Oklahoma City office's physical and mailing address was corrected so any party initiating a proceeding and needing service pursuant to The Coal Reclamation Act of 1979, 45 O.S Section 742.1 Et seq. would know the new location and phone number. In 460:2-8-2, the location, the mailing address and telephone number were also corrected so individuals served a notice of proposed civil penalty assessment would have the correct location to file a petition for review with the Department. The new Oklahoma City's office location was corrected to 2915 N. Classen Boulevard, Suite 213, Oklahoma City, Oklahoma 73106 and new telephone number is 405/427-3859.
CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

460:2-1-10. Service

(a) Any party initiating a proceeding in the OHA under the ~~act~~Act shall serve copies of the initiating documents ~~of~~to the ~~Chief Mine Inspector~~Director or the Department Legal Counsel, ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105 (telephone 405/521-3859).~~ Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859). Any party or other person shall serve any other documents being filed subsequently with the OHA on all other parties and all other persons participating in the proceeding.

(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.

(c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.

(d) Whenever an attorney has entered an appearance for a party in a proceeding before a hearing examiner or the Director, service thereafter shall be made upon the attorney.

SUBCHAPTER 8. PETITIONS FOR REVIEW OF PROPOSED INDIVIDUAL CIVIL PENALTY ASSESSMENT

460:2-8-2. Who may file

Any individual served a notice of proposed individual civil penalty assessment may file a petition for review with the Legal Division of the Oklahoma Department of Mines, ~~4040 N. Lincoln, Suite 107, Oklahoma City, OK 73105.~~2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 (telephone 405/427-3859).

[OAR Docket #14-800; filed 7-18-14]

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

[OAR Docket #14-801]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
460:3-1-2. Descriptions of Orginization [AMENDED]
460:3-1-3. Method of Operation [AMENDED]
460:3-1-4. Petitions requesting promulgation, amendment or repeal of a rule or organization [AMENDED]
460:3-1-5. Conducting hearings for formal review [AMENDED]
AUTHORITY:
45 O. S §§ 1.5,721,732 Et seq. and 75 O .S. § 302 Et seq. Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014
COMMENT PERIOD:
November 15, 2013 through December 15, 2013
PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and Wagoner, Oklahoma
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
February 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration of June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
These amendment revisions are all within Subchapter 1. Subsection (e) was added to 460:3-1-2, for clarification that Article VI, Section 1, Oklahoma Constitution and 45 O.S. § 1b, changed the Chief Executive Officer(CEO) of the Department of Mines' title, responsibilities and qualifications from the Chief Mine Inspector to the Director of Department of Mines (Director). In 460:3-1-3(a), the Oklahoma City office address was corrected to 2915 N. Classen, Suite 213, Oklahoma City, OK 73106 and in (b), (d) and (f) the Chief Mine Inspector title was changed to Director of the Department of Mines and/or the Director. In Section 4, the CEO title was changed and in (c) a notice publication was changed from the Oklahoma Gazette to The Daily Oklahoman and/or The Tulsa World. Section 5 also has a title change with a few grammatical and typographical corrections.

CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

460:3-1-2. Description of organization

(a) The office of Chief Inspector of Mines, Oil and Gas (hereinafter referred to as the Department) was created and exists by virtue of Article 6, Section 25 of the Constitution of the State of Oklahoma, as amended.

(b) The Chief Executive Officer is the Chief Mine Inspector, who is appointed by the Governor by and with the consent of the Senate for terms of four (4) years to run concurrently with the term of the Governor~~)~~ [Article VI, Sec. 1, Oklahoma Constitution, as amended.]

(c) The Chief Mine Inspector shall perform all administrative duties required of said office under the direction of the Governor and shall perform all duties and shall have such authority as is vested in the Chief Mine Inspector by the provisions of Title 45 of the Oklahoma Statutes.

(d) Mining districts are created by the Chief Mine Inspector for the Assistant Mine Inspectors to fulfill their duties of inspection and enforcement. Copies of maps showing the boundaries of the mining districts of this Chapter are available to the public upon request to the Department. [45 O.S. Supp ~~(198)1~~(1981), Sec. 21.1]

(e) In the absence of an appointed Chief Mine Inspector, the Chief Executive Officer of the Department of Mines shall be the Director of the Department of Mines. The Director shall be appointed by the Oklahoma Mining Commission and shall serve at the pleasure of said Commission which shall fix the Director's duties and compensation. The Director shall be chosen with regard to his or her knowledge, training, experience and ability in administering the functions of the Department. The appointed Director shall have been a resident and a qualified elector of Oklahoma for a period of at least three (3) years preceding the appointment. [45 O.S.§1b].

460:3-1-3. Method of operation

(a) The principal office of the Department is ~~4040N. Lincoln,Suite107,Oklahoma City,Oklahoma.~~2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) Office hours shall be from 8:00 A.M. to 4:30 P.M., unless otherwise designated by the ~~Chief Mine Inspector~~Director of the Department of Mines, each day except Saturday and Sunday and legal holidays established by statute or proclamation of the Governor.

(c) The Department of Mines may exercise its official powers at any location in the State of Oklahoma.

(d) Every communication in writing to the Department shall be addressed to the ~~Chief Mine Inspector~~Director at the principal office.

(e) All rules and other written statements of policy or interpretations formulated, adopted or used by the Department in the discharge of its functions, all final orders, decisions and opinions and all forms, applications and instructions which are required to be completed in applying for a license or permit~~,~~ will be made available at the principal office during regular office hours.

(f) Copies of all official records of the Department, not privileged or protected from publication by law, may be made and certified by the ~~Chief Mine Inspector~~Director on the request of any person. The person making such request shall pay the expense of making such copies in accordance with a fee schedule adopted by the Department. Certified copies of any records or papers on file in the Department shall be evidence equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.

(g) All petitions or motions requesting hearings or other affirmative or administrative action of the Department shall be in the following form:

BEFORE THE
OKLAHOMA DEPARTMENT OF MINES

IN RE: (Nature of Proceeding)	) No._____
	) (Initials of Case # _____
	) year-to be completed by
	) staff if not known or not
	) previously designated)

All such petitions and motions shall be signed by the person presenting same, his agent or attorney, and shall include a return address and telephone.

(h) When computing time, the following shall apply:

(1) Except as otherwise provided, computation of time is based on calendar days.

(2) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday on which the Department is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(3) Intermediate Saturdays, Sundays and legal holidays are excluded from the computation when the period or prescribed time is seven (7) days or less.

460:3-1-4. Petition requesting promulgation, amendment or repeal of a rule or organization

(a) Any interested person may petition the Department requesting the promulgation, amendment, or repeal of a Department rule, provided, in submitting such petition, the following requirements shall apply:

(1) All petitions must be submitted in typewritten or legible printed form.

(2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person.".

(3) All petitions must clearly state that the petition is for the promulgation of a new rule, for the amendment of an existing rule or for the repeal of an existing rule, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s), a complete text of the existing rule language requested for change or deletion and/or such language as may be requested to be added must be specified. In the instance of a requested repeal of any rule(s), the petition must state the complete rule(s) requested for repeal.

(4) All petitions must clearly and separately state the factual basis and reasons, legal grounds and technical justification for each requested rule promulgation, amendment or repeal and shall indicate whether petitioner desires a public hearing. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition.

(5) All petitions must be duly signed and endorsed by all petitioning parties, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Department rule shall be referred to the Department for review and consideration. The Department shall initially determine if the submitted petition is in adequate and proper form. If determined not to be in proper and adequate form, the Department shall thereupon return said petition to the petitioning party for correction and resubmission.

(c) Upon receipt of the petition, the ~~Chief Mine Inspector~~Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification, or law previously considered in a petition for rulemaking on the same issue shall not provide a reasonable basis. If the ~~Chief Mine Inspector~~Director determines that the petition has a reasonable basis, a notice shall be mailed to all mine operators and other interested persons, and shall be published in the ~~Oklahoma Gazette~~ The Daily Oklahoman and/or The Tulsa World seeking comments from the public on the proposed change. The Department may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Before making any final determination, the requesting party shall be allowed reasonable opportunity for argument,

written ~~an~~and/or oral, in support of the petition before the Department. In making its final determination on the petition, the Department may, in its discretion, resort to either of the following nonexclusive actions or proceedings (or any combination thereof):

(1) For good and sufficient cause, summarily grant or deny the petition; or

(2) Refer the request to staff for additional review, consideration and recommendation prior to a determination thereon by the Department.

(e) Within 90 days from receipt of the petition, the Department shall issue a written decision either granting or denying the petition. The ~~Chief Mine Inspector's~~Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the ~~Chief Mine Inspector~~Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Department shall notify the petitioner in writing, setting forth the reasons for denial.

(f) Should any petition be granted by the Department, in whole or in part, the petition as granted shall thereafter be treated as in the case of all rulemaking and the procedures of the Administrative Procedures Act shall thereupon become applicable in the further adoption of such rule promulgation, amendment or repeal.

460:3-1-5. Conducting hearings for formal review

(a) The Department may hold hearings for formal review on any matter within the Department's jurisdiction. Hearings for formal review may be instituted and conducted where expressly required by law and where deemed necessary to the proper execution and discharge of any of the powers or duties conferred or imposed upon the Department by law. Hearings may be instituted by application, petition, complaint (herein generally and collectively referred to as "application") or similar request of an aggrieved person or by the Department on its own initiative.

(b) All hearings for formal review held under the authority of 45 O.S., Section 721 et seq., shall be in compliance with 75 O.S., Section 301 et seq., as amended, and with this Chapter.

(c) Hearings for formal review shall be conducted by an authorized Hearing Examiner who shall be designated by the ~~Chief Mine Inspector~~ Director. Hearing Examiners are authorized to issue subpoenas, administer oaths, to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on any other motions or objections arising during the course of the hearings; and, generally to do all things necessary and incidental to conducting and completing the hearing.

(d) Hearings for formal review may be held at the main offices of the Department in Oklahoma City, or at such other locations as may be designated by law, rule or regulation.

(e) All testimony and evidence given at hearings for formal review shall be electronically recorded in duplicate. Upon receipt of notice of appeal to the District Court pursuant to the Administrative Procedures Act or upon other proper request of a party of record, the Department shall transcribe the testimony verbatim. The cost of transcribing the hearings and furnishing a certified copy of the record to the District Court shall be borne by the appellant, petitioner or requesting party. When a completed hearing record has been transcribed and certified, a copy of the transcript may be obtained, upon written request, from the Department. There will be a transcription fee, as determined by the Department, payable by the requesting party. [75 O.S., Sections 309, 320].

(f) When deemed necessary and proper for the purposes of a hearing for formal review, pre-hearing discovery by a party may be allowed as provided under the Administrative Procedures Act and this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be made at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the period of time within which discovery requests may be presented and entertained.

(1) In any hearing proceeding, the Hearing Examiner may direct, on the Examiner's own motion, or at the request of a party, that the parties appear for a pre-hearing conference. Parties of record shall be notified of such conferences in advance. A ~~Prehearing~~pre-hearing conference may be held to facilitate simplification of issues presented, admissions and stipulations, the identification of documents and witnesses proposed to be offered, discovery and production of relevant documents and other information, to consolidate parties and issues, and any other matters as may aid in the conduction of the hearing.

(2) The Hearing Examiner, on the Examiner's own motion or at the request of a party, may, in the name of the Department, issue subpoenas for witnesses and/or the production of books, records, papers or other information or objects. Subpoenas may be personally served by any authorized Department member or by certified mail, return receipt requested. Subpoenas must be served no less than three (3) days prior to the date of the hearing. [75 O.S., Section 315].

(g) The Hearing Examiner shall open the hearing for formal review at the time and place set forth in the notice.

(1) After opening the hearing for formal review, the Hearing Examiner shall determine whether notice of the hearing was properly given as required by law. Should it be determined that the required notice was not given or is materially, substantially or prejudicially defective in form or content, the Hearing Examiner shall adjourn the hearing, set a new hearing date and a new and proper notice thereof shall be given. In addition to the required notice, all parties of record shall be given written notice of the new hearing date.

(2) After opening the hearing for formal review, the Hearing Examiner shall request that all parties enter their appearances for the record and whether they are appearing in support of or in opposition to the application. Parties may appear personally, by authorized representative and/or by legal counsel, provided, attorneys appearing as legal counsel for and on behalf of a party must be duly

licensed to practice law in the State of Oklahoma or must complete the oath [5 O.S. Section 17.1 and Article II, Section 5 of the Rules of the Oklahoma Bar Association] set forth in Appendix A~~.~~ of this Chapter. The applicant or protestant must appear at the hearings, either personally, by representative or by legal counsel. The failure of any party to appear shall be deemed to constitute a default and abandonment of interest by the party failing to appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown five (5) days from the date of the hearing.

(3) After all parties have entered their appearances, the Hearing Examiner shall proceed to entertain presentation of evidence and testimony. The testimony of a witness shall be taken only upon sworn oath or affirmation. Witnesses shall be sworn individually. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, to object to the introduction of evidence, to impeach witnesses, and to rebut evidence presented. [75 O.S., Section 310]

(4) As provided under the Administrative Procedures Act, the strict and formal rules of evidence and pleading such as are applied and prevail in a court of law need not be observed in Department hearings for formal review. All evidence and testimony offered must be relevant and material to the matter subject of the application and hearing. Evidence and testimony which is clearly irrelevant, immaterial, incompetent or unduly repetitious or cumulative may be excluded or limited. Evidence may be received by stipulation and agreement of all interested parties. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available and, upon request, a party may be given the opportunity to compare the copy with the original. Copies of proposed exhibits shall be supplied to adverse parties and one original copy submitted to the Hearing Examiner. Each exhibit offered shall be tendered for identification. Each exhibit entered into evidence shall become a part of the administrative record. No exhibit shall be accepted after the conclusion of the hearing.

(5) Files and records of the Department which pertain to the subject of the hearing, and books, reports, and other papers or writings which have been prepared and published by any governmental or public agency, may at the discretion of the Hearing Examiner, be officially noticed and received into evidence as exhibits and incorporated by reference. The original or a copy in the possession of the Department shall be made available for inspection and copying by any party. Each such matter shall be appropriately identified and designated by number in the record as an exhibit. Certification of such files and records may be waived when it appears there is not valid reason to doubt the authenticity of the document presented. Official notice may also be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the Department's specialized knowledge. [75 O.S., Section 310]

(6) The Hearing Examiner may, at the Examiner's discretion, continue or adjourn a hearing to another date. Hearing continuances may be granted at the request of any party for good cause or by agreement of all parties or may be ordered on motion of the Hearing Examiner. Continuances or adjournments for further hearing shall be to date, time and place certain announced in open session of the hearing. Where granted or ordered prior to the scheduled hearing date, the party at whose request the continuance was granted or ordered shall notify all other interested parties of record of the date, time, and place set by the Hearing Examiner for further hearing. At the conclusion of a hearing, the Hearing Examiner may, at the Examiner's discretion for good cause shown and without prejudice to any party, leave the hearing record open to allow presentation and rebuttal of additional material or information necessary to a full, fair and complete submission and disposition of the matter subject of the hearing.

(7) Upon conclusion of a hearing for formal review, the Hearing Examiner may request that all parties file proposed ~~findings~~Finding of ~~fact~~Facts and ~~conclusions~~ Conclusions of ~~law~~Law for review and consideration by the Hearing Examiner. The Hearing Examiner may request all parties to submit legal briefs. [75 O.S. Section 312]

(8) After all parties have had an opportunity to be heard and present evidence, and after expiration of any additional time allowed, the hearing shall be deemed completed and the hearing record shall be deemed closed.

(9) As expeditiously as possible after completion of the hearing for formal review, the Hearing Examiner shall review, consider and evaluate all matters presented and relevant to the hearing issues, and, based thereon, the Hearing Examiner shall prepare a proposed final Order containing necessary ~~findings~~ Findings of ~~fact~~Facts and ~~conclusions~~Conculsions of law Law. The Examiner's proposed Order shall be presented to the Director of the Department for review, consideration and action. All parties of record shall be furnished a copy of the Examiner's proposed Order, at least 15 days in advance of the final ~~order~~ Order of the Director, and may file Exceptions thereto. [75 O.S., Section 311]

(10) At such time as the Examiner's proposed Order is to be considered and acted upon by the Director, no new testimony or evidence may be presented or entertained. Upon request, oral arguments and supporting briefs on the Examiner's proposed Findings of Fact, Conclusions of Law, and Order may be presented, but a reasonable time limit for argument shall be fixed. Oral argument shall be recorded and shall become a part of the record. All parties of record shall be furnished a copy of the final Findings of Facts, ~~Conclusion~~Conclusions of Law, and Order of the Director of the Department. [75 O.S., Section 312]

(11) As allowed by and subject to compliance with the requirements imposed under the Administrative Procedures Act, any party may request rehearing, reopening or reconsideration of any final Department action, decision or Order. The Department may, on its own motion, order

rehearing, reopening or reconsideration of any Department action, decision or order. Appeals from any final Department action, decision or ruling, may be taken as allowed and provided by and subject to the requirements of the Administrative Procedures Act. Subject to the provisions of the Administrative Procedures Act and unless otherwise directed or ordered by the Department, no Department action, decision or Order shall be stayed pending, rehearing, reopening, reconsideration or appeal. [75 O.S., Sections 317, 319]

[OAR Docket #14-801; filed 7-18-14]

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

[OAR Docket #14-802]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
460:10-1-7. Petitions to initiate rulemaking [AMENDED]
460:10-1-8. Availability of records [AMENDED]
Subchapter 3. Regulatory Program
460:10-3-3. Authority [AMENDED]
Subchapter 13. Non-Coal Mining Permit Applications Requirements for Information on Environmental Resources
460:10-13-1. Purpose [AMENDED]
460:10-13-2. Definitions [AMENDED]
460:10-13-5. Permitting for non-coal mining within a Sensitive Basin [NEW]
460:10-13-6. Operational requirements for non-coal mining within a Sensitive Basin [NEW]
Subchapter 23. Amount and Duration of Performance Bond
460:10-23-5. Adjustment of amount [AMENDED]
Subchapter 31. Blasting and Use of Explosives
460:10-31-11. Certified surface blaster qualifications [NEW]
Subchapter 35. State Inspection
460:10-35-2. State Inspections [AMENDED]
460:10-35-3. Citizens' request for state inspections [AMENDED]
460:10-35-4. Right of entry [AMENDED]
460:10-35-5. Review of adequacy and completeness inspection [AMENDED]
460:10-35-6. Review of decision not to inspect or enforce [AMENDED]
460:10-35-7. Availability of records [AMENDED]
Subchapter 37. State Enforcement
460:10-37-3. Notices of violation [AMENDED]
460:10-37-4. Service of notices of violation and cessation orders [AMENDED]
460:10-37-6. Review of citations [AMENDED]
AUTHORITY:
45 O. S. § 1 Et seq., 75 O.S § 302 Et seq., Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVENOR AND CABINET SECRETARY:
October 24, 2014
COMMENT PERIOD:
November 15, 2013 through December 15, 2013
PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and in Wagoner, Oklahoma.
ADOPTION:
February 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
February 28, 2014
APPROVAL BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration of June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCOPORATED BY REFERENCE:
N/A
ANALYSIS:
Within Subchapter 35 and Subchapter 37 there are minor typographical, punctuation, and grammatical corrections. An Oklahoma Constitutional Amendment [Article VI, Section 1] and an amendment to Title 45 O.S Section 1b resulted in a sift and a merge in the title and responsibilities of the Department's Chief Executive Officer from the Chief Mine Inspector to the title Director of the Department of Mines(Director).These title changes are in 460:10-7-1 (a), (c), (d) and (d) (1); 460:10-3-3: 460:10-35-2 (a) through 460:10-35-6 (a) (b) and (c); 460:10-37-3 (a), (b), (c), (d) and (e). A notice advertisement placement was changed from the Oklahoma Gazette to The Daily Oklahoma and/or The Tulsa World in 460:10-1-7(c). In 460:10-23-5 (b) and incorrect reference to Subchapter 29 was changed to Subchapter 27. An address correction for the Department's Oklahoma City office was revised in 460:10-1-7 (a), 460:10-1-8 and 460:10:37-7 (b), to 2915 N. Classen Blvd., Suite 213, Oklahoma City OK 73106. A reference to Subchapter 29 was corrected to Subchapter 27 in 460:10-23-5(b). Because Subchapter 13 requires environmental resources information designated and approved by the Oklahoma Water Resources Board (OWRB) to be included in non-coal mining permit applications on certain classified waters three definitions Management plan, Pit water and Sensitive Basin were added to 460:10-13-2. New sections (5) and (6) were added to Subchapter 13. Section (5) requires that, along with OAC Chapter 10's and 45 O.S Section 721 Et seq., requirements, applicants seeking new permits and revisions, increasing acreage after April 1, 2011, for non-coal mining within a Sensitive Basin submit an OWRB approved Management plan with (b) providing exemptions requirements for mining within a Sensitive Basin. The new Section(6) provides as part of operational requirements for non-coal mining within a Sensitive Basin that the application include an OWRB approved ground water use permit prior to taking, use or disposal of pit water. Subsection (b) requires an OWRB approved Management plan for mines that have lost their preexisting exemptions regarding water trapped in producing mines within a Sensitive Basin. Section 11 was added to Subchapter 31, Blasting and the Use of Explosives. The addition of 460:10-31-11 (a) through (h) requires any person performing blasting activities to have a valid, current, blaster's certificate issued by the Oklahoma Mining Commission with reciprocity available from another state In Subsection (b) a certified blaster shall provide evidence of one year's practical experience under direct supervision of a current certified surface blaster. Under (c) a blaster shall be able to understand and give written and oral orders and in (d) shall be competent in handling explosives and performing in a safe manner the type of blasting required and in (e) the blaster shall be knowledgeable and competent in the use of each type of blasting method used. Subsection (f) states that a blaster certification shall be valid for two (2) years and renewals shall require a current OSBI background check submitted prior to issuance and certification or recertification shall not be granted to any persons with a felony conviction. Pursuant to Subsection (g) a blaster shall be capable of carrying out the duties and not be addicted to narcotics, intoxicants, or similar types of drugs and (h) requires that the certification be carried by the blaster or that a copy be on file at the blasting area during the blasting operation.
CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918)485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

460:10-1-7. Petitions to initiate rulemaking

(a) Any interested person may petition the ~~Chief Mine Inspector~~ Director of the Department of Mines to initiate a proceeding for the issuance, amendment, or repeal of any regulation under this Chapter. The petition shall be submitted to the ~~Office of the Chief Mine Inspector~~, Director of the Oklahoma Department of Mines, ~~4040 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105~~ 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendments, or repeal of a regulation under this Chapter and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the ~~Chief Mine Inspector~~Director shall determine if the petition sets forth facts, technical justification, and law which may provide a reasonable basis for issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition or rule-making on the same issue shall not provide a reasonable basis. If the ~~Chief Mine Inspector~~Director determines that the petition has a reasonable basis, a notice may be published in the ~~Oklahoma Gazette~~Daily Oklahoman and or the Tulsa World seeking comments from the public on the proposed change. The Department may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.

(d) The ~~Chief Mine Inspector's~~Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the ~~Chief Mine Inspector~~Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Department shall notify the petitioner in writing.

460:10-1-8. Availability of records

Records required by this Chapter to be made available to the public shall be retained at the offices of the Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma ~~73105.~~73106.

SUBCHAPTER 3. REGULATORY PROGRAM

460:10-3-3. Authority

The ~~Chief Mine Inspector~~Director of the Department of Mines is required by Oklahoma Statutes Title 45 to promulgate rules and regulations.

SUBCHAPTER 13. NON-COAL MINING PERMIT APPLICATIONS REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

460:10-13-1. Purpose

This Subchapter sets forth general procedures governing mining operations on Oklahoma's Scenic rivers and areas classified as Outstanding resource waters, ~~and~~ High Quality waters, and Sensitive Basins.

460:10-13-2. Definitions

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

"High quality waters" (HQW) means those waters designated as high quality by the Oklahoma Water Resources Board within the Oklahoma Water Quality Standards, OAC 785:45-1-1 et seq., as possessing existing water quality which exceeds levels necessary to support propagation of fishes, shellfish, wildlife and recreation in and on the waters.

"Management plan" means a site-specific water management and conservation plan which Oklahoma Water Resources Board has determined satisfies the provisions of OAC 785:30-15-6.

"Outstanding resources water" (ORW) means certain waters of this State which have been designated as Outstanding resources waters by the Oklahoma Water Resources Board within the Oklahoma Water Quality Standards, OAC 785:45-1-1 et seq., and includes streams designated as scenic rivers and waters of the State located within the watershed of scenic rivers. They also include waters located within national parks, forests, wilderness areas, wildlife management areas, wildlife refuges and waters which contain species listed pursuant to the Federal Endangered Species Act.

"Pit water" as defined by OWRB means groundwater trapped or collecting in a producing/active mine pit that emanates from a Sensitive basin as designated by the Oklahoma Water Resources Board within OAC 785:30-15 et seq., pertaining to water trapped in producing mines.

"River bank" means the area lying directly adjacent to the river bed within a width of 100 feet on either side of the river bed.

"River bed" means any area of the river lying within the ordinary high water mark.

"Scenic river areas" conforming to the definition contained in 82 O.S. Section 1452, means the following:

(A) The Flint Creek and Illinois River above the confluence of Barron Fork Creek, also known as Baron Fork Creek and Barren Fork Creek, in Cherokee, Adair and Delaware Counties;

(B) The Barren Fork Creek, also known as Baron Fork Creek and Barron Fork Creek, in Adair and Cherokee Counties from the present alignment of Highway 59 ~~West~~ west to the Illinois River;

(C) The upper Mountain Fork River above the 600-foot elevation level of Broken Bow Reservoir in McCurtain and LeFlore Counties;

(D) Big Lee's Creek, sometimes referred to as Lee Creek, located in Sequoyah County, above the 420-foot MSL elevation, excluding that portion necessary for a dam to be built in the State of Arkansas with a crest elevation of no more ~~that~~than 420-feet

MSL elevation. The Oklahoma Water Resources Board shall make such classifications, designations or adjustments to Oklahoma's Water Quality Standards as required to allow the impoundments of water by said dam;

"Sensitive Basin" means a sensitive sole source groundwater basin or subbasin as designated by the Oklahoma Water Resources Board within OAC 785:30-15 et seq., pertaining to water trapped in producing mines.

460:10-13-5. Permitting for non-coal mining within a Sensitive Basin

(a) In addition to the requirements of this Chapter and the requirements of 45 O.S. Section 721 et seq., non-coal applicants seeking new permits, or revisions to existing permits by increasing permitted acreage beyond the boundaries of the existing permit, after August 1, 2011, for mining within a Sensitive basin must submit a management plan to the Department which has been approved by the Oklahoma Water Resources Board.

(b) All non-coal applicants seeking a non-coal mining permit which contains operations including taking, using, or disposing of pit water in an amount less than the acre feet amount per year as determined by the Oklahoma Water Resources Board specified within OAC 785:30-15-3(b) shall be exempt from the requirements of this subchapter.

460:10-13-6. Operational requirements for non-coal mining within a Sensitive Basin

(a) In addition to the requirements listed in this Chapter and those requirements within 45 O.S. Section 721 et seq., applicants for non-coal mining permits within a Sensitive basin who submit their application to the Department after August 1, 2011, must submit to the Department a groundwater use permit approved by the Oklahoma Water Resources Board prior to taking, use, or disposal of pit water.

(b) Mines which have lost their preexisting exemptions regarding water trapped in producing/active mines as provided in 82 O.S. Section 1020.2(C) and OAC 785:30-15-1(c) and as determined by the Oklahoma Water Resources Board, must submit to the Department a copy of the management plan which has been approved by the Oklahoma Water Resources Board.

(c) An applicant who has been issued a non-coal mining permit by the Department, and who the Oklahoma Water Resources Board determines is in violation of its groundwater use permit or its management plan, may be subject to enforcement actions by the Oklahoma Water Resources Board and the Department.

SUBCHAPTER 23. AMOUNT AND DURATION OF PERFORMANCE BOND

460:10-23-5. Adjustment of amount

(a) The amount of the performance bond liability applicable to a permit shall be adjusted by the Department as the acreage in the permit area is revised, methods of mining operation change, standards of reclamation change, or when the cost of future reclamation, restoration, or abatement work changes. The Department shall notify persons involved in bond coverage of any proposed bond adjustments and provide those persons an opportunity for an informal conference on the adjustment. For purposes of this Section, a person involved in bond coverage shall include the permittee, the surety and any other person with a property interest in collateral posted under the bonding regulations who has in writing to the Department requested such notification at the time the collateral is posted or the interest is acquired, whichever occurs later. The Department shall review each outstanding performance bond at the time permit reviews are conducted under 460:10-19-1, and shall re-evaluate those performance bonds in accordance with the standards in Section 460:10-23-2.

(b) A permittee, surety, or any person with property interest in collateral offered as bond coverage may request reduction of the required performance bond amount upon submission of evidence to the Department proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Department if it has to complete the reclamation and therefore warrants a reduction of the bond amount. The request shall be considered as a request for partial bond release in accordance with the procedures of ~~Subchapter 29~~Subchapter 27 of this Chapter.

SUBCHAPTER 31. BLASTING AND USE OF EXPLOSIVES

460:10-31-11. Certified surface blaster qualifications

(a) Any person performing blasting activities must have a valid, current blaster's certificate issued by the Oklahoma Mining Commission. Reciprocity shall be granted upon submittal of a recognized blasting certificate from another state.

(b) A certified surface blaster shall provide evidence of one (1) year's practical experience under the direct supervision of a current certified surface blaster.

(c) A blaster shall be able to understand and give written and oral orders.

(d) Blasters shall be competent in handling explosives and performing in a safe manner the type of blasting that will be required.

(e) The blaster shall be knowledgeable and competent in the use of each type of blasting method used.

(f) A blaster certification shall be valid for a period of two (2) years. Renewal of certification shall require a current OSBI background check be submitted prior to reissuance. A certification or recertification shall not be granted to any person with a felony conviction.

(g) A blaster shall be capable of carrying out the duties and not be addicted to narcotics, intoxicants, or similar type of drugs.

(h) The blaster certification shall be carried by the blaster or a copy shall be on file at the blasting area during the blasting operation.

SUBCHAPTER 35. STATE INSPECTION

460:10-35-2. State inspections

(a) The Department shall conduct an average of at least one inspection every month of each non-coal surface mining and reclamation operation under its jurisdiction. Additional inspections may be ordered for just cause by the ~~Chief Mine Inspector~~Director of the Department of Mines or his or her other designees.

(b) The inspections required under subsection (a) of this section shall:

(1) Be carried out on ~~a~~ an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends or holidays;

(2) Occur without prior notice to the operator being inspected or any agent or employee of such operator, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of 45 O.S. (1981), Section 721 et seq., this Chapter and the permit.

460:10-35-3. Citizens' requests for state inspections

(a) A citizen may request a state inspection by furnishing to an authorized representative of the ~~Chief Mine Inspector~~Director a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice exists and setting forth a phone number and address where the citizen can be contacted.

(b) Within 30 days of the state inspection or, if there is no state inspection, within 30 days of receipt of the citizen's written statement, the Department may send the citizen the following:

(1) If an inspection was made, a description of the enforcement action taken; or

(2) If no state inspection was conducted, an explanation of the reason why.

460:10-35-4. Right of entry

Each authorized representative of the ~~Chief Mine Inspector~~ Director conducting a state inspection of a non-coal surface mining operation under Title 45 of the Oklahoma Statutes:

(1) Shall have~~may~~ the right of entry to inspect and investigate any non-coal surface mining and reclamation operation, without advance notice or a search warrant, upon presentation of appropriate credentials, and

(2) May, at reasonable times and without delay, have access to and copy any records required to be maintained by 45 O.S. (1981), Section 721 et seq., and this Chapter, and may inspect any monitoring equipment required by 45 O.S. (1981), Section 721 et seq., or this Chapter.

460:10-35-5. Review of adequacy and completeness of inspection

Any person who is or may be adversely affected by a non-coal surface mining and reclamation operation may notify the ~~Chief Mine Inspector~~Director in writing of any alleged failure on the part of the non-coal inspection division of the Department to make an adequate and complete or periodic inspection as provided in Section 460:10-35-2. The notification shall include sufficient information to create the reasonable belief of non-compliance with Section 460:10-35-2 and to demonstrate that the person is or may be adversely affected. The ~~Chief Mine Inspector~~Director shall within 30 days of receipt of the notification determine compliance or non-compliance with Section 460:10-35-2, and if not, shall immediately order an inspection to remedy the non-compliance. The ~~Chief Mine Inspector~~Director shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the non-compliance.

460:10-35-6. Review of decision not to inspect or enforce

(a) Any person who is or may be adversely affected by non-coal surface mining and reclamation operations may ask the ~~Chief Mine Inspector~~Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for state inspection under Section 460:10-35-3. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The ~~Chief Mine Inspector~~Director shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review.

(c) Informal review under this Section shall not affect any right to formal review by the ~~Chief Mine Inspector~~ Director.

460:10-35-7. Availability of records

(a) Copies of all records, reports, inspection materials, or information obtained by the Department under 45 O.S. (1981), Section 721 et seq., and this Chapter shall be made immediately available for examination upon request to the public, except that the Department may refuse to make available:

(1) Investigatory reports compiled for law enforcement purposes; and

(2) Information not required to be made available under Section 460:10-17-8 or (c) of this Section.

(b) Copies of documents and information required to be made available under (a) of this Section shall also be provided for examination at the Department of Mines ~~in Oklahoma City~~located at 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(c) In order to protect preparation for hearings and enforcement proceedings, the Department may designate for special handling, investigative and enforcement reports and other such materials.

SUBCHAPTER 37. STATE ENFORCEMENT

460:10-37-3. Notices of violation

(a) The ~~Chief Mine Inspector~~Director or authorized representative shall ~~issued~~issue a notice of violation if, on the basis of an inspection, he orshe finds a violation of 45 O.S. (1981), Section 721 et seq., this Chapter or any condition of a permit imposed under ~~the~~ 45 O.S. (1981), Section 721 et seq., or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under Section 460:10-37-2.

(b) A notice of violation issued under this section shall be in writing, signed by the ~~ChiefMine Inspector~~Director or his or her authorized representative, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) ~~a~~A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the non-coal surface mining and reclamation operation to which it applies.

(c) The ~~Chief Mine Inspector~~Director or his orher authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(d) If the operator to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the ~~Chief Mine Inspector~~Director or authorized representative shall issue a cessation order under Section 460:10-37-2(b).

(e) The ~~Chief Mine Inspector~~Director or authorized representative shall terminate a notice of violation by written notice to the operator to whom it was issued, when he or she determines that all violations listed in the notice have been abated.

460:10-37-4. Service of notices of violation and cessation orders

A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the non-coal surface mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the ~~ChiefMine Inspector~~Director or his orher authorized representative, appears to be in charge of the surface mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to (1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the operator to whom it is issued or his designated agent. Service shall be complete upon tender of the notice ~~of~~or order or of the mail and shall not be deemed incomplete because of refusal to accept.

460:10-37-6. Review of citations

(a) An operator issued a notice of violation or cessation order under Sections 460:10-37-2 or 460:10-37-3, may request review of that action by filing an application for review within 30 days after receiving notice of the action, at the following address: Oklahoma Department of Mines~~,~~, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) The filing of an application for review under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

[OAR Docket #14-802; filed 7-18-14]

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

[OAR Docket #14-803]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Standards
460:15-1-3. Permitting and reclamation plans [AMENDED]
460:15-1-5. Mine superintendent [AMENDED]
460:15-1-25. Ventilation [AMENDED]
AUTHORITY:
45 O .S. § 1.5 Et seq., 75 O. S. §302 Et seq., Oklahoma Mining Commission
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FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
In OAC:15, three sections have been revised all within Subchapter 1. Subsection (d) has been added to 460:15-1-3 requiring that each application contain descriptions that the applicant bases the right to enter and begin mining activities on the permitted area. The description shall identify those documents by type and date of execution, the specific lands to which the documents pertains and an explanation of the legal rights claimed by the applicant. Copies of these documents shall be submitted upon request by the Department. In 460:15-1-5(a) new text requiring that a certified nine

superintendent be on each shift that the mine is operating has been added. In Section 25 text has been added to (k) that changes, as per the ventilation plan, that a suitable man door be no more than six hundred (600) feet apart instead of the now allowed three hundred (300) feet apart. A Subsection (m) was also added requiring that combustible materials shall not be stockpiled or stored within 300 feet of any surface mine opening.

CONTACT PERSON:

Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL STANDARDS

460:15-1-3. Permitting and reclamation plans

(a) It shall be unlawful for any person to engage in any mining operation without first obtaining from the Oklahoma Department of Mines a permit for such separate mining operation.

(b) Each application for a permit shall be accompanied by a plan of reclamation that meets the requirements of the Mining Lands Reclamation Act or have the plan submitted and awaiting approval from the Oklahoma Department of Mines. If the plan has been submitted prior to the application, a letter stating the date the reclamation plan was submitted must be attached to the permit application.

(c) Each application shall contain preliminary plans for ventilation, roof control, certification and apprentices, escapeway, first aid, mine rescue, electrical, hoisting and man-trips, fire protection, mining near abandoned workings, combustible materials and rock dusting, communication, blasting and explosives, books and records, accident prevention, and use and storage of toxic and noxious materials, and other requirements in accordance with Title 45 O.S. and 30 C.F.R.

(d) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin underground mining activities in the permit area. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant. A copy of said documentation shall be submitted upon request by the Department.

460:15-1-5. Mine superintendent

(a) **Employment.** In order to secure efficient management and to promote health and safety of the persons employed therein, the operator of each and every coal mine shall employ a duly qualified and certified superintendent who shall have charge of the entire operation and shall see that the provisions of the Oklahoma Mining Laws are properly executed. A certified superintendent shall be on each shift the mine is in operation. During the absence of the superintendent, not to exceed thirty (30) calendar days, a relief person possessing at least a Mine Foreman ~~certificated~~certification may be appointed to act as superintendent.

(b) **Superintendent duties.** The duties of a mine superintendent are as follows:

(1) Keep a sufficient quantity of quality materials and supplies readily accessible for the preservation of the mine and safety of the employees.

(2) Read, examine and countersign all reports.

(3) Cooperate with the mine foreman and others, in the fulfillment of their duties.

(4) Post all mine rules and regulations and maintain an adequate supply of record books.

(5) Notify the Department at least ten (10) days prior to any change that was originally submitted and approved in the mine application.

(c) **Superintendent responsibilities.** The responsibilities of a mine superintendent are as follows:

(1) Plans and coordinates activities of personnel engaged in mining.

(2) Plans and coordinates development of the mine.

(3) Obtains necessary data to determine methods of ~~mine~~mining, location of support facilities, surface and underground, roof and rib control, ventilation and preliminary plans.

(4) Tour~~s~~ mine regularly to detect and resolve safety, personnel and production problems.

(5) Makes or causes to be made on a day-to-day basis temporary notations, supplements, and revisions to the mine map showing the working face of each working place, pillars mined, ventilation controls, change in ventilation and exculpates and other pertinent data.

460:15-1-25. Ventilation

(a) Main fans shall be:

(1) Installed on the surface;

(2) Installed in fireproof housings and connected to the mine opening with fireproof air ducts; and

(3) Equipped with a pressure-recording gauge and an automatic signal device designed to give alarm should the fan slow or stop. The signal from this device should be placed so that it will be seen or heard by a responsible person who is always on duty and can hear or will observe such alarm when men are underground and who shall take appropriate action immediately.

(b) To protect main fans from forces coming out of the mine should an explosion occur:

(1) Main fans should be offset not less than fifteen (15) feet from the nearest side of the mine opening, and explosion doors or a weak wall having a cross sectional area equal to or greater than the connection entry should be provided in direct line with possible explosion forces; or

(2) Main fans may be installed in line with diversion entry, slope, or shaft (fan entry) driven from the mine air courses to the surface.

(3) The surface opening of the fan entry should be no less than fifteen (15) feet nor more than one hundred (100) feet from the surface opening of the connected mine air course (pressure relief entry). The pressure relief entry

opening should be provided with a weak wall or explosion doors in direct line with forces of an explosion originating underground and such weak wall or explosion doors should have a cross-sectional area of the pressure relief entry not be less than that of the fan entry. The underground intersection of the fan entry and pressure relief entry should be no less than fifteen (15) feet nor more than one hundred (100) feet from the surface opening of the pressure relief entry. The pillar of coal between the pressure relief entry and the fan entry should, regardless of coal bed height, contain not less than two thousand five hundred (2,500) square feet.

(c) Main fans may be driven either by electric motors or internal combustion engines.

(1) When electric motors are used, they should be provided with a separate power circuit independent of any other mine circuit.

(2) When an internal combustion engine is used, the engine should be installed in a fireproof housing, located so as to be protected from possible fuel supply fire or explosions. The engine and exhaust should be located out of direct line with the airstream produced by the fan and be vented to the atmosphere in such a manner that the exhaust gases cannot contaminate the mine intake airstream or any enclosure.

(d) In mines ventilated by multiple force or multiple exhaust main fans, each main fan installation should be equipped with fireproof doors, so positioned that in the event of the failure of a main fan, the doors at the fan will automatically close and prevent air reversal through the fan.

(e) In mines ventilated by a combination of force and exhaust fans, fireproof automatic closing ~~doors~~doors will automatically close to prevent air reversal that would affect the safety of the miners.

(f) The area surrounding all main fans should be kept free of flammable material for at least one hundred (100) feet in all directions.

(g) The minimum quantity of air reaching the last open crosscut in any pair or set of rooms shall be nine thousand (9,000) cubic feet per minute, and the minimum quantity of air reaching the intake end of a pillar line shall be nine thousand (9,000) cubic feet per minute. The minimum quantity of air in any coal mine reaching any face where coal is being mined shall be three thousand (3,000) cubic feet per minute. The Department of Mines or the mine inspector may require in any coal mine a greater quantity and velocity of air when he or she determines it necessary to protect the health and safety of the miners. The quantity of air shall be measured in the last open crosscut in each pair or set of developing entries. The ventilation shall be conducted through all accessible entries, rooms and all working places, in such manner and with such velocity as to dilute and render harmless inflammable, noxious and poisonous gases.

(h) In the event of interruption of the ventilation current, employees shall be immediately withdrawn to the assembly points as designated by the operator, and the power to the faces disconnected. If the ventilation current cannot be restored in fifteen (15) minutes, all employees shall not return to work until the ventilation current has been restored and the area examined and reported safe.

(i) All ventilating fans shall be operated continuously unless:

(1) Repair or maintenance is needed.

(2) Mine is to be permanently closed and is in the process of being sealed.

(3) If the ventilating fan has been temporarily stopped for more than fifteen (15) minutes and the employees are withdrawn from the mine. No person shall be allowed underground except for the purpose of inspection until the mine has been reported free of accumulations of explosive gases and other dangers.

(j) The fan shall be inspected at least daily and recorded in an approved book.

(k) All main stoppings, overcasts, or undercasts between main intakes and returns shall be substantially built of non-combustible material. Stoppings between intake and return air courses shall be maintained not more than three (3) crosscuts from the face. A suitable man door shall be provided as per the ventilation plan, but not more than ~~three hundred (300)~~six hundred (600) feet ~~a part~~apart. Man doors shall have a minimum opening of nine hundred (900) square inches. All mines liberating any dangerous, explosive or noxious gases shall be kept free of standing gas in all working places and roadways. No accumulation of explosive gas shall be allowed to exist in any open, worked out, or~~,~~ abandoned parts of the mine. It shall be removed as soon as possible after its discovery, and no miners or other persons who are not employed in the removal of the dangerous accumulation shall be allowed to remain in any mine or part of mine during the time that a dangerous accumulation of explosive gas is being removed from any part of this mine. All worked out places or abandoned areas shall be either properly ventilated or examined, sealed, or maintained as a bleeder system.

(l) In all mines it shall be the duty of the operator to employ one or more persons holding certificates of competency from the ~~State~~Oklahoma Mining Commission as mine foreman~~,~~ or fire-boss~~,~~ to examine the mine and who shall examine every working place, all places adjacent to live working, every roadway and traveling way, all seals, every road to abandoned workings, and over all falls in the mine, for inflammable, noxious and poisonous gases and other dangerous or unsafe conditions such as falls of roof, dangerous tracks, timbering, or water. Such examination shall begin within three (3) hours prior to the appointed time for each shift to enter the mine and shall be made with an approved methane detection device and flame-safety lamp. The fire-boss shall examine for all dangers in all portions of the mine under his charge and after each examination he shall leave at each place examined the date, time and initials of his examinations. He shall place a danger signal at every place, where inflammable, noxious and poisonous gas has been discovered, or where immediate danger is found to exist from any other cause. The fire-boss shall report to the mine foreman all places where dangerous accumulations of gas have been found, and the nature and location of any other existing danger, and shall record the results of his inspection in a book kept for that purpose. No person shall enter any

portion of a mine falling within the above classification until the fire-bosses have completed their examination and have reported that the mine is in a safe condition for the employees to enter.

(m) Combustible material shall not be stockpiled or stored within 300 feet of any surface mine opening.

[OAR Docket #14-803; filed 7-18-14]

TITLE 460. DEPARTMENT OF MINES CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[OAR Docket #14-805]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
460:20-1-7 [AMENDED]
460:20-1-9 [AMENDED]
Subchapter 11. State Processes for Designating Areas Unsuitable for Surface Mining Operations
460:20-11-4 [AMENDED]
Subchapter 17. Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights
460:20-17-4 [AMENDED]
Subchapter 27. Surface Mining Permit Applications: Minimum Requirements for Reclamation and Operations Plan
460:20-27-14 [AMENDED]
Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards
460:20-43-47 [AMENDED]
Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities
460:20-45-17. [AMENDED]
460:20-45-47. [AMENDED]
Subchapter 63. Individual Civil Penalties
460:20-63-5. [AMENDED]
AUTHORITY:
45 O. S. § 1.5 Et seq., 45 O .S. §789, Oklahoma Mining Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
N/A
COMMENT PERIOD:
February 1, 2013 through March 6, 2013
PUBLIC HEARINGS:
March 4, 2013 in McAlester, OK and on March 6, 2013 in Oklahoma City, OK
ADOPTION:
March 28, 2013
SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
April 5, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATED BY REFERENCE:
N/A
ANALYSIS:
This amendment to OAC Chapter 20 revises numerous Subchapters. In Subchapter 1, Section 7 and Section 9 and in Subchapter 27, Section 14, the Department's Oklahoma City office address has been changed to 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 74306. Tag lines have been added to 460:20-11-4 with (b), (c) and (d) correcting the misspelled word intervener and reflecting the Oklahoma City address change. The address change is also corrected in 460:20-63-5(b)(1) and a tag line has been added to (d). New text has been added to 460:20:17-7(b)(2)(C) that requires a current bond calculation (less than 60 days old) detailing the costs to reclaim the permit by a third party under the approved worst case scenario. In 460:20-43-47(c), a (3) was added requiring operators to report in writing all instances of alleged subsidence within 30 calendar days identifying the location in relation to the underground mine workings. There are three modifications to 460:20-45-17 beginning with the addition of the words, and the right of entry information to the Section line. A new (b) was requires the application to describe the documents the applicant bases his legal right to enter and to begin underground coal mining and reclamation operations and whether that right is the subject of pending litigation. The description shall identify the document type, date of execution, the specific lands in the documents and an explanation of the legal rights claimed by the applicant. In (b) (1) (A) (B) and (C) describe the requirements or documentation that must be submitted when the private mineral estate to be mined has been severed from the private surface estate. Paragraph (2) reads that nothing in Section 17 shall be construed to provide the Department with the authority to adjudicate property right disputes. A new Paragraph (6) has been added to 460:20-45-47(c) requiring the operator to report to the Department all instances of alleged subsidence within 30 calendar days. The report must be in writing and must identify the location of the alleged subsidence in relation to the underground mine workings.
CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

460:20-1-7. Petition to initiate rulemaking

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, Oklahoma Department of Mines, ~~4040 N. Lincoln Boulevard~~, 2915 N. Classen Blvd, Suite 213, Oklahoma City, Oklahoma ~~73105~~73106.

(b) The petition shall be a concise statement of the facts, technical justification, and law which requires issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth the facts, technical justification or law previously considered in a petition or rulemaking of the same issue shall not be provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the office State register of public notices seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

460:20-1-9. Availability of records

(a) Records required by the Act to be made available locally to the public shall be retained at the offices of the Department ~~o~~ of Mines, ~~4040 N. Lincoln Boulevard~~, 2915 N. Classen Blvd., Suite 213 Oklahoma City, Oklahoma ~~73105~~ 73106.

(b) Other records or documents in the possession of the Office of Surface Mining may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

SUBCHAPTER 11. STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE MINING OPERATIONS

460:20-11-4. Initial processing, recording, and notification

(a) **Initial processing.**

(1) Within 30 days of receipt of a petition, the Department shall notify the petitioner by certified mail whether or the petition is complete under Section 460:20-11-3(b) or (c). Complete, for a designation or termination petition, means that the information required under Section 460:20-11-3(b) or (c) has been provided.

(2) The Department shall determine whether any identified coal resources exits in the area covered by the petition, without requiring any showing from the petitioner. If the Department finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) If the Department determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of Section 460:20-11-3(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the Department shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations If the new petition does not contain such material, the Department may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceeding where the facts were considered.

(5) The Department shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(6) The Department may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such determination, the Department may issue a decision on a complete and accurate permit application and shall inform the petitioner why this Chapter cannot consider the part of the petition pertaining to the proposed permit area.

(b) **Notification.**

(1) Promptly after a petition is received, the Department shall notify the general public of the receipt of the petition by newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State registry of public notices. The Department shall make copies of the petition available to the public and shall provide copies of the petition to other interested government agencies, ~~intervenors~~interveners, persons with ownership interests of record in the property. Proper notice shall comply with the requirements of applicable State law.

(2) The Department may provide for a hearing or a period of written comments on the completeness of petitions. If a hearing or comment period on the completeness is provided, the Department shall inform interested governmental agencies, ~~intervenors~~ interveners, persons with an ownership interest of record in the property, and other persons, known to the Department to have an interest in the property of the opportunity to request to participate in such a hearing or to provide written comments. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. Notice of such hearing shall be made by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any official State registry of public notices. The Department shall notify the petitioner of such a hearing by certified mail. On the basis of the Departmental review as well as consideration of all comments, the Department shall determine whether the petition is complete.

(3) Promptly after the determination that a petition is complete, the Department shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for 2 consecutive weeks in the locale of the area covered by the petition, in the newspaper providing the largest circulation in the region of the petitioned area, and in any official State register of public notices.

(c) **Interveners.** Until three days before the Departments holds a hearing under Section 460:20-11-5, any person may intervene in the proceedings by filing allegations of facts describing how the designation determination directly affects the ~~intervenor~~, intervener supporting evidence, a short statement identifying the petition to which the allegations pertain, and the ~~intervenor's~~intervener's name, address, and telephone number.

(d) **Recordkeeping.** Beginning immediately after a complete petition is filed, the Department shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the Department. The Department shall make the record available for public inspection free of charge and for copying at reasonable costs during all normal hours at a central location of the county or multi-county area in which the land petitioned is located, and at the main office of the Department of Mines~~, 4040 North Lincoln Boulevard~~2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma ~~73105~~ 73106.

SUBCHAPTER 17. REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

460:20-17-4. Permit renewals

(a) **General.** A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) **Application requirements and procedures.**

(1) An application for renewal of a permit shall be filed with the Department at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the
Department and shall include at a minimum~~-~~:

(A) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(B) Evidence that a liability insurance policy or adequate self-insurance under Section 460:20-37-17of this Chapter will be provided by the applicant for the proposed period of renewal;

(C) A current bond calculation (less than 60 days old) detailing the costs to reclaim the permit by a third party under the approved worst case scenario and ~~Evidence~~evidence that the performance bond in effect for the operation will continue in full force and effect for any renewals requested, as well as any additional bond required by the Department pursuant to Subchapter 37 of this Chapter;

(D) A copy of the proposed newspaper notice and proof of publication of same, as required by Section 460:20-23-9 of this Chapter; and

(E) Additional revised or updated information required by the Department.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in Sections 460:20-15-5 and 460:20-15-8 (b) of this Chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of Section 460:20-17-3.

(c) **Approval process.**

(1) **Criteria for approval.** The Department shall approve a complete and accurate application for permit renewal, unless it finds, in writing that:

(A) The terms and conditions of the existing permit are not being satisfactorily met;

(B) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

(C) The requested renewal substantially jeopardizes the operator's continuingability to comply with the Act and the regulatory program on existing permit areas;

(D) The operator has not provided evidence of having liability insurance or self-insurance as required in Section 460:20-37-17 of this Chapter;

(E) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Department might require pursuant to Subchapter 37 of this Chapter; or

(F) Additional revised or updated information required by the Department has not been provided by the applicant.

(2) **Burden of proof.** In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(d) **Renewal term.** Any permit renewal shall be for a term not to exceed the period of the original permit established under Section 460:20-15-8 of this Chapter.

(e) **Notice of decision.** The Department shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM.

(f) **Administrative and judicial review.** Any person having an interest which is or may be adversely affected by the decision of the Department shall have the right to administrative and judicial review set forth in Subchapter 19 of this Chapter.

SUBCHAPTER 27. SURFACE MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLAN

460:20-27-14. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct 1985). "Earth Dams and Reservoirs," Technical Release No. 60 (R-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, ~~order~~Order No. P87-157509/AS. Copies can be inspected at the Oklahoma Department of Mines ~~4040 N. Lincoln Blvd., Suite 107~~, 2915N.ClassenBlvd.,Suite213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), shall:

(A) Be prepared by, or under the direction of, and certified, registered, professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) Include any geotechnical investigation, design, and construction requirements for the structure;

(C) Describe the operation and maintenance requirements for such structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does meet size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams, in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer,

(B) Include any design and construction requirements for the structure, including any required geotechnical information;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structure.** Siltation structure, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-43-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216.

(c) **Sedimentation ponds: permanent and temporary impoundments.**

(1) Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-43-14 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216.

(2) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 20 CFR 77.216-1 and 77.216-2.The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(3) For an impoundment not meeting the size or other criteria of 30 CFR 77.216 (a) or the Class B or C criteria for dams in TR-60, (210-VI-TR-60, Oct. 1985), "Earth Dams and Reservoirs," or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with minimum static safety factor of 1.3 specified in Section 460:20-43-14 (a)(3)(B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-43-29 through 460:20-43-31 of this Chapter.

(e) **Coal processing waste dams and embankments.** Coal processing waste dams and embankments shall be designed to comply with the requirements of Sections 460:20-43-20 through 460:20-43-31 of this Chapter. Each plan shall comply with the requirements of the Mine Health Safety Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in an area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) **Stability analysis.** If the structure meets Class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR 77.216(a), each plan under subsection (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

460:20-43-47. Subsidence control

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.

(c) The operator shall:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) To the extent required under applicable provisions of State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a non-~~cancellable~~cancelable premium-prepaid insurance policy.

(3) The operator shall report to the Department all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the underground mine workings.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5(d) of this Chapter.

SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES

460:20-45-17. Coal recovery and right of entry information

(a) Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

(b) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin underground coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the document by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(1) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit:

(A) A copy of the written consent of the private mineral estate owner for the extraction of coal by underground methods;

(B) A copy of the conveyance that expressly grants or reserves the right to extract coal by underground mining methods;or

(C) If the conveyance does not expressly grant the right to extract coal by underground mining methods, documentation that under applicable State Law, the applicant has the legal authority to extract the coal by those methods.

(2) Nothing in this Section shall be construed to provide the Department with authority to adjudicate property right disputes.

460:20-45-47. Subsidence control

(a) **Operator measures to prevent or minimize damage.**

(1) The operator shall either adopt measures consistent with known technology which prevents subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface land; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this Subchapter shall be construed to prohibit the standard method of room-and-pillar mining.

(2) If an operator employs mining technology that provides for planned subsidence in

a predictable and controlled manner, the operator must take necessary and prudent measures, consistent with mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and to minimize material damages to such structures are not required if:

(A) The operator has the written consent of their owners or

(B) Unless the anticipated damage would constitute a threat to health or safety, costs of such measures exceed the anticipated costs of repair.

(3) Nothing in this part prohibits the standard method of room-and pillar-mining.

(b) Operator compliance. The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to Section 460:20-31-13 of this Chapter.

(c) Repair of damage to surface lands. The operator shall:

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) Promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. If repair option is selected, the operator must fully rehabilitate, restore, or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidencerelated damage. The operator may provide compensation by the purchase, before mining, of non-cancelable premium-prepaid insurance policy. The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

(3) Either correct material damages resulting from subsidence caused to any structures or facilities not protected by paragraph (c)(2) of this section by repairing the damage or compensate the owner of the structure or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase, before mining of a non-cancelable premium-prepaid insurance policy.

(4) Be governed by a rebuttable presumption of causation by subsidence. The information to be considered in determination of causation is whether damage to protected structures was caused by subsidence from underground mining. All relevant and reasonably available information will be considered by the Department.

(5) **Adjustments of bond amounts for subsidence damage.** When subsidence related material damage to land, structures, or facilities protected under paragraph (c)(1) through (c)(3) of this section occurs, or when contamination, diminution, or interruption to a water supply protected under 460:20-45-8(j) occurs, the Department must require the operator to obtain additional performance bond in the amount of the estimated cost of repairs if the operator will be repairing, or in the amount of the decrease in value if the operator will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the operator will be replacing the water supply, until the repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The Department may extend a 90-day time frame, but not to exceed one year, if the operator demonstrates and the Department finds in writing that the subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected

water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence related material damage to lands or protected structures, or the replacement of the protected water supply.

(6) The operator shall report to the Department all instances of alleged subsidence within 30 calendar days. The report must be in writing. The report must identify the location of the alleged subsidence in relation to the underground mine workings.

(d) Underground mining activities shall not be conducted beneath or adjacent to:

(1) Public buildings and facilities;

(2) Churches, schools, and hospitals; or

(3) Impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the Department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant-water source for any public supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by Subsection (d) of this Section, the Department may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The Department shall suspend underground mining activities under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the Department, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the Department. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of Section 460:20-15-5 (d) of this Chapter.

SUBCHAPTER 63. INDIVIDUAL CIVIL PENALTIES

460:20-63-5. Procedure for assessment of individual civil penalty

(a) **Notice.** The Department shall service on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for a penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) **Final order and opportunity for review.** The notice of proposed individual civil penalty assessment shall become a final order of the Director 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice proposed individual civil penalty assessment a petition for review with the Oklahoma Department of Mines,~~4040 N.Lincoln Blvd.,~~ 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma ~~73105~~ 73106. (Phone (405) ~~521~~427-3859) according to the Rules of Practice and Procedures.

(2) The Department and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

(c) **Service.** The individual civil penalty shall be served on the person to whom it is directed or his or her designated service agent promptly after issuance as follows:

(1) By tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge at the exploration or surface coal mining and reclamation operation.

(2) As an alternative to paragraph (b)(1) of this Section, service may be made by sending a copy of the notice or Order by certified mail or by hand to the permittee or his or her designated agent. Service shall be complete upon tender of the Notice or Order or of the mail and shall not be deemed incomplete because of refusal to accept.

(d) **Service agent.** Designation by any person of an agent for service of notice and Orders shall be made in writing to the Department.

[OAR Docket #14-805; filed 7-18-14]

TITLE 460. DEPARTMENT OF MINES CHAPTER 20. THE PERMANENT REGULATIONS GOVERNING THE COAL RECLAMATION ACT OF 1979

[OAR Docket #14-804]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 15. Requirements for Permits and Permit Processing
460:20-15-6.7 [AMENDED]
460:20-15-10.1 [AMENDED]
Subchapter 17. Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights
460:20-17-5 [AMENDED]
Subchapter 29. Underground Mining Permit Applications: Minimum Requirements for Information on Environmental Resources
460:20-29-10 [AMENDED]
460:20-29-11 [AMENDED]
Subchapter 31. Underground Mining Permit Applications: Minimum Requirements for Reclamation
460:20-31-9 [AMENDED]

Subchapter 43. Permanent Program Performance Standards: Surface Mining Standards
460:20-43-7 [AMENDED]
460:20-43-23 [AMENDED]
460:20-43-37 [AMENDED]
460:20-43-49 [AMENDED]
Subchapter 45. Permanent Program Performance Standards: Underground Mining Activities
460:20-45-5 [AMENDED]
Subchapter 47. Special Permanent Program Performance Standards: Auger Mining
460:20-47-4. Auger mining: hydrologic balance

AUTHORITY:
45 O. S. § 1.5 Et seq., 45 O. S. §789, Oklahoma Mining Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014

COMMENT PERIOD:
November 15, 2013 through December 15, 2013

PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and Wagoner, Oklahoma

ADOPTION:
February 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
February 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration of June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTION:
N/A

INCORPORATED BY REFERENCE:
N/A

ANALYSIS:
This amendment to AOC Chapter 20 contains changes within numerous Subchapters. In Subchapter 1, the word Provisions was added to the title In 460:20-15-6.7 pertaining to unanticipated events or conditions at remining sites text was omitted that references a long expired permit date for unabated violations resulting from unanticipated event. When an improvidently issued permit is to be suspended or rescinded, by the Department pursuant to 460:20-15-10.1(c), an added (1) requires the Department to send the permittee written notice requiring that all surface coal mining operations under that permit to cease, the new (2) requires the written notice to be posted at the office closest to the permit area and in (d) duplicated language has been deleted. In 460:20-17-5(d) (1) an incorrect reference to 460:20-15-6.9 has been changed to 15-6.6 of this Chapter. Two text additions have been made to Subchapter 29, Section 10(4) now requires the GPS coordinates for each building that are required in the application maps which include the all building located in and within 1,000 feet of the proposed permit area, along with the building's current use. Section 11(a) (5) requires the application to include cross sections, maps, and plans showing the location and extent of known workings of active, inactive, or abandoned underground mines, including mine opening to the surface and these must now include the depth to the mined coal if available within the proposed permit and adjacent areas. There are also some punctuation and grammar corrections made to Subsection (b). In 460:20-31-9 there is an address change for the Department's Oklahoma City office which is now 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106 and in (f) the word be was added. A tag line, Removal, was added to 460:20-43-7(a) and under a new (1) all topsoil must be removed a minimum of 60 feet or one pit width (whichever is less) in advance of the active pit unless the Department determines a different distance. Under 460:43-23, Paragraphs (17), (18), (19) and (20) have been added requiring additional blasting record data that must be available to the Department and the public. The new data required are the names of the blasting crew, expiration date of the blaster's certification, a digital video of each blast with information about the location of the camera and bearings to the blast, and the drill logs respectfully. A paragraph (2) was added to 460:20-43-37 requiring every twelve months after the issuance and until final bond release, that the permittee submit a map or maps signed and dated by a licensed professional engineer or licensed land surveyor that shows, the newly added (A) The current boundaries, (B) The cumulative disturbed areas, (C) The cumulative acres that have been back filled and graded to the approved postmining contours, (D) The cumulative acres retopsoiled and (E) The cumulative acres where permanent vegetation has been established and (F) A map legend detailing the data used to create the map or maps. Within 460:20-43-49(a), new text has been added stating that to qualify for temporary cessation, additional minable coal must be available under a valid lease and the area of addition coal must be located within the existing boundaries or immediately adjacent to the permit and subject of a pending revision application. A new (c) was also added that states that if temporary cessation exceeds twelve months in duration, a notice of intent to continue the temporary cessation must be submitted to the Department annually along with a current bond recalculation, proof of notice to landowners, and undated information on the items included in the original notice as described in (b) of this Section. Within 20-45-5 an added (c) states that when no longer needed for monitoring or other approved use or transfer as a water well, each shaft, drift, adit, tunnel, exploratory hole, entryway or other openings to the surface shall be capped, sealed, backfilled, or otherwise properly managed, as required and that permanent closure measures be designed to keep people, livestock, fish and wildlife, machinery safe and to keep acid or other toxic drainage from entering ground or surface waters. Subsection (d) has been added to 460:20-47-4, auger mining, which requires that surface drainage must be directed away from the highwall during augering operations in order to maintain the stability of the highwall and to protect persons conducting the augering.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308 (E),WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 15. REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

460:20-15-6.7. Unanticipated events or conditions at remining sites

(a) The applicant is eligible for a permit under OAC 460:20-15-6.6 if an unabated violation:

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was~~:~~held by the applicant.

~~(A) Issued before September 30, 2004, including subsequent renewals; and~~

~~(B) Held by the applicant.~~

(b) For permits issued under OAC 460:20-33-12, an event or condition is presumed to be unanticipated for the purpose of this section if it:

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application.

460:20-15-10.1. Suspension or rescission requirements for improvidently issued permits

(a) Except as provided in paragraph (b) of this Section, the Department must suspend or rescind the permit upon expiration of the time specified in Section 460:20-15-9.2(b) or (c) in this Subchapter unless permittee submits evidence and the Department finds that:

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) The permittee or its operator no longer owns or controls the relevant operation;

(3) The Department's finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) The permittee is pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If the permittee has requested administrative review of a notice of proposed suspension or rescission under Section 460:20-15-9.2(e) of this Subchapter, the Department will not suspend or rescind the permit unless and until the Department's Decision that the permit was improvidently issued is affirmed.

(c) When the Department suspends or rescinds the permit under this section, it must:~~issue permittee a written notice requiring it to cease all surface coal mining operations under the permit;~~

(1) Issue the permittee a written notice requiring it to cease all surface coal mining operations under the permit and

(2) Post the notice at the office closest to the permit area.

(d) If the Department suspends or rescinds the permit under this section, the Applicant or Operator may request administrative review of the notice under the procedures of 460:2, the Rules of Practice and Procedure for the Coal Reclamation Act. ~~of 1979, if the proposed notice to suspend or rescind the permit issued under Section460:20-15-9.2 of this Subchapter has not been the subject of an administrative proceeding.~~

SUBCHAPTER 17. REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

460:20-17-5. Transfer, assignment, or sale of permit rights

(a) **General.** No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the Department. At its discretion, the Department may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the Department that sufficient bond coverage will remain in place.

(b) **Application requirements.** An applicant for approval of the transfer, assignment, or sale of permit rights shall:

(1) Provide the Department with an application for approval of the proposed transfer, assignment, or sale including:

(A) The name and address of the existing permittee and permit number or otheridentifier;

(B) A brief description of the proposed action requiring approval; and

(C) The legal, financial, compliance, and related information required by Subchapter 23 of this Chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations.

(c) **Public participation.** Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Department within a time specified by the Department.

(d) **Criteria for approval.** The Department may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor:

(1) Is eligible to receive a permit in accordance with Section ~~460:20-15-6.9~~ 460:20-15-6.6 of this Chapter~~;~~.

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee.

(3) Meets any other requirements specified by the Department.

(e) **Notification.**

(1) The Department shall notify the permittee, the successor~~, commenters~~ commenters,and OSM of its findings.

(2) The successor shall immediately provide notice to the Department of the consummation of the transfer, assignment, or sale of permit rights.

(f) **Continued operation under existing permit.** The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit.

SUBCHAPTER 29. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

460:20-29-10. Maps: general requirements

The permit application shall include maps showing:

(1) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(2) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(3) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence, and timing of the mining of subareas for which it is anticipated that additional permits will be sought;

(4) The location of all buildings in and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings (include GPS coordinates for each building);

(5) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(6) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(7) The locations of water-supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the Department, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(8) Each public road located in or within 100 feet of the proposed permit area;

(9) The boundaries of any public park and locations of any cultural and historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit or adjacent areas;

(10) Each cemetery that is located in or within 100 feet of the proposed permit area.

(11) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

(12) Other relevant information required by the Department.

460:20-29-11. Cross sections, maps, and plans

(a) The application shall include cross sections, maps, and plans showing:

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the over burden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface and the depth to the mined coal if available within the proposed permit and adjacent areas;

(6) Location and extent of subsurface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

(b) Cross sections, maps, and plans included in a permit application as required by this Section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer;~~,~~ a professional geologist;~~,~~or a qualified registered, professional land surveyor, with assistance from ~~expects~~experts in related fields such as landscape architecture, and shall be updated as required by the Department.

SUBCHAPTER 31. UNDERGROUND MINING PERMIT APPLICATIONS: MINIMUM REQUIREMENTS FOR RECLAMATION

460:20-31-9. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments

(a) **General.** Each application shall include a general plan for each proposed siltation structure, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, with assistance from experts in related fields such as landscape architecture;

(B) Contain a description, map, and cross section of the structure and its location;

(C) Contain preliminary hydrologic and geologic information required to assessthe hydrologic impact of the structure;

(D) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(E) Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the Department. The Department shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Impoundments meeting the class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VT-TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR-60) shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). The technical release is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87-157509/AS. Copies can be inspected at the ~~Oklahoma Department of Mines 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, OK.~~Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(B) Include any geotechnical investigation, design, and construction requirements for the structure;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR-60) shall:

(A) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer;

(B) Include any design and construction requirements for the structure, including any required geotechnical information;

(C) Describe the operation and maintenance requirements for each structure; and

(D) Describe the timetable and plans to remove each structure, if appropriate.

(b) **Siltation structures.**

(1) Siltation structures, whether temporary or permanent, shall be designed in compliance with the requirements of Section 460:20-45-12 of this Chapter. Any impoundment or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of Section 460:20-45-24 of this Chapter.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) **Permanent and temporary impoundments.** Permanent and temporary impoundments shall be designed to comply with the requirements of Section 460:20-45-14 of this Chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(1) Each plan for an impoundment meeting the size or other criteria of the Mine Safety and Health Administration shall comply with the requirements of 30 CFR 77.216-1 and 77.216-2. The plan required to be submitted to the District Manager of MSHA under 30 CFR 77.216 shall be submitted to the Department as part of the permit application in accordance with Subsection (a) of this section.

(2) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR-60 (210-VI-TR60, Oct. 1985), "Earth Dams and Reservoirs,"~~,~~ or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in 460:20-45-14(a)(3)B) of this Chapter.

(d) **Coal processing waste banks.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter.

(e) **Coal processing waste dams and embankments.** Coal processing waste banks shall be designed to comply with the requirements of Sections 460:20-45-29 through 460:20-45-31 of this Chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location and depth of the borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical

conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground-water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) **Stability analysis.** If the structure~~,~~ meets Class B or C criteria for dams in TR-60 or the size or other criteria of 30 CFR 77.216(a) then each plan under Subsections (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

SUBCHAPTER 43. PERMANENT PROGRAM PERFORMANCE STANDARDS: SURFACE MINING STANDARDS

460:20-43-7. Topsoil and subsoil

(a) **Removal.**

(1) All topsoil must be removed a minimum of 60 feet or one pit width (whichever is less) in advance of the active pit unless a different distance is determined by the Department.

(A) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(B) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the Department in accordance with (b) of this Section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The Department may choose not to require the removal of topsoil for minor disturbances which:

(A) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(B) Will not destroy the existing vegetation and will not cause erosion.

(4) **Timing.** All material to be removed under this Chapter shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) **Substitutes and supplements.** Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the Department that the resulting soil medium is equal to, or more suitable for, sustaining vegetation than~~,~~ the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) **Storage.**

(1) Materials removed under Subsection (a) of this Section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regarded areas.

(2) Stockpiled materials shall:

(A) Be selectively placed on a stable site within the permit area;

(B) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(C) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the Department; and

(D) Not be moved until required for redistribution unless approved by the Department.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under (a) (1) of this Section would be detrimental to the quality or quantity of those materials, the Department may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that:

(A) Such action will not permanently diminish the capability of the topsoil of the host site; and

(B) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) **Redistribution.**

(1) Topsoil materials removed under Subsection (a) of this Section shall be redistributed in a manner that:

(A) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(B) Prevents excess compaction of the materials; and

(C) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under Subsection(a) of this Section, the regraded land shall be treated, if necessary, to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The Department may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that:

(A) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently availableto prevent sedimentation, and

(B) Such embankments will be otherwise stabilized.

(4) **Nutrients and soil amendments.** Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) **Subsoil segregation.** The Department may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of Subsection(c) and (d) of this Section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of Sections 460:20-43-43, 460:20-43-44, 460:20-43-45 and 460:20-43-46.

460:20-43-23. Use of explosives: records of blasting operations

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the Department and to the public for inspection. Such records shall contain the following data:

(1) Name of the operator conducting the blast.

(2) Location, date, and time of the blast.

(3) Name, signature, and certification number of the blaster conducting the blast.

(4) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in Section 460:20-43-22(e).

(5) Weather conditions, including those which may cause possible adverse lasting effects.

(6) Type of material blasted.

(7) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(8) Diameter and depth of holes.

(9) Types of explosives used.

(10) Total weight of explosives used per hole.

(11) The maximum weight of explosives detonated in an 8-millisecond period.

(12) Initiation system.

(13) Type and length of stemming.

(14) Mats or other protections used.

(15) Seismographic and airblast records, if required, which shall include:

(A) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(B) Exact location of instrument and the date, time, and distance from the blast;

(C) Name of the person and firm taking the reading;

(D) Name of the person and firm analyzing the seismographic record and

(E) The vibration and/or airblast level recorded.

(16) Reasons and conditions for each unscheduled blast.

(17) Names of blasting crew.

(18) Expiration date of blaster's certification.

(19) A digital video of each blast with information about the location of the camera and bearing to blast.

(20) Drill logs.

460:20-43-37. Contemporaneous reclamation

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under Section 460:20-33-8 of this Chapter.

(1) **Timing of backfilling and grading.**

(A) **Contour mining.** Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Department may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary~~;~~.

(B) **Open pit mining with thin overburden.** Rough backfilling and grading shall occur in accordance with the time schedule approved by the Department, on the basis of the materials submitted under Section 460:20-27-10(b)(3), which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(C) **Area strip mining.** Rough backfilling and grading shall be completed within180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Department may grant additional time for rough backfilling and grading, if the permittee can demonstrate, through a detailed written analysis under Section 460:20-27-10(b)(3), that additional time is necessary.

(2) **Annual reporting.** Every twelve months after permit issuance and until final bond release, the permittee must submit to the Department a map or maps, signed and dated by a licensed professional engineer or licensed land surveyor, showing:

(A) The current permit boundaries;

(B) The cumulative disturbed acres;

(C) The cumulative acres that have been backfilled and graded to the approved postmining contours;

(D) The cumulative acres retopsoiled; and

(E) The cumulative acres where permanent vegetation has been established.

(F) A map legend detailing the data used to create the map or maps.

460:20-43-49. Cessation of operations: temporary

(a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. To qualify for temporary cessation, additional minable coal must be available under

a valid lease and the area of additional coal must be located within the boundaries of the existing permit or immediately adjacent to the permit and the subject of a pending revision application. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the Department a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

(c) If temporary cessation exceeds twelve months in duration, a notice of intention to continue the temporary cessation must be submitted to the Department annually along with a current bond recalculation, proof of notice to landowners, and updated information on the items included in the original notice as described in 460:20-43-49(b).

SUBCHAPTER 45. PERMANENT PROGRAM PERFORMANCE STANDARDS: UNDERGROUND MINING ACTIVITIES

460:20-45-5. Casing and sealing of underground openings: temporary

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

(c) When no longer needed for monitoring or other use approved by the Department upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under Section 460:20-45-8, each shaft, drift, adit, tunnel, exploratory hole, entry way or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the Department in accordance with Section 460:20-45-4 of this Subchapter and consistent with Section 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to keep acid or other toxic drainage from entering ground or surface waters.

SUBCHAPTER 47. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS: AUGER MINING

460:20-47-4. Auger mining: hydrologic balance

(a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of Sections 460:20-43-8 and 460:20-43-9 of these Regulations.

(b) All auger holes, except as provided in (c) of this Section, shall be:

(1) Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid- or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

(2) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the Department, if the holes are not discharging water containing acid- or toxic-forming material.

(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the Department determines that:

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes will:

(A) Not pose a threat of pollution to surface water, and

(B) Comply with the requirements of Sections 460:20-43-8 and 460:20-43-9 of these Regulations.

(d) Surface drainage must be directed away from the highwall during augering operations in order to maintain the stability of the highwall and protect persons conducting the augering.

[OAR Docket #14-804; filed 7-18-14]

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

[OAR Docket #14-805A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Requirements
460:25-1-8. Petitions to initiate rulemaking [AMENDED]
460:25-1-9. Availability of records [AMENDED]
Subchapter 3. General Requirements for Permits and Applications
460:25-3-8. [AMENDED]
Subchapter 7. Permit Information

460:25-7-2. Public notices of filing of permit application [AMENDED]
Subchapter 13. Performance Standards
460:25-13-22. Records of blasting operations [AMENDED]

AUTHORITY:
63 O. S. §123.1 Et seq., 45 O. S §1.5 Et seq., Oklahoma Mining Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 24, 2014

COMMENT PERIOD:
November 15, 2013 through December 15, 2013

PUBLIC HEARINGS:
December 18, 2013 in Oklahoma City and Wagoner, Oklahoma

ADOPTION:
February 20, 2014

SUBMISSION OF ADOPTED RULES TO GOVENOR AND LEGISLATURE:
February 28, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration of June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTION:
N/A

INCORPORATED BY REFERENCE:
N/A

ANALYSIS:
This OAC Chapter 25 amendment in Subchapter 8, Subchapter 9, and Subchapter 7, all correct the address of the Department's Oklahoma City office. The current address is 2915 N. Classen Blvd., Suite 213, Oklahoma City, OK 73106. In 460:25-3-8 (b) the filing deadline for permit renewal applications has been revised from 45 days before permit expiration to prior to the permit's expiration date. The 45 days shortened the permit term. In Subchapter 22, a new (20) has been added requiring that digital or video recordings of each shot to be available for review upon request and that these recordings clearly show the top and bottom of the blast. Paragraph (21) has been added to state the information required to be provided with the digital or video recordings which are listed in the new Subparagraphs (A), (B), and (C). Subparagraph (A) requires the date of the recording, (B) the GPS recording location and the camera bearing and (C) the name of the person recording the blast.

CONTACT PERSON:
Cathy Frank, Legal Officer, Department of Mines, 1102 W. Cherokee St., Suite D, Wagoner, OK 74467; (918) 485-3999

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL REQUIREMENTS

460:25-1-8. Petitions to initiate rulemaking

(a) Any interested person may petition the Director of the Oklahoma Department of Mines to initiate a proceeding for the issuance, amendment, or repeal of any regulations under the Chapter. The petition shall be submitted to the Director, Oklahoma Department of Mines, ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105~~2915 North Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendments, or repeal of a regulation under the Chapter and shall indicate whether the petitioner desires a public hearing.

(c) Upon review of the submitted petition, the Director shall determine if the petition sets forth the requirements of Subsection (b) of this Section as to provide a reasonable basis to initiate rulemaking action. If the Director determines that the petition has reasonable basis, a notice may be published in the Oklahoma Register seeking comment from the public on the proposed change. The Department may hold a public hearing, may conduct an investigation, or take other action to determine whether the petition should be granted.

(d) The Director's decision shall constitute the final decision ~~for~~of the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Department shall notify the petitioner in writing.

460:25-1-9. Availability of records

Records required by this Chapter to be made available to the public shall be retained at the offices of the Oklahoma Department of Mines, ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105~~ 2915 North Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 .

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS

460:25-3-8. Permit application filing deadlines

(a) **General.** By June 1, 1996, all applicants using explosives or conducting blasting must have a valid permit issued by the State of Oklahoma.

(b) **Renewal of valid permits.** An application for renewal of a permit shall be filed with the Department ~~at least 45 days before~~prior to the expiration of the permit involved.

(c) **Revisions of permit.** Any application for revision of a permit shall be filed with the Department no more than 7 days after the revision is implemented.

SUBCHAPTER 7. PERMIT INFORMATION

460:25-7-2. Public notices of filing of permit application

A permit application shall be posted at the Oklahoma Department of Mines at the Oklahoma City Office, located at ~~4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105~~ 2915 North Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106 when filed with the Department. The posted permit application, which will serve as public notice, shall contain, at a minimum, the following information:

(1) The name and business address of the applicant;

(2) Verification of application;

(3) Blaster's state certificate number with issuance date and expiration date; and
(4) Copy of the certificate of blasting.

SUBCHAPTER 13. PERFORMANCE STANDARDS

460:25-13-22. Records of blasting operations

A record of each blast, including seismographic reports if used, shall be retained for at least three years and shall be available for inspection by the Department upon request. The record shall contain ~~as~~ at a minimum the following data:

(1) Name of company or contractor.
(2) Exact location of the blast, date, and time of detonation.
(3) Name, signature and license number of blaster in charge.
(4) Type of material blasted.
(5) Number of holes, burden and spacing.
(6) Diameter and depth of holes.
(7) Types of explosives used.
(8) Total amount of explosives used.
(9) Maximum amount of explosives per delay period of eight (8) milliseconds or greater.
(10) Method of firing and type of circuit.
(11) Direction, distance in feet, and identification of nearest dwelling, house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blast.
(12) Weather conditions including temperature, wind velocity, and direction.
(13) Type and height or length of stemming.
(14) A statement as to whether mats or other protections against flyrock were used.
(15) Type of delay electric blasting caps used and delay periods used.
(16) The person taking the seismograph reading shall accurately indicate exact location of seismograph if used and shall also show the distance of seismograph from blast and the distance from the nearest seismograph and the nearest structure.
(17) Seismograph records, where required:
(A) Name of person and firm analyzing the seismograph record
(B) Seismograph reading
(18) Maximum number of holes per delay period of eight (8) milliseconds or greater.
(19) Sketch of blast pattern including number of holes, burden and spacing distance delay pattern, and if decking is used, a hole profile.
(20) Digital or video recordings of each shot must be available for review upon request. Digital or video recordings must clearly show top and bottom of blast.
(21) Information provided with digital or video recordings must include:
(A) Date of recording;
(B) GPS location of recording and camera bearing;
(C) Name of person recording the blast.

[OAR Docket #14-805A; filed 7-18-14]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 20. SECURITY REQUIREMENTS

[OAR Docket #14-711]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:20-1-5. Other security controls for nonpractitioner registrants [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §§ 2-301, 2-309H.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 5, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
475:20-1-5. Other security controls for nonpractitioner registrants [AMENDED] - defines the process that must be followed to distribute samples of controlled dangerous substances.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

475:20-1-5. Other security controls for nonpractitioner registrants

(a) Before distributing a controlled dangerous substance to any person whom the registrant does not know to be registered to possess the controlled dangerous substance, the registrant shall make a good-faith inquiry either with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or with the Drug Enforcement Administration to determine that the person is registered to possess the controlled substance.

(b) The registrant shall design and operate a system to disclose to the registrant suspicious orders of controlled dangerous substances. The registrant shall inform the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

(c) All registrants shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of any theft or significant loss of any controlled dangerous substances upon discovery of such theft or loss. Notification shall be made in writing and shall contain a list of the substances stolen or diverted by their trade name, quantities, descriptions, amount lost or stolen, and any cost code marks utilized. Thefts must be reported whether or not the controlled dangerous substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) No person acting as an agent of a registered controlled dangerous substances manufacturer or distributor (i.e., detailman, salesman, etc.) shall distribute samples of controlled dangerous substances to a practitioner without first having been registered (no fee required) with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

(1) To register with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control to distribute samples of controlled dangerous substances a form must be filled out and submitted to the Registration Department. Such forms may be obtained through the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control website or by calling the Registration Department.

(2) A new form shall be completed and submitted to the registration department each time the list of items to be distributed changes.

(3) A copy of the form submitted to the Oklahoma State Bureau of Narcotics shall be retained by the distributor.

(4) The practitioner receiving the samples shall keep a record each time he/she receives or distributes samples of controlled dangerous substances.

(e) When shipping controlled dangerous substances, a registrant is responsible for selecting common or contract carriers which provide adequate security to guard against in-transit losses. When storing controlled dangerous substances in a public warehouse, a registrant is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the registrant shall store controlled dangerous substances in a public warehouse which complies with the requirements set forth in this Chapter. In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled dangerous substances) to guard against storage or in-transit losses and comply with all current Federal regulations. Reporting the loss of in-transit shipments is the responsibility of the registrant shipping the controlled dangerous substances.

(f) When distributing controlled dangerous substances through agents (e.g., detailmen), a registrant is responsible for providing and requiring adequate security to guard against theft and diversion while the controlled dangerous substances are being stored or handled by the agent(s).

(g) No registrant shall knowingly employ as an agent or employee any person who will have access to controlled dangerous substances if such person has been convicted, pled guilty or nolo contendere or otherwise ordered to complete a period of probation or supervision for a misdemeanor or felony relating to any controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act in this state, any other state, or the United States, or any person convicted, pled guilty or nolo contendere or otherwise ordered to complete a period of probation or supervision for any felony of this state, any other state, or the United States, unless, after full review of the circumstances, the Director waives this requirement in writing with respect to each person on a case-by-case basis.

(h) The registrant shall immediately notify OBN and seek authorization to employ any individual as specified above.

[OAR Docket #14-711; filed 7-10-14]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 30. LABELING REQUIREMENTS

[OAR Docket #14-709]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:30-1-11. Refilling of prescriptions [AMENDED]
475:30-1-12. Partial filling of Schedules III, IV and V prescriptions [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §§ 2-301, 2-309H.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
March 5, 2014
ADOPTION:
March 5, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
475:30-1-11. Refilling of prescriptions [AMENDED]
475:30-1-12. Partial filling of Schedules III, IV and V prescriptions [AMENDED]
Gubernatorial approval:
December 3, 2013
Register publication:
31 Ok Reg 332
Docket number:
13-1401

INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
475:30-1-11. Refilling of prescriptions [AMENDED]- Adds the prohibition of refilling a hydrocodone prescription. This amendment is pursuant to the recent statutory change to 63 O.S. section 2-309(B)(3).
475:30-1-12. Partial filling of Schedules III, IV and V prescriptions [AMENDED]- Adds section addressing partial refills of hydrocodone products. This amendment is pursuant to the recent statutory change to 63 O.S. section 2-309(B)(3).
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

475:30-1-11. Refilling of prescriptions

(a) No prescription for a controlled dangerous substance in Schedules III or IV shall be filled or refilled more than six (6) months after the date such prescription was issued, and no such prescription authorized to be refilled may be refilled more than five (5) times. Each refilling of a prescription shall be maintained by the pharmacy, which indicated by the number of the prescription the following information: the name and dosage form of the controlled dangerous substance; the date of each refilling; the quantity dispensed; the identity or initials of the dispensing pharmacist in each refilling; and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription, he/she shall be deemed to have dispensed a refill for the full face amount of the prescription. Additional quantities of controlled dangerous substances listed in Schedule III or IV may only be authorized by a prescribing practitioner through issuance of a new and separate prescription. Refills shall not be obtained at the same time as the initial filling of the prescription and only one (1) refill shall be obtained at any one time. A new prescription for a specific CDS voids any existing refills or other prescriptions for the same drug.

(b) A pharmacy registrant may elect to use an automated data processing system to maintain prescription files; however, if such a system is used, there must also be written files kept which meet the requirements of Title 59 Okl.St.Ann. § 353.20, OAC 535:15-3-21 and 21 CFR § 1306.22.

(c) Prescriptions for hydrocodone containing products may not be refilled.

475:30-1-12. Partial filling of Schedules III, IV and V prescriptions

The partial filling of a prescription for a controlled dangerous substance listed in Schedules III, IV or V is permissible; PROVIDED that:

(1) Each partial filling is recorded in the same manner as a refilling.

(2) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed.

(3) No dispensing occurs after six (6) months after the date on which the prescription was issued.

(4) Prescriptions for hydrocodone containing products are partially filled pursuant to 475:30-1-7.

[OAR Docket #14-709; filed 7-10-14]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 55. PSEUDOEPHEDRINE CONTROL

[OAR Docket #14-710]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:55-1-3. Pharmacy requirements [AMENDED]
475:55-1-5. Electronic reporting [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §§ 2-301, 2-309H.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 8, 2014
COMMENT PERIOD:
February 3, 2014 through March 5, 2014
PUBLIC HEARING:
None held or requested
ADOPTION:
March 5, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 5, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
475:55-1-3. Pharmacy requirements [AMENDED]
475:55-1-5. Electronic reporting [AMENDED]
Gubernatorial approval:
October 29, 2013
Register publication:
31 Ok Reg 155
Docket number:
13-1262
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
475:55-1-3. Pharmacy requirements [AMENDED] - Adds section addressing notification requirements prior to the purchase of pseudoephedrine products.
475:55-1-5. Electronic Reporting [AMENDED] - Adds requirement to have a person attest that they are not subject to the Methamphetamine Registry Act before they can purchase pseudoephedrine products.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

475:55-1-3. Pharmacy requirements

(a) Schedule V pseudoephedrine substances may be sold only in licensed pharmacies that are registered with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. These substances, as a special class of Schedule V controlled substances, shall be kept in a locked environment (shelving unit, safe, cabinet, etc.) that is within view of the pharmacy, or behind the pharmacy counter. As specified in 63 OS, 2-303 (1), 2-304 (A)-4, and OAC 475:20-1-2, the pharmacist and those with access to pseudoephedrine products will have an affirmative duty to guard against the theft and diversion of these products.

(b) Pharmacies that sell, distribute or otherwise deliver Schedule V pseudoephedrine substances must post a sign, provided by the Oklahoma Bureau of Narcotics, in a conspicuous area in or around the pharmacy, to inform persons obtaining pseudoephedrine about the provisions of the Oklahoma Methamphetamine Offender Registry Act, 63 O.S. §2-701, that prohibit any person who, after November 1, 2010, that has been convicted, pled guilty or no contest, or otherwise on that date was serving any sentence for a methamphetamine related offense, from purchasing or possessing a product containing any amount of pseudoephedrine. Alternatively, the above notification may be presented to the purchaser by electronic means. A purchaser must attest, by signature, in written or electronic form, that they are not subject to the Oklahoma Methamphetamine Offender Registry Act, as summarized above, prior to purchase of any pseudoephedrine products. The pharmacy must maintain those signatures for a period of two (2) years from the date of signature.

475:55-1-5. Electronic Reporting

Pharmacists or other authorized persons who sell Schedule V pseudoephedrine products shall exercise reasonable care in assuring that the purchaser has not exceeded the three and six-tenths (3.6) gram limit per day, the seven and two-tenths (7.2) gram limit for a thirty (30) day period or the sixty (60) gram limit for a twelve (12) month period. The pharmacist or other authorized person must utilize the real-time electronic pseudoephedrine tracking system as set forth pursuant to 63 O.S. §2-341 and the Methamphetamine Registry as set forth pursuant to 63 O.S. §2-701. The following provisions are necessary for compliance with this system:

(1) All pseudoephedrine transactions regulated by Oklahoma law must be approved through submitting the request to the electronic log and Methamphetamine Registry;

(2) Pseudoephedrine products regulated by Oklahoma law will only be sold to customers who present a valid form of identificationand who attest that they are not subject to the Oklahoma Methamphetamine Offender Registry Act;

(3) The customer information must be the same as that on the presented identification, and shall include the following information (fields that are required for submitting information as required by Oklahoma law):

(A) Pharmacy identification;
(B) Identification number;
(C) Last name;
(D) First name;
(E) Purchase quantity (in grams);
(F) Initials of the pharmacist or other authorized person conducting the transaction;
(G) Product name;
(H) Form of pseudoephedrine if it is liquid or gel-caps;
(I) Customer's street address;
(J) Customer's current city, state, and zip code; and
(K) Date of birth.

(4) If at any time a pharmacist or other authorized person discovers that the electronic log is unavailable or that the information submitted to the electronic log is inaccurate, the authorized person may continue regulated transactions for twenty-four (24) hours, provided that all sales are manually recorded. The authorized person shall suspend all sales if the reporting problem is not corrected within twenty-four (24) hours of discovery. Regulated sales may be resumed only when the reporting problem is corrected and all manually recorded sales are correctly submitted to the electronic log.

[OAR Docket #14-710; filed 7-10-14]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #14-663]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
485:10-1-2. [AMENDED]
Subchapter 3. Regulations for Approved Nursing Education Programs
485:10-3-2. [AMENDED]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse
485:10-7-1. [AMENDED]
485:10-7-2. [AMENDED]
485:10-7-4. [AMENDED]
485:10-7-5. [AMENDED]
Subchapter 8. Criminal Background Checks for Applicants for Licensure/Certification
485:10-8-1. [AMENDED]
Subchapter 9. Requirements for Registration and Licensure as a Licensed Practical Nurse
485:10-9-1. [AMENDED]
485:10-9-2. [AMENDED]
485:10-9-4. [AMENDED]
485:10-9-5. [AMENDED]
Subchapter 10. Advanced Unlicensed Assistant
485:10-10-7. [AMENDED]
Subchapter 11. Disciplinary Action

485:10-11-2. [AMENDED]
Subchapter 15. Requirements for Practice as an Advanced Practice Registered Nurse
485:10-15-6. [AMENDED]
485:10-15-7. [AMENDED]
485:10-15-9.1. [AMENDED]
Subchapter 16. Requirements for Prescriptive Authority for Advanced Practice Registered Nurses
485:10-16-5. [AMENDED]

AUTHORITY:
Oklahoma Board of Nursing 59 O.S. §§ 567.2; 567.4.F.; 567.5.B; 567.5.D.; 567.6.B; 567.6.D; 567.6a.B; 567.7.B.; 567.7.C.; 567.12; 567.18.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 5, 2013

COMMENT PERIOD:
December 2, 2013 to January 13, 2014

PUBLIC HEARING:
January 28, 2014

ADOPTION:
January 28, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 3, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Many of the revisions to the *Rules* support use of online applications. "Notarized" and "certified" referencing application requirements were deleted. The affidavit declaring and affirming true, complete and correct statements in the applications remains a part of the application. The requirement of submission of a signed, dated photograph of the applicant was also deleted. The National Council of State Boards of Nursing provides to the Oklahoma Board of Nursing the NCLEX Licensing Exam Candidate Report which includes a candidate photograph of greater quality than the photograph submitted by the applicant to the Board of Nursing.

Throughout the document formatting and punctuation changes where appropriate were made, as well as the change of title for "National League for Nursing Accrediting Commission" to the newly adopted title of "Accreditation Commission for Education in Nursing." References throughout the *Rules* to effective dates that are now in the past were deleted for brevity.

Revisions to *Rules* specific to the disciplinary process were made. In 485:10-1-2, the definition of "complaint" was added to clarify the disciplinary process. In Subchapter 11, specific to Board Orders, the language of "reviewed and signed by the Board President" was added to clarify the current processing of Board Orders.

Revisions have been made to 485:10-3-2 expanding the length of time for submission of applications to establish new nursing education programs from four weeks to eight weeks. This allows for request of and receipt of any additional information for Board consideration not previously submitted to meet the rule requirements.

In 485:10-7-2 and 485:10-9-2, related to endorsement of RNs and LPNs, requirements for English language testing for those educated outside the United States was revised to reflect currently available tests. In addition, temporary licensure requirements were revised citing to current rule qualifications to expand the number of options available to applicants in verifying continuing qualifications for practice. To update language, references to effective dates that are now past for submission of fingerprint images were deleted and language allowing vendor inclusion in the process was added.

Revisions were made to 485:10-7-4 and 485:10-9-4 related to reinstatement of license. Currently, continuing qualifications for practice requirements are noted with licensure renewal only. The addition of continuing qualifications for practice requirements to reinstatement of license requirements ensures qualifications are met if the licensee lapses the license for not meeting the requirements on renewal and then applies for reinstatement. Language was added to 485:10-7-5 and 485:10-9-5 specific to inactive status for the same reason. The addition of continuing qualifications for practice requirements to return to active status of license requirements ensures qualifications are met if the licensee places the license on inactive status for not meeting the renewal requirements and then applies for return to active status.

In 485:10-8-1, references to effective dates that are now past were deleted. In this same section of the *Rules*, language incorporating statute specific to the requirement of a criminal background check conducted by the OSBI not greater than ninety days old at the time of application for licensure submission was added. Outdated language specific to processing criminal background fingerprint images was deleted and language allowing vendor inclusion in the process was added.

Revisions in 485:10-16-5, deleted the requirement of submission in writing by the Advanced Practice Registered Nurse the assigned DEA number to the Board of Nursing. Current DEA status is retrievable from the DEA.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

485:10-1-2. Definitions

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

"Academic credit hours" are calculated as follows:

(A) 1 academic semester credit hour = 16 contact hours

(B) 1 academic quarter credit hour = 12.5 contact hours

"Accountable" means assuming responsibility to the client, the public, other health-care practitioners and oneself for one's actions and/or decisions and their outcomes.

"Additional nursing function" means the nursing functions, procedures, or tasks, not usually included at the time of matriculation in most nursing education programs; requiring additional knowledge, instruction, and practice before they can be safely performed. Such functions must fall within the scope of accepted nursing practice; may become necessary due to technological advances, new practice standards, or the natural evolution of an occupation; and must not be precluded by other Oklahoma Practice Acts.

"Advanced Practice Registered Nurse" or "APRN" is a term that includes Certified Nurse Practitioners (CNP), Clinical Nurse Specialists (CNS), Certified Nurse Midwives (CNM), and Certified Registered Nurse Anesthetists (CRNA).

"Advanced Unlicensed Assistant" or "AUA" means an individual, other than a licensed nurse, who performs in an assistive role and has been certified to perform core skills as delegated by a licensed nurse and as authorized by the Rules and Regulations of the Oklahoma Board of Nursing.

"Board" *means the Oklahoma Board of Nursing [59 O.S. Section 567.3(1)]*

"Client" means a consumer of nursing care; may be an individual or group; is synonymous with "patient".

"Clinical learning experiences" means faculty-planned and guided activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the lifespan as appropriate to the role expectations of the graduates. These experiences occur in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, long-term care facilities, clients' residences, and community agencies; and in associated clinical pre- and post-conferences.

"Clinical skills laboratory" means a designated area in which equipment and supplies are provided to simulate a clinical facility, allowing skills and procedures to be demonstrated and practiced.

"Complaint" means a nursing practice incident report submitted to the Board informing the Board staff that a certificate holder or licensed nurse may have violated the Oklahoma Nursing Practice Act. If the Complaint results in obtaining evidence to support a violation(s) of the Oklahoma Nursing Practice Act, then a **sworn Complaint** is prepared and filed by Board staff to initiate an individual proceeding as provided for in the Administrative Procedure Act, 75 O.S. §§ 309 *et seq.*

"Continuing education contact hours" are calculated as: 1 contact hour = 50 minutes.

"Continuous incarceration" means a period of confinement inside a penal institution, pursuant to a sentence from a court of competent jurisdiction, which confinement continues uninterrupted by periods of liberty from its beginning to its end. It **does not** include such sentences as weekends in jail with the defendant at liberty during the week.

"Controlling institution" means the agency or institution that administers the nursing education program, assumes responsibility for its financing, graduates the students, and grants the diploma, certificate or degree to the graduates.

"Core skills" means the list of functions that an Advanced Unlicensed Assistant should be capable of performing upon completion of the certification training program and satisfactory passage of the certification examination.

"Delegating" means entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties.

"Distance learning program" means 50% or more of the theory components of the board-approved nursing education program are offered by correspondence, on-line, through video-conferencing, or via CD-ROM.

"Innovative approach" means a creative nursing education strategy that departs from the current rule structure and requires Board approval for implementation.

"Key Party" means immediate family members and others who would be reasonably expected to play a significant role in health care decisions of the patient and includes but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decision for the patient.

"Legal authority" means the authorized state agency for the administration of the statutes relating to the practice of nursing in this state. The Oklahoma Board of Nursing is the only legal authority for licensing Licensed Practical Nurses, Registered Nurses, and Advanced Practice Registered Nurses; and for certifying Advanced Unlicensed Assistants.

"Licensed nurse" means a Registered Nurse or "RN", a Licensed Practical Nurse or "LPN", or an Advanced Practice Registered Nurse currently licensed by the Oklahoma Board of Nursing.

"Nurse Administrator" means the Registered Nurse responsible for the administration of the nursing education program or the nurse holding the highest level of management in an agency/facility regardless of the title used.

"Preceptor" means a licensed nurse who is employed by the facility in which the clinical experience takes place, and who agrees to provide supervision to a student for a specified period of time during the preceptor's scheduled work hours in order to assist the student to meet identified learning objectives.

"State approved program of nursing" means a nursing education program approved by the Oklahoma Board of Nursing.

"Member board jurisdiction" means a full member board of National Council of State Boards of Nursing.

"Supervising" means providing guidance by a qualified nurse for the accomplishment of the nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing a task or activity.

SUBCHAPTER 3. REGULATIONS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-3-2. Establishment of new nursing education programs

(a) **Step I. Initial application.**

(1) An institution wishing to establish a new nursing education program shall advise the Board of its intent in writing, and shall seek Board consultation in the initial planning.

(2) The institution shall submit the Step I Initial Application to the Board office at least ~~four~~eight weeks prior to a regularly-scheduled Board meeting, which provides the following information for the Board's consideration:

(A) mission and organization of the educational institution;

(B) accreditation status of the educational institution;

(C) type of nursing program to be established;

(D) relationship of nursing program to the educational institution;

(E) documentation of the rationale for the establishment of the nursing program in Oklahoma;

(F) potential effect on other nursing programs in the area;

(G) tentative time-table for program development and implementation;

(H) source of potential qualified Nurse Administrator and faculty, with projected times of employment;

(I) tentative budget plans including evidence of financial resources adequate for developing, implementing, and continuing the nursing program;

(J) source of anticipated student population;

(K) description of support staff for the proposed program;

(L) description of physical facilities;

(M) description of available clinical resources with letters from clinical resources supporting development of a new program in nursing.

(3) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer educational programs in Oklahoma. Regional accreditation is recommended for institutions offering programs in nursing education.

(4) The Board shall advise the institution in writing of its decision to:

(A) approve proceeding with development of the program-Step II; or

(B) defer approval pending a visit to the institution and/or receipt of further information; or

(C) deny approval specifying reasons for denial.

(b) **Step II. Application for Provisional Approval.**

(1) The institution shall employ a qualified Nurse Administrator ensuring adequate time is provided to develop Step II. A consultative visit will be conducted by Board staff at least one month prior to submission of the Step II application. A report of the findings from this visit will be submitted to the Board with the Step II application.

(2) The Nurse Administrator shall prepare the following materials following the Guidelines for Provisional Approval for the Board's consideration:

(A) philosophy, program and course objectives;

(B) curriculum plan;

(C) policy statements;

(D) survey of clinical facilities and existing nursing education programs in the service area, with evidence that a sufficient amount and variety of clinical experience is available to support an additional nursing education program in the service area;

(E) faculty qualifications, criteria and job descriptions;

(F) budget plan projected for a three (3) year period;

(G) learning resources; and

(H) institutional and program organizational plans.

(3) At least four months prior to the anticipated admission of students and at least ~~four~~ eight weeks prior to a regularly-scheduled Board meeting, the Nurse Administrator shall submit the "Application for Provisional Approval" for Board review.

(4) Nursing education and institutional representatives may be present during the Board meeting. The Board shall advise the institution in writing of its decision to:

(A) grant Provisional Approval, authorizing the institution to proceed with implementation of the nursing education program and admission of students; or

(B) defer Provisional Approval and program implementation pending further development; or

(C) deny Provisional Approval.

(5) The program cannot admit students until Provisional Approval is granted.

(6) Faculty qualification forms must be submitted to the Board and qualified faculty employed at least thirty days prior to the admission of students.

(7) Progress reports shall be made by the Nurse Administrator as requested by the Board while on Provisional Approval.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE

485:10-7-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Registered Nurse must meet the following qualifications:

(1) Submits an application containing such information as the Board may prescribe;

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) Submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic professional curricula of a state Board-approved registered nursing education program conducted in a member board jurisdiction that meets the requirements of 485:10-5-6 ~~(d-1, 2, and 3),~~(d)(1), (2), and (3), and holds or is entitled to hold a diploma or degree therefrom.

(b) **Applications.**

~~(1)~~ Applications for licensure by examination must be completed~~, notarized,~~ and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.

~~(2) One (1) photograph signed by the applicant must be filed with the application.~~

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit the required fee. An authorization to test will be issued by the testing service allowing the candidate to schedule the examination.

(d) **Fee for examination.**

(1) The fee for writing the licensing examination adopted by the Board for Registered Nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for Registered Nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

(2) Applicants who fail the NCLEX-RN may be eligible to repeat the examination upon filing an application and fee, and upon meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-RN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two years from the completion date of the additional education to take and pass the NCLEX-RN.

485:10-7-2. Licensure by endorsement

(a) **Qualifications.**

(1) The applicant must submit an application containing such information as the Board may prescribe;

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) An applicant for licensure by endorsement as a Registered Nurse must meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(4) An applicant licensed in another state or U.S. territory since January 1, 1952 must have written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.

(5) An applicant must submit evidence of either:

(A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.

(6) In addition to meeting other requirements for endorsement established by the Board in these ~~rules~~Rules, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Registered Nurses;

(C) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(D) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years.

(7) Applicants for endorsement who took the National Council Licensure Examination for Registered Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) Provide evidence of at least six months work experience as a registered nurse in the state, U.S. territory, or country of licensure.

(b) **Applications.**

(1) Applications must be completed~~, notarized and accompanied by a photograph signed by the applicant~~ and filed with the Board.

(2) Endorsement may be accepted from the original state or U.S. territory of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) graduation from a government-approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:

(i) a translated transcript with certified proof of translation received directly from the nursing education program in the original country of licensure, or

(ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools (CGFNS)

(C) licensure or registration as required in country of graduation as evidenced by official verification received directly from the Commission of Graduates of Foreign Nursing Schools;

(D) current competence in oral and written English as evidenced by receipt of current, valid scores directly from the approved testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service, or

(ii) International English Language Testing System (IELTS), or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service~~.~~, or

(iv) Michigan English Language Assessment Battery (MELAB).

(E) An evaluation of educational credentials as evidenced by:

(i) CGFNS Certificate Status or Visa Screen Certificate; or

(ii) CGFNS Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(F) Evidence of either:

(i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982;

(2) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States.

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and provide evidence of at least one year full-time equivalent work experience in a clinical setting as a registered nurse in the state or territory of licensure.

(3) Applicants must submit a completed application and the required fee.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of:

(A) Current unrestricted licensure in another state with no history of arrest or disciplinary action requiring further review;

(B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license;

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485:10-7-2(d)(1)(D)~~(i iv)~~;

(F) ~~Certification of employment in a position that requires nursing licensure as a registered nurse for a minimum of 520 work hours in the past two years~~ Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-7-2(a)(6) and (7); and

(G) ~~Effective January 1, 2013,submission~~Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.

485:10-7-4. Reinstatement of license

(a) The Registered Nurse license is lapsed if not renewed by expiration date thereof.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(d) The fee for reinstatement of license shall be established by the Board.

(e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.

(h) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has lapsed less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

(~~h~~i) In addition to meeting other reinstatement requirements established by the Board in these rules, if the Oklahoma nursing license has not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Registered Nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(4) Present evidence of licensure as a registered nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

485:10-7-5. Inactive status

(a) Any Registered Nurse licensee who desires to retire from the practice of nursing shall submit a written request to be placed on the Inactive List.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, if the nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Registered Nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction; and/or

(4) Present evidence of licensure as a nurse in another state with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

(g) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has been inactive less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 hours; or

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or
(4) Verify completion of a Board-approved refresher course; or
(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

SUBCHAPTER 8. CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR LICENSURE/CERTIFICATION

485:10-8-1. Requirements for criminal background checks for initial licensure/certification in this state

(a) All applications for registered nurse or practical nurse licensure by examination or endorsement or for certification as an Advanced Unlicensed Assistant shall include a state and national criminal history records search.
~~(b) Until January 1, 2013, such applications shall be accompanied by a completed Oklahoma State Bureau of Investigation (OSBI) criminal history records search with a search of the applicant's full legal name, all alias names, and Social Security number/s, to include a search for sex offender and violent offender status.~~
~~(c) Effective January 1, 2013,eachapplication shall be accompanied by two full sets of fingerprint images to be used for the purpose of permitting a state and national criminal history records search~~
(b) Each applicant for licensure shall have a fingerprint-based background check not more than ninety (90) days old at the time of submission of the application for licensure. An applicant who has submitted fingerprint images that were used for the purpose of permitting a state and national criminal history records search with a previous application submitted to the Board within the last twelve (12) months or submitted to the Board after the implementation of the federal continuous Record of Arrest reports is exempt from this requirement.
(~~d~~c) The fingerprint images will be accompanied by a money order or cashier's check made payable to the OSBI or the Board's designated vendor for the fee established by the OSBI and/or vendor.
~~(e) Upon receipt of the application and fingerprint images with the established fees, the Board shall timely forward the fingerprint images to the OSBI to permit a state and national criminal history records search to be completed.~~

SUBCHAPTER 9. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A LICENSED PRACTICAL NURSE

485:10-9-1. Licensure by examination

(a) **Qualifications.** An applicant for licensure by examination as a Licensed Practical Nurse must meet the following qualifications:
(1) has received a high school diploma or a General Educational Development certificate (GED);
(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;
(3) submits an application containing such information as the Board may prescribe;
(4) submits proof satisfactory to the Board in such manner and upon such forms as the Board may require to show that the applicant has completed the basic curricula of a state Board-approved practical nursing education program conducted in a member board jurisdiction that meets the requirements of ~~485:10-5-6-(e-1, 2)~~485:10-5-6(e)(1) and (2), and holds or is entitled to hold a diploma or degree therefrom; or
(5) has completed equivalent courses through one of the following methods:
(A) in a state approved program of nursing with a minimum overall grade point average of 2.0, and a grade of a "C" or higher in all nursing courses. Evidence must be provided that verifies successful completion of a minimum of one academic year of instruction in a registered nursing education program, including classroom instruction and clinical practice in nursing care of the adult, nursing care of children, and maternal-infant nursing. Course content in anatomy and physiology, growth and development, mental health, pharmacology and nutrition also must have been successfully completed. Courses in external degree programs or completed by challenge examination are not acceptable for PN equivalency; or
(B) has completed a registered nursing education program in a foreign country and meets the requirements of 485:10-7-2(d).
(6) Board-approved role transition learning packet related to legal and ethical aspects of practical nursing must be successfully completed by all PN equivalency applicants prior to approval to write the examination for licensure.

(b) **Applications.**
~~(1)~~ Applications for licensure by examination must be completed~~, notarized~~ and filed with the Board prior to the examination. If the application is not completed within one (1) year, a new application and new fee will be required.
~~(2) One (1) photograph signed by the applicant must be filed with the application.~~

(c) **Admission to the examination.** The candidate must register with the authorized testing service and submit required fee. An authorization to test will be mailed to the candidate by the testing service allowing them to schedule the exam.

(d) **Fee for examination.**
(1) The fee for writing the licensing examination adopted by the Board for practical nurse licensure shall be established by the Board in accordance with statutory guidelines and shall accompany the application.

(2) The fee for rewriting the licensing examination adopted by the Board for practical nurse licensure shall be the same as the fee established for the first-time writing.

(3) The fee for the examination (first time and rewrite) is not refundable.

(e) **Policies for the examination.**

(1) Applicants must pass the National Council Licensure Examination for Practical Nurses (NCLEX-PN).

(2) Applicants who fail the NCLEX-PN may be eligible to repeat the examination upon filing an application and fee meeting Board requirements.

(3) To be eligible to write or rewrite the NCLEX-PN, the applicant must submit a completed application, transcript, and fee to the Board and a completed registration form and fee to the authorized testing service within two years of completion of the nursing education program or the equivalent coursework and/or related experience. If more than two years has elapsed, the applicant must complete additional education as follows:

(A) Successfully complete a Board-approved refresher course in accordance with the Board's policy; or

(B) Successfully complete nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.

(4) After completion of the required additional education, the applicant will have two years from the completion of the additional education to take and pass the NCLEX-PN.

485:10-9-2. Licensure by endorsement

(a) **Qualifications.**

(1) The applicant must submit an application containing such information as the Board may prescribe;

(2) is a minimum of eighteen (18) years of age on or before the date the license is issued;

(3) has received a high school diploma or a General Educational Development certificate (GED)~~;~~

(4) An applicant for licensure by endorsement as a Licensed Practical Nurse shall meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.

(5) An applicant licensed in another state or U.S. territory since June 30, 1954, must have passed the licensing examination adopted by the Board. A license to practice practical nursing in Oklahoma will not be issued until this requirement is met.

(6) In addition to meeting other requirements for endorsement established by the Board in these rules, each applicant for endorsement must demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(B) Successfully pass the National Council Licensure Examination for Practical Nurses;

(C) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(D) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years.

(7) Applicants for endorsement who took the National Council Licensure Examination for Practical Nurses for initial licensure within the last two years must:

(A) Provide evidence of completion of the nursing education program within two years of initial application for licensure by examination; or

(B) Provide evidence of at least six months work experience as a practical nurse in the state, U.S. territory, or country of licensure.

(b) **Applications.**

(1) Applications must be completed~~, certifiedand accompanied by a photograph signed by the applicant~~ and filed with the Board.

(2) Endorsement may be accepted from the original state of licensure by examination.

(3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.

(4) If the application is not completed within one (1) year after receipt of fee, the application must be refiled.

(c) **Fee for licensure by endorsement.**

(1) The fee shall accompany the application.

(2) The fee is not refundable.

(3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.

(d) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.

(1) The applicant must present evidence of:

(A) completion of a high school diploma or a General Educational Development certificate (GED);

(B) current competence in oral and written English as evidenced by receipt of current, valid scores directly from the testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service; or

(ii) International English Language Testing System (IELTS); or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service~~.~~; or

(iv) Michigan English Language Assessment Battery (MELAB).

(C) graduation from a government approved post-secondary practical nursing education program or equivalent courses in a government approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS);

(D) licensure or registration as required in country of graduation as evidenced by official verification completed within the last twelve (12) months immediately preceding the date of application for licensure by endorsement received directly from the Commission of Graduates of Foreign Nursing Schools,

(E) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:

(i) a translated transcript received directly from the nursing education program in the original country of licensure with certified proof of translation; or

(ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS).

(F) An evaluation of educational credentials as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate or Visa Screen Certificate status;

(iii) Reports received from CGFNS must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(2) The applicant must successfully complete the licensing examination adopted by the Oklahoma Board of Nursing.

(3) The requirements for competence in spoken and written English are waived for applicants who are:

(A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States, or

(B) Licensed in another US State or Territory, have successfully completed the licensure examination approved by the Board and provide evidence of at least one year full-time equivalent work experience in a clinical setting as a practical nurse in the state or territory of licensure.

(4) Applicants must submit a completed application with the required application and evaluation fees.

(e) **Temporary license for endorsement applicants.**

(1) A temporary license may be issued to the applicant on proof of

(A) Current unrestricted licensure in another state with no history of arrest or disciplinary action requiring further review;

(B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;

(C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Healthcare Profession and Science Course-by-Course Report or Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation;

(D) Payment of the fee for licensure by endorsement and temporary license;

(E) Foreign-educated applicants must provide evidence of current competence in oral and written English by meeting the requirements of 485:10-9-2(d)(1)(B)~~(i-iv)~~; and

(F) ~~Certification of employment in a position that requires nursing licensure as a licensed practical nurse for a minimum of 520 work hours in the past two years~~ Demonstrating evidence of continued

qualifications for practice through meeting the requirements of 485:10-9-2(a)(5) and (6); and

(G) ~~Effective January 1, 2013,submission~~Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.

(2) The temporary license may not be issued for a period longer than ninety (90) days.

(3) The temporary license may be extended, but such period shall be no longer than one (1) year.

485:10-9-4. Reinstatement of license

(a) The Licensed Practical Nurse license is lapsed if not renewed by expiration date thereof.

(b) The applicant must submit an application containing such information as the Board may prescribe.

(c) A completed application for reinstatement must be submitted to the Board office with the required fee. If the application is not completed within one (1) year, a new application and new fee will be required.

(d) The fee for reinstatement of license shall be established by the Board.

(e) An application for reinstatement for a license that has been suspended or surrendered must be in compliance with all terms and conditions of any Order entered with regard to the suspension or surrender and shall be considered by the Board.

(f) An application for reinstatement of a license that has been revoked by the Board shall be considered by the Board.

(g) An application for reinstatement for a license not previously revoked, suspended or surrendered may be granted on such terms and conditions as the Board may require.

(h) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has lapsed less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 hours; or [1]

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

(i) In addition to meeting other reinstatement requirements established by the Board in these rules, if the Oklahoma practical nursing license has not been in an active licensure status for a period of two (2) years or more, the applicant for reinstatement must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past two (2) years preceding receipt of the application for reinstatement in the Board office.

AGENCY NOTE: *[1] This section 485:10-9-4(h)(1) contains a scrivenor's error and was intended to read: "Verify employment in a position that requires a Licensed Practical Nurse license with verification of at least 520 hours; or"*

485:10-9-5. Inactive status

(a) Any licensee who desires to retire from the practice of practical nursing shall submit a written request to be placed on the inactive list.

(b) The date of transfer to the inactive status will be the date of approval by the Board. The Board may delegate approval of the licensee's request to be placed on inactive status to the Board Staff.

(c) A licensee shall remain on the Inactive List unless otherwise indicated without the payment of the renewal fee.

(d) The return to active fee shall be due when the licensee desires to return to active practice. The applicant must submit an application containing such information as the Board may prescribe.

(e) An application for return to active status for a license that has been placed on Inactive Status by Order of the Board shall be considered by the Board.

(f) In addition to meeting other requirements to return to active status as established by the Board in these rules, if the practical nursing license has been on the Inactive List for a period of two (2) years or more, the licensee must demonstrate continued qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Submission of an official transcript or certificate of completion verifying completion of a nursing refresher course with content consistent with Board policy;

(2) Successfully pass the National Council Licensure Examination for Practical Nurses;

(3) Submission of an official transcript verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education

program, which includes classroom and clinical instruction; and/or

(4) Present evidence of licensure as a practical nurse in another state with employment in a position that requires practical nursing licensure with certification of at least 520 work hours during the past two (2) years preceding receipt of the request for return to active status in the Board office.

(g) In addition to meeting other reinstatement requirements established by the Board in these Rules, if the Oklahoma nursing license has lapsed less than two years, each applicant shall demonstrate evidence of continuing qualifications for practice through completion of one or more of the following requirements within the last two (2) years prior to receipt of the completed application in the Board office:

(1) Verify employment in a position that requires a registered nurse license with verification of at least 520 hours; or [1]

(2) Verify the completion of at least twenty-four (24) contact hours of continuing education applicable to nursing practice; or

(3) Verify current certification in a nursing specialty area; or

(4) Verify completion of a Board-approved refresher course; or

(5) Verify completion of at least six (6) academic semester credit hours of nursing coursework at the licensee's current level of licensure or higher.

AGENCY NOTE: *[1] This section 485:10-9-5(g)(1) contains a scrivenor's error and was intended to read: "Verify employment in a position that requires a Licensed Practical Nurse license with verification of at least 520 hours; or"*

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTANT

485:10-10-7. Certification

(a) The Board shall establish and maintain a listing (registry) of persons authorized to function as an Advanced Unlicensed Assistant.

(b) An applicant for certification by examination as an Advanced Unlicensed Assistant must meet the following requirements:

(1) has successfully completed the prescribed curricula in a state-approved education program for Advanced Unlicensed Assistants and holds or is entitled to hold a diploma or certificate therefrom; or

(2) has successfully completed an equivalent course approved by the Board in a formal program of instruction in a health-care facility or an educational institution with classroom/laboratory instruction and supervised clinical experience. Evidence must be provided that verifies ability to safely and accurately perform each core skill included in Board-approved Advanced Unlicensed Assistant course;

(3) is a minimum of eighteen (18) years of age on or before the date the certificate is issued~~.~~

(c) Application for certification:

(1) Applications for certification must be filed with the Board in accordance with the procedure designated by the Board. The application must be complete ~~and signed~~. The required fee ~~and one (1) photograph signed by the applicant~~ must be filed with the application.

(2) The candidate must register with the authorized testing service and submit the required fee.

(3) The applicant must submit an application containing such information as the Board may prescribe.

(d) Fee for certification:

(1) The fees for certification and writing the certification examination adopted by the Board shall accompany the applications.

(2) The fee for rewriting the certification examination adopted by the Board shall be the same as the fee established for the first-time writing.

(3) The fee for the examination is not refundable.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-2. Hearings

(a) **Conduct of hearing.** All hearings and notice thereof shall be conducted and governed in accordance with the provisions of the Oklahoma Administrative Procedures Act. [75 O.S. Section 309 *et seq.*]

(b) **Notice of hearing.** Notice of the hearing shall be served in any manner authorized by the Oklahoma Pleading Code for the personal service of summons in proceedings in state courts.

(c) **Procedures before the Board.**

(1) Every individual proceeding shall be initiated by a sworn complaint containing a brief statement of the facts supporting the request for action by the Board.

(2) The respondent shall file with the Board a written response under oath to the Complaint by the date to be furnished. If no response is filed, the Respondent shall be considered in default and the Board may take whatever action it deems sufficient and appropriate. The Executive Director of the Board or designee may extend the time within which a response must be filed, but in no event may the time be extended beyond the hearing date.

(3) Written requests for continuances shall be received in the Board office not less than four (4) business days prior to the date and time set for the hearing. The request shall state the reasons for the request and time period desired. The Board or its designee shall promptly rule on such requests.

(4) Discovery shall be conducted in accordance with the Administrative Procedures Act except that all discovery must be completed ten (10) days prior to the date set for hearing unless otherwise ordered by the Board.

(5) The order of procedure shall be the same as followed by the state trial courts in civil proceedings.

(6) The admissibility of evidence shall be governed by the provisions of the Oklahoma Administrative Procedures Act [75 O.S. Section 310].

(7) The President of the Board or his/her designee shall rule on admissibility of evidence and objections to such evidence and shall rule on other motions or objections in the course of the hearing.

(8) The Board, its designee, attorney for the Board, the respondent or attorney for the respondent, may conduct examinations.

(9) A respondent who fails to appear, after having received proper notice, may be determined to have waived the right to present a defense to the charges in the complaint and the Board may declare the respondent in default and revoke, suspend or otherwise discipline respondent as it may deem necessary.

(10) Subpoenas for the attendance of witnesses and/or furnishing of information required by the Board staff and as requested by the respondent, and/or the production of evidence or records of any kind shall be issued by the Director of the Investigative Division or the Director's designee.

(A) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party or his attorney, and directed to the Director of the Investigative Division or the Director's designee. The Director of the Investigative Division or the Director's designee shall have three (3) business days to process the request. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(B) The Director of the Investigative Division or the Director's designee shall cause such subpoenas to be issued and mailed in conformity with said written requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(C) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director of the Investigative Division or the Director's designee, no later than ten (10) business days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(D) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

(11) The respondent is responsible for any expenses associated with witnesses, subpoenas and/or evidence presented on her/his behalf.

(12) Any pre-trial motions and/or discovery motions must be filed in the Board office not less than 15 days prior to the date set for hearing unless otherwise ordered by the Board.

(13) The respondent shall not communicate with any member of the Board concerning the matters alleged in the complaint before or during or after the hearing. This restriction does not apply to the presentation of testimony or evidence by the respondent in the course of the hearing.

(14) If for any reason a hearing is not completed and the Board finds that the public health, safety or welfare imperatively requires emergency action, the Board may take such emergency action with regard to the respondent's license as it deems necessary in order to protect the health, safety or welfare of the public.

(d) **Administrative Penalties.** When determining the amount of the administrative penalty to be imposed for a violation of the Oklahoma Nursing Practice Act the following additional factors shall be a part of the consideration by the Board when establishing the nature, circumstance, and gravity of the violation, the degree of culpability, the effect on the ability of the person to continue to practice and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act:

(1) evidence of actual or potential harm to patients, clients or the public;

(2) the seriousness of the violation, including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety and welfare of the public;

(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present lack of fitness;

(6) evidence of prior disciplinary history by the Board or any other health care licensing agency in Oklahoma or another jurisdiction;

(7) the length of time the licensee has practiced;

(8) the actual damages, physical or otherwise resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances;

(12) the extent to which system dynamics in the practice setting contributed to the problem;

(13) evidence of a lack of truthfulness or trustworthiness;

(14) any other matter that justice may require.

(e) **Orders.**

(1) At the conclusion of the hearing, the Board will announce its decision and a written order reviewed and

signed by the Board President or other official who presided at the hearing will be issued within twenty (20) days of the Board's decision.

(2) A copy of the order shall be delivered or mailed to the Respondent and the Respondent's attorney of record.

(f) **Record of hearing.**

(1) The record in an individual proceeding shall be as defined in the Oklahoma Administrative Procedures Act and shall also include the licensing history of the respondent.

(2) All hearings shall be transcribed by a duly certified reporter, unless the presiding officer designates otherwise. A transcript of the proceedings shall not be made except in the event of an appeal of the decision of the Board, or upon written application accompanied by a deposit sufficient to cover the cost of transcription. Tapes and shorthand or stenotype notes of the proceedings shall be retained for a period of not less than five (5) years.

(g) **Appeals and reconsideration.** Requests for reconsideration and appeals of order in individual proceeding shall be in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 15. REQUIREMENTS FOR PRACTICE AS AN ADVANCED PRACTICE REGISTERED NURSE

485:10-15-6. Practice as a Certified Nurse Practitioner

(a) **Educational preparation.** Successful completion of an education program shall establish eligibility to take the recognized nurse practitioner certification examination in a specialty area. The education program shall:

(1) Prepare nurse practitioners in a graduate-level nursing program accredited by or holding preliminary approval or candidacy status with the ~~National League for Nursing Accrediting Commission~~Accreditation Commission for Education in Nursing or the Commission on Collegiate Nursing Education; or

(2) Meet the following requirements:

(A) be based on measurable objectives that relate directly to the scope of practice for the specialty area;

(B) include theoretical and clinical content directed to the objectives;

(C) be equivalent to at least one academic year. A preceptorship which is part of the formal program shall be included as part of the academic year;

(D) be university-based or university-affiliated with oversight by a nursing program accredited by an approved national nursing accrediting agency.

(3) Effective January 1, 2016, all applicants for initial licensure or licensure by endorsement as a Certified Nurse Practitioner must hold a graduate level degree from an advanced practice education program accredited by or holding preliminary approval or candidacy status with the ~~National League for Nursing Accrediting Commission~~ Accreditation Commission for Education in Nursing or the Commission on Collegiate Nursing Education.

(b) **Scope of practice for CNP.** The Certified Nurse Practitioner's scope of practice includes the full scope of nursing practice and practice in an expanded role as follows:

(1) The Certified Nurse Practitioner (CNP) provides comprehensive health care to clients across the life span.

(2) The CNP is responsible and accountable for the continuous and comprehensive management of a broad range of health services, which include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) diagnosis and prescription of medications, treatments, and devices for acute and chronic conditions and diseases;

(D) management of health care during acute and chronic phases of illness;

(E) guidance and counseling services;

(F) consultation and/or collaboration with other health care providers and community resources;

(G) referral to other health care providers and community resources.

(3) The CNP will provide services based upon education, experience, and national certification. It is the responsibility of the licensee to document competency of any act, based upon education, experience and certification.

(4) The scope of practice as previously defined is incorporated into the following specialty categories and further delineates the population served:

(A) Adult CNP (acute and/or primary) provides acute and/or primary health care to adolescents and adults.

(B) Family CNP provides health care to persons across the lifespan.

(C) Geriatric CNP provides health care to older adults.

(D) Neonatal CNP provides health care to neonates and infants.

(E) Pediatric CNP (acute and/or primary) provides acute and/or primary health care to persons from newborn to young adulthood.

(F) Women's Health Care CNP provides health care to adolescent and adult females. Care may also be provided to males with reproductive health needs or problems.

(G) Acute Care CNP provides health care to adults who are acutely or critically ill.

(H) The Adult Psychiatric and Mental Health CNP provides acute and chronic psychiatric and mental health care to persons age 13 or older.

(I) The Family Psychiatric and Mental Health CNP provides acute and chronic psychiatric and mental health care to persons across the lifespan.

(J) The Acute Care Pediatric CNP provides health care to persons from newborn to young adulthood with complex acute, critical and chronic health conditions.

(5) Effective January 1, 2016, the applicant for initial APRN licensure or APRN licensure by endorsement as a CNP shall hold certification in at least one of the following population foci: family/individual across the lifespan, adult-gerontology (acute and/or primary), neonatal, pediatrics (acute and/or primary), women's health/gender related, or psychiatric/mental health.

485:10-15-7. Practice as a Clinical Nurse Specialist

Educational preparation. Successful completion of an education program shall establish eligibility to take the recognized Clinical Nurse Specialist certification examination in a specialty area. The education program shall prepare Clinical Nurse Specialists in a graduate-level advanced practice education program accredited by or holding preliminary approval or candidacy status with the ~~National League for Nursing Accrediting Commission~~Accreditation Commission for Education in Nursing or the Commission on Collegiate Nursing Education.

485:10-15-9.1. Approval of advanced practice education programs (Effective January 1, 2016)

(a) **Requirements for approval.**

(1) The Board shall have the authority for approval of advanced practice education programs located in the State of Oklahoma.

(2) To be approved as an advanced practice education program in the State of Oklahoma, the program shall meet the following standards:

(A) A graduate-level program offered by a university accredited by an accrediting body that is recognized by the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA);

(B) The APRN program holds accreditation or candidacy status from the ~~National League for Nursing Accrediting Commission~~Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Accreditation Commission for Midwifery Education, or the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs;

(C) The curriculum of the APRN nursing education program must prepare the graduate to practice in one of the four identified APRN roles (i.e., CRNA, CNM, CNS, or CNP) and in at least one of the six population foci (i.e., Family/Individual across the Lifespan, Adult-Gerontology (acute and/or primary), Neonatal, Pediatrics (acute and/or primary), Women's Health/Gender-Related, or Psychiatric/Mental Health).

(b) **Establishment of a new advanced practice education program in the State of Oklahoma.**

(1) An institution wishing to establish a new advanced practice education program shall submit an application for approval to the Board at least six weeks prior to a regularly-scheduled Board meeting and at least six months prior to planned admission of the first students, which provides the following information for the Board's consideration:

(A) mission and organization of the education institution;

(B) accreditation or candidacy status of the education institution and of the proposed program;

(C) advanced practice registered nurse role(s) and population focus/foci of the proposed program;

(D) degree to be offered;

(E) degree plan;

(F) tentative time-table for program development and implementation;

(G) proposed size of program.

(2) The application shall be signed by the controlling institution's administrative official with evidence that the institution is authorized to offer education programs in Oklahoma.

(3) The Board shall advise the institution in writing of its decision to:

(A) approve the program; or

(B) defer approval pending receipt of further information; or

(C) deny approval specifying reasons for denial.

(c) **Reports to the Board.**

(1) A Board-approved advanced practice education program shall submit notification to the Board of changes in accreditation status, nurse administrator for the program, or institutional ownership within 30 days of the change.

(2) Upon notification of loss of accreditation status, the program will be removed from the list of Board-approved advanced practice education programs. The program will be notified that ~~its graduates~~those graduating since loss of accreditation are not eligible for licensure as Advanced Practice Registered Nurses in the State of Oklahoma.

(3) Additions to or changes in the advanced practice education program that change the advanced practice role, population focus, or degree require approval of the Board prior to implementation.

SUBCHAPTER 16. REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY FOR ADVANCED PRACTICE REGISTERED NURSES

485:10-16-5. Maintenance

(a) The Advanced Practice Registered Nurse may prescribe in writing, orally, or by other means of telecommunication, drugs or medical supplies which are not listed on the exclusionary formulary approved by the Board, and which are within the scope of practice for the Advanced Practice Registered Nurse, and that are not otherwise prohibited by law.

(b) The Advanced Practice Registered Nurse must have a supervising physician on file with the Board prior to prescribing drugs or medical supplies. Changes to the written statement

between the Advanced Practice Registered Nurse and supervising physician shall be filed with the Board within thirty (30) days of the change and shall be effective upon filing.

(c) The Advanced Practice Registered Nurse with prescriptive authority who prescribes Schedule III-V drugs will comply with state and Federal Drug Enforcement Administration (DEA) requirements prior to prescribing controlled substances.

~~(1) The Advanced Practice Registered Nurse with prescriptive authority will submit in writing the assigned DEA number to the Board of Nursing within fourteen (14) days of receipt.~~

~~(2)~~ No more than a 30-day supply for Schedule III-V drugs shall be prescribed by the Advanced Practice Registered Nurse with prescriptive authority.

[OAR Docket #14-663; filed 7-7-14]

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

[OAR Docket #14-502]

RULEMAKING ACTION:
PERMANENT Rule Document
RULES:
Subchapter 1. General Provisions
490:1-1-2. Definitions [AMENDED]
Subchapter 5. Investigative Procedures
490:1-5-8. Reporting [AMENDED]
Subchapter 9. Continuing education
490:1-9-4. Continuing education requirements [AMENDED]
490:1-9-5. Auditing of continuing education hours [AMENDED]
AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 12, 2013
COMMENT PERIOD:
October 1, 2013, through October31, 2013
PUBLIC HEARING:
November 20, 2013
ADOPTION:
November 20, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 27, 2013
LEGISLATIVE APPROVAL:
NA
LEGISLATIVE DISAPPROVAL:
NA
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
NA
INCORPORATIONS BY REFERENCE:
NA

ANALYSIS:
The purpose of the rules change is to continue to follow up on the Statutory changes effected by Enrolled House Bill No. 1282 of the 2011 Regular Session, and to update requirements for Long Term Care Administrators in Oklahoma to include administrator types added in this legislation. The proposed changes update and add definitions and revises language to standardize our language with other relevant statute/rules changes and improve the clarity of the intent of the document.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-2. Definitions

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

"Accredited college or university" means a college or university that is domiciled within the United States and that is accredited by: the North Central Association of Colleges and Schools, The Higher Learning Commission; the Southern Association of Colleges and Schools, Commission on Colleges; the Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; the New England Association of Schools and Colleges, Commission on Institutions of Higher Education; the Middle States Association of Colleges and Schools, Middle States Commission on Higher Education; or the Northwest Commission on Colleges and Universities.

"Administrator-In-Training" or "AIT" means: an individual serving a Board-approved internship within the facility type for which he is seeking licensure/certification under the supervision of a preceptor 'certified' by the Board. Individuals serving an AIT internship may also be referred to herein as 'intern/trainee'.

"Administrator" means any individual duly licensed or certified by the Board regardless of the role or function he performs.

"Adult Day Care (ADC) Administrator" means a long term care administrator (or director) duly licensed by the Board to serve in this capacity in an Adult Day Care Center. The scope of practice of an individual licensed as an Adult Day Care Administrator is limited to a licensed Adult Day Care Center.

"Adult Day Care (ADC) Center" shall have the same meaning as such term is defined in the Adult Day Care Act, Title 63 O.S. Section 1-870 et seq.

"Adverse action" means revocation or suspension of a license, reprimand, censure or probation; any other loss of or restriction placed upon the license, including, but not limited to, the right to apply for, or renew a license; voluntary surrender

in lieu of discipline, non-renewal (excluding nonrenewal due to non-payment of fees, or retirement); administrative fines and any other negative action or finding by the Board.

"Assistant Administrator" as used herein means an individual who has been 'certified' by the Board as having met the minimum qualifications established by the Board to be able to serve as a full-time, Assistant Administrator in a licensed long term care nursing facility, and who acts under the direction, supervision and license of a licensed administrator who is the "Administrator-of-Record" at two-or-more licensed facilities which are located within a 50-mile radius of each other and wherein the total occupied bed count does not exceed 120 beds.

"Assisted Living Center" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq. Also known as an Assisted Living Facility (ALF).

"Board" means the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA) or its staff.

"Certification" contextually, prior to the effective date of these rules, means the authorization granting a person the privilege of serving as a long term care administrator and continues until licensed in accordance with these rules or until October 1, 2012, whichever occurs first. The exception is the certified assistant administrator which this Board continues to certify. Certification after the effective date of these rules pertains to the completion of training at an approved institution of higher learning or other body conducting such training (except Administrator University for Nursing Home Administrators and Board conducted training for Adult Day Care administrators). The institution or body certifies that the individual has been properly and completely trained and is prepared, as a prerequisite, for the state standards exam and/or NAB RC/AL exam. Certification of training is a step in the licensure process for RC/AL licensure.

"Continuum of Care Facility" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Degree equivalency evaluation" means an equivalency evaluation of a degree that was earned from a college or university not domiciled in the United States against a degree earned from an 'accredited college or university' (see definition earlier herein) that is performed by one of the following:

(A) Educational Credential Evaluators (ECE)

(B) Educational Records Evaluation Service (ERES)

(C) International Education Research Foundation Credentials Evaluation Service (IERFCES)

(D) World Education Services (WES)

"Formal Complaint" means a formal allegation by the Board that probable cause exists that an individual licensed as a long term care administrator has violated applicable statutes and/or rules. These allegations are written in a legal document filed with the Board by its prosecuting attorney.

"Intermediate Care Facility for the Mentally Retarded (ICF/MR)" means a facility whose primary purpose is to provide health and rehabilitative services for persons with mental retardation or a related condition, and otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq. ICF/MR is synonymous with the term ICF/IID (intermediate care facility for individuals with an intellectual disability).

"Intermediate Care Facility for the Mentally Retarded, 16 Beds and Less (ICF/MR-16)" means a facility with sixteen (16) or fewer licensed resident beds that serves persons with mental retardation or with related conditions and that otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq.

"Lapsed License or Expired License" means a license that is no longer valid because the licensee failed to timely renew his/her license by the renewal deadline, causing the license to lapse or expire.

"License" means the written authorization of the Board granting a person the privilege of serving as a long term care administrator for a specific period of time, and further, a legal instrument obligating that person to adhere to the rules, regulations and statutes that govern the license.

"Licensing Year" shall mean the specific period of time a license/certification issued by the Board is valid. For purposes of these Rules, the term "licensing year" shall have the same meaning as "calendar year", the time period beginning at 12:01 a.m., January 1, and ending as of 12:00 midnight, the same December 31. A long term care administrator's license/certification is valid for one year.

"Long Term Care" primarily for the purposes of this board, as used herein, includes care given at facilities where a licensed long term care administrator is required such as a nursing facility, assisted living facility, residential care facility or an adult day care center. It does not encompass temporary care situations such as a swing bed hospital.

"National Association of Long Term Care Administrator Boards"("NAB") is composed of state boards or agencies responsible for licensing long term care administrators. The basic objective of the NAB is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure, re-licensure and regulation of long term care administrators. One of NAB's functions is the development and administration of the national long term care administrator or Nursing Home Administrator (NHA) examination as well as the Residential Care/Assisted Living (RC/AL) examination.

"Nursing Home, Nursing Facility, Long Term Care Facility, Specialized Home, and Specialized Facility" shall have the same meanings as the term "Nursing Facility" as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq. and/or as defined at 42CFR §483.1 et seq.

"Nursing Home Administrator (NHA)" means a long term care administrator duly licensed by the Board to serve in this capacity in a nursing facility, nursing home, skilled nursing facility or any similarly worded facility type. Their scope of practice includes ICF/MR, RCF, ALF and Adult Day Care Centers and the term is synonymous with nursing facility administrator.

"Preceptor" means an individual qualified by training and experience, who is currently licensed as a long term care

administrator in Oklahoma, is 'certified' by the Board as a qualified preceptor and is charged with coordinating the training of an AIT intern/trainee who is enrolled in a Board-approved Administrator-in-Training (AIT) internship program.

"Provisional license" means the temporary authority to serve as a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements prescribed by the Board.

"RC/AL Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in either an RCF or ALF. The scope of practice of an individual licensed as an RC/AL administrator is limited to either a licensed Residential Care Facility (RCF) or a licensed Assisted Living Facility (ALF).

"Residential Care (RC) Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in only an RCF. The scope of practice of an individual licensed as a Residential Care Administrator is limited to a licensed Residential Care Facility (RCF).

"Referral or Report" means an issue or concern regarding a long term care administrator that has been reduced to writing and is forwarded to the Board for a determination as to whether a violation of the Board's Rules has occurred. Such referral or report may be made by an individual or agency.

"Residential Care Home" or "Residential Care Facility (RCF)" shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 et seq.

"Revocation or Revoked License" is a sanction imposed upon a license/certificate by the Board that results in a complete loss of license/certificate and all privileges attendant thereto and requires holder to surrender his license/certificate, the annual license/certification renewal card and all other license or certificate-related documents to the Board.

"Specialized facility" shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Suspension or Suspended License" is a sanction imposed upon a license/certificate by the Board. The licensee retains his license/certificate and his annual renewal card and therefore must renew the license, yet he shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist, any or all other restoration requirements imposed by the Board have been met, and the Board has restored his status.

SUBCHAPTER 3. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS

SUBCHAPTER 5. INVESTIGATIVE PROCEDURES

490:1-5-8. Reporting

(a) The Board shall report final adverse actions to the National Practitioner Data Bank (NPDB), formerly the Healthcare Integrity and Protection Data Bank (HIPDB), in accordance with requirements at Title 45, Code of Federal Regulations, Part ~~61~~60.

(b) Disciplinary action taken against a license/certificate holder and reported to the ~~HIPDB~~ NPDB shall be reported on the registry as provided in 63 O.S. §330.64.

(c) If the Board has knowledge that the license/certificate holder is licensed or certified as a long term care administrator in any other legal jurisdiction(s) and/or if the Board has knowledge that this person holds other professional license(s) or certification(s), the Board may report disciplinary action taken against this person to all appropriate state licensing authorities, federal regulatory authorities and professional certification organizations.

(d) Referrals may be made to law enforcement authorities, the State's Medicaid Fraud and Abuse authorities, Adult Protective Services, the State's Ombudsman, or any other licensing or regulatory entity.

490:1-9-4. Continuing education requirements

(a) Each licensee shall be responsible for identifying his own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those needs, and integrating new knowledge and skills into his duties.

(b) Individuals who are newly licensed as a nursing home or ICF/MR administrators or certified as Assistant Administrators are required to successfully complete continuing education hours equivalent to a rate of two (2) hours per month, beginning with the month following the month his license/certificate is issued, for each month he holds the license/certificate during the current licensing year. For certified assistant administrators, this is a condition of employment.

(1) Individuals who are newly licensed as RC/AL administrators are required to successfully complete continuing education hours equivalent to a rate of one and one-half (1.5) hours per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(2) Individuals who are newly licensed as RC only administrators are required to successfully complete continuing education hours equivalent to a rate of 1.3 hours per month, rounded up to the next half hour increment (e.g., 1.3 = 1.5; 2.6 = 3), beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(3) Individuals who are newly licensed as Adult Day Care administrators are required to successfully complete continuing education hours equivalent to a rate of one (1) hour per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(c) Licensees holding a nursing home administrator license and Certified Assistant Administrators shall successfully complete twenty-four (24) clock hours of continuing education (commonly referred to as CEUs or continuing education units)

during each licensing year. For Certified Assistant Administrators this shall be a condition of employment.

(1) RC/AL administrators shall successfully complete eighteen (18) clock hours of continuing education during each licensing year.

(2) Residential Care only administrators shall successfully complete sixteen (16) clock hours of continuing education during each licensing year.

(3) Licensed Adult Day Care Administrators are required to successfully complete twelve (12) clock hours of continuing education during each licensing year.

(d) Licensees/certificate holders are responsible for maintaining their own continuing education records.

(e) Carry-over of continuing education hours earned in one licensing year that were in excess of the hours required for that year to a subsequent licensing year is not permitted.

(f) Licensed administrators who have attended and received credit for previously approved program content shall be denied credit for attending subsequent duplicate programs in the same calendar year.

(g) A licensee/certificate holder who cannot meet the continuing education requirement due to illness, emergency or hardship may petition the Board, in writing, requesting a waiver of the ~~CEU~~clock hour requirement. Any such waiver request must be received and acted-upon by the Board prior to the end of the licensing period in which the CE~~U~~ requirement will not be met. The waiver request shall explain why compliance is not possible, and include appropriate documentation. Waiver requests will be evaluated and acted upon by the Board on a case-by-case basis.

(h) In the event a licensee fails to provide the Board, upon request, with documentation that the continuing education requirements have been met, the licensee will be subject to sanction by the Board, which may include suspension or revocation of his license. This is always considered a reportable offense even on the first offense and will appear as a violation in the Registry and NPDB.

(i) A licensee whose license is suspended by the Board for disciplinary reasons is not exempt from the continuing education requirements, and must, therefore, successfully complete the required number of continuing education hours commensurate with his license/certificate type during any licensing year(s) in which his license is under suspension. Licensee shall, upon Board request, furnish documentation that the continuing education requirements have been met. Failure to provide such requested documentation shall subject licensee to sanction by the Board, including further suspension or revocation of his license.

(j) All CE~~U~~ hours earned for programs approved by the NCERS/NAB or approved by the Board may be utilized by a licensee for purposes of meeting the annual CE~~U~~ requirement in the licensing period in which the hours were earned.

490:1-9-5. Auditing of continuing education hours

(a) The Board may request continuing education information from sponsors for audit purposes only.

(b) The Board does not retain any record of continuing education hours completed by individual administrators except as it may otherwise obtain in its performance of the annual CE~~U~~ compliance audit.

(c) An annual audit of at least 5% of the total number of each type of administrator~~s~~ will be made to verify compliance with the annual CE~~U~~ requirement. This percentage may be increased at the Board's discretion.

(d) Failure of a licensee to provide verification of continuing education hours completed, if requested by the Board, shall result in disciplinary action against the licensee. The minimum penalty for a first time offense is $50.00 per ~~CEU~~ clock hour short and completion of twice the number of ~~CEUs~~ clock hours short, due within 120 days. These ~~CEUs~~ clock hours cannot be applied to the current year's requirements. This is also a ~~HIPDB~~ NPDB (~~Healthcare Integrity and Protection Data Bank~~National Practitioners Data Bank) reportable offense. For a second offense, the penalty will double. Any subsequent offenses shall be referred to the Board for determination of an appropriate penalty which may include suspension or revocation. The Administrator may also request a formal hearing before the Board in lieu of the penalty for either the first or second time offense, in which case a formal complaint shall be drafted and the Board shall have a full range of penalty options available to them, to include suspension and revocation. These automatic penalties for the first and second offense do not require Board approval; however, any variation from this "standard" will require Board approval. A formal complaint and appropriate order will still be drafted by the Board's attorney and the action taken shall be reported to the Board.

[OAR Docket #14-502; filed 6-24-14]

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

[OAR Docket #14-503]

RULEMAKING ACTION:

Permanent Rules Document

RULES:

Subchapter 1. Licensing of Long Term Care Administrators

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility includes ICF/MR) administrators (also known as nursing home administrators

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living RC/AL) administrators [AMENDED]

490:10-1-3.2. Grandfathered License [REVOKED]

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [AMENDED]

490:10-1-3.4. Grandfathered License [REVOKED]

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [AMEMDED]

490:10-1-3.6. Grandfathered License [REVOKED]

490:10-1-4. Requirements for ~~licensure by reciprocity~~/licensure by interstate endorsement for long term care administrators [AMENDED]

490:10-1-5. Requirements for a provisional license as a nursing home administrator or residential care/assisted living (RC/AL) administrator [AMENDED]

490:10-1-5.1. Requirements for a provisional license as a residential care~~/assisted living~~ administrator [AMENDED]

490:10-1-11. Requirement for restoration from suspended status [AMENDED]
Subchapter 3. Application for Long Term Care Administrator Licensure
490:10-3-1. Application for initial licensure, licensure by ~~reciprocity/~~interstate endorsement, or provisional license [AMENDED]
490:10-3-2. National examination [AMENDED]
490:10-3-4. Admission to the State Standards and national examinations [AMENDED]
Subchapter 5. Discipline
490:10-5-3. Disciplinary action [AMENDED]
Subchapter 8. Administrator-In-Training (AIT) internship program for Nursing Home Administrators
490:10-8-5. Preceptor qualifications [AMENDED]
490:10-8-8. Preceptor's final report [AMENDED]
490:10-8-13. AIT time on the job [AMENDED]
490:10-13-2. Administrator Responsibilities [AMENDED]

AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
September 12, 2013

COMMENT PERIOD:
October 1, 2013, through October 31, 2013

PUBLIC HEARING:
November 20, 2013

ADOPTION:
November 20, 2013

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
November 27, 2013

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
NA

INCORPORATIONS BY REFERENCE:
NA

ANALYSIS:
The purpose of the rules changes was to continue to follow up on the Statutory changes affected by Enrolled House Bill No. 1282 of the 2011 Regular Session, and to update requirements for Long Term Care Administrators in Oklahoma to include administrator types added in this legislation. The proposed changes update and add definitions and revises language to standardize our language with other relevant statute/rules changes and improve the clarity of the intent of the document. It also removes dated guidance concerning the "grandfathering" of recently added license types and clarifies standards for some of the newly added licensure types. It adds the option for a temporary license and adds a provisional license option for the RC/AL type, making the licensure process easier and quicker for a qualified person to be gainfully employed while restricting the Board from granting a Provisional NHA license to an AIT or AU student who has not already passed the NAB NHA exam. It slightly broadens the requirements to be a Preceptor to include experienced licensed administrators acting in the capacity of an Assistant Administrator in a VA home.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. LICENSING OF LONG TERM CARE ADMINISTRATORS

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR) administrators (also known as nursing home administrators)

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure shall meet the requirements in this Section.

(b) Each applicant shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) "Official Proof" [see 490:10-3-1.1. (relating to evidence requirements)] of successful completion of a formal program or program(s) of study, wherein applicant received, at a minimum, a bachelor's degree:

(A) applicant received a bachelor's degree from a ~~an accredited~~college or university accredited by one of the regional accreditation organizations recognized by the U.S. Department of Education and the Board if the applicant's degree is from a school domiciled in the United States; or

(B) if the applicant received his degree from a college or university domiciled outside the United States [and, as such, the college/university does not fall under the accreditation purview of any of the six (6) regional accreditation organizations recognized by the U.S. Department of Education and by the Board], applicant shall, at applicant's expense, cause a degree equivalency evaluation of his degree to be performed and the results sent directly to the Board. The Board shall assess the results of this degree equivalency evaluation and, at its sole discretion, determine if applicant's education and/or degree are equivalent, at a minimum, to a bachelor's degree earned from ~~an~~ a regionally accredited college or university;

(2) Receipt of a passing score on the national "NAB" NHA examination conducted by the National Association of Long Term Care Administrator Boards (NAB);

(3) Receipt of a passing score on the Oklahoma State Standards examination within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(4) Successful completion of Administrator University within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take Administrator University prior to any future licensing attempts (if the candidate has a degree in long term care administration from an institution accredited by NAB, the Administrator University may be waived);

(5) Successful completion of the Administrator-in-Training (AIT) program (or documentation of

an equivalent internship as part of a degree in long term care from an institution accredited by NAB) within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and complete another AIT program prior to any future licensing attempts; and

(6) Payment of the required fee(s).

(c) The Board, at its sole discretion, may waive the Administrator University requirement and/or the Administrator-in-Training requirement if the applicant was previously licensed in Oklahoma as a long term care administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(d) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC/AL administrator shall meet the requirements in this Section. Administrators holding an RC/AL license may serve as an administrator only in either an RCF or ALF.

(b) Each applicant for initial licensure as an RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(~~b~~c) Each applicant for initial licensure as a RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification:

(A) through training from an institution of higher learning whose program has been approved by the Board; or

(B) receipt of a nationally recognized assisted living certificate of training and competency for assisted living administrators that has been reviewed and approved by the Board;

(C) All sources of certification previously approved through the Oklahoma State Department of Health requirements shall be presumptively approved by the Board until November 1, 2013 but shall thereafter be required to be reviewed and approved by the Board.

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC/AL administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(3) Receipt of a passing score on the national "NAB" RC/AL examination conducted by the National Association of Long Term Care Administrator Boards (NAB) and

(4) Payment of the required fee(s).

(5) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination; a passing score on the State Standards exam is a prerequisite to the NAB RC/AL exam.

(~~c~~d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously certified or licensed in Oklahoma as an RC/AL administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.2. Grandfathered license [REVOKED]

~~(a) Effective October 1, 2012, all RC/AL Administrators shall be licensed by the Board. Individuals who were certified in Oklahoma as Residential Care or AL Administrators prior to the effective date of these rules, who are currently in good standing and submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as RC/AL Administrators. This required documentation includes completing an application, proof of previous certification, completion of current CEU requirements and the applicant shall submit to a background check. The Board may verify certifications through the original certification source. All applicants currently serving as RC/AL Administrators whose certifications have lapsed for any reason, including failure to meet CEU requirements, or who fail to meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.~~

~~(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, non-current CEUs, missing documentation or their good standing is in question, shall~~

~~be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.~~

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC administrator shall meet the requirements in this Section. Administrators holding an RC license may serve as an administrator only in an RCF and may not serve in any other facility type.

(b) Each applicant for initial licensure as an RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(c~~b~~) Each applicant for initial licensure as a RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification~~:~~

~~(A)~~ through training from an institution of higher learning whose program has been approved by the Board;

~~(B) All sources of certification previously approved through the Oklahoma State Department of Health requirements shall be presumptively approved by the Board until November 1, 2013 but shall thereafter be required to be reviewed and approved by the Board.~~

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; and

(3) Payment of the required fee(s).

(4) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination.

(d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously certified or licensed in Oklahoma as an RC administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.4. Grandfathered license [REVOKED]

~~(a) Effective October 1, 2012, all RC Administrators shall be licensed by the Board. Individuals who were certified in Oklahoma as Residential Care Administrators prior to the effective date of these rules, who are currently in good standing and submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as RC Administrators. This required documentation includes completing an application, proof of previous certification, completion of current CEU requirements and the applicant shall submit to a background check. The Board may verify certifications through the original certification source. All applicants currently serving as RC Administrators whose certifications have lapsed for any reason, including failure to meet CEU requirements, or who fail to meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.~~

~~(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, non-current CEUs, missing documentation or their good standing is in question, shall be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.~~

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an ADC administrator shall meet the requirements in this Section.

(b) Each applicant for initial licensure as an ADC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) One of the following:

(A) A high school diploma (or GED) AND five (5) consecutive years supervisory experience (full-time or equivalent) in a long term care or geriatric setting; OR

(B) A Bachelor's degree AND one (1) year of supervisory experience, preferably in a social or health services setting; Each applicant for initial licensure as an ADC administrator under this provision shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of Bachelor's degree. The same level of "proof" detailed in paragraph 10-1-3(b) is required; OR

(C) An active Oklahoma Nursing license (either LPN or RN), in good standing, and two years of nursing experience.

(2) Successful completion of Board approved training for adult day care administrators;

(3) Receipt of a passing score on the Oklahoma State Standards examination for adult day care administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this the twenty-four (24) month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; and

(4) Payment of the required fee(s).

(c) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.6. Grandfathered license [REVOKED]

~~(a) Effective October 1, 2012, all Adult Day Care Administrators shall be licensed by the Board. Individuals who were Adult Day Care Administrators, including those currently in upper management who routinely directly supervise and serve as interim administrators in the absence of the administrator, as of the effective date of these rules and who submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as Adult Day Care Administrators. This required documentation includes completing an application, providing proof that the applicant is currently employed as an Adult Day Care director/administrator, and the applicant shall submit to a background check. All applicants currently serving as Adult Day Care Administrators who do not meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.~~

~~(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, missing documentation or their good standing is in question, shall be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.~~

490:10-1-4. Requirements for ~~licensure by reciprocity/~~licensure by interstate endorsement for long term care administrators

(a) In addition to the general requirements found in this Chapter, each applicant for ~~licensure by reciprocity/~~licensure by interstate endorsement as a nursing home administrator shall meet the requirements of this Section.

(1) The Board ~~has entered into a licensure by reciprocity/licensure by endorsement agreement with the National Association of Long Term Care Administrator Boards (NAB) that~~ permits licensure for candidates for Nursing Home Administrators from other jurisdictions who have met the following minimum requirements.

(A) Submission to the Board of "Official Proof" of successful completion of a formal program(s) of study and, at a minimum, receipt of a bachelors degree that meets the requirements set forth in 490:10-1-3.;

(B) Submission to the Board of evidence of current licensure, in good standing, as a long term care/nursing home administrator, and submission of proof that applicant has:

(i) served full time as the administrator-of-record for the past two (2) consecutive years in a jurisdiction regulated by a licensing authority.; or

(ii) been active ~~in long term care~~as a licensed nursing home administrator in a jurisdiction regulated by a licensing authority for at least two (2) of the past ~~five (5)~~three (3) consecutive years;

(C) Submission to the Board of proof of initial licensure as a long term care/nursing home administrator, including active NAB NHA Exam scores, and proof that such license is in good standing with that licensing authority;

(D) Submission to the Board of full disclosure of any/all pending disciplinary actions or current investigations against applicant as well as any sanctions imposed against applicant's long term care/nursing home administrator license or against any professional license he presently holds or has ever held in any other State or jurisdiction, including, but not limited to: revocation; suspension; 'voluntary surrender'; other licensure restriction(s) that limited applicant's practice under such license; or the assessment of monetary penalties or fines or the assessment of additional CEUs by the licensing entity as a result of disciplinary proceedings~~;~~. Loss of a professional license due to nonrenewal or failure to obtain the required number of annual CEU hours is excepted from the full and complete disclosure otherwise required herein;

(E) Documentation related to current or previous licensure shall be submitted directly to the Board by the state-appointed authority(ies) regulating the respective license(s); and

(F) Payment of the required fee(s)

(2) The Board, in its sole discretion, shall assess the magnitude of any disciplinary action taken by other licensing authorities in its determination of applicant's eligibility for an Oklahoma license.

(3) Applicants otherwise determined eligible for Oklahoma licensure by ~~reciprocity/~~interstate endorsement shall be required to sit for and receive a passing score on the Oklahoma State Standards examination and pay the required license fee before a license is granted by the Board~~.~~through approval of the Executive Director. Only

those applicants for licensure by endorsement with a record of any form of disciplinary action by another licensing authority or any other possible negative indicator shall be required to be approved by a vote of the Board.

(b) There is no ~~reciprocity~~ licensure by endorsement allowance for licensure for the RC/AL license, the RC license or the Adult Day Care License. All out of state licensure applications for these licensure types shall be treated as initial licensures with the exception of individuals who previously passed the NAB RC/AL exam, shall not be required to re-take that exam, however these individuals must provide proof of having passed that exam.

490:10-1-5. Requirements for a provisional license as a nursing home administrator or residential care/assisted living (RC/AL) administrator

(a) To fill a position of ~~nursing home~~ administrator that unexpectedly becomes vacant, the Board may grant one (1) provisional license for a single period not to exceed six (6) months. The Board shall not grant another provisional license to fill a vacancy at the same facility for a period of one year after the date the provisional license is granted.

(b) In addition to the general requirements found in this Chapter each applicant for a provisional license shall meet the requirements of this Section.

(c) A provisional license may be granted to a person who does not meet all of the licensing requirements established by the Board, but who:

(1) For a provisional nursing home administrator license, has ~~Has~~ successfully completed a formal program(s) of study and, at a minimum, received a bachelor's degree that meets the requirements set forth in 490:10-1-3(b)(1)(A) or (B);

(2) Has obtained the services of a currently-licensed Oklahoma long term care administrator to act as an on-site consultant to the provisional licensee;

(3) Has provided the Board with evidence indicating he has at least two (2) years of experience in a long term care facility;

(4) Has received a passing score on the current applicable Oklahoma State Standards examination; and

(5) Has paid the required fee(s).

(d) A provisional license shall not be issued to a current AIT and/or AU student unless that student/AIT had previously passed the NAB NHA exam.

(e) The consultant administrator to a provisional licensee must have been employed in a comparable long term care facility in Oklahoma for a minimum of two (2) years.

(~~e~~f) The consultant administrator to a provisional licensee shall:

(1) Provide direct supervision of the provisional licensee for at least eight (8) hours per week with no more than 10 calendar days lapsing between consultant visits to the provisional licensee's facility; and

(2) Submit monthly evaluation reports on the provisional licensee to the Board no later than the tenth day of each month for the duration of the provisional license.

490:10-1-5.1. Requirements for a provisional license as a residential care~~/assisted living~~ administrator

There is no provisional license provision for ~~residential care/assisted living administrators or~~ residential care administrators.

490:10-1-11. Requirements for restoration from suspended status

(a) In addition to the general requirements found in this Chapter, each applicant for restoration of a suspended license shall meet the requirements in this Section.

(b) Individuals seeking restoration of a license that has been suspended must petition and appear, in person, before the Board and provide the Board with written documentation that he~~-~~has complied with all terms of the suspension.

(c) The Board, in its sole discretion, may restore a suspended license after the suspension time has elapsed, upon submission of evidence satisfactory to the Board that the conditions responsible for the suspension no longer exist and that no other reasons exist which warrant continued suspension.

(d) Evidence shall include complete documentation attested to under oath and by witnesses of facts that indicate that the conditions responsible for the suspension no longer exist. Letters of recommendations from employees, officers of courts, or respected members of the individual's community may also be submitted.

(e) Petitioners who have been suspended may be required to complete continuing education hours (in addition to those required for license renewal), and/or specific Administrator-In-Training (AIT) modules, and/or the portions of or the entire Administrator University curriculum at the discretion of the Board, at the expense of the applicant.

(f) Petitioners who were suspended but allowed their license to lapse while suspended or while pending adjudication of a case that resulted in suspension shall be required, at the time of their petition for reinstatement, to pay the renewal fees for every year they did not renew. If they are unable to show documented proof of completion of the continuing education requirements for the entire period of their suspension, they shall also be subject to the provisions of OAC 490:1-9-5(d) except that the penalty must be complied with (CE accomplished and fines paid) prior to the Board reviewing the petition for reinstatement. The license may however be removed from the former lapsed status and returned to suspended status (requiring annual renewal and annual completion of CE requirements) but meeting these requirements does not obligate the Board to reinstate the license.

SUBCHAPTER 3. APPLICATION FOR LONG TERM CARE ADMINISTRATOR LICENSURE

490:10-3-1. Application for initial licensure, licensure by ~~reciprocity/~~interstate endorsement, or provisional license

(a) Each applicant for licensure as a long term care administrator shall make a verified application on a form furnished by the Board stating the license type for which he is applying and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license, for licensure by ~~reciprocity/~~interstate endorsement or for a provisional license is valid for one year after the date of receipt by the Board.

(c) An applicant shall be deemed to have abandoned the application if he does not fulfill all requirements for licensure within one year from the date of application.

(d) An application for Administrators University (AU) may be used as an application for initial licensure. However, if this application is over a year old when all requirements have been met, the Board does require that this application be updated. Such an application shall be deemed abandoned if it has not been updated within the time restrictions for licensure.

(e) An application for licensure submitted subsequent to the abandonment of a former application shall be treated as a new application and the applicant must meet current requirements for licensure as a long term care administrator

(f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved and no further action will be taken on the application.

(g) An application is complete when:

(1) the application fee prescribed by the Board at OAC 490:1-7-2. has been remitted and deposited to the Board's credit with the State Treasurer;

(2) all documentation required to be submitted along with or in support of the application has been received by the Board;

(3) the applicant has met all other requirements for an initial license, for licensure by ~~reciprocity/~~interstate endorsement or for a provisional license, as applicable, and

(4) the results of the criminal background check have been received by the Board .

(h) Upon verification of compliance with all requirements, an applicant shall be eligible for consideration by the Board for purposes of licensure as a long term care administrator.

(i) The fee is due and payable on notice of eligibility for licensure. A license will not be issued until said fee is paid in full to the Board.

(j) The certificate of license shall be presented at the Board meeting when it is approved, if possible, or mailed to the applicant within seven (7) working days of Board's formal grant of license to the applicant. Applicants are encouraged to attend the Board meeting.

(k) A temporary license may also be applied for in accordance with the applicable provisions in paragraph 10-1-3~~.1~~(d), 10-1-3.1(e), 10-1-3.3(e), or 10-1-3.5(c) at the discretion of the applicant.

490:10-3-2. National examination

(a) An individual applying for an initial license must receive a passing score on the applicable exam, either the Nursing Home Administrator ("NHA") examination or the Residential Care/Assisted Living ("RC/AL") exam administered by the National Association of Long Term Care Administrator Boards (NAB) (neither is applicable to Residential Care or Adult Day Care administrator applicants). The Board may waive this requirement if the applicant provides evidence that he has successfully passed the appropriate NAB examination at a previous time. The NAB's RC/AL (Residential Care/Assisted Living)
exam does not meet the requirement for a nursing home administrator license

(b) An individual applying for licensure by ~~reciprocity/licensure by~~ interstate endorsement shall not be required to sit for and receive a passing score on the NAB's NHA examination if the applicant provides evidence that he has successfully passed it at a previous time.

(c) An individual applying for a provisional license shall not be required to ~~take the "NHA"~~pass the applicable NAB examination to be provisionally licensed.

(d) An applicant who fails to pass the appropriate NAB examination may re-take the examination four (4) additional times, after which (5 failures) he will have to petition the Board, on each subsequent occasion, to allow him to sit for the examination. The Board, after reviewing the merits of each such petition, will either allow or deny the petition, and if the decision is to deny the petition, may propose other remedies that may increase the potential for the individual to successfully pass this examination on a future attempt (i.e. continuing education, NAB examination study/refresher course, etc.) prior to applicant re-petitioning the Board to allow applicant to re-take the examination.

(e) Fees for all national examinations shall be in an amount prescribed by and are due and payable to the NAB or its authorized designee.

490:10-3-4. Admission to the State Standards and national examinations

(a) Upon review of applicant qualifications by Board staff, applicants meeting Board requirements are notified of their eligibility to sit for the State Standards examination. Upon successful completion of Administrator University and a Board-approved AIT program, applicants for initial licensure as nursing home administrators become eligible to sit for the NAB's ("NHA") examination. In all cases, except Residential Care and Adult Day Care where a NAB exam is not required, taking the appropriate NAB exam is the last step in the process and all other requirements must be met prior to being approved to sit for the national examination.

(b) Applicants for licensure ~~by reciprocity/licensure~~ by interstate endorsement, for a provisional license and for a certification as an assistant administrator (nursing facility only)

are eligible to sit for the State Standards examination on the next scheduled testing date, or pay the appropriate fee for an unscheduled testing date.

(c) All applicants shall be required to agree not to compromise or attempt to compromise the NAB or the Oklahoma State Standards examination by disclosing any information, questions, or answers on these examinations. This agreement shall be documented on a "Test Confidentiality and Attestation" form provided by the Board or an online equivalent in the online application process. Prohibited activities which might compromise these examinations include, but are not limited to:

(1) reproducing or assisting another by any means to reproduce or attempt to reproduce any portion of the examination, by any means, including electronic transmission or memorization;

(2) having any person (whether paid or unpaid) take the examination on their behalf; engaging in face-to-face, written, or electronic discussions, including on blogs, listservs, chat rooms, email, or any social media application, concerning the content of the examination for personal, commercial, or other reasons; and

(3) selling, distributing, buying, receiving or having unauthorized possession of any portion of the examination, specifically any questions or answers.

(d) Failure to observe the confidentiality of a NAB Examination or an Oklahoma State Standards Examination may result in disciplinary action by the Board as outlined in OAC 490:10-5-3(a)(23).

SUBCHAPTER 5. DISCIPLINE

490:10-5-3. Disciplinary action

(a) This subchapter applies to all long term care administrators.

(b~~a~~) The Board may take action against ~~an~~ a licensed administrator or an unlicensed person acting as administrator, and may deny an initial application; deny a renewal application; suspend or revoke a long term care administrator license or certification, a provisional license, a preceptor certification, an assistant administrator's certification, or an AIT internship training permit; warn; censure; reprimand; impose administrative fines or probation or use other remedies that may be considered to be less than suspension or revocation upon satisfactory evidence of any of the following:

(1) Obtaining or attempting to obtain a license or certificate by fraud, deceit, or misrepresentation.

(2) Conviction of or a plea of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude.

(3) Use of legally-prescribed or illegal drugs (narcotics or other dangerous drugs) or alcohol or the dependence on legally-prescribed drugs or illegal drugs or alcohol, or gambling, if such use or dependence, or such gambling, or the behaviors related to or resulting from such use or dependence compromise the individual's ability or capacity to fulfill his duties or responsibilities in the long term care facility, or if the same constitute(s) a criminal offense.

(4) Commitment to a mental institution or judicial determination of incompetence.

(5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public.

(6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.

(7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care field, the long term care administrator profession and/or the public.

(8) Except as otherwise permitted in this Chapter, concurrently serving or acting as the administrator of more than one nursing facility; or exceeding the conditions placed on administrators of ICFs/MR with 16 beds or less as stated in this Chapter; or otherwise serving as an administrator beyond the scope of their licensed authority.

(9) Failure to comply with State or federal requirements applicable to the facility.

(10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.

(11) Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of long term care facility patronage.

(12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any State official, licensing agency or regulatory agency.

(13) Failure to provide verification of continuing education hours.

(14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.

(15) Falsification of any records relating to the operation of a long term care facility; falsification of records submitted to the Board or any other state or federal agency; falsification of a resident's records, or causing a resident's records to be falsified.

(16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.

(17) Interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by Statute.
(18) Violation of any disciplinary order, consent agreement, term of suspension, condition, stipulation, or any other limitation imposed on the licensee by the Board.
(19) Unlicensed practice, practice on a revoked, suspended, or lapsed license; or practice on a provisional license without the use of an on-site consultant or as a Certified Assistant Administrator without the oversight of an Administrator-of- Record.
(20) Failure to pay fees or fines established or imposed by the Board.
(21) Knowingly aiding, assisting, or advising a person to unlawfully practice as an administrator without a required license.
(22) Failure to adequately supervise an assistant administrator and/or failure to assure that the assistant administrator complies with state and federal requirements applicable to the facility.
(23) Conduct that violates the security of any licensure examination materials.
(24) Coercion or harassment, or the attempt to coerce or harass, or the use of any other form of uninvited solicitation directed toward a resident of a long term care facility or toward a member of the resident's family or the resident's guardian for the purpose of attempting to persuade the resident to change long term care facilities.
(25) Failure to notify the Board of a change of name, business or personal mailing address(es), or change of employment within fifteen (15) calendar days of the occurrence.
(26) Coercion or harassment of, or the attempt to coerce or harass, a member of the Board, a Board employee or an authorized agent or representative of the Board as related to any matter or issue over which the Board has jurisdiction.

SUBCHAPTER 8. ADMINISTRATOR-IN-TRAINING (AIT) INTERNSHIP PROGRAM FOR NURSING HOME ADMINISTRATORS

490:10-8-5. Preceptor qualifications

(a) A licensed administrator wishing to be certified as a preceptor for the AIT program may apply to the Board on the form and in the manner prescribed by the Board.
(b) To be certified as a preceptor, the applicant shall:
(1) exemplify the highest ethical and professional standards as an administrator for at least the preceding twenty-four (24) consecutive months;
(2) be licensed and be able to document employment as:
(A) an Oklahoma long term care administrator for at least twenty-four (24-months of the preceding sixty (60) months; OR
(B) an Oklahoma long term care administrator for at least twenty four (24) of the preceding sixty (60) months and supervising administrators in multiple locations wherein an AIT could be appropriately trained under his direct and/or indirect supervision, e.g., as a regional supervisor or operations officer with multiple homes; OR
(C) an Oklahoma long term care administrator for at least twenty-four (24 months of the preceding sixty (60) months currently serving as an assistant administrator in a Veterans Administration (ODVA) home (not the administrator of record);
(3) successfully complete preceptor training that meets the requirements established by the Board; and
(4) has not been the subject of any action by any Board or licensing authority which resulted in formal reprimand, suspension or revocation of license, or in an administrative fine within the preceding twenty-four (24) consecutive months.
(c) If the Board imposes a sanction against an administrator, such administrator may not be eligible to be certified as a preceptor for twenty-four (24) months from the date of the sanction, as specified in the sanction's final or agreed order.
(d) Preceptors shall be certified for a period of thirty-six (36) months if active (who trained at least one trainee during the first twenty four (24) months of their preceptor-ship or twenty four (24) months if inactive. Preceptors may be re-certified at the discretion of the Board. There shall be an automatic extension of the certification period for any preceptor whose certification expires while overseeing an AIT intern/trainee, provided that the preceptor otherwise meets all other requirements for certification and those governing assignment of a preceptor to an AIT intern/trainee. The extension shall be granted to the end of the training period for the particular intern/trainee.

490:10-8-8. Preceptor's final report

(a) At the end of the approved AIT internship, the preceptor will submit a final report and an evaluation of the intern/trainee on the form(s) and in the manner as prescribed by the Board. The preceptor will sign the form(s). The form(s) will indicate whether or not the intern/trainee has satisfactorily completed the prescribed internship program.
(b) The reports will be filed in the intern/trainee's file in the Board's office and will become a record in the individual's file.
(c) Preceptors for nursing home AIT candidates shall be awarded 3 CEUs per each 560 hour trainee completed or 4 CEUs per each 700 hour trainee completed (awarded in the year the training was completed) and may earn up to ~~9~~ 12 CEUs in this manner per calendar year (credited for a maximum of 3 students in any one calendar year).

490:10-8-13. AIT time on the job

(a) The intern/trainee with a degree in a field related to any of the NAB defined domains of practice, OR with experience in long term care for 2 of the last 5 years shall serve a 560 hour internship, unless in the opinion of the Board or preceptor, the intern/trainee requires additional hours of training; or unless

the hours required to complete the internship, are otherwise reduced by formal action of the Board. All others (with a degree not related to a NAB defined domain of practice or without experience in long term care for 2 of the last 5 years) shall serve a minimum of a 700 hour internship with the same exceptions noted wherein additional hours are required in the opinion of the Board or preceptor.

(b) An internship that has been discontinued due to a period of active duty military service of the intern/trainee shall be allowed to be completed within one (1) year after the intern/trainee has completed his military service obligation. If this time frame cannot be met by the intern/trainee, the previously-started internship shall be cancelled by the Board and he will have to reapply to the Board for a new internship and pay all applicable fees. If an internship has been discontinued due to active duty military service of the preceptor, the Board will work with the intern/trainee to secure another preceptor.

(c) An internship that has been discontinued for any purpose other than military service, and such discontinuance exceeds one year from the date of the beginning of the discontinuance, that internship will be cancelled by the Board, and the AIT intern/trainee shall be required to reapply to the Board for a new internship and pay all applicable fees.

(d) Only one discontinuance is allowed.

(e) ~~Internships~~ 560 hour internships shall be completed in not less than fourteen (14) consecutive weeks nor more than twelve (12) consecutive months. 700 hour internships shall be completed in not less than seventeen and a half (17.5) consecutive weeks nor more than fifteen (15) consecutive months (where no more than 40 hours in any one week of the program is ever permitted).

(f) This section shall be subject to the requirements of any other provisions of law.

(g) The intern/trainee must complete the internship in a facility or facilities that is (are) currently in substantial compliance with the rules and regulations governing long term care facilities in Oklahoma.

490:10-13-2. Administrator responsibilities

(a) It is the responsibility of the long term care administrator, as the managing officer of the facility to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations. The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(b) Long term care administrators licensed/certified by the Board shall adhere to the Administrator Code of Ethics as adopted by the Board.

(c) Nursing home administrators licensed by the Board shall not concurrently serve as the administrator-of-record of more than one long term care facility except as otherwise permitted in this Chapter. A licensed nursing home administrator may serve as the administrator of more than one intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16), only if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed the lesser of six (6) facilities or total licensed capacity of sixty-four (64) beds.

(d) A long term care administrator licensed/certified by the Board must devote at least one-half (1/2) of such person's working time to on-site, on-the-job supervision of a long-term care facility at which he is listed as being the Administrator-of-Record. As used herein, 'working time' is defined as being a full-time employee scheduled to work forty (40) hours per week. The administrator's working time on-site at the facility shall be distributed throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. This requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16), or in an ALF or RCF when otherwise legally authorized to be the administrator of more than one such facility, and shall not apply to administrators governed under OAC 490:10-13-3.(g).

(e) Every person licensed/certified as an administrator and designated the "Administrator-of-Record" shall display the appropriate "Certificate of" or "License" in a conspicuous place in the facility or place of business requiring such license/certification.

(f) Each licensed/certified administrator shall ~~notify the Board, in writing,~~update their licensure record, online, within fifteen (15) calendar days following the change of his name, business and/or personal mailing address, change in employment or change in employment status, ~~on the form and~~ or in the manner as prescribed or as may be prescribed by the Board. The Board will assess a late fee as prescribed at OAC 490:1-7-2 if it is determined that the administrator failed to provide current contact information within this fifteen day period.

(g) Upon receipt of satisfactory evidence that "Certificate" or "License" has been lost, mutilated, or destroyed, the Board may issue a duplicate replacement license upon payment of a fee as prescribed by the Board at OAC 490:1-7-2.

(h) To change his name on a "Certificate of License", the licensee must provide legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement "Certificate of License" will be issued.

(i) An administrator shall not knowingly initiate contact with an individual currently residing in a long term care facility, or knowingly initiate contact with the family or guardian of an individual currently residing in a long term care facility, for the purpose of attempting to persuade a change in that individual's residence to another long term care facility.

(j) An administrator shall not knowingly solicit, or permit an employee to solicit clients for his long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary to stop such conduct.

(k) An Administrator, or applicant for Administrator licensure/certification, in connection with a license /certificate application or an investigation conducted by the Board or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the

State or federal government having regulatory responsibility over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misrepresentation known by the Administrator or applicant for licensure/certification to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Board or such government agency or any designated representative thereof.

[OAR Docket #14-503; filed 6-24-14]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 1. OFFICE OF PERSONNEL MANAGEMENT ADMINISTRATIVE RULES [REVOKED]

[OAR Docket #14-772]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
530:1-1-1. Purpose [REVOKED]
530:1-1-2. Definitions [REVOKED]
530:1-1-4. Legal references [REVOKED]
530:1-1-6. Severability [REVOKED]
530:1-1-8. Organization [REVOKED]
530:1-1-10. Computation of time [REVOKED]
530:1-1-12. Location for information and for filing [REVOKED]
530:1-1-14. Records [REVOKED]
530:1-1-16. Forms and Instructions [REVOKED]
530:1-1-18. Rulemaking [REVOKED]
530:1-1-20. Requests for declaratory rulings [REVOKED]
Subchapter 3. Formal and Informal Procedures [REVOKED]
530:1-3-1. Purpose [REVOKED]
530:1-3-2. Right of the Administrator to initiate action [REVOKED]
530:1-3-5. Complaints [REVOKED]
530:1-3-7. Representation [REVOKED]
530:1-3-9. Hearings (individual proceedings) [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMEERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

530:1-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to establish policies, procedures and standards that apply to the Office of Personnel Management (OPM) and to other Chapters in this Title. The rules in this Chapter describe:~~

~~(1) The organization of OPM;~~

~~(2) How to get information and file documents; and~~

~~(3) The general practices of OPM.~~

530:1-1-2. Definitions [REVOKED]

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

~~***"Administrator"*** *means the chief administrative officer of the Office of Personnel Management* [74:840.3 (5)].~~

~~**"Day"** means a calendar day.~~

~~**"OPM"** means the Oklahoma Office of Personnel Management.~~

~~**"Party"** means a person or organization named and participating or properly seeking and entitled by law to participate in an individual proceeding.~~

530:1-1-4. Legal references [REVOKED]

~~In this Title, italic type means it exactly repeats language from a law or another legal document. The specific reference is in brackets following the italics. Language in the rules that restates laws or other legal material in other words is also followed by a reference in brackets, but it is not printed in italics.~~

530:1-1-6. Severability [REVOKED]

~~If a court of competent jurisdiction finds any rule or part of a rule in this Title to be unenforceable, it shall not impair or invalidate the remaining rules in this Title; the remaining rules shall be valid and enforceable to the fullest extent allowed by law.~~

530:1-1-8. Organization [REVOKED]

~~The Administrator is the chief administrative officer of OPM. The Governor appoints the Administrator under Section 840.5 of Title 74 of the **Oklahoma Statutes.** The Administrator determines the internal organization of OPM [74:840.6] and employs staff to assist in carrying out the duties of the Administrator and OPM.~~

530:1-1-10. Computation of time [REVOKED]

~~In computing any period of time prescribed or allowed by the rules in this Title, OPM does not count the day of the act, or event, from which the period of time begins to run. But, OPM does include the last day of the period unless it is a Saturday, Sunday, legal holiday as defined by the **Oklahoma Statutes**, or any other day OPM does not remain open until 4:00 p.m. In this case, the period shall run through the end of the next day OPM is open until 4:00 p.m. The Administrator may extend any time period established by the rules in this Title.~~

530:1-1-12. Location for information and for filing [REVOKED]

~~(a) The address and telephone number for communications with OPM is: Office of Personnel Management, Jim Thorpe Building, Room G80, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105-4904, Telephone (405) 521-2177.~~

~~(b) The normal business hours of OPM are 8:00 a.m. to 5:00 p.m., Monday through Friday.~~

~~(c) Anyone may file a document with OPM by mail or hand-delivery during normal business hours. The "filing date" is the date OPM receives a document by mail or hand-delivery, not the date it is mailed or postmarked.~~

~~(d) OPM does not accept facsimiles or "FAXs" instead of original official documents except for the following documents:~~

~~(1) Agency Payroll Initialization (OPM-38);~~

~~(2) Agency Transfer (OPM-30);~~

~~(3) Carl Albert Public Internship Program application materials, and completed and signed agreement forms;~~

~~(4) Certified Public Manager nomination;~~

~~(5) Classification Grievance Audit Request (OPM-70);~~

~~(6) Dependent birthday change (EBC-20);~~

~~(7) Delegated authority application;~~

~~(8) Documents and related correspondence on legislation, rules, and Employment Relations Services (except for Employee Assistance Program participant documents and alleged discrimination complaint documents);~~

~~(9) HRDS Course Nomination;~~

~~(10) Interagency employee transfer correspondence;~~

~~(11) Mandatory Supervisory Training Report;~~

~~(12) Model Project application;~~

~~(13) Notice to Announce (OPM-29);~~

~~(14) PEP Nomination (OPM-102);~~

~~(15) Personnel Transaction Freeze Exception Request (OPM-92);~~

~~(16) Position Description Questionnaires (OPM-39, OPM-39A, OPM-39B, and OPM-65);~~

~~(17) Quality Oklahoma Project Report;~~

~~(18) Reallocation Forms (OPM-138, OPM-139, OPM-140, OPM-141, and OPM-142);~~

~~(19) Request for personnel action (OPM-14);~~

~~(20) State Mentor Program nomination forms, application materials, and Appointing Authority endorsement forms;~~

~~(21) State Personnel Interchange Program completed and signed agreement and contract forms;~~

~~(22) Test Use and Security Agreement; and~~

~~(23) Voluntary Payroll Deduction Application (VPD-1) and related correspondence.~~

~~(e) OPM does not accept electronic mail or "e-mails" instead of original official documents except for the following documents:~~

~~(1) Carl Albert Public Internship Program transcripts, enrollment verifications, and resumes;~~

~~(2) Certified Public Manager nomination;~~

~~(3) HRDS Course Nomination;~~

~~(4) Mandatory Supervisory Training Report; and~~

~~(5) Quality Oklahoma Project Report.~~

~~(f) Unless a document clearly states otherwise, the signature of a person on a document filed with OPM shall mean the person has read it and has personal knowledge of the information it contains, that every statement is true, that no statements are misleading; and that filing the document is not a delay tactic. If any document is not signed or is signed with intent to defeat the purposes of the rules in this Title, the Administrator may ignore it and continue as though it had not been filed.~~

530:1-1-14. Records [REVOKED]

~~(a) **Records retention and disposition.** OPM keeps documents for at least the minimum time required by state and federal laws that pertain to archives and records. This varies depending on the type of document. OPM has its records disposition schedules available for inspection.~~

~~(b) **Removal of documents.**~~

~~(1) Before the effective date of a document, the Administrator may approve a written request from a person, an agency, or party that has filed the document to revise, replace, or withdraw it.~~

~~(2) After the effective date of a document, the Administrator may allow it to be removed on the order of a court or when an employing agency (that created the document) and the employee (affected by the document) both file a written request for its removal. This removal would usually be part of the resolution of an appeal to the Oklahoma Merit Protection Commission or an internal agency grievance.~~

~~(c) **Confidential and open records.**~~

~~(1) Most records in OPM are available for public inspection and release, but some are not. The records that are not available for general public access may include records described as confidential in this Section or in other Chapters in this Title, and other records that laws require or permit OPM to keep confidential. The Administrator normally keeps the following records confidential but may choose, in some cases, to make them public if law permits it.~~

~~(A) State employees' home addresses, home telephone numbers and social security numbers [74:841.6A].~~

~~(B) *Records which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation* [51:24A.7(A)(1)];~~

~~(C) Employee evaluations, payroll deductions, employment applications not resulting in a person being hired by the state, and other records that would result in a clearly unwarranted invasion of personal privacy if they were disclosed [51:24A.7(A)(2)];~~

~~(D) Before taking action, personal notes and personally created materials (other than OPM's budget request) prepared by OPM staff as an aid to memory [51:24A.9];~~

~~(E) Before taking action, research material leading to the adoption of a policy or the implementation of a project [51:24A.9];~~

~~(F) Records coming into the possession of *OPM from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law* [51:24A.13]; and~~

~~(G) Documents, such as medical records and records protected by the attorney-client privilege, that are exempt from the Oklahoma Open Records Act or are specifically required or permitted by law to be kept confidential;~~

~~(2) All records that are not confidential are open for public inspection and copying. Examples of open records include:~~

~~(A) Employment applications that result in persons becoming state officials or employees [51:24A.7(B)(1); 51:24A.3(4)];~~

~~(B) Gross receipts of public funds [51:24A.7(B)(2)];~~

~~(C) Dates of an individual's employment with the state and his or her job title [51:24A.7(B)(3)]; and~~

~~(D) Any final disciplinary action resulting in loss of pay, suspension, demotion of position or discharge [51:24A.7(B)(4)].~~

~~(d) **Inspection and release of records.**~~

~~(1) Individuals may inspect and copy records during OPM's regular business hours according to OPM's procedures, which protect the integrity and organization of the records and prevent excessive disruption of OPM's essential functions [51:24A.5(5)]. An individual seeking to inspect, copy, or otherwise reproduce records shall complete a form prescribed by the Administrator, which requests the name, address, and telephone number of the individual. The form also requests information concerning the intended use and purpose of all intended uses of the requested materials for the purpose of determining whether a search fee will be charged. Individuals requesting access to OPM records shall provide sufficient advance notice to prevent the unnecessary disruption of essential OPM functions; appointments are preferred.~~

~~(2) The Administrator may give officers and employees of the state or federal government acting in their official capacities access to confidential records.~~

~~(3) Each person shall have access to his or her own records in OPM unless it is against the law [51:24A.7(C)].~~

~~(e) The Administrator shall only charge fees that are consistent with Section 24A.5 of Title 51 of the **Oklahoma Statutes.** A reasonable search fee may be charged to recover the direct costs of document searches, if the request is solely for commercial purposes or would cause disruption of OPM's essential functions:~~

~~(1) Fee for paper photocopies $0.25 per copy.~~

~~(2) The search fee shall be determined by multiplying the number of hours required to complete the search by the hourly rate of pay of the OPM employee conducting the search.~~

530:1-1-16. Forms and instructions [REVOKED]

~~Other Chapters in this Title contain references to forms and instructions OPM requires. People may contact OPM to request blank forms and general information about completing and submitting them.~~

530:1-1-18. Rulemaking [REVOKED]

~~(a) The Administrator follows Article I of the Administrative Procedures Act, Sections 250.3 through 308.2 of Title 75 of the **Oklahoma Statutes**, to make rules. The Administrator may appoint another person to conduct any public hearing about rulemaking.~~

~~(b) Any person may request the Administrator to adopt, amend, or repeal any rule in this Title. [75:305]~~

~~(c) A request for rulemaking must be in writing and it must include the following information.~~

~~(1) The name, address and telephone number of the person making the request;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The date of the request;~~

~~(4) The requested action, that is, revision of a rule, repeal of a rule, or addition of a rule;~~

~~(5) Any numbers and headings used to identify the rule if the request is to revise or repeal an existing rule;~~

~~(6) The proposed language if the request is to amend an existing rule or add a new rule;~~

~~(7) The reason for the request; and~~

~~(8) The intended effect of the action.~~

~~(d) If the Administrator does not begin rulemaking procedures within 30 days after the date OPM receives a request, the request shall be considered denied. [75:305]~~

530:1-1-20. Requests for declaratory rulings [REVOKED]

~~(a) Any person may request the Administrator to interpret OPM's policy on the applicability of any rule or order of OPM. This is called a request for a declaratory ruling. The purpose of~~

~~a declaratory ruling is to explain, or clarify, a rule or an order of the Administrator in relation to a particular situation. A request for a declaratory ruling must be in writing, and it must include the following information.~~

~~(1) The name, address and telephone number of the person making the request;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The date of the request;~~

~~(4) A description of the problem or issue that is the reason for the request; and~~

~~(5) The numbers and headings used to identify the rule or order on which the ruling is sought.~~

~~(b) The Administrator may deny the request if it is repetitive, concerns a matter that in the Administrator's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Administrator's authority.~~

~~(c) The Administrator may provide others with written notice of the request for a declaratory ruling and give them an opportunity to respond in writing within 15 days.~~

SUBCHAPTER 3. FORMAL AND INFORMAL PROCEDURES [REVOKED]

530:1-3-1. Purpose [REVOKED]

~~The rules in this Subchapter describe general formal and informal procedures the Administrator uses to take action and make decisions. Other Chapters in this Title describe informal procedures that apply specifically to individual programs under the Administrator's authority. Chapter 10 of Title 455 contains formal and informal procedures authorized by the Oklahoma Personnel Act, Section 840.1 et seq. of the **Oklahoma Statutes**, that are under the jurisdiction of the Oklahoma Merit Protection Commission.~~

530:1-3-2. Right of the Administrator to initiate action [REVOKED]

~~The Administrator may take whatever action is consistent with the rules in this Title to carry out the duties of the Administrator and accomplish the objectives of any program or activity within his or her authority. The Administrator may use formal procedures or informal procedures, such as telephone calls, letters, meetings, mediation, investigations or other appropriate methods to resolve concerns.~~

530:1-3-5. Complaints [REVOKED]

~~(a) Anyone may complain to the Administrator about any matter under his or her authority. A complaint shall be in writing, and it shall include the following information.~~

~~(1) The name, address and telephone number of the person making the complaint;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person filing the complaint;~~

~~(4) A brief, clear description of each charge, problem or issue that is the basis for the complaint including names, dates, places and actions;~~

~~(5) The numbers and headings of the laws and rules that may apply;~~

~~(6) The remedy, if any, the person making the complaint seeks;~~

~~(7) The signature of the person making the complaint; and~~

~~(8) The date.~~

~~(b) If the complaint is repetitive, concerns a matter that has already been resolved, or a matter outside the Administrator's authority, the Administrator may reject the complaint.~~

~~(c) The Administrator may provide others with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response must contain all of the following information.~~

~~(1) The name, address and telephone number of the person responding;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person responding;~~

~~(4) A specific admission, denial or explanation of each charge;~~

~~(5) A brief, clear description of the facts including names, dates, places and actions;~~

~~(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;~~

~~(7) The numbers and headings of the laws and rules that may apply;~~

~~(8) The signature of the person responding; and~~

~~(9) The date.~~

~~(d) The Administrator may refer complaints to informal procedures, such as telephone calls, letters, meetings, mediation, investigations or other appropriate procedures.~~

~~(e) Unless the Administrator finds a formal hearing (individual proceeding) is necessary none will be conducted.~~

~~(f) The Administrator shall make a decision about a complaint within 60 days after its receipt, unless the Administrator needs more time. In that case, OPM shall notify the person filing the complaint and persons filing any responses to the complaint.~~

530:1-3-7. Representation [REVOKED]

~~In an individual proceeding, any party has the right to have an attorney who is a member of the Oklahoma Bar Association. The attorney shall act for and bind the party he or she represents. To name an attorney, a party shall file a notice with the Administrator according to 530:1-1-12. If a party names an attorney, OPM shall communicate with the attorney and not with the party. It shall be the responsibility of the party's attorney to communicate with the party.~~

530:1-3-9. Hearings (individual proceedings) [REVOKED]

~~(a) The Administrator follows the provisions of Article II of the Administrative Procedures Act, Sections 309 to 323 of Title 75 of the **Oklahoma Statutes**, and the rules in this Chapter in conducting hearings (individual proceedings). The Administrator or a person named by the Administrator as the hearing officer shall conduct hearings. This Section does not apply to public hearing to receive comments on proposed rules.~~

~~(b) The Administrator shall send a notice of hearing to the parties. It shall be at least 20 days after the Administrator mails the notice unless the parties agree to an earlier date.~~

~~(c) The hearing officer may set a time limit on oral presentations during a hearing.~~

~~(d) The Administrator's decision after a hearing conducted under this Section is final.~~

[OAR Docket #14-772; filed 7-18-14]

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

[OAR Docket #14-773]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. Merit System of Personnel Administration Rules [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services; 74 O.S. §840-1.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
Gubernatorial approval:
May 15, 2013
Register publication:
30 Ok Reg 1912
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES, 3545 N.W. 58TH STREET SUITE 110, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapter 10, and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).

[OAR Docket #14-773; filed 7-18-14]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 15. VOLUNTARY PAYROLL DEDUCTION RULES [REVOKED]

[OAR Docket #14-774]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 15. Voluntary Payroll Deduction Rules [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

530:15-1-1. Purpose [REVOKED]

~~The rules in this Chapter provide procedures for implementation of voluntary payroll deductions for employee association dues, educational employee organizations, employee association foundation contributions, payments to credit unions, banks, or savings associations, payments to supplemental insurance and retirement plans, payments to a college savings account, and subscriptions to Oklahoma Today magazine, as authorized for state employees by Section 34.70 of Title 62 of the Oklahoma Statutes. Other types of voluntary payroll deductions (such as those for salary adjustment agreements under subsection B(4) of Section 34.70, U.S. Savings Bonds or charitable gifts) are not addressed by the rules in this Chapter.~~

530:15-1-2. Definitions [REVOKED]

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

~~**"Administrator"** means the chief administrative officer of the Office of Personnel Management, an officer of the State of Oklahoma appointed by the Governor pursuant to Section 840-1.6A of Title 74 of the Oklahoma Statutes, and authorized to establish procedures for administration of voluntary payroll deductions by Section 34.70. The term, as used in this Chapter, includes employees of the Office of Personnel Management to whom the Administrator has lawfully delegated authority to act on his or her behalf.~~

~~**"Appointing Authority"** means the chief administrative officer of an agency. As the term is used in the Voluntary Payroll Deduction Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.~~

~~**"Complaint"** means a grievance with respect to any matter relevant to the Administrator's duties under Section 34.70.~~

~~**"Complainant"** means a person or an organization that has submitted a complaint.~~

~~**"Declaratory ruling"** means an explanation of a rule or order and its applicability to a particular matter.~~

~~**"Dues paying"** means, with respect to a member of an employee association, the member is either currently paying dues or has provided a valid authorization to have such dues withheld from pay and remitted to the association. [62:34.70 (B)(5)]~~

~~**"Employee association"** means a formal and continuing affiliation of state employees with the principle objective of speaking for and benefiting their interests as employees, in which membership is restricted to state employees but unrestricted as to the geographic location of their duty stations, and which has at least 2,000 dues-paying members. An employee organization also falls within this definition.~~

~~**"Member"** means:~~

~~(A) with respect to a credit union, a shareholder; and~~

~~(B) with respect to a bank or savings association, an account holder; and,~~

~~(C) with respect to an employee association, a person who has sought and been granted recognition as one of those within the field of membership as defined by the association's governing instruments.~~

~~**"Participation"** means the total number of state employees reported to the Office of Personnel Management for which amounts withheld from pay for a given month were remitted pursuant to employee authorization to a single billing unit as identified by its Federal Employer (Tax) Identification Number.~~

~~**"Party"** means any person, employee association, educational employee organization, credit union, bank, savings association or insurance organization that is the subject of, or requests, action by the Administrator in connection with any matter relevant to the Administrator's duties under Section 34.70.~~

~~**"Product vendor"** means any of the following entities approved for state employees' voluntary payroll deduction:~~

~~(A) an entity offering a supplemental retirement plan with a minimum participation of 500 state employees;~~

~~(B) a private insurance organization with a minimum participation of 500 state employees for supplemental life, accident, or health insurance;~~

~~(C) a private insurance organization with a minimum participation of 500 state employees for legal services;~~

~~(D) the Oklahoma Tourism and Recreation Department as publisher of Oklahoma Today magazine.~~

~~**"Provided for by the State"** means:~~

~~(A) for insurance purposes, the basic health, life, dental, or disability plan or any other such insurance a state agency is authorized to provide for its employees as evidenced by financial participation in those policies or a group policy(s) the agency has negotiated as a basic employment benefit; and~~

~~(B) for retirement purposes, any state retirement system, deferred compensation program (commonly referred to as deferred annuities), or other retirement plan(s) a state agency is authorized to provide for its employees as evidenced by financial participation in those plans.~~

~~**"Section 34.70"** means Section 34.70 of Title 62 of the Oklahoma Statutes.~~

~~**"State agency"** means any office, department, board, commission, or institution of the State of Oklahoma."~~

~~**"State employee"** means any employee of a state agency.~~

~~**"Supplemental"** means:~~

~~(A) for insurance purposes, life, accident (including income continuation during disability), legal,~~

~~and health insurance policies not provided for by the State; and~~

~~(B) for retirement purposes, plans that provide retirement income benefits and are not provided for by the State. In recognition of the powers conferred upon state institutions of higher education by Section 3905 of Title 70 of the Oklahoma Statutes, the Administrator will follow such institutions' decisions as to whether an insurance policy or retirement plan is a basic or a supplemental employee benefit.~~

530:15-1-5. Construction [REVOKED]

~~The rules in this Chapter shall be construed liberally to effectuate the purposes and provisions of Section 34.70.~~

530:15-1-6. Determinations of fact and conclusions of law [REVOKED]

~~All determinations of fact or conclusions of law shall be made by the Administrator. The Administrator may initiate actions when he determines it is necessary to do so in order to accomplish the objectives of Section 34.70, and to carry out his duties thereunder. The Administrator may appoint one or more employees or officers to assist him in executing such duties.~~

530:15-1-7. Filing and inspection of documents [REVOKED]

~~(a) Requests for declaratory rulings, applications for administrative actions, complaints or other communications regarding any matter relevant to the Administrator's duties under Section 34.70 must be directed to the Administrator, Office of Personnel Management, 2101 N. Lincoln Blvd., Oklahoma City, OK 73105-4904; telephone (405) 521-2177.~~

~~(b) Except as provided elsewhere by the rules in this Chapter, no particular form is required. Requests for blank forms and general information may be directed to the Office of Personnel Management, Attention: Financial Management Services, at the same address and telephone number.~~

~~(c) A document that is required to be filed may be sent by mail or hand delivered within the time limit, if any, for such filing. The date on which it is received at the Office of Personnel Management shall be deemed to be the date of filing. The document must be signed by the party to the action, by a duly authorized representative of the party, or by the party's attorney; provided, however, an application by a credit union, bank, savings association, employee association, or educational employee organization for approval or renewal of payroll deduction status must be signed by an officer of the organization. The signature of the person signing the document constitutes a certification that such person has read the document and has personal knowledge of the facts set forth therein; that every statement contained in the instrument is true and correct and no such statements are misleading; and that the document is not interposed for delay. If any document submitted is not signed or is signed with intent to defeat the purposes of the rules in this Chapter, it may be stricken as sham and false and the Administrator may proceed as though the document had not been served or filed.~~

~~(d) If a party has designated an attorney to represent it, the Administrator shall communicate with the party through the attorney, and consider that the attorney can act for and bind the party.~~

~~(e) A document a party has filed may be amended, upon the party's written request and in the discretion of the Administrator, at any time prior to final action. If amended, the document shall be effective as of the date of the original filing.~~

~~(f) If a document that has been filed is not in substantial conformity with the applicable rules as to the contents thereof or is otherwise insufficient, the Administrator, on his own initiative or upon request of a party, may strike or dismiss such document, or require its amendment.~~

~~(g) All documents filed with the Administrator shall be retained in the files of the Office of Personnel Management in accordance with the Records Management Act, Section 201 through **216 of Title 67 of the** Statutes. The Administrator may permit the withdrawal of original documents upon submission of properly authenticated copies to replace such documents.~~

~~(h) Any document submitted to the Administrator with respect to a matter under Section 34.70 and that is not exempt from public disclosure; any form that may be adopted by the Administrator; all rules, written statements of policy or interpretation; and all final orders, decisions and opinions formulated or used by the Administrator are available for public inspection.~~

530:15-1-9. Forms [REVOKED]

~~The following form has been adopted by the Administrator for use in administering Section 34.70: Form VPD-1 "Request for Approval or Renewal of Payroll Deduction Status." This form is to be used by employee associations, educational employee organizations, credit unions, banks, savings associations and insurance/retirement plan organizations to request initial approval or continuation of payroll deduction status.~~

530:15-1-10. Computation of time [REVOKED]

~~The time within which an act is to be performed under the rules in this Chapter shall be computed by excluding the first day and including the last. When the last day for doing an act required by the rules in this Chapter falls on a day on which the Office of Personnel Management is not open, then the required act may be performed on the next business day. The Administrator, for good cause shown, and with notice to all interested parties, may extend any time prescribed in the rules in this Chapter.~~

530:15-1-11. Amending of rules [REVOKED]

~~Any party may petition the Administrator for the adoption, amendment or repeal of any rule in this Chapter. Such petition shall be in writing and shall include the party's name and address, the wording of proposed new rules or amendments, and an explanation of why the change is requested and its intended effect.~~

530:15-1-12. Requests for declaratory rulings [REVOKED]

~~(a) A party may request that the Administrator issue a declaratory ruling with regard to any matter relating to the party's interests and involving the administration of Section 34.70. A request for declaratory ruling must be in writing and signed in accordance with the rules in this Chapter. No particular form is required. A request for declaratory ruling shall include the following:~~

~~(1) The name and address and organizational affiliation, if any, of the requesting party, and the title of any representative filing the request; and~~

~~(2) A clear and concise explanation why a declaratory ruling is needed, including such facts, names, citations of law and administrative rules that may be relevant to the matter.~~

~~(b) The Administrator will acknowledge receipt of the request for declaratory ruling within 15 days after receipt. If the request is repetitive, concerns a matter that in the Administrator's judgment is inappropriate for a declaratory ruling, or concerns a matter beyond the Administrator's scope of authority, the request may be denied and the party so advised.~~

~~(c) If a request for declaratory ruling names or will directly, materially and adversely affect another party, the Administrator shall provide the other party with written notice and afford such party an opportunity to respond in writing. Any response must be filed with the Office of Personnel Management within 15 days after the date notice was mailed.~~

~~(d) The Administrator will consider a request for declaratory ruling and issue a decision within 30 days after receipt, unless additional time is deemed necessary in which event the requestor will be so advised and given the reasons therefore.~~

SUBCHAPTER 3. ADMINISTRATIVE PROVISIONS [REVOKED]

530:15-3-2. Deduction authorization procedure [REVOKED]

~~(a) All state agencies shall implement procedures to accommodate payroll deductions requested by employees, as permitted by law and the rules in this Chapter.~~

~~(b) Agencies shall require their employees to submit signed authorizations to begin or change a payroll deduction; provided, for a change in an employee association's dues agencies shall accept the association's notice of such change in lieu of individual authorizations.~~

~~(c) An entity that receives payment through deduction must provide upon request by the Administrator or an agency the appropriate deduction amount for any specified payroll period.~~

530:15-3-4. Fees [REVOKED]

~~The Office of Personnel Management, using payment information furnished by the Office of State Finance, and other state agencies when necessary, will calculate and assess monthly the statutory fees for processing insurance and retirement plan deductions. Fees shall be payable on demand. If payments are not made in a timely manner, payroll deduction status may be terminated.~~

530:15-3-6. Consideration of applications for deduction status [REVOKED]

~~The Administrator will consider an application for approval or renewal of payroll deduction status and issue a decision in writing within 30 days of receipt, unless additional time is deemed necessary in which event the applicant will be so advised and given the reasons therefore. Unless the Administrator determines a hearing is necessary to receive additional information and so orders, his decision will be based solely upon the application, accompanying information and evidence, and records in the Administrator's custody or control.~~

530:15-3-7. Dues for employee associations [REVOKED]

~~(a) An employee association other than one specifically authorized payroll deduction for its dues by statute may request such status. The request must be made by filing a completed Form VPD-1 and providing the Administrator with information to show it is a statewide association limited to state employee membership and has at least 2,000 dues paying members. [62:34.70 (B)(5)]~~

~~(b) Either of the following may be submitted as evidence that an employee association has at least (2,000) dues paying members.~~

~~(1) Attestation by an independent public accountant or certified public accountant that the association had at least (2,000) members at the time of the accountant's examination of membership records, all of whom either were currently paying dues or had signed valid authorizations for payroll deduction of dues. The examination must have taken place within the 60 days preceding the date of application for payroll deduction status.~~

~~(2) Photocopies of membership application cards, showing the association name, date of membership application, member's name and address, employing state agency and signature authorizing payroll deduction of dues. These must be accompanied by an affidavit signed by a duly authorized representative of the association, attesting that all persons for whom cards are submitted are current members. Cards shall be considered valid if the dates thereon, and other evidence provided to the Administrator, indicate a regularity of continuing interest by the employees signing the cards.~~

~~(c) The Administrator may require an association that has previously been granted payroll deduction status to file a completed Form VPD-1 and to certify or demonstrate it continues to be a statewide association limited to state employees with at least (2,000) dues paying members. The Administrator may utilize the State's payroll records to satisfy himself that there continue to be at least (2,000) dues paying members.~~

~~(d) As evidence an employee association is a "statewide" organization in which membership is limited to state employees, the association must submit a copy of its governing instruments, demonstrating that membership is both:~~

~~(1) restricted to state employees, and~~

~~(2) open to state employees regardless of the geographic location of their duty stations.~~

530:15-3-7.1. Contributions to employee association foundations [REVOKED]

~~(a) Any statewide employee association limited to state employee membership with a minimum membership of two thousand (2,000) dues paying members may request payroll deduction for contributions to its foundation organized under 26 U.S.C., Section 501(c)(3). The request must be made by filing a completed form VPD-1 with the Administrator. The form shall be accompanied by:~~

~~(1) a copy of the determination by the Internal Revenue Service that the foundation is exempt from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code; and~~

~~(2) a statement on the foundation's letterhead signed by an officer of the foundation indicating the foundation is affiliated with the employee association submitting the request.~~

~~(b) The Administrator may verify that an association has previously been granted payroll deduction status for membership dues and continues to be eligible by statute or under 530:15-3-7.~~

~~(c) After a foundation has been authorized payroll deduction status, the employee association shall be responsible for immediately notifying the Administrator in writing ofany changes in the foundation's eligibility for payroll deduction status. This shall include but not be limited to copies of any communications from the Internal Revenue Service concerning the foundation's exemption from federal income tax as an organization described in section 501(3)(c) of the Internal Revenue Code. The Administrator may require an association that has previously been granted payroll deduction for its association to file a completed VPD-1 and to submit evidence that it continues to possess a 501(c)(3) exemption from the Internal Revenue Service.~~

530:15-3-7.2. Dues for statewide educational employee organizations [REVOKED]

~~A statewide educational employee organization or association may request authorized payroll deduction status to allow instructional personnel of the Oklahoma School for the Blind or the Oklahoma School for the Deaf to pay membership dues through voluntary payroll deduction. The request may be made by filing a completed Form VPD-1 with the Administrator.~~

530:15-3-8. Credit unions, banks and savings associations [REVOKED]

~~A credit union, bank or savings association having an office in this state may request payroll deduction status. The request must be made by filing a completed Form VPD-1 and providing the Administrator with information to show at least one branch office location in the state of Oklahoma. [62:34.70 (A)(1)]~~

530:15-3-9. Supplemental insurance or retirement plans [REVOKED]

~~(a) A private organization, including an independent insurance agency, that was not accorded payroll deduction status as of July 1, 1988, may request such status with respect to insurance policies or retirement plans that are supplemental to those provided for by the State. Such requests must be made by filing a completed Form VPD-1. A policy or retirement plan must have received applicable regulatory approvals to qualify for payroll deduction.~~

~~(b) The Administrator shall not consider any application for payroll deduction status during a period of 12 months following the removal or revocation of such status, nor shall he consider more than 3 applications from an applicant previously denied or removed from deduction status during any 6-year period after the first denial or refusal.~~

~~(c) Upon a determination that a supplemental insurance or supplemental retirement applicant is eligible for payroll deduction status, the Administrator shall grant probationary deduction status to continue through the end of the 12th month following the month in which probationary status is granted. If participation during the 12th month is less than 500 state employees, the Administrator shall notify the applicant that deduction status will be revoked.~~

~~(d) The minimum participation requirement shall apply to each supplemental insurance billing unit, as identified by the Federal Employer (Tax) Identification Number, to which payments are payable, and to each retirement plan.~~

530:15-3-10. College savings accounts [REVOKED]

~~College savings accounts are administered under the Oklahoma College Savings Plan Act pursuant to Section 3970.1 et seq. of Title 70 of the Oklahoma Statutes.~~

530:15-3-11. Subscriptions to Oklahoma Today magazine [REVOKED]

~~Subscriptions to "Oklahoma Today" magazine published by the Oklahoma Tourism and Recreation Department may be paid by voluntary payroll deduction at the request of any state employee. Subscriptions to "Oklahoma Today" magazine shall be paid by a one-time (rather than monthly) deduction.~~

530:15-3-12. Notification of approval for payroll deduction [REVOKED]

~~(a) Upon the approval of an application for payroll deduction status, the Administrator shall notify the applicant. The Administrator shall periodically distribute to state agencies a list of entities for which deduction status has been granted or withdrawn.~~

~~(b) The approval of an application does not constitute an endorsement or recommendation by the Office of Personnel Management or the State of Oklahoma as to the subject of the payroll deduction, and applicants shall make no such representation.~~

530:15-3-13. Denial of deduction status [REVOKED]

~~(a) If the Administrator determines an applicant does not meet the criteria set forth in Section 34.70 for payroll deduction status, he shall notify the applicant in writing of denial and the reasons for denial. The Administrator may reconsider an application, if an applicant submits a request and additional information within 15 calendar days after notification of denial.~~

~~(b) If the Administrator determines an entity with current deduction status no longer meets the criteria for such status, he shall notify it of his intent to terminate deduction status, giving the reason for such proposed termination. This notice will be mailed at least 30 calendar days in advance of the date the Administrator expects to notify agencies of the termination. Within 15 calendar days after the notice of the intention to terminate was mailed to the entity, the entity may submit a written request for continued status to the Administrator. The written request must be accompanied by a statement of the specific reasons why status should not be terminated, and must also be accompanied by all evidentiary material the requestor seeks to rely on. The Administrator will consider the request, reasons, and evidence presented, and will issue a decision within 5 calendar days after receipt. The decision of the Administrator is final, unless otherwise provided by the Administrative Procedures Act.~~

~~(c) The Administrator shall notify all state agencies of a termination of payroll deduction status and shall allow a reasonable period of time for adjustments to payrolls.~~

530:15-3-14. Procedure for requesting Voluntary Payroll Deduction [REVOKED]

~~(a) A request by a state employee for voluntary payroll deduction for the payment of premiums for supplemental life, accident, and health insurance, insurance premiums for legal services, premiums or payments for retirement plans, payment of insurance premiums due to a private insurance organization, which is regulated by the State Insurance Commission, for an Oklahoma Long Term Care Partnership Programapproved policy pursuant to the Oklahoma Long Term Care Partnership Act, salary adjustment agreements included in the flexible benefits plan, contributions to the Oklahoma College Savings Plan, membership dues in any statewide educational organization or association, payments to banks, credit unions, savings associations and subscriptions to the Oklahoma Today magazine, must be made in writing to the employing state agency. The request must include the employee's signature.~~

~~(b) A request by a state employee for voluntary payroll deduction for the payment of membership dues in an employee association may be made as described in Subsection (a) or may be made via online or electronically submitted forms. The employee association shall verify that the online or electronically submitted form accurately reflects the request of the state employee via email or another method approved by the Office of Personnel Management, and shall forward a copy of such verification and membership application to the employing agency for processing.~~

~~(c) All forms for employee requests for voluntary payroll deduction, whether paper or electronic format, shall include at a minimum the employee's name, Social Security number, the amount of the voluntary payroll deduction, the vendor's name, and if applicable, the approved policy form number.~~

530:15-3-15. Annual distribution of employee organization materials [REVOKED]

~~Appointing Authorities shall provide for the annual distribution of employee organization materials to agency employees. It shall be the responsibility of an employee organization to provide the materials to state agencies for distribution.~~

530:15-3-16. Product vendor access to state employees [REVOKED]

~~(a) State agencies shall allow product vendors reasonable access to their employees at least once each calendar year for the purpose of providing information about their products. For the purposes of this Section, "reasonable access" shall mean the granting of access within 1 year from the date of the request. Such access shall be allowed only during scheduled breaks or during periods immediately before or after normal work hours. For facilities that operate 24 hours a day, product vendors shall be allowed access to all shifts. Such access shall not disrupt or interfere with the business of the agency, and state funds shall not be utilized to accommodate such access. State agencies may allow such access upon request, or may designate specific dates and times for product vendor access and notify product vendors of the designated dates.~~

~~(b) Product vendors may provide information only on products approved for voluntary payroll deduction, and may not provide information on any other products or services.~~

~~(c) Product vendors shall identify 1 contact through which state agencies can arrange access. Product vendors shall provide the contact name, as well as a telephone number, facsimile (fax) number, mailing address, and email address for the contact to the Office of Personnel Management. State agencies may request this information from the Office of Personnel Management for the purposes of facilitating vendor access. Product vendors shall be solely responsible for keeping such contact information current.~~

~~(d) Product vendors shall comply with all applicable laws, rules and policies of the state agencies they visit. Product vendors who fail to comply with laws, rules, or policies of the state agency after oral or written notification, or who cause a disruption to thebusiness of the agency, may be denied access by the Appointing Authority to the employees of that state agency for 1 calendar year. Appointing Authorities shall give a product vendor notice and an opportunity to respond before making a decision to deny access.~~

SUBCHAPTER 5. COMPLAINTS AND HEARINGS [REVOKED]

530:15-5-2. Complaints [REVOKED]

~~(a) A complaint with regard to any matter relating to the administration of Section 7.10 may be made to the Administrator. A complaint shall be in writing and signed in accordance with the rules in this Chapter. Except as may be provided elsewhere by the rules in this Chapter, no particular form is required. A complaint shall include the following:~~

~~(1) the name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint; and~~

~~(2) a clear and concise statement of the nature of the complaint, including such facts, names, citations of law and administrative rules that may be relevant to the matter, and the remedy, if any, requested.~~

~~(b) The Administrator will acknowledge receipt of the complaint within 15 days of date of receipt. If the complaint is repetitive, concerns a matter that has previously been resolved, or concerns a matter beyond the Administrator's scope of authority, the complaint may be rejected and the complainant so advised.~~

~~(c) If a complaint names or will directly, materially and adversely affect another party, the Administrator shall provide the other party with written notice and afford such party an opportunity to respond in writing to the complaint. Any response must be filed with the Office of Personnel Management within 15 days after the date notice was mailed. The response must contain all of the following elements:~~

~~(1) A specific admission, denial, or explanation of each allegation~~ of the ~~complaint, or, if the respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions and denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation;~~

~~(2) A specific and appropriately detailed statement of any affirmative defense; and~~

~~(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.~~

~~(d) The Administrator will consider a complaint and issue a decision within 30 days after receipt, unless additional time is deemed necessary in which event the complainant will be so advised and given the reasons therefore. Unless the Administrator determines a hearing is necessary to receive additional information and so orders, his decision will be based solely upon the complaint, any responses to the complaint, accompanying information and evidence, and records in the Administrator's custody or control.~~

~~(e) Complaints may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.~~

530:15-5-5. Rules of evidence [REVOKED]

~~In any proceeding, the Administrator shall not be bound by technical rules of evidence. The Administrator may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.~~

~~(1) All irrelevant, immaterial, or unduly repetitive evidence shall be excluded from consideration.~~

~~(2) The Administrator shall give effect to the rules of privilege recognized by Oklahoma state law.~~

~~(3) Documentary evidence may be received in the form of copies or excerpts, if the submitting party certifies authenticity and if upon request the original is available for comparison with the copy.~~

~~(4) The Administrator may take notice of judicially or generally cognizable facts; however, before a decision is made final parties shall be notified of the material so noticed and afforded an opportunity to contest the facts so noticed.~~

530:15-5-8. Hearings [REVOKED]

~~(a) The Administrator may hold a hearing on any matter relating to the administration of Section 34.70. The Administrator or a person designated by the Administrator as the hearing officer may conduct the hearing.~~

~~(b) The following procedures for hearings will be followed except as may be required by the provisions of Article II of the Administrative Procedures Act, Sections 309 through 323 of Title 75 of the Oklahoma Statutes:~~

~~(1) The Administrator shall give at least 10 days notice of a hearing. Notice shall be made:~~

~~(A) by posting a meeting announcement at the premises of the Office of Personnel Management; and~~

~~(B) by mail to persons who have requested that they receive notice of a hearing or who, in the judgment of the Administrator, may be affected by the subject of the hearing.~~

~~(2) A meeting announcement shall include the time, date and place for the hearing, and a description of the subject of the hearing. Unless the meeting announcement contains other instruction, the meeting will begin with introductory remarks, followed by an explanation of the subject, and an opportunity for attendees to make oral comments. Oral presentations by an individual attendee, or by a group of attendees who represent a common interest, may be limited to 30 minutes. Ten minutes additional time may be allowed if necessary for responses. Written comments are encouraged but not required.~~

~~(c) This Section does not apply to meetings and hearings which are subject to the Open Meeting Act, Section 301 through 314 of Title 25 of the Oklahoma Statutes or to Article I of the Administrative Procedures Act, Sections 250.2 through 308.2 of Title 75 of the Oklahoma Statutes.~~

[OAR Docket #14-774; filed 7-18-14]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 20. OKLAHOMA STATE EMPLOYEES' DIRECT DEPOSIT RULES
[REVOKED]

[OAR Docket #14-775]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
530:20-1-1. Purpose [REVOKED]
530:20-1-2. Definitions [REVOKED]
530:20-1-3. Participation mandatory [REVOKED]
530:20-1-4. Exceptions to participation [REVOKED]
530:20-1-6. Responsibilities of employers [REVOKED]
530:20-1-8. Participating financial institutions [REVOKED]
530:20-1-9. Service charge prohibited [REVOKED]
530:20-1-11. Payroll date not affected [REVOKED]
530:20-1-14. Forms and instructions [REVOKED]
530:20-1-16. Procedures for direct deposit enrollment and changes [REVOKED]
530:20-1-18. Warrant to replace returned direct deposit [REVOKED]
Subchapter 3. OPM Administrative Policies and Procedures [REVOKED]
530:20-3-1. Purpose [REVOKED]
530:20-3-5. Communication with OPM [REVOKED]
530:20-3-7. Confidential records; inspection and release of open records [REVOKED]
530:20-3-10. Complaints [REVOKED]
AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 28, 2014
PUBLIC HEARING:
February 28, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).
CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL POLOCIES AND PROCEDURES [REVOKED]

530:20-1-1. Purpose [REVOKED]

~~(a) This Chapter establishes policies and procedures to administer the Oklahoma State Employees' Direct Deposit Act, Section 292.10 et seq. of Title 74 of the **Oklahoma Statutes.** The rules in this Chapter are not intended to replace or conflict with other laws and rules, such as Section 840.23 of Title 74 of the Oklahoma Statutes, which governs procedures for recovery of overpayments.~~

~~(b) Chapter 1 of this Title contains general rules of the Office of Personnel Management (OPM) that also apply to the Oklahoma State Employees' Direct Deposit Act.~~

530:20-1-2. Definitions [REVOKED]

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

~~**"Act"** means the Oklahoma State Employees' Direct Deposit Act, Section 292.10 et seq. of Title 74 of the Oklahoma Statutes.~~

~~**"Administrator"** means the Administrator of the Office of Personnel Management.~~

~~**"Automatic Deposit Transmittal form"** means a form voluntarily completed by a state employee to provide enrollment or termination information for the direct deposit system and to authorize the use of electronic funds transfer for payroll warrants.~~

~~**"Banking day"** means a *day on which a bank is open to the public for carrying on substantially all of its banking functions* [12A:4-104].~~

~~**"Day"** means a calendar day.~~

~~**"Direct deposit system"** *shall mean a method of electronically transferring a payroll* [warrant] *for an eligible employee whereby the employee agrees to an electronic transfer of any payroll* [warrant] *to a financial institution* [74:292.11(1)].~~

~~**"Electronic funds transfer"** means transferring an employee's net pay directly into the employee's financial institution account electronically rather than issuing pay warrants.~~

~~**"Employee"** means any person in the classified, unclassified or exempt service of any employer [74:292.11(2)].~~

~~***"Employer"** means any state agency, board, commission, department, institution, authority, officer, bureau, council, office, the Oklahoma State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, or other entity created by the Oklahoma Constitution. "Employer" shall not include any school district or political subdivision of this state* [74:292.11(3)].~~

~~**"Participant"** means a person who is participating in the direct deposit system.~~

530:20-1-3. Participation mandatory [REVOKED]

~~(a) Employees hired after December 31, 2004, shall participate in the direct deposit system. At the time the employee enters on duty, the employee shall identify a financial institution~~

~~that will serve as a personal depository agent for the employee [74:292.12(A)(1)].~~

~~(b) Employees hired before December 31, 2004, shall participate in the direct deposit system. No later than June 30, 2007, each employee hired before December 31, 2004, who is not a participant in the direct deposit system, shall identify a financial institution that will serve as a personal depository agent for the employee [74:292.12(A)(2)].~~

530:20-1-4. Exceptions to participation [REVOKED]

~~(a) An employer may waive participation in the direct deposit system for temporary, seasonal or student employees.~~

~~(b) An employee may submit a written application to his employer that identifies extraordinary needs or circumstances that would prevent the employee from participating in the direct deposit system. If deemed appropriate, the employer may waive participation in the direct deposit system for that employee. The employer may require periodic review of the extraordinary needs and circumstances of its employees granted exceptions to determine whether or not continued exemption is warranted.~~

530:20-1-6. Responsibilities of employers [REVOKED]

~~(a) All employers shall begin offering direct deposit to any eligible employees not later than January 1, 1992 [74:292.12(C)].~~

~~(b) All employers shall distribute and make available to employees information about the direct deposit system and automatic deposit transmittal forms.~~

~~(c) Employers receiving individual "advice of deposit" forms and pay stubs showing a record of earnings shall provide them to employees in the direct deposit system instead of payroll warrants.~~

~~(d) Employers that do not use the OSF payroll accounting system shall provide a direct deposit service for their employees. The service shall agree with the Act and this Subchapter. It shall include the use of an automatic deposit transmittal form like the form described in Section 530:20-1-14 and approved by OPM. The rules in this Chapter do not require revision of any direct deposit authorization form in effect before January 1, 1992, that substantially agrees with 530:20-1-14.~~

530:20-1-8. Participating financial institutions [REVOKED]

~~An employee may select any financial institution that participates in commercial direct deposits to receive his or her net pay through electronic funds transfer.~~

530:20-1-9. Service charge prohibited [REVOKED]

~~No one shall require an employee in the direct deposit system to pay a service charge for participating that reduces the net amount of the employee's salary deposited [74:292.12(A)].~~

530:20-1-11. Payroll date not affected [REVOKED]

~~An employee's participation in the direct deposit system shall not affect the employee's payroll date and frequency of payment unless the employee is on the supplemental payroll. If a participating employee is on supplemental payroll, the employee's payroll date may be delayed by 3 banking days.~~

530:20-1-14. Forms and instructions [REVOKED]

~~(a) The automatic deposit transmittal shall be used by the employee to authorize:~~

~~(1) deposit of his or her payroll warrant in a specified checking or savings account in the financial institution of his or her choice through electronic funds transfer;~~

~~(2) the specified financial institution to make a credit entry to the specified account;~~

~~(3) the state of Oklahoma to direct the financial institution to return any moneys that are deposited in the employee's account to which the employee is not entitled;~~

~~(4) changes in his or her enrollment information;~~

~~(5) termination of the direct deposit of his or her payroll warrant; and~~

~~(b) The automatic deposit transmittal form contains spaces for the employee to:~~

~~(1) provide personal data to facilitate his or her personal banking needs;~~

~~(2) sign and date the agreement.~~

530:20-1-16. Procedures for direct deposit enrollment and changes [REVOKED]

~~(a) Procedures for employees under the Office of State Finance payroll accounting system. To authorize direct deposit, employees under the Office of State Finance payroll accounting system, or its successor, shall file a properly completed automatic deposit transmittal form. An employee shall file this form 30 days before the desired effective date of the first electronic funds transfer, change or termination. The employee shall attach the form to an official document from the financial institution. (For example, an employee may attach a blank check with the word "VOID" printed across it.) The official document shall show the financial institution's routing number and employee's deposit account number.~~

~~(b) Procedures for employees not under the Office of State Finance payroll accounting system. Employees of agencies not under the Office of State Finance payroll accounting system shall complete and submit automatic deposit transmittal forms according to the instructions of their employers.~~

~~(c) An instruction manual may be obtained from the Office of Personnel Management.~~

530:20-1-18. Warrant to replace returned direct deposit [REVOKED]

~~If a financial institution returns a direct deposit, OSF (or the employer, if the employer does not pay through OSF) shall issue a clearing account voucher to the employee for the amount of the returned deposit.~~

SUBCHAPTER 3. OPM ADMINISTRATIVE POLICIES AND PROCEDURES [REVOKED]

530:20-3-1. Purpose [REVOKED]

~~The purposes of the rules in this Subchapter are to provide information about:~~

~~(1) how people can get information about the direct deposit system from OPM and how they can make submissions to OPM;~~

~~(2) OPM's policies for inspection and release of direct deposit records;~~

~~(3) OPM's policies for handling complaints about the direct deposit system.~~

530:20-3-5. Communication with OPM [REVOKED]

~~Section 530:1-1-12 describes how to communicate with OPM about the direct deposit program. People should direct communications to the attention of the Oklahoma State Employees' Direct Deposit program according to 530:1-1-12.~~

530:20-3-7. Confidential records; inspection and release of open records [REVOKED]

~~(a) State employees supply personal information to the Office of Personnel Management or other state employers to facilitate their personal banking needs under the Act. Public disclosure of this information would be a clearly unwarranted invasion of the employees' personal privacy under Section 24A.7 (A)(2) of Title 51 of the Oklahoma Statutes. Therefore, the Administrator shall not release that information for public inspection.~~

~~(b) State employee home addresses, state employee home telephone numbers, and state employee social security numbers shall not be open to public inspection or disclosure [74:841.6A].~~

~~(c) Section 530:1-1-14 contains other general standards and procedures for inspecting and copying Office of Personnel Management records.~~

530:20-3-10. Complaints [REVOKED]

~~Anyone may complain to the Administrator about the direct deposit system according to 530:1-3-5. However, a person shall first exhaust other procedural remedies, including those described on the automatic deposit transmittal form.~~

[OAR Docket #14-775; filed 7-18-14]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 25. STATE EMPLOYEE CHILD DAY CARE PROGRAM RULES [REVOKED]

[OAR Docket #14-776]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [REVOKED]
530:25-1-1. Purpose [REVOKED]
530:25-1-2. Definitions [REVOKED]
530:25-1-7. Child Day Care Program Advisory Committee organization and meetings [REVOKED]
530:25-1-9. Communications with OPM [REVOKED]
Subchapter 3. [REVOKED]
Subchapter 5. Center Service Provider [REVOKED]
530:25-5-2. Contract for operation of center [REVOKED]
530:25-5-4. Service provider responsibilities [REVOKED]
530:25-5-6. Rates [REVOKED]
Subchapter 7. Participation in Program [REVOKED]
530:25-7-2. State employee priority [REVOKED]
530:25-7-4. Eligibility for participation [REVOKED]
530:25-7-6. Enrollment procedures [REVOKED]
530:25-7-7. Responsibilities of parents [REVOKED]
530:25-7-8. Termination of participation [REVOKED]
Subchapter 9. Appeals and Complaints [REVOKED]
530:25-9-4. Appeals [REVOKED]
530:25-9-5. Complaints [REVOKED]

AUTHORITY:
The Director of the Office of Management and Enterprise Services: 74 O.S. §840-1.1 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 28, 2014

PUBLIC HEARING:
February 28, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this proposed rulemaking action is to revoke the rules within Title 530, Chapters 1, 10, 20, 25, Appendix A and B and re-adopted as necessary within Title 260. The purpose of the revocation and re-adoption is to consolidate the rules for the Office of Management and Enterprise Services as directed by HB 1477 (2013).

CONTACT PERSON:
Gary Goff, Deputy General Counsel, (405) 717-8744

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

530:25-1-1. Purpose [REVOKED]

~~(a) The rules in this Chapter implement Sections 4190 through 4192 of Title 74 of the **Oklahoma Statutes**, which authorize a pilot State Employee Child Day Care Program.~~

~~The rules establish policies, procedures, and standards necessary for a pilot program. The rules in this Chapter do not include the policies for the actual operation of the child day care center by a service provider.~~

~~(b) Chapter 1 of this Title contains general rules of the Office of Personnel Management (OPM) that also apply to the State Employee Child Day Care Program.~~

530:25-1-2. Definitions [REVOKED]

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

~~**"Administrator"** means the Administrator of the Office of Personnel Management.~~

~~**"Center"** means a pilot child day care center located in the Tulsa State Office Building.~~

~~**"Day"** means a calendar day.~~

~~**"Dependent"** means a parent's natural minor child, adopted minor child, minor step child, or other minor child who lives with the parent on a fulltime or part-time basis.~~

~~**"OPM"** means the Oklahoma Office of Personnel Management.~~

~~**"Parent"** means a responsible adult who has the authority to enroll a dependent in a center.~~

~~**"Program"** means the State Employee Child Day Care Program.~~

~~**"Rate"** means the amount of money the Administrator authorizes the service provider to charge for child care services. It includes all charges.~~

~~**"Service provider"** means the independent contractor operating the center according to a contract with the State of Oklahoma. The service provider is not an agent or agency of the State of Oklahoma.~~

~~**"State employee"** means an elected or appointed officer or employee of the executive, judicial or legislative branch of government, including institutions comprising The Oklahoma State System of Higher Education.~~

530:25-1-7. Child Day Care Program Advisory Committee organization and meetings [REVOKED]

~~(a) *The Administrator shall appoint an advisory committee to:*~~

~~(1) *review the child care needs of state employees,*~~

~~(2) *recommend suitable sites for centers,* [and]~~

~~(3) *monitor and evaluate the operation of centers* [74:4190(A)(1)].~~

~~(b) *The advisory body shall report annually on the progress of the program to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives* [74:4190(A)(2)].~~

~~(c) At least annually, the advisory committee shall elect a chairman and a vice-chairman from among its members.~~

~~(d) A majority of the members shall constitute a quorum.~~

~~(e) The advisory committee shall meet at the call of the Administrator.~~

530:25-1-9. Communications with OPM [REVOKED]

~~Section 530:1-1-12 describes how to request information from OPM and submit information to OPM. People should direct communications about the program to the attention of the State Employee Child Day Care Program according to 530:1-1-12.~~

530:25-1-10. Confidential records; inspection and release of open records [REVOKED]

~~(a) *State employee home addresses, state employee home telephone numbers, and state employee social security numbers shall not be open to public inspection or disclosure* [74:841.6A].~~

~~(b) State employees may give the service provider written permission to release their home addresses, home telephone numbers, and social security numbers.~~

~~(c) Section 530:1-1-14 contains other general standards and procedures for inspecting and copying OPM records.~~

SUBCHAPTER 3. [REVOKED]

SUBCHAPTER 5. CENTER SERVICE PROVIDER [REVOKED]

530:25-5-2. Contract for operation of center [REVOKED]

~~*The pilot day care programs shall be operated through a contract with a child day care provider. Any such contract shall be made through competitive bid procedures through the* [Department of Central Services]. *Bid acceptance will be made on the basis of quality and how it is best suited to the children's* [sic] *needs. The low bid will not be the single qualifier* [74:4191(B)].~~

530:25-5-4. Service provider responsibilities [REVOKED]

~~The responsibilities of the service provider shall include, but not be limited to the following:~~

~~(1) Operating a high-quality child day care program that *shall meet or exceed applicable state child care facilities licensure standards* [74:4191(B)];~~

~~(2) Complying with the contract for the operation of the center;~~

~~(3) Carrying *sufficient liability insurance coverage which will pay damages incurred as a result of the negligent acts or omissions of an employee of the child day care provider within the scope of the employment of such person* [74:4191(B)];~~

~~(4) Submitting employee and parent handbooks describing the center's child care policies and procedures to the Administrator for approval, and distributing the handbooks to the employees and parents after approval;~~

~~(5) Making appropriate arrangements with parents for the payment of charges for child day care services; and~~

~~(6) Reserving a minimum of one half of the licensed spaces for eligible dependents of state employees, and giving state employees first priority for all vacant spaces according to 530:25-7-2 and Section 4190 (D) of Title 74 of the Oklahoma Statutes.~~

530:25-5-6. Rates [REVOKED]

~~The Administrator shall establish, in writing, *rates for child care consistent with the rates of the industry within the geographic area* [74:4190(E)]. The Administrator shall obtain information about the rates for child care in the vicinity of the center and shall evaluate the results based on reasonable comparability of facilities and programs. The Administrator shall notify the service provider of established rates.~~

SUBCHAPTER 7. PARTICIPATION IN PROGRAM [REVOKED]

530:25-7-2. State employee priority [REVOKED]

~~[The] *child day care center* [in the Tulsa State Office Building] *shall reserve a minimum of one half (1/2) of the licensed spaces for eligible minor dependents of the state employees and may allow eligible children of other than state employees to utilize a maximum of one half (1/2) of the licensed spaces, with state employees retaining first priority for all vacant spaces* [74:4190(D)].~~

~~(1) The service provider may enroll an eligible child who is not a dependent of a state employee in one of the spaces reserved for the dependents of state employees after certifying to the Administrator that:~~

~~(A) no eligible minor dependent of a state employee is on the waiting list described in 530:25-7-6(g); and~~

~~(B) the number of children who are not dependents of state employees enrolled according to this certification procedure does not exceed one fourth of the licensed spaces reserved for eligible dependents of state employees.~~

~~(2) The service provider shall promptly terminate the enrollment of a child who is not the dependent of a state employee according to 530:25-7-8 (a)(3)(B) to enroll an eligible dependent of a state employee in one of the spaces reserved for dependents of state employees.~~

530:25-7-4. Eligibility for participation [REVOKED]

~~(a) Dependents are eligible to participate if their age and any special needs are within the scope of day care services set by the Administrator in the contract for operation of the center.~~

~~(b) The service provider shall enforce the eligibility requirements for participation.~~

530:25-7-6. Enrollment procedures [REVOKED]

~~(a) The service provider shall be responsible for the enrollment policies of the center.~~

~~(b) The service provider shall develop application forms for persons wishing to participate in the program.~~

~~(c) Applicants shall personally sign and date all enrollment documents that require the signature of parents, guardians, or individuals acting in the capacity of parent as defined in 530:25-1-2.~~

~~(d) The service provider shall evaluate all applications to determine if the applicant meets all eligibility requirements for the program.~~

~~(e) The service provider shall give successful applicants written notice of acceptance. The service provider shall include material describing the program, rules, procedures, and policies of the center.~~

~~(f) The service provider shall give unsuccessful applicants written notice of the reasons for denial. In notices to applicants who are state employees, the service provider shall describe the procedure by which the applicant may appeal to the Administrator.~~

~~(g) When there are no vacancies, the service provider shall keep a waiting list of applicants. The service provider shall give eligible minor dependents of state employees first priority for all vacant spaces [74:4190(D)] and shall put their names at the top of the waiting list. The service provider shall put the names of eligible minor dependents of parents who are not state employees below children of state employees. The date the service provider receives an application shall determine rank within each group.~~

530:25-7-7. Responsibilities of parents [REVOKED]

~~*Any parent utilizing the services of on-site child day care shall be responsible for the charges assessed by the child day care provider for child day care services* [74:4191(C)].~~

530:25-7-8. Termination of participation [REVOKED]

~~(a) Participation in the program shall end on the first of the following dates:~~

~~(1) The date the program ends.~~

~~(2) The date a parent announces to the service provider as a child's last day at the center.~~

~~(3) The date the service provider determines a:~~

~~(A) child no longer meets the eligibility requirements for the center.~~

~~(B) parent no longer meets eligibility and priority requirements for any licensed space.~~

~~(C) parent or child is in violation of the policies of the center.~~

~~(D) parent or child is an immediate threat or danger at the center.~~

~~(b) If the service provider removes a child from the program because of one of the reasons listed in (a)(3) of this Section, the service provider shall provide the parent with written notice. The notice shall include reasons for the termination and~~

~~a description of the procedure by which the parent may appeal to the Administrator.~~

SUBCHAPTER 9. APPEALS AND COMPLAINTS [REVOKED]

530:25-9-4. Appeals [REVOKED]

~~A parent whose child has been removed from the center by the service provider or a state employee parent whose enrollment application has been rejected by the service provider may appeal to the Administrator. A parent shall file the appeal within 10 days after receiving notice of removal or rejection. The parent shall file the complaint according to 530:1-3-5.~~

530:25-9-5. Complaints [REVOKED]

~~Anyone may complain to the Administrator about the administration of the program according to 530:1-3-5. However, a person should first exhaust other procedural remedies, including those of the service provider and the Department of Human Services, Office of Child Care Licensing Services.~~

[OAR Docket #14-776; filed 7-18-14]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS
CHAPTER 15. EXAMINATION/ LICENSURE

[OAR Docket #14-487]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
545:15-1-1.1. Definitions [NEW]
545:15-1-2. Examination [AMENDED]
545:15-1-5. License [AMENDED]
545:15-1-5.1. Training License [NEW]
AUTHORITY:
TITLE 59 O.S., Sections 141 and 144.1, State Board Podiatric Medicine Practice Act; Board of Podiatric Medical Examiners
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 15, 2013 through December 17, 2013
PUBLIC HEARING:
December 17, 2013
ADOPTION:
January 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
545:15-1-1.1. Definitions [NEW]
545:15-1-2. Examination [AMENDED]
545:15-1-5. License [AMENDED]
545:15-1-5.1. Training License [NEW]
Gubernatorial approval:
January 29, 2014
Register publication:
31 Ok Reg 609
Docket number:
14-424
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
Senate bill 302 amended 59 O.S. Sections 144 and 144.1, which authorizes the Board of Podiatric Medical Examiners to use certain examinations for the licensing exam and permitting the issuance of a training license. These rule changes specify the National Board of Podiatric Medical Examiners' (NBPME) examination, American Podiatric Medical Licensing Examinations (APMLE), as part of the Oklahoma licensing exam, adds definitions for NBPME, APMLE, and sets out parameters for issuing the training license.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

545:15-1-1.1. Definitions

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

"APMLE" means the American Podiatric Medical Licensing Examinations.

"National Board examination" means the AMPLE, formerly known as the Podiatric Medical Licensing Examination for States or PMLexis.

"NBPME" means the National Board of Podiatric Medical Examiners.

"Podiatric resident" means an individual enrolled in a podiatric medicine and surgery residency accredited by the Council on Podiatric Medical Education.

545:15-1-2. Examination

~~(a) Examination for licensure to practice podiatry in the State of Oklahoma shall be given by the Board.~~

~~(b) The Board may give the examination at any special meeting, but it shall not be required to do so.~~

~~(1) In general, the examination for licensure shall be given during the month of March on an annual basis on a date set by the Board.~~

~~(2) The written portion and oral portion of the exam must be passed within the same calendar year. Any person who fails both the oral and written portions of the exam and who still seeks licensure shall be required to sit for the entire examination. Any person who fails the written portion, passes the oral portion and who still seeks licensure may retake the written portion on a date set by the Board.~~

(a) Upon submission and approval of a completed application for licensure by examination, and the payment of all fees, an applicant may sit for an examination approved by the Board. The Board has adopted the APMLE Part III as the written portion of the licensure examination. The applicant also must pass

a jurisprudence exam and an oral exam as authorized in 59 O.S. Section 144 as administered by the Board.

(~~c~~b) Applicants shall file a written application for examination ~~as required by the Board~~as set out in OAC 435:15-1-3 of this Subchapter and pay, in advance, the fee for examination.

(1) The application must be received at least 30 days prior to the date the exam is to be administered.

(2) The application fee must be submitted in the form of a cashier's check or certified check with the completed application form.

(3) If the application for examination is unacceptable, the fee shall be returned to the candidate along with the application.

(4) If the application is deemed acceptable, the candidate shall be notified of same in writing and scheduled for examination. The application fee shall be deposited with the office of the State Treasurer of the State of Oklahoma and shall at that point become non-refundable.

(~~d~~c) Any person who is otherwise qualified for licensure shall receive a license to practice podiatry in this State who meets the requirements set out in Title 59 O.S. § 144.

~~(e) The examination shall include a written and an oral portion. In addition, it shall be administered in the English language.~~

(~~f~~d) The examination shall cover areas in anatomy, podiatric medicine and surgery, pathology, dermatology, pharmacology, biomechanics, anesthesia, radiology, Oklahoma law relating to podiatry and any other areas deemed relevant by the Board.

(~~g~~e) The Board hereby authorizes examination papers to be graded by one or more of its own members or by any one or more licensed podiatrist it shall select at a meeting of the Board.

~~(h) The Board further may employ any national examination administered by any person or entity approved by the Council on Podiatric Medical Education to administer any such examination in their behalf.~~

545:15-1-5. License

(a) Each license issued by the Board shall be signed by each member of the Board, shall bear the Seal of the Board, and shall designate the licensee as a licensed podiatrist.

(b) Licenses, to remain effective, must be renewed ~~annually~~biennially or reinstated as provided by the Act.

545:15-1-5.1. Training License

(a) The Secretary of the Board is authorized to issue a training license to podiatric residents. Unless otherwise renewed, amended, suspended or revoked by the Board, a training license issued under this section may be extended without renewal by the Secretary for a period not to exceed ninety (90) days until scores from the first-year resident's final licensing examination are received and application for full licensure is acted on by the Board.

(b) No person granted a training license to practice podiatric medicine within a post-graduate training program within this state shall practice outside the scope of the training license. Any practice outside the scope of a training license shall be deemed to be the unlicensed practice of podiatric medicine. The Secretary is authorized to seek injunctive action to prevent any person from violating terms or limitations of a training license granted by the Board.

(c) Upon application for renewal, the Secretary shall review all training licenses granted on an annual basis to determine if such license should be renewed by the Board or amended as to its terms or limitations.

(d) No special license for post-graduate training may be issued unless the applicant has passed all sections of Part I and Part II of the America Podiatric Medical Licensing Examination (APMLE).

[OAR Docket #14-487; filed 6-23-14]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS
CHAPTER 20. MAINTAINING LICENSURE

[OAR Docket #14-488]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. Renewal of licensure
545:20-1-1.1. Definitions [NEW]
545:20-1-2. Qualifications [AMENDED]
545:20-1-3. Fees [AMENDED]
545:20-1-5. Reinstatement [AMENDED]
Subchapter 3. Continuing education
545:20-3-1. Continuing education requirements [AMENDED]
545:20-3-2. Provisions for continuing education [AMENDED]
545:20-3-3. Approved continuing education programs [AMENDED]
AUTHORITY:
TITLE 59 O.S., Section 141, State Board Podiatric Medicine Practice Act; Board of Podiatric Medical Examiners
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 15, 2013 through December 17, 2013
PUBLIC HEARING:
December 17, 2013
ADOPTION:
January 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Renewal of licensure
545:20-1-1.1. Definitions [NEW]
545:20-1-2. Qualifications [AMENDED]
545:20-1-3. Fees [AMENDED]
545:20-1-5. Reinstatement [AMENDED]
Subchapter 3. Continuing education
545:20-3-1. Continuing education requirements [AMENDED]
545:20-3-2. Provisions for continuing education [AMENDED]
545:20-3-3. Approved continuing education programs [AMENDED]
Gubernatorial approval:
January 29, 2014

Register publication:
31 Ok Reg 610
Docket number:
14-425
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
Senate bill 302 amended 59 O.S. Sections 145 and 145.1, which authorizes the Board of Podiatric Medical Examiners to require renewal of licensure biennially. These rule amendments facilitate the change from annual renewal to biennial renewal.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. RENEWAL OF LICENSURE

545:20-1-1.1. Definitions

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

"Renewal period" means the two year period from July 1 of an even-numbered year to the following June 30 of the next even-numbered year.

545:20-1-2. Qualifications

(a) Each license to practice podiatry heretofore issued which remains effective under the provisions of the Act and each license issued hereafter under the Act shall entitle the licensee to practice podiatry in this State and to hold himself or herself out as a licensed podiatric physician from the date of issuance thereof until ~~thefollowing first day of July~~June 30 of the following even-numbered year and as long as lawfully renewed, unless suspended or revoked.

(b) Qualifications for renewal of licenses are as follows:

(1) The applicant for renewal must not have violated the Act or the Rules of the Board.

(2) The applicant for renewal must have fulfilled the ~~annual~~biennial requirement for continuing education as set forth in 59 O.S., Section 145.1~~, and submit proof thereof, with application for renewal~~. Licensees licensed in the second half of the biennial period will required to obtain 30 hours of continuing education. Proof of continuing education shall be submitted to the Board prior to renewing the license.

(3) The applicant for renewal must submit completed application ~~form~~ with appropriate fee ~~attached~~ to the Board office.

(c) A licensed podiatrist shall be entitled to have his or her license renewed on or before ~~the first day of July~~June 30 of the renewal year, following completion of the above requirements.

(d) A licensed podiatrist who does not so satisfy the Board of the above requirements in the time and manner required shall cease to be entitled to have such license renewed.

(e) A licensed podiatrist in good standing who seeks retirement status may, at the discretion of the Board, be issued from the Board a license designated as "Licensed Podiatrist - Retired" with a one time application processing fee as stated in 545:35-1-2(b)(1)(A). The issue of such license waives the requirement of continuing education and restricts the privileges of said licensee to the following:

(1) The licensee may use the designation Doctor of Podiatric Medicine - Retired.

(2) The licensee shall not engage in the practice of podiatric medicine.

(3) The licensee shall not possess a narcotic license or have prescription writing privileges.

(4) The licensee may be reinstated to active status upon fulfilling the requirements set forth by the Board in Paragraphs (a), (b), (c), and (d) heretofore set forth in this Section and Section 545:20-3-2(c).

545:20-1-3. Fees

The ~~annual~~biennial renewal fee as set by the Oklahoma State Board of Podiatry is ~~seventy-five dollars ($75.00)~~one-hundred-fifty dollars ($150.00).

545:20-1-5. Reinstatement

(a) A license shall be renewed by the Board upon the payment of the delinquent ~~annual~~biennial renewal fee and completed application form without penalty between the 1st day of July and the 30th day of September, of the year in which renewal is due, if and only if the licensee first satisfies the Board that ~~during the preceding twelve (12) month period, he or she did not violate the Act or rules of the Board~~ he or she has not violated the Act or rules of the Board since the last renewal or initial licensure, whichever is most recent.

(b) A license which has not been renewed by the 30th day of September of the year in which renewal is due shall be entitled to ~~renewal~~reinstatement thereof on or before the next 30th day of June of the ~~following~~next even-numbered year, upon such application therefore, and upon meeting the requirements for renewal and satisfying the Board that the Act and rules of the Board have not been violated, and upon payment of the ~~delinquent annual renewal fee, plus a penalty of four (4) times the delinquent annual renewal fee and administrative fees~~reinstatement fee as stated in OAC 545:35-1-2. (b)(2)(B).

(c) A license not so reinstated in such time as outlined in this section becomes void~~ at the close of the 30th day of June following the year of delinquency~~.

(d) An individual whose license becomes void may be reinstated only by application for a license ~~by examination~~as stated in OAC 545:15-1-3.

SUBCHAPTER 3. CONTINUING EDUCATION

545:20-3-1. Continuing education requirements

(a) Each podiatric physician licensed in this state shall complete and provide the Board proof of attendance of ~~thirty (30)~~sixty (60) hours of continuing education ~~each year~~every two years for renewal of his or her license to practice podiatric medicine in the State of Oklahoma.

(b) These hours of continuing education must be obtained in the ~~twelve (12)~~twenty-four (24) month period immediately preceding the ~~year for which the license is to be issued~~renewal deadline. That is, from July 1 of ~~oneyear~~ even-numbered years to the following June 30 of an even-numbered year.

(c) At least ~~fifteen (15)~~thirty (30) hours of the required ~~thirty (30)~~sixty (60) hours of continuing education must be obtained in the State of Oklahoma, save and except those podiatrist practicing only in states outside of Oklahoma who hold an Oklahoma license, may substitute hours of continuing education in the state which they practice.

(d) The Board may, upon showing of good cause and in their absolute discretion, waive hours of continuing education for any ~~one-year~~two-year renewal period providing that all hours of continuing education be completed at the end of ~~anythree-year~~ the following two-year renewal period pursuant to Section 545:20-3-2(b).

545:20-3-2. Provisions for continuing education

(a) Excess hours of continuing education obtained in the last one-half of the preceding ~~fiscal year~~renewal period may be carried forward to the following ~~year~~renewal period, providing they do not exceed ~~five (5)~~ten (10) hours in number.

(b) Delinquency for continuing education hours may only be allowed in cases of hardship as determined on an individual basis by the Board. In all instances, hours of delinquency must be current at the end of ~~anythree year~~thefour year period following a period of delinquency.

(c) Any practitioner fully retired from the practice of podiatric medicine shall be exempt from compliance of these requirements; however upon resuming the practice of podiatry, the individual shall fulfill such requirements of continuing education hours which have accrued from the effective date of retirement to the time of resumption of practice.

(d) Non-resident podiatrist, who hold an Oklahoma license, but who do not actively practice in the State of Oklahoma, may substitute approved hours of continuing education from the state in which they practice as long as the qualifications are equal to or greater than the State of Oklahoma.

545:20-3-3. Approved continuing education programs

(a) Any program approved by the Council on Continuing Education of the American Podiatric Medical Association will be approved by the Board for the hours actually attended by the candidate.

(b) One (1) hour of continuing education credit may be granted an applicant by attending a meeting or hearing of the Board; not to exceed ~~three (3)~~six (6) hours per renewal period.

(c) Hospital programs of continuing education consisting of lecture, audio-visual, talk-back and grand rounds as well as clinico-pathological conferences shall be granted as per the hours of actual attendance, whether these hours be of a medical or podiatric nature. These programs and attendance must be verified by the continuing education director of that institution. No more than ~~five (5)~~ten (10) hours of continuing education credit may be given.

(d) National, state and local society sponsored programs will be approved as per the guidelines established by the Council of Continuing Education of the American Podiatric Medical Association and the Board.

(e) ~~Hours obtained in colleges or universities, while working on a degree or non-degree program, providing these courses shall be of a medical nature, shall be granted one (1) hour of continuing education for each credit hour granted by the college or university.~~

~~(f)~~ Hours of continuing education submitted to the Board for approval, by any ~~member~~licensee, from any source, must be certified by the continuing education director of the institution or organization from which the hours were obtained, that he or she was in actual attendance for the specified period.

(~~g~~f) Applicants may be granted ~~three (3)~~six (6) hours of continuing education credit for obtaining hospital-sponsored Cardio-Pulmonary Resuscitation Certification during the current ~~licensure year~~renewal period or ~~six (6)~~twelve (12) hours of continuing education credit for obtaining hospital-sponsored Advanced Cardiac Life Support Certification during the current licensure year.

(~~h~~g) Credit may be given for correspondence work or internet courses if ~~pre-approved by the Board or~~ approved by the Council on Continuing Education of the American Podiatric Medical Association. A maximum of ~~five (5)~~ten (10) hours per renewal period may be obtained in this manner.

[OAR Docket #14-488; filed 6-23-14]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS
CHAPTER 25. SUSPENSION AND REVOCATION

[OAR Docket #14-489]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
545:25-1-7. Hearing [AMENDED]
545:25-1-8. Report of proceeding, expenses, preservation [AMENDED]
AUTHORITY:
TITLE 59 O.S., Section 141, State Board Podiatric Medicine Practice Act; Board of Podiatric Medical Examiners
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
November 15, 2013 through December 17, 2013
PUBLIC HEARING:
December 17, 2013
ADOPTION:
January 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
January 21, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The amendment to **OAC545:25-1-7. Hearing**, deletes language requiring the board to either suspend or revoke a license or to dismiss the case. The Board, under Title 59 O.S. Section 147, has the authority to impose penalties other than just suspension or revocation including disapproval of an application for renewal of license, imposition of a fine, censure or reprimand, placement on probation, restriction of practice and payment of costs. The new language also sets out the method and requirements for applying for reinstatement after suspension or revocation.

Amendments to **OAC 545:25-1-8. Report of proceeding, expenses, preservation**, deletes the requirement that a record of hearings be made by a court reporter. It adds language saying the proceedings will be recorded and transcribed upon request. It allows the defendant to hire a court reporter should they so choose.
CONTACT PERSON:
Kathy Plant, Executive Secretary, 405-962-1400, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

545:25-1-7. Hearing

(a) Whether or not the licensee appears, the Board may proceed and determine the truthfulness of the charge or charges.

(b) Opportunity shall be afforded all parties to respond and present evidence and arguments on all relevant issues involved. The Board shall allow the licensee reasonable opportunity to appear in person or by counsel or both, and to present evidence in refutation of the charge or charges.

(c) Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order or default.

(d) The record in an individual proceeding shall include:

(1) All pleadings, motions and intermediate rulings.

(2) Evidence received or considered.

(3) A statement of matters officially noted.

(4) Questions and offers of proof, objections and rulings thereon.

(5) Proposed findings and exceptions.

(6) Any decision, opinion or report by the officer presiding at the hearing.

(7) All staff memoranda or data submitted to the hearing officer or members of the Board in connection with their consideration of the case.

(e) ~~Oral proceedings or any part thereof shall be transcribed on request of any involved party or his representative.~~

~~(f)~~ Findings of fact shall be based exclusively on the evidence and on matters officially noted.

(~~g~~f) No action by the Board shall be taken against the licensee until the foregoing procedures have been complied with.

(~~h~~g) ~~If, upon such hearing, the Board shall determine the charge or charges to be true wholly or in substantial part, and if under the applicable laws the license may, and in the opinion of the Board should, be suspended or revoked upon the evidence adduced, the Board shall determine which.~~

~~(1) If the determination be for suspension, the Board shall determine also the duration of the suspension, for a specified time not to exceed three (3) years. The suspension of a license to be reinstated following a specified period of time shall in no way exempt the licensee from maintaining his or her appropriate hours of continuing education or paying annual biennial renewal fees.~~

~~(2) Suspension shall during the time of suspension take from the licensee all rights and privileges acquired by virtue of the license.~~

~~(3) If the determination be for revocation, this shall take from the licensee, permanently, all rights and privileges acquired by virtue of the license.~~

~~(4) If the Board shall determine that the charge or charges themselves, if true, are insufficient to justify suspension or revocation, it shall so order and withhold further proceeding thereon except to dismiss the same.~~If, upon such hearing, the Board finds the charge or charges to be true by clear and convincing evidence, the Board may issue an order imposing one or more of the following penalties:

(1) Disapproval of an application for a renewal license;

(2) Suspension of a license by the Board for a specified time not to exceed three (3) years;

(i) the suspension of a license to be reinstated following a specified period of time shall in no way exempt the licensee from maintaining his or her appropriate hours of continuing education or paying biennial renewal fees;

(ii) suspension shall during the time of suspension take from the licensee all rights and privileges acquired by virtue of the license;

(3) Revocation of a license; revocation shall take, permanently, from the licensee all rights and privileges acquired by virtue of the license;

(4) An administrative fine for any amount up to and not to exceed One Thousand Dollars ($1,000.00) for each count or separate violation;

(5) A censure or reprimand;

(6) Placement on probation for a period of time and under such terms and conditions as deemed appropriate by the Board, including supervision;

(7) Restriction of the practice of a podiatric physician under such terms and conditions as deemed appropriate by the Board, including supervision; and

(8) Payment of costs associated with a disciplinary proceeding.

(~~i~~h) Procedures before this Board shall comply with the Administrative Procedures Act of the State of Oklahoma.

(~~j~~i) The standard of proof used by the Board in disciplinary actions under the Act shall be clear and convincing.

(j) In any action by the Board in which a person licensed by the Board has been suspended, the Board may at any time,

upon motion of any member of the Board reconsider such suspension.

(k) In addition, the person whose license has been suspended may petition the Board for reinstatement in accordance with applicable law.

(l) In any case in which a person whose license has been suspended is considered by the Board for reinstatement, it shall be the burden of that person to show compliance with all terms and conditions imposed by the Board in the disciplinary action. The Board may deny reinstatement to any such person who does not satisfy the Board of compliance with any Board requirement or condition imposed by the Board in disciplinary action or may approve reinstatement without restriction or may approve reinstatement with terms of probation or restrictions as deemed necessary to protect the health, safety and well-being of the public.

(m) Upon the completion of any term of suspension imposed by the Board, the person whose license was suspended shall bear the burden to show compliance with all requirements and conditions imposed by the Board prior to reinstatement by the Board.

(n) An application for reinstatement shall be filed with the Board in writing and shall set forth action taken by the applicant to comply with conditions and requirements imposed by the Board, including all documents in support thereof. Such application or motion shall be reviewed by the Secretary prior to being scheduled for action by the Board at a meeting of the Board. If the Secretary determines the applicant has met the requirements and conditions imposed by the Board, the matter shall be scheduled for Board action. If the Secretary determines the applicant has not complied with requirements and conditions imposed by the Board, the Secretary shall advise the applicant of the noncompliance in writing and the matter shall not be scheduled for Board action. In the event an applicant disagrees with the determination of the Secretary, the applicant may move in writing for the original application to be reviewed by the Board, upon payment of the appropriate fee.

(o) An applicant for reinstatement after suspension pursuant to 59 O.S. § 147 shall meet all application requirements in effect at the time reinstatement is requested, be of good moral character and have reimbursed the Board for taxed costs or worked out a repayment plan satisfactory to the Board. In addition, the Board may require the applicant to meet the continuing education requirements.

(p) In the event the Secretary determines that a person has not complied with an order of the Board, the Secretary may initiate additional disciplinary action against that person and may seek to have the Board impose additional penalties for failure to comply with a Board order.

545:25-1-8. Report of proceeding, expenses, preservation

~~A stenographic record shall be made by a certified court reporter of any and all proceeding to suspend or revoke a license.~~

~~(1) The record shall be reduced to typewritten form.~~

~~(2) The record shall be certified by the presiding officer of the hearing as being true and accurate.~~

~~(3) The record shall be preserved by the secretary-treasurer of the Board for a period of five (5) years.~~

(a) A record of the hearing, by means of audio recording will be made of all hearings conducted by the Board. The record of the proceeding shall not be transcribed except upon written application and a deposit sufficient in the amount to pay for having the record transcribed. The staff shall then make appropriate arrangements with a certified court reporter to transcribe the hearing from the audio recording.

(b) A defendant may, at his or her expense, arrange for a record of the hearing to be made by a court reporter.

[OAR Docket #14-489; filed 6-23-14]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-602]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Collections and Disbursements
550:1-7-1. Refund Vouchers [AMENDED]
550:1-7-4. Vouchers payable to an estate [AMENDED]
550:1-7-6. Return of contributions made under a mistake of fact [NEW]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 19, 2014
COMMENT PERIOD:
February 3, 2014 - March 17, 2014
PUBLIC HEARING:
March 19, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to OAC 550:1-7-1 improves the efficiencies associated with the delivery of both types of payments; reduces the number of paper checks printed each month; makes funds associated with each payment type available to recipients much faster; and improves the level of customer service provided to our membership. Related statutes/rules: Title 550:1-7-1(a) 11 O.S. § 50-111.1

The proposed amendment to OAC 550:1-7-4 improves the efficiencies associated with the delivery of both types of payments; reduces the number of paper checks printed each month; makes funds associated with each payment type available to recipients much faster; and improves the level of customer service provided to our membership. Related statutes/rules: n/a

The proposed amendment to OAC 550:1-7-6 reflects how the Oklahoma Police Pension and Retirement System will handle the refund of contributions to the participating municipality wherein the participating municipality paid more than the amount of contributions due from said municipality. Related statutes/rules: 11 O.S. § 50-111.1

CONTACT PERSON:

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS

550:1-7-1. Refund vouchers

(a) **Conditions upon receiving refunds.** The following conditions must be met before contributions are refunded:

(1) All contributions made through the last day of employment must be received by the Oklahoma Police Pension and Retirement System.

(2) Member must have ceased employment with the participating municipality before any application for refund of contributions will be considered by the Oklahoma Police Pension and Retirement Board.

(b) **Payment.** ~~Following Board approval and receipt of executed Notice of Selected Distribution for Refund of Contributions,~~ The refund of contributions shall be ~~paid and~~ mailed or directly deposited by the Oklahoma Police Pension and Retirement System no earlier than the last business day of the month following Board approval.

550:1-7-4. Vouchers payable to an estate

(a) **Conditions for obtaining voucher payable to an estate.** The Oklahoma Police Pension and Retirement System will issue a voucher to an estate upon the following conditions being met:

(1) For estates whose fair market value of property located in this state owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, less liens and encumbrances, exceed Twenty Thousand Dollars ($20,000.00), the personal representative of the estate of the deceased must have filed a probate action in a court of competent jurisdiction, have been issued either letters testamentary or letters of administration, and must furnish the Oklahoma Police Pension and Retirement System with the employer identification number assigned to the estate by the Internal Revenue Service.

(2) For estates whose fair market value of property located in this state owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, less liens and encumbrances, does not exceed Twenty Thousand Dollars ($20,000.00), the provisions of 58 O.S. Sections 393 and 394 shall apply. In addition, the employer identification number assigned to the estate by the Internal Revenue Service must be furnished to the Oklahoma Police Pension and Retirement System.

(b) **Payment.** Vouchers payable to an estate shall be mailed or directly deposited by the Oklahoma Police Pension and Retirement System no earlier than the last business day of the month following Board approval.

550:1-7-6. Return of contributions made under a mistake of fact

Notwithstanding Section 550:1-7-1(a), should a contribution be made through a mistake of fact that is more than the correct amount of participating municipality or member contributions to be paid to the Oklahoma Police Pension and Retirement System by a participating municipality, the Oklahoma Police Pension and Retirement System may refund the mistaken portion of the contribution to the participating municipality within one year of the date on which the mistaken portion of the contribution was made. The Oklahoma Police Pension and Retirement System shall not pay the participating municipality earnings attributable to the mistaken portion of the contribution but shall reduce the amount returned to the participating municipality pursuant to this subsection by the amount of losses attributable to the mistaken portion of the contribution.

[OAR Docket #14-602; filed 6-30-14]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM
CHAPTER 15. OKLAHOMA POLICE DEFERRED OPTION PLAN

[OAR Docket #14-603]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
550:15-1-2. Forward drop [AMENDED]

AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 19, 2014

COMMENT PERIOD:
February 3, 2014 - March 17, 2014

PUBLIC HEARING:
March 19, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed amendment to OAC 550:15-1-2 clarifies the changes regarding interest under the Deferred Option Payout Provision Policy for retired members; changes regarding payment options to the member directly, Direct Rollover, or member's annuity provider with no recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff and/or the Board; changes towards payment to the beneficiary or estate under the Oklahoma Police Deferred Option Plan. Related statutes/rules: 11 O.S. § 50-111.3

CONTACT PERSON:

Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

550:15-1-2. Forward drop

(a) **Application.**

(1) The applicant must have twenty (20) years or more of credited service with the Oklahoma Police Pension and Retirement System to be eligible.

(2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan. Forms will be provided by the Oklahoma Police Pension and Retirement System.

(3) The effective date of membership will be the first day of the month.

(4) Once the Board has approved a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the Oklahoma Police Deferred Option Plan is irrevocable as long as the member remains employed.

(b) **Contributions.**

(1) The final member contribution made to the Oklahoma Police Pension and Retirement System shall be for the last pay period prior to the first of the month in which the member becomes a participant in the Oklahoma Police Deferred Option Plan.

(2) The employer's contribution will continue to the Oklahoma Police Pension and Retirement System.

(3) The member's option account shall be credited fifty percent (50%) of the employer's contribution received for the member and the Oklahoma Police Pension and Retirement System shall be credited fifty percent (50%). The credit to the member's option account shall be made the next work day after receipt of the employer's contribution.

(4) Only the member's portion of the employer's contribution will be credited to the member's option account. No other contributions will be accepted.

(5) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of five (5) years, contributions will no longer be credited to the member's option account.

(c) **Benefits.**

(1) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.

(2) The member's service retirement benefit is frozen and at no time will he/she be allowed to increase his/her pension benefit due to additional years of service.

(3) The monthly retirement benefit will be credited to the member's option account the last day of the month.

(4) A member who participates in this plan shall be eligible to receive cost of living increases.

(d) **Interest.**

(1) The member's option account shall earn interest at a rate of two percent (2%) below the rate of return of the total investment portfolio of the System, but no less than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.

(2) The Fund's annual rate of return shall be calculated and certified by the Board's financial consultant. The annual rate of return shall be for the fiscal year ending June 30.

(3) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit times the certified annual rate of return, less two percent (2%), divided by 365 days times the number of days the deposit was credited to the member's option account for the fiscal year.

(4) Each member shall receive an itemized statement at least on an annual basis beginning with interest credited at June 30, 1991.

(5) Upon completion of the five year term in the Oklahoma Police Deferred Option Plan or earlier termination of employment by the member, annual interest calculated through the last day of the month employed and certified by the Board's financial consultant will be credited to the member's option account provided the annual rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate then the member's option account will be credited at the assumed interest rate of the last actuarial report.

(6) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of the five (5) years, the member's option account if left in the Plan, ceases to earn interest unless the member made a timely election pursuant to the Deferred Option Payout Provision Policy. Effective July 1, 2006, pursuant to the Deferred Option Payout Provision Policy, a retired member who has completed participation in the Oklahoma Police Deferred Option Plan under the Forward Drop or the Back Drop provisions may elect within thirty (30) days following

termination of employment with a participation municipality to leave his or her Deferred Option Payout Account balance in the Plan. Under the Deferred Option Payout Provision Policy, the retired member's Deferred Option Payout Account balance will be commingled and invested with the total pension fund and as such the retired member will not be able to direct his or her investments.

(7) At the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan, the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such termination has at all times included reemployment of a member by a participating municipality but only in a position not covered under the System or as a police chief. Thus, such a member would receive in-service distributions of such member's accrued monthly retirement benefit from the System.

(e) **Payment.**

(1) The member shall make application to terminate participation in the Oklahoma Police Deferred Option Plan a minimum of ninety (90) days prior to termination of employment with the participating municipality. The Oklahoma Police Pension and Retirement System shall have a minimum of ninety (90) days from the date of receipt of members' application to terminate participation in the Oklahoma Police Deferred Option Plan in which to process said application and make payment, unless the member has made an affirmative election to participate in the Deferred Option Payout Provision.

(2) The member should make payment selection a minimum of thirty (30) days prior to the distribution date. The form on which payment selection must be submitted will be provided by the System.

(3) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by the Oklahoma Police Deferred Option Plan. This payment will be made after the last contribution has been received and interest applied following termination of employment and after receipt of the completed payment selection form.

(4) The member may select a direct rollover of his or her distribution in accordance with OAC 550:1-7-5.

(5) The member may select an annuity to be provided by a third party. The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the annuity provider.

(6) The member may select to participate in any other method of payment if approved by the State Board.

(7) Once the member's option account has been paid directly to the member, or as a Direct Rollover or to the member's annuity provider, the member shall not have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

(f) **Beneficiaries.** If the participant dies during the period of participation in the Oklahoma Police Deferred Option Plan, a beneficiary may elect to receive a lump sum payment equal to the account balance of the participant. A beneficiary may elect a Direct Rollover of the account balance in accordance with OAC 550:1-7-5. If there is no beneficiary or if the beneficiary predeceases the participant, a lump sum payment shall be paid to the estate of the participant. Once paid out directly to the beneficiary (ies), or as a Direct Rollover, or to the estate of the member, neither the beneficiary (ies) nor the estate of the member shall have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

[OAR Docket #14-603; filed 6-30-14]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 20. PURCHASE OF TRANSFERRED CREDITED SERVICE

[OAR Docket #14-604]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
550:20-1-2. Computation [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND LEGISLATURE:
January 19, 2014
COMMENT PERIOD:
February 3, 2014 - March 17, 2014
PUBLIC HEARING:
March 19, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to OAC 550:20-1-2 adds language regarding guidelines for a refund on payments towards transferred credited services. Related statutes/rules: 11 O.S. §§ 50-111.4; 50-111.5
CONTACT PERSON:
Darcie Gordon, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

550:20-1-2. Computation

All purchases of transferred credited service pursuant to 11 O. S. Section 50-111.4, shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost, and any tables formulated for the purpose of determining such cost during each calendar year, shall be based on the actuarial assumptions utilized in the actuarial valuation report as of the preceding July 1.

(2) The actuarial value shall be based upon the member's age, salary and service at the time of purchase, together with the earliest age for retirement and actuarially projected salary at time of retirement. For purposes of this actuarial cost, it is assumed that all members are married at the time of retirement. If purchase is not made within 30 days of Board approval, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming post retirement mortality weighted 90% male and 10% female.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, the member's salary shall be annualized based upon the completed calendar months of payroll information.

(6) In lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer or direct rollover as authorized by the statutes governing the System.

(7) Notwithstanding (6) of this subsection, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by Oklahoma state statutes), trustee-to-trustee transfer and/or direct rollover as described in (6) of this subsection.

(8) In the event that a member (A) elected to purchase transferred credited service pursuant to 11 O.S. Section 50-111.2, (B) has made payment for such transferred credited service under 11 O.S. Section 50-111.4, and (C) has not had such transferred credited service added under 11 O.S. Section 50-111.2.A by the time such member becomes entitled to a disability benefit under 11 O.S. Section 50-115, upon application by the member such payment shall be refunded from the Fund without interest thereon.

[OAR Docket #14-604; filed 6-30-14]

TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS
CHAPTER 10. LICENSURE OF PSYCHOLOGISTS

[OAR Docket #14-743]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
575:10-1-2. Requirements to become licensed as a psychologist [AMENDED]
575:10-1-3. Private Practice Under Supervision [AMENDED]
575:10-1-5. Psychologists' licenses; license status; public inquiries [AMENDED]
575:10-1-9. Fees after becoming licensed as a psychologist [AMENDED]
AUTHORITY:
Oklahoma State Board of Examiners of Psychologists; 59, O.S., 2001, Section 1352.1(8).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 21, 2014
PUBLIC HEARING:
March 28, 2014
ADOPTION:
March 28, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 1, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amendments to these rules will allow committees to approve applications, practice under supervision agreements and extensions of practice under supervision agreements. These amendments will also allow the board to lower annual renewal fees if suitable.
CONTACT PERSON:
Teanne Rose, Executive Officer, Oklahoma State Board of Examiners of Psychologists, 201 N.E. 38th Terrace, Suite 3, Oklahoma City, OK 73105, 405-524-9094.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

575:10-1-2. Requirements to become licensed as a psychologist

(a) **Application.** Persons desiring licensure as a psychologist may obtain official application information from either the Board office or the Official Board Website. Applicants are required to submit a four hundred dollar ($400.00) application fee in the form of a personal or certified check or acceptable money order. The application fee is non-refundable. The completed application and all necessary papers must be at the board office at least 30 days prior to a regularly scheduled

Board meeting. A minimum of three references from licensed psychologists shall be required for each applicant. Board members shall not serve as references for applicants except to verify portions of completed training or experience.

(b) **Consideration of application.** The Board ~~shall~~may appoint a committee to consider and approve, ~~on an individual basis,~~ the request of each applicant to take the examination for licensure as a psychologist under O.S. 59, Section 1362(1).

(c) **Doctoral programs.** All applicants for licensure as a psychologist shall have a doctoral degree based upon a curriculum from an institution regionally accredited by an organization recognized by the U.S. Department of Education consisting of at least three academic years, which shall be defined as 90 semester hours (excluding internship credit), leading to said degree. The applicant's doctoral degree must be from a program accredited by the American Psychological Association or meet all of the following criteria. By January 1, 1997, applicants for licensure shall have completed a doctoral program in psychology that is accredited by the American Psychological Association, or the Canadian Psychological Association, or designated as a psychology program by the Designation Committee of the National Register of Health Service Providers in Psychology and the Association of State and Provincial Psychology Board, and meet all of the following criteria:

(1) The doctoral program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train psychologists.

(2) The psychology program must stand as a recognizable coherent organizational entity within the institution.

(3) There must be clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

(4) The program must be an integrated, organized sequence of study.

(5) The program must have an identifiable psychology faculty and a psychologist responsible for the program.

(6) The program must have an identifiable body of students who are matriculated in that program for a degree.

(d) **Practica and internship required.** The assessment of mental, emotional, or behavioral disorders and/or the treatment of individuals, couples, families, or groups with such disorders, by psychologists, requires a doctoral degree from an academic program designed to train psychologists to provide these services which integrates coursework and other experiences toward the goal of training psychologist practitioners. Practica and an internship experience are required.

(e) **Evaluating doctoral programs.** The doctoral program shall be documented in writing to the Board. The institution is to document the name of the department granting the degree, the date of completion of the degree requirements, and the major program of study such as, but not limited to, clinical, counseling, developmental, educational, experimental, industrial-personnel, psychometrics, school, or social-personality, unless this information is indicated on the applicant's official transcript. A certified letter from the Registrar may be submitted as documentation of the date of completion of the degree requirements. This academic program will then be evaluated by the following criteria:

(1) Except in school psychology, the three academic years leading to the doctoral degree must include a minimum of two years of full-time, on campus, graduate study (excluding internship). In school psychology, the three academic years leading to the doctoral degree must include a minimum of one year of full-time postmaster's graduate study as defined by the institution (excluding internship).

(2) At least forty-two (42) hours of the specified course work must be primarily psychological in content. The applicant must have a minimum of three (3) or more graduate semester hours in each of the following substantive content areas, for a total of twenty-one (21) hours:

(A) scientific and professional ethics and standards,

(B) research design and methodology,

(C) statistics and psychometrics,

(D) biological bases of behavior [e.g. physiological psychology, comparative psychology, neuropsychology, sensation, psychopharmacology].

(E) cognitive-affective bases of behavior [e.g. learning, memory, perception, cognition, thinking, motivation, emotion].

(F) social bases of behavior [e.g. social psychology, cultural, ethnic, and group processes, sex roles, organization and systems theory], and

(G) individual behavior [e.g. personality theory, human development, individual differences, abnormal psychology].

(3) The remaining twenty-one (21) hours of specified course work may be in the foregoing basic areas or in courses pertaining to the specific program of study.

(f) **Doctoral degree in area related to psychology not sufficient.** The possession of a doctoral degree from an area related to psychology does not qualify one for licensure as a psychologist. This includes, but is not limited to, applicants with degrees in special education, pastoral psychology (or counseling), counseling and guidance, speech and hearing, and counselor education.

(g) **Supervised experience.** An applicant for licensure as a psychologist must have two years of supervised experience satisfactory to the Board. Supervisors may not be members of the psychologist's immediate family or other individuals with whom the necessary level of objectivity cannot be maintained. This will include, but is not limited to, spouses, children, siblings, and parents or anyone with whom the psychologist has an emotionally or sexually intimate relationship. Any experience gained under such supervision will be disallowed. This two years of experience must be as a psychologist and in line with the applicant's major program of study for the doctoral degree as determined according to the procedure stated in 575:10-1-2(e). Applicants in the areas of clinical, counseling, and school psychology must have an internship experience. Applicants from psychology programs other than

clinical, counseling, or school psychology, who assert the program's purpose to be the training of individuals to provide professional psychological services to the public, must have an internship experience. Internships of applicants from psychology programs with titles other than clinical, counseling, or school psychology programs will be evaluated using the same rules as those used to evaluate applicants with degrees from either clinical, counseling, or school psychology programs, depending upon which the Board deems is the most appropriate corollary based upon the program's training goals and objectives. A predoctoral internship may be used to partially fulfill the two-year experience requirement for licensure. Under no circumstances may more than one year of predoctoral experience as an intern be accepted. The internship must be consistent with the major program of study in the doctoral program which was documented in writing to the Board by the accredited institution [see 575:10-1-2(e)]. Internships in clinical psychology require a full-time experience (40 hours per week) either for one calendar year, or for two years of half-time experience. Counseling and school psychology internships require either a full-time experience (40 hours per week) for one calendar year or one academic contract year or a half-time experience for two calendar years or two academic contract years. An academic contract year means the school year of the elementary or secondary school setting in which an intern is fulfilling the internship requirement. If the counseling or school psychology internship is completed in other than an elementary or secondary school setting, the one calendar year requirement shall apply.

(h) **General requirements for internships.** Internships must be designed to provide a planned, programmed sequence of training experience. The primary focus and purpose of the internship must assure breadth and quality of training. An internship is an organized program of planned experiences in contrast to simply supervised experience or on-the-job training. The internship must provide training in a range of assessment and treatment activities conducted directly with patients or clients seeking psychological services. At least 25 percent of the trainee's time must be in direct patient or client contact. Internship training is at the post-coursework, post candidacy, post-clerkship, post-practicum, post-externship level. A written statement or brochure must be available which describes the goals and content of the internship, states clear expectations for the quantity and quality of trainee's work, and is furnished to prospective interns.

(i) **Supervision in internships.** A clinical or counseling psychology internship agency must have a clearly designated staff psychologist, who is responsible for the integrity and quality of the training program and who is licensed. In a counseling or clinical psychology internship, the basic supervision must be conducted by a staff psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, and who is licensed. While additional experience with professionals in other disciplines is highly desirable, it is required that clinical and counseling psychology interns have experience with multiple (three or more) supervisors who are licensed as psychologists. Supervision of counseling and clinical psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of clinical and counseling psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience. The counseling or clinical psychology internship agency should ordinarily have a minimum of two interns at the internship level of training during the applicant's training period.

(j) **School psychology internships.** School psychology internships must have a clearly designated psychologist who is responsible for the integrity and quality of the training program and who is licensed. In a school psychology internship, the basic supervision must be conducted by a psychologist who is trained in the applicant's major program of doctoral study, or a closely related program, who is licensed, and who may be employed in a setting other than the school district in which the internship is situated. While additional experience with professionals in other disciplines is highly desirable, it is required that school psychology interns have experience with multiple (two or more) supervisors who are licensed as psychologists. Supervision of school psychology interns shall consist of an average of at least 10 percent of the full-time or half-time intern's week. At least half of the supervision of school psychology interns must be regularly scheduled, formal, face-to-face, individual supervision by one or more licensed psychologists with the intent of dealing with psychological services rendered directly by the intern. The remaining half of the supervision may be conducted individually or in a group by licensed psychologists or by other licensed professionals as appropriate to the internship experience.

(k) **Postdoctoral experience.** At least one year of the two-year experience requirement must be postdoctoral experience as a psychologist and in line with the applicant's major program of doctoral study as determined according to the procedure stated in 575:10-1-2(e). The postdoctoral experience must be a full time (40 hours per week) for at least one calendar year (50 weeks), or a total of 2000 hours of appropriate experience, or equivalent, for a period not to exceed three years, except in school psychology. The postdoctoral experience in school psychology must be full time (40 hours per week) for at least one calendar year (50 weeks) or one academic contract year, or a total of 2000 hours (or the number of hours in an academic contract year) of appropriate experience, or equivalent, for a period not to exceed three years. The postdoctoral experience must be under the supervision of a licensed psychologist(s) who was trained in the applicant's major program of doctoral study, or a closely related program, and who is currently engaged in rendering psychological services relevant to that training. The applicant must have received and accumulated 75 hours of regularly scheduled, formal, face-to-face, individual supervision from his/her supervisor(s) reasonably distributed throughout each 12 months of the postdoctoral experience. The postdoctoral experience does not have to be in a private setting.

(l) **Examination process.** The full examination for licensure shall consist of three component examinations:

(1) **Objective examination.** An objective examination in basic psychology, the Examination for Professional Practice in Psychology, shall be administered each year at sites, dates and times approved by the Board.

(2) **Jurisprudence examination.** A jurisprudence examination based on the Rules of the Board, Psychologists Licensing Act, Code of Ethics and applicable Oklahoma Mental Health Law, will be administered at a time and place determined by the Board. Additional exams may be scheduled for reciprocity applicants at a time and place determined by the chair.

(3) **Oral examination.** An oral examination concerning ethics, professional problems, and any other subject matter the Board shall deem appropriate for the examination will be administered at a time and place determined by the Board. The examinee must pass both the objective and jurisprudence examinations before being admitted to the oral examination.

(m) **Passing scores on examinations.** An applicant is deemed to have passed the objective examination if he/she has obtained at least the minimum pass point designated by the developer of the examination. An applicant is deemed to have passed the jurisprudence examination if he/she has 70 percent of the total items correct. An applicant must pass both the objective and jurisprudence examinations before being eligible for the oral examination. An applicant is deemed to have passed the oral examination when a majority of the examining committee, voting by secret ballot, judges the performance of the applicant as satisfactory for licensure.

(n) **Notification of results.** All applicants will be notified by mail of the results of each component examination within 30 days of the examination date. At the request of the applicant, specific information about his/her performance on any component examination will be provided to the extent the integrity of the exam is not violated.

(o) **Re-examination.** If any of the three component examinations is failed on the first attempt, the applicant will be allowed to retake the failed component at sites, dates, and times approved by the Board. No special examination time shall be scheduled. If any of the component examinations is failed a second time, the applicant shall not be allowed to retake the failed component for a period of 6 months. The failed component may be taken two additional times. If any component is failed a total of four times, the application process shall cease. The former applicant may reapply for licensure by submitting a new application for consideration by the Board in accordance with the requirements to become licensed as a psychologist.

(p) **Waiver of portion of examination or re-examination.** Failure on any portion of the licensing examination will be considered failure of the entire examination for purposes of licensing; however, satisfactory performance on the objective examination or jurisprudence examination will be grounds for waiver of that portion of the examination for future re-examination.

(q) **Licensing by reciprocity.** Applicants for licensure under the reciprocity provisions of this act may only be licensed if they meet the requirements in 59 O.S. Section 1366(2).

575:10-1-3. Private Practice Under Supervision

(a) **Purpose.** The purpose of this provision is to provide an opportunity for individuals to fulfill the experience requirements for licensure in psychology in other than academic, governmental, or institutional settings. The applicant for such approval is considered to be requesting entrance into the established practice of a licensed psychologist for the purpose of gaining supervised experience.

(b) **Not an independent practitioner.** The applicant, if approved to conduct Private Practice Under Supervision, is not authorized to represent him/herself as an independent practitioner of psychology to the public.

(c) **Application; eligibility; approval.** Application for approval to Practice Psychology Under Supervision shall be made in the same manner, and on the same forms that are used to apply for licensure. A notarized statement, signed by both the applicant and proposed supervisor, must be submitted with the application. Said notarized statement shall contain an explicit statement indicating that the supervisor agrees to supervise the practice of psychology of the applicant, and that the supervisor has read, understands and agrees to the provisions of the law with respect to practice under supervision, O.S. 59, Section 1353(d) to wit, that the supervisor accepts complete and full responsibility for the psychological activities and services of the applicant. Permission to practice under supervision will be granted only after the applicant has completed all requirements for the doctorate and the Board has been so notified by the university awarding the degree. Approval will be extended only to those whose training and experience would qualify them for licensure after completion of the experience requirements of the law, except for the second year of supervised experience as required in 575:10-1-2(g), and has been approved by the Board <u>or a committee selected by the Board</u> to sit for examination. Approval for practice under this provision shall be for a period of one calendar year dating from the date of approval by the Board of the application for Private Practice Under Supervision or until date of licensure. Extension of this approval shall be considered only upon written request of the supervisee and such request must be received prior to the end of the one-year period of previous approval.

(d) **Written agreement between applicant and supervisor.** Applications for approval to engage in Private Practice Under Supervision shall include a written agreement, co-signed by the applicant and his/her supervisor, describing the terms of the supervisory arrangement. Said terms must include supervision time amounting to at least 90 minutes weekly and a statement of fees charged for supervisory time, the extent of the applicant's services rendered to the public while practicing under supervision, and an evaluation of the quality of the applicant's professional and interpersonal skills for rendering services to the public.

(e) **Notice of ~~Board~~ decision.** The individual applicant for approval for Private Practice Under Supervision and his/her proposed supervisor shall be notified by mail as to the decision

of the Board or the committee with respect to said application. ~~Any Board decision concerning an individual practicing under this provision shall also be communicated by mail to the supervisee and supervisor.~~

(f) **Preparation and distribution of certain announcements forbidden.** Persons approved for the private practice under supervision are not authorized to represent themselves as independent practitioners of psychology. Preparation or distribution of announcements of practice, independent telephone listings, or other such notices shall be in violation of the authorization to practice under supervision and will lead to automatic revocation of the approval for practice under supervision.

(g) **Terminate responsibilities and obligations.** Any individual practicing psychology under supervision must take the Examination for Professional Practice in Psychology (EPPP), Jurisprudence Examination and Oral Examination no later than one calendar year after the day permission to practice under supervision is granted. Failure to take the examination within the designated time period shall result in automatic revocation of the approval to practice under supervision. An individual approved for Private Practice Under Supervision who fails all or part of the examination for licensure, may be granted an extension of the approval for Private Practice Under Supervision; however, such approval shall be automatically revoked if the individual does not attempt re-examination within one calendar year from the date of the completion of the last part of the examination which was previously attempted. Under unusual circumstance, such as military service or major illness, an applicant may be granted an extension of the approval to practice until the next examination which the supervisee might reasonably be expected to attempt. If the applicant fails any of the three portions of the licensing examination three times then approval for practice under supervision will automatically be revoked.

(h) **Requirements for supervisors.** Permission to practice psychology under supervision shall be granted to applicants who otherwise qualify, only if the supervisor for their practice is:

(1) A licensed psychologist.

(2) Trained in the same major program of study as the applicant's doctoral training and who will supervise the candidate in work consistent with that major program of study.

(3) Currently engaged in a private practice rendering psychological services to the public on at least a 10-hour weekly basis.

(4) Is not a member of the psychologist's immediate family nor an individual with whom the necessary level of objectivity can be maintained. This will include, but is not limited to, a spouse, children, siblings, and parents or anyone with whom the psychologist has an emotionally or sexually intimate relationship.

(i) **Board members not eligible.** Board members shall not be authorized as supervisors under this provision.

(j) **Supervisor's responsibility.** As per O.S. 59, Section 1353(6), the supervising psychologist accepts full and complete responsibility for all professional conduct of the supervisee; all professional responsibility resides with the supervisor, not with the supervisee. The supervisee will be considered to have joined the practice of the supervisor. The supervisory psychologist will normally be expected to accept no more than three supervisees under the provision of this section. Exceptions to this limit may be approved by the Board if the Board determines that adequate supervision will be provided by the proposed relationship.

575:10-1-5. Psychologists' licenses; license status; public inquiries

(a) **License issued by Board.** The license shall be issued to each applicant found to meet the requirements for licensure as a psychologist established by the Board. All licensees shall be required to practice only within their major program of doctoral study and supervised experience.

(b) **Status of licenses.** There shall be three types of status for licenses of psychologists:

(1) **Active license.** An active license is a license which has been issued or renewed by the Board for the current calendar year by payment of the appropriate fee. The renewal fee shall not exceed ~~be~~ four hundred dollars ($400.00) each year and is due prior to January 1 of each year. The active status shall be the only status which is valid for the practice of psychology. It is the responsibility of each licensed psychologist to keep the Board informed of his/her current address.

(2) **Inactive license.** A license may be placed on inactive status by payment of a one-time fee of twenty-five dollars ($25.00). Licenses on inactive status shall not be valid for the practice of psychology; however, active status may be re-established upon payment of the current renewal fee, without penalty, if the board establishes that there are no known impediments to licensure [pursuant to O.S. 59, Section 1370(A)] and there are no unresolved complaints on file with this Board or the Board of another state. Inquires concerning the credentials of psychologists whose licenses are on inactive status shall be honored by the Board.

(3) **Invalid license.**

(A) **Invalid license for nonpayment of renewal fee.** A license shall be on invalid status when the renewal fee or inactive fee has not been received by the Board by December 31 of the year the license was issued or last renewed. When this occurs, the license is invalid for the practice of psychology until it is again renewed. Payment of the current renewal fee, plus penalty, shall reinstate the license to active status if the Board establishes that there are no known impediments to licensure [pursuant to O.S. 59, Section 1370(A)]. Inquiries to the Board concerning the credentials of psychologists whose licenses are invalid shall be answered with the statement that the licensee does not hold a valid license to practice in the state of Oklahoma.

(B) **Invalid license for noncompletion of continuing professional education requirement.** A license shall be on invalid status as of December 31 of

the year the license was issued, or last renewed, if the psychologist has not completed the required twenty (20) hours of acceptable continuing professional education. When this occurs, the license is invalid for the practice of psychology until it is again renewed. Completion of 20 hours of acceptable continuing professional education, together with verification ruled acceptable to the Board, shall reinstate the license to active status if the Board establishes that there are no known impediments to licensure [pursuant to O.S. 59, Section 1370(A)]. Inquiries to the Board concerning the credentials of psychologists whose licenses are invalid shall be answered with the statement that the licensee does not hold a valid license to practice in Oklahoma.

(c) **Public inquiries regarding licensees.** Inquiries to the Board concerning the credentials of a psychologist shall be answered by providing information about the status of the psychologist's license and whether or not there are any known impediments to licensure and/or unresolved Board complaints with this Board or the Board of another state.

575:10-1-9. Fees after becoming licensed as a psychologist

(a) **Fee to renew the license.** The renewal fee shall not exceed~~be~~ four hundred dollars ($400.00) each year and is due prior to January 1 of each year.

(b) **Fee to hire a psychological technician.** The fee which a psychologist must pay to hire a psychological technician in his/her private practice shall be one hundred and fifty dollars ($150.00). The renewal fee shall be one hundred dollars ($100.00) each year and is due on the anniversary date of approval by the Board.

[OAR Docket #14-743; filed 7-17-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 1. ADMINISTRATIVE OPERATIONS [REVOKED]

[OAR Docket #14-758]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:1-1-1. Purpose [REVOKED]
580:1-1-2. Chief administrative officer [REVOKED]
580:1-1-3. Availability of Records [REVOKED]
580:1-1-4. Organization of the Department of Central Services [REVOKED]
580:1-1-5. Appeals [REVOKED]
580:1-1-6. Petition requesting promulgation, amendment or repeal of a rule [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules regarding the administrative operations of the Department of Central Services. Since the Department of Central Services has been consolidated into the Office of Management and Enterprise Services, these rules are no longer necessary.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:1-1-1. Purpose [REVOKED]

~~(a) The Department of Central Services (also referred to as DCS) is created by Section 61.2 of Title 74 of the Oklahoma Statutes and is the successor to the Office of Public Affairs and the State Board of Public Affairs.~~

~~(b) The primary statutory powers and duties of DCS are set forth in Section 1 et seq of Title 61 and Section 61 et seq. of Title 74 of the Oklahoma Statutes.~~

~~(c) The principal office of the Department of Central Services is located in the Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, Oklahoma.~~

~~(d) Office hours are from 8:00 a.m. to 5:00 p.m. each day, except Saturday and Sunday, and any legal holiday established by statute or proclamation of the Governor.~~

580:1-1-2. Chief administrative officer [REVOKED]

~~(a) The Director of the Department of Central Services, also known as the Director of Central Services, is the chief administrative officer of the Department of Central Services and is responsible for providing the overall direction necessary for the agency to attain its mission as established by statute or administrative rule.~~

~~(b) The Director of Central Services is appointed by the Governor by and with the consent of the Senate and serves at the pleasure of the Governor (74 O.S., Section 61.1).~~

580:1-1-3. Availability of records [REVOKED]

~~(a) Records in the custody of DCS, except those documents specifically excluded by law, shall be available to the public as provided by the Open Records Act. Documents will be available to the public for inspection during regular office hours.~~

~~(b) Persons wishing to view records of DCS shall register their name, address and telephone number before documents are viewed. The registrant shall state whether the documents are being viewed for a personal, business or commercial reason and shall list the documents desired for viewing.~~

~~(c) No original records shall be removed from the DCS.~~

~~(d) Persons wishing to photocopy documents in the custody of the DCS may do so in accordance with the Open Records Act. A charge for copies may be made in accordance with the Open Records Act and administrative rules of the DCS.~~

580:1-1-4. Organization of the Department of Central Services [REVOKED]

~~(a) The Department of Central Services is organized to include the following functions: Administration, Asbestos Abatement, Building Management (also referred to as Facilities Services), Central Printing, Central Purchasing, Construction and Properties, Fleet Management, Interagency Mail, Property Distribution, and Risk Management.~~

~~(b) The Department of Central Services also administratively supports, the Capitol Medical Center Improvement and Zoning Commission, the Public Employees Relations Board, the Oklahoma Capitol Improvement Authority, and the State Capitol Preservation Commission.~~

580:1-1-5. Appeals [REVOKED]

~~Any decision of the Department of Central Services may be appealed in accordance with the Oklahoma Administrative Procedures Act. Appeals must be submitted in writing to the General Counsel, at the principal office of the Department of Central Services within ten days of notification of decision.~~

580:1-1-6. Petition requesting promulgation, amendment or repeal of a rule [REVOKED]

~~(a) Any person may request the Director of the Department of Central Services to adopt, amend, or repeal any rule in this Title. [Reference 75 O.S. §305]~~

~~(b) A request for rulemaking must be in writing and must include the following information:~~

~~(1) the name, address and telephone number of the person making the request;~~

~~(2) the name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) the date of the request;~~

~~(4) the requested action, that is, revision of a rule, repeal of a rule, or addition of a rule;~~

~~(5) any numbers and headings used to identify the rule if the request is to revise or repeal an existing rule;~~

~~(6) the proposed language if the request is to amend an existing rule or add a new rule;~~

~~(7) the reason for the request; and~~

~~(8) the intended effect of the action.~~

~~(c) Upon review and consideration of the request, the Director may approve the request and send notice that such proposal will be formally considered for adoption. In accordance with 75 O.S. §305, if a person requesting rulemaking proceedings has not received a notice from the Director within thirty (30) calendar days after submission of a petition, the petition shall be deemed to have been denied.~~

[OAR Docket #14-758; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 10. FACILITIES MANAGEMENT [REVOKED]

[OAR Docket #14-759]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 2. General Provisions [REVOKED]
580:10-2-1. Purpose [REVOKED]
580:10-2-2. Definitions [REVOKED]
580:10-2-3. Statutory citations [REVOKED]
580:10-2-4. Forms [REVOKED]
580:10-2-5. Waivers [REVOKED]
Subchapter 5. Use of Public Areas of Capitol and Plazas [REVOKED]
580:10-5-1. Purpose [REVOKED]
580:10-5-2. Capitol access, operating hours and access requirements [REVOKED]
580:10-5-3. Use of public areas [REVOKED]
580:10-5-4. Provisions for exhibits and art exhibits [REVOKED]
580:10-5-5. Private purpose; conditions for use [REVOKED]
580:10-5-6. Provisions for events, exhibits and art exhibits [REVOKED]
580:10-5-7. Governor's Art Gallery and Blue Room [REVOKED]
580:10-5-8. Vehicles on plaza [REVOKED]
580:10-5-9. Access to the Capitol Dome [REVOKED]
Subchapter 7. Use of State Capitol Park [REVOKED]
580:10-7-1. Purpose [REVOKED]
580:10-7-2. Use of State Capitol Park [REVOKED]
580:10-7-3. Park use information [REVOKED]
580:10-7-4. Banners on light poles along Lincoln Renaissance [REVOKED]
Subchapter 9. Operation of Buildings Owned, Used or Occupied by or on Behalf of the State [REVOKED]
Part 1. Smoking [REVOKED]
580:10-9-1. Purpose; Authority [REVOKED]
580:10-9-2. Definitions [REVOKED]
580:10-9-3. Smoking Room Inspection Report [REVOKED]
580:10-9-4. Verification for compliance [REVOKED]
Part 3. Use of Capitol Conference Center and the Concourse Theater [REVOKED]
580:10-9-8. Purpose [REVOKED]
580:10-9-9. Reservation of meeting rooms [REVOKED]
580:10-9-10. Use of meeting rooms [REVOKED]
Part 4. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings [REVOKED]
580:10-9-15. Purpose [REVOKED]
580:10-9-16. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements [REVOKED]
Part 5. General Operations of Public Buildings Managed by the Department of Central Services [REVOKED]
580:10-9-21. Purpose [REVOKED]
580:10-9-22. General use [REVOKED]
580:10-9-23. General operating procedures [REVOKED]
580:10-9-24. Use of public areas [REVOKED]

AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 2. GENERAL PROVISIONS [REVOKED]

580:10-2-1. Purpose [REVOKED]

~~This Chapter provides information and establishes procedures for the Director of the Department of Central Services to administer the operations of all buildings or property owned, used or occupied by or on behalf of the State and controlled by the Department of Central Services, including the Capitol, Capitol plazas, and the State Capitol Park.~~

580:10-2-2. Definitions [REVOKED]

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

~~**"Art"** means fine art of museum quality representing the highest quality of art objects available to include paintings, graphic arts, art photography and sculpture, aesthetically aligned with recognized values, created by the conscious use of skill and creative imagination.~~

~~**"Art exhibit"** means an exhibit composed primarily of art.~~

~~**"Capitol"** means the State Capitol Building.~~

~~**"Capitol Complex"** means the property and buildings of the State of Oklahoma bordered by 28th Street on the north, south bound Lincoln Boulevard on the west, 18th Street on the South, and north bound Lincoln Boulevard on the east, to the point of beginning on 28th Street.~~

~~**"Capitol Conference Center"** means Room 104 of the Capitol.~~

~~**"Commercial activity"** means selling or offering merchandise, food or services for the benefit of an individual or business entity organized for profit.~~

~~**"Concourse Theater"** means Room C50 located in the concourse between the Will Rogers Building and the Sequoyah Building.~~

~~**"CPC"** means the State Capitol Preservation Commission.~~

~~**"Demonstration"** means a gathering of persons which may include demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication or expression of views engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Director"** means the Director of Central Services.~~

~~**"Event"** means an assembly or gathering of people for a single purpose.~~

~~**"Exhibit"** means a display whether free standing or affixed to structures.~~

~~**"Plaza"** means the outdoor area adjacent to the Capitol under the authority of the Department of Central Services.~~

~~**"Private purpose"** means an event or exhibit subject to special admission requirements.~~

~~**"Public area"** means those portions of the property for general visitation or use under the control of the Department of Central Services.~~

~~**"Public purpose"** means an event or exhibit for general visitation or use.~~

~~**"Reservation"** means an accommodation the Department approves and a sponsor secures in advance for an event, art exhibit, demonstration, exhibit or meeting.~~

~~**"Sponsor"** means an individual that requests use of a public area on behalf of an individual, group or state agency.~~

~~**"State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, or the Office of the Governor.~~

~~**"State Capitol Park"** or **"park"** means all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol Complex, including the Governor's Mansion and all properties within the public right-of-way along Lincoln Boulevard north from the north boundary line of Northeast 13th Street to the south boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plat filed in the office of the Secretary of state as File Number 155 in the State Property Records. [74 O.S., §1811.4]~~

580:10-2-3. Statutory citations [REVOKED]

~~Statutory citations refer to the most recent codification of statutes.~~

580:10-2-4. Forms [REVOKED]

~~Forms or instructions will be developed for use by the public to facilitate requirements of this chapter. The Department shall provide forms upon request.~~

580:10-2-5. Waivers [REVOKED]

~~The Director may waive any requirement of this chapter unless statutes mandate the requirement.~~

~~(1) All requests for waivers shall be in writing and must include justification for the waiver request.~~

~~(2) The Department shall respond in writing as to the approval, conditional approval, or denial of a waiver request.~~

SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS [REVOKED]

580:10-5-1. Purpose [REVOKED]

~~The provisions of this Subchapter prescribe conditions and procedures for Capitol access and use of designated public areas of the Capitol or Plazas for exhibits, art exhibits and events to ensure the safety of persons visiting the Capitol, employees, the building and the building contents.~~

580:10-5-2. Capitol access, operating hours and access requirements [REVOKED]

~~(a) Capitol operating hours are from 6:00 a.m. to 7:00 p.m., Monday through Friday, excluding state holidays and 9:00 a.m. to 4:00 p.m., Saturdays, Sundays and state holidays.~~

~~(b) During operating hours, the Capitol may be accessed by the public through the west entrance, the east entrance, the southeast entrance on the ground level, and the tunnel entrance on the southeast side of the Capitol.~~

~~(c) Capitol entrances are open from 6:00 a.m. to 7:00 p.m. or until one hour following adjournment of legislative session, Monday through Friday.~~

~~(d) All persons entering the Capitol shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.~~

~~(e) After 7:00 p.m. or one hour following adjournment of the legislative session, Monday through Friday, and on Saturdays, Sundays and state holidays, persons may enter the Capitol through the west entrance only.~~

~~(1) Persons entering the west entrance of the Capitol after 7:00 p.m., Monday through Friday, and on Saturdays, Sundays and state holidays shall check in with a Capitol Patrol Officer, produce a valid form of picture identification and state their intended destination inside the Capitol.~~

~~(2) Persons shall check out with a Capitol Patrol Officer at the west entrance when exiting the Capitol.~~

~~(f) All state agencies located in the Capitol shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Capitol Patrol security personnel.~~

~~(1) The list shall state the name, established location of employment in the Capitol and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the Capitol.~~

~~(2) The list shall be filed and maintained by Capitol Patrol security personnel.~~

~~(3) Information provided on the list shall be reviewed regularly and revisions filed with Capitol Patrol security personnel immediately.~~

~~(g) Persons in the Capitol and on the Capitol Complex shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.~~

~~(h) Public entrances, operating hours and access requirements for the Capitol are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.~~

580:10-5-3. Use of public areas [REVOKED]

~~(a) **Reservation requests.** All events, exhibits and art exhibits to be in the public areas of the Capitol or plazas, whether for a public or private purpose, require prior written approval of the Department.~~

~~(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees (Reference 580:10-5-5) to the Department at least ten (10) working days but no more than six (6) months prior to the beginning date of the proposed event or exhibit. The application must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.~~

~~(2) The application shall specify the desired date, time period, public use area, a description of the event or exhibit. The Department may request additional information as determined necessary to facilitate the reservation.~~

~~(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.~~

~~(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Department.~~

~~(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on~~

~~a first-come, first-served basis and may limit the number of reservations in the public areas or plazas.~~

~~(c)~~ ~~**Reservation limitations.**~~ ~~Reservations authorize events only in the public areas or plazas specified in the approved application. Event participants shall not block or inhibit passage through the Capitol public areas or plaza common areas, sidewalks, hallways, aisles or passageways.~~

580:10-5-4. Provisions for exhibits and art exhibits [REVOKED]

~~(a)~~ ~~In addition to the approval requirements of 580:10-5-3, all art exhibits shall be approved by CPC prior to the date of the art exhibit.~~

~~(b)~~ ~~In addition to the approval requirements of 580:10-5-3, any exhibit which exceeds ten (10) working days shall be approved by CPC prior to the date of the exhibit.~~

~~(c)~~ ~~The Department provides information to a sponsor to seek CPC approval for exhibits and art exhibits upon request.~~

~~(d)~~ ~~Exhibits and art exhibits shall not block or inhibit passage through hallways, aisles or passageways.~~

580:10-5-5. Private purpose; conditions for use [REVOKED]

~~The Department shall determine whether an event, exhibit or art exhibit in the Capitol or a plaza for a private purpose pertains primarily to a private purpose. Private purpose events are subject to the conditions in this subsection.~~

~~(1)~~ ~~The event, exhibit or art exhibit is subject to being preempted by a public purpose event, even if the private event was scheduled earlier; and.~~

~~(2)~~ ~~Equipment may be available for use during an event, exhibit or art exhibit and shall be subject to the fee schedule below:~~

~~(A)~~ ~~Chair - $2.00~~

~~(B)~~ ~~Table - $8.00~~

~~(C)~~ ~~Tabletop Lectern/Microphone - $12.00~~

~~(D)~~ ~~Large Sound System - $50.00~~

~~(E)~~ ~~Floor Model Lectern - $15.00~~

~~(F)~~ ~~Stage - $40.00~~

~~(G)~~ ~~Easel - $3.00~~

~~(H)~~ ~~Risers - $40.00~~

580:10-5-6. Provisions for events, exhibits and art exhibits [REVOKED]

~~(a)~~ ~~The following provisions apply to all events, exhibits or art exhibits:~~

~~(1)~~ ~~Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Department grants prior approval.~~

~~(2)~~ ~~No intoxicating beverage or low-point beer will be dispensed or consumed on state property.~~

~~(3)~~ ~~Use of cooking or heating elements of any kind is prohibited.~~

~~(4)~~ ~~Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.~~

~~(5)~~ ~~Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Department may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.~~

~~(A)~~ ~~Plaza. Use of handheld signs and signs on hand sticks are allowed.~~

~~(B)~~ ~~Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.~~

~~(6)~~ ~~No individual or group may restrict access to, from or within the Capitol or a plaza.~~

~~(7)~~ ~~No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.~~

~~(8)~~ ~~The Department prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.~~

~~(9)~~ ~~Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited except as otherwise provided by law. Display of business cards or other means the Department considers promotional are prohibited.~~

~~(10)~~ ~~Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.~~

~~(11)~~ ~~The Department may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Department, to an individual, group, building, contents of the building, or building fixtures and appurtenances.~~

~~(12)~~ ~~A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.~~

~~(13)~~ ~~Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.~~

~~(14)~~ ~~Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.~~

~~(15)~~ ~~Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.~~

~~(16)~~ ~~All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.~~

~~(b) **Requirements at end of event, exhibit or art exhibit.** A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.~~

~~(c) **Unauthorized events or activities.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized events or activities.~~

580:10-5-7. Governor's Art Gallery and Blue Room [REVOKED]

~~(a) A sponsor that desires to use the Blue Room and the Governor's Art Gallery shall contact the Office of the Governor. The Governor's Office may approve or disapprove an event, exhibit or art exhibit.~~

~~(b) A sponsor shall state the number of persons the sponsor anticipates to attend the event on the reservation application. The Governor's Office shall limit the number of participants in the Blue Room and Governor's Art Gallery to conform with the occupancy limits set by the State Fire Marshal.~~

~~(c) Upon approval of an event, exhibit or art exhibit by the Governor's Office, the sponsor shall pay a security deposit of Two Hundred Fifty Dollars ($250.00) to the Governor's Office prior to the event, exhibit or art exhibit. If, upon inspection following the event, inspectors find no damages the Governor's Office will return the security deposit to the sponsor. If inspectors find damages, the sponsor shall forfeit the security deposit or a portion of the security deposit. The sponsor is responsible and shall be billed for any damages that exceed the security deposit amount.~~

580:10-5-8. Vehicles on plaza [REVOKED]

~~Parking or driving vehicles on a plaza is strictly prohibited unless for a specific state purpose. Prior written authorization must be issued by the Director for the purpose.~~

580:10-5-9. Access to the Capitol Dome [REVOKED]

~~The Capitol Dome shall not be considered a designated public area of the Capitol. All access shall be strictly controlled by the Director.~~

SUBCHAPTER 7. USE OF STATE CAPITOL PARK [REVOKED]

580:10-7-1. Purpose [REVOKED]

~~The provisions of this Section prescribe conditions and procedures for the use of the public areas of the State Capitol Park for noncommercial demonstrations and events to ensure the safety of persons visiting the Park, employees, and preservation of the Park. For the purposes of this subchapter, the areas within the perimeter fence of the Governor's Mansion are not considered public areas.~~

580:10-7-2. Use of State Capitol Park [REVOKED]

~~(a) **Reservation requests.** All demonstrations and events to be on the State Capitol Park, whether for a public or private purpose, require prior written approval of the Department Office.~~

~~(1) A sponsor shall submit an application for a reservation together with a check for any applicable fees to the Department at least ten (10) working days prior to the beginning date of the proposed demonstration or event. The application must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.~~

~~(2) The application shall specify the desired date, time period, public use area, a description of the demonstration or event. The Department may request additional information as determined necessary to facilitate the reservation.~~

~~(3) The Department may impose conditions and time limitations pursuant to the rules of this subchapter and state law.~~

~~(4) Reservations for use of the Park are also subject to the provisions of 580:10-5-5.~~

~~(5) If the Department denies a request for a reservation, the Department will issue written notice to the requesting sponsor indicating the reasons for denial. Reservation requests which indicate that the sponsor may allow or encourage conduct that is violent, threatening, abusive, obscene, or that jeopardizes the safety of self or others shall not be approved by the Department.~~

~~(b) **Prioritization of reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations in the public use areas of the park.~~

~~(c) **Reservation limitations.** Reservations authorize demonstrations and events only in the public area and during the time period specified in the approved application.~~

580:10-7-3. Park use information [REVOKED]

~~(a) **Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.~~

~~(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.~~

~~(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.~~

~~(3) Digging, which includes driving stakes into the ground, is prohibited.~~

~~(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.~~

~~(5) Contained fires may be authorized based upon intended use and climatological conditions.~~

~~(6) Discharging or setting off fireworks is prohibited. The Department may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.~~

~~(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.~~

~~(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other like devices is prohibited.~~

~~(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.~~

~~(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.~~

~~(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Department.~~

~~(12) Burial of human or animal remains is prohibited.~~

~~(13) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.~~

~~(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.~~

~~(15) Events, exhibits or art exhibits for the purpose of promoting a profit-making organization or individual are prohibited, except as otherwise provided by law. Display of business cards or other means the Department considers promotional are prohibited.~~

~~(b) **Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.~~

~~(c) **Unauthorized demonstrations and events.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized demonstrations or activities.~~

580:10-7-4. Banners on light poles along Lincoln Renaissance [REVOKED]

~~(a) **Purpose.** The purpose of the banner arms on the light poles along the Lincoln Renaissance area (Lincoln Boulevard from NE 28th to NE 38th Streets) is for the State of Oklahoma to communicate with its citizenry and promote state agencies, state programs, and state sponsored events. The banner arms are reserved for the sole and exclusive use of the State Oklahoma, acting through the Department. The provisions of this Section prescribe procedures and conditions for the display of banners on such light poles.~~

~~(b) **Request to display banners.** No banners may be displayed without written authorization from the Director. Requests to display banners shall be:~~

~~(1) submitted to the Director in writing;~~

~~(2) be signed by the appointing authority of a state agency; and,~~

~~(3) specify what state agency, program or event the banners will promote.~~

~~(c) **Approval of request to display banner.** After the request is reviewed, the Director will notify the state agency in writing of the approval or denial of the request.~~

~~(d) **Prohibited displays of banners.** Banners promoting private organizations, individuals, or privately sponsored events may not be displayed from the light poles along the Lincoln Renaissance area at any time. Any banners displayed without the express written authorization of the Director will be taken down immediately at the owner's expense.~~

SUBCHAPTER 9. OPERATION OF BUILDINGS OWNED, USED OR OCCUPIED BY OR ON BEHALF OF THE STATE [REVOKED]

PART 1. SMOKING [REVOKED]

580:10-9-1. Purpose; Authority [REVOKED]

~~All buildings, or portions thereof, owned or operated by the state may have one designated smoking room which must meet certain requirements. [21 O.S., Section 1247(A.5.)]. The purpose of this Part is to establish inspection procedures to verify designated smoking rooms meet the requirements. This Part also provides information and reporting methods to ensure compliance is met and maintained. In addition to the statutory requirements, state agencies are encouraged to maintain designated smoking rooms in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards for persons using a smoking room.~~

580:10-9-2. Definitions [REVOKED]

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

~~**"Air intake"** means the part of the building's ventilation system where makeup air or fresh air enters the building to be mixed with conditioned air and is part of the HVAC system.~~

~~**"Air pressure measurement devices"** means any device that is capable of measuring differential pressures between two or more areas within the facility.~~

~~**"Appointing authority"** means the chief administrative officer of an agency.~~

~~**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.~~

~~**"Building"** means a structure operated by a state agency.~~

~~**"Building entrance"** means a place of entry into or exit from a building.~~

~~**"Building manager"** means the person responsible for the daily operation and maintenance activities for a state operated building.~~

~~**"Common supply"** means the common building supply distribution system used to deliver conditioned air to all spaces within the building.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Director"** means the Director of the Department of Central Services.~~

~~**"Fully Enclosed"** means that a room's HVAC is isolated from the common building return and that the room is sealed to the floor above, so that smoke does not escape into adjoining areas.~~

~~**"HVAC"** means Heating Ventilation and Air Conditioning System.~~

~~**"Industrial hygienist"** means a professional qualified by education, training and experience to recognize, evaluate and develop controls for occupational hazards.~~

~~**"Negative air pressure"** means an atmosphere of pressure lower than adjacent areas measured by the ASHRAE Standard Method of Pressure Measurement or equivalent industry measurement methods.~~

580:10-9-3. Smoking Room Inspection Report [REVOKED]

~~(a) **Use.** Any state agency that operates a state owned building and has designated a smoking room in such building must file an inspection report with the Department.~~

~~(b) **Forms.** The State Operated Building Smoking Room Inspection form related to this Part has been issued by the Department for use by agencies and is available on the Department website or upon request.~~

~~(c) **Content.** The inspection report must include the following information:~~

~~(1) The name of the state agency and division;~~

~~(2) Physical address of the building;~~

~~(3) The name of the building manager;~~

~~(4) Room number of the designated smoking room~~

~~(5) Room size, which must include the length, width, height, area and volume of the room;~~

~~(6) Distance from the designated smoking room exhaust to the nearest fresh air intake;~~

~~(7) Negative pressure measurements tested by an air pressure measurement device;~~

~~(8) A diagram of the designated smoking room which displays all entrances, HVAC supply vents and exhaust; and~~

~~(9) The name, title and address of person or company testing air pressure measurements, if other than the agency.~~

~~(10) Any other additional information the Department may determine necessary.~~

~~(d) **Signature and Attestation.** The inspection report must be signed and verified by the agency building manager and certified by the appointing authority prior to delivery to the Department.~~

~~(1) **Building Manager Verification.** The verification language of the building manager must read: As the Building Manager responsible for the operation of the building listed in this report, I hereby verify that the designated Smoking Room was inspected for compliance with the requirements of Oklahoma Statutes, Title 21, Section 1247, specifically: (list of statutory required items) and that the facts contained in this report are true.~~

~~(2) **Appointing Authority Certification.** The certification language of the appointing authority must read: I hereby certify that I have reviewed the contents of this report and that the above named Building Manager, an employee of this agency, is authorized to verify the information contained herein.~~

~~(e) **Original Signature.** At least one copy of the inspection report delivered to the Department must contain an original signature of the agency building manager and appointing authority.~~

~~(f) **Due Date.** The inspection report is due by October 1, 2002. Thereafter, an inspection report shall be filed whenever a new smoking room is designated or an existing designated smoking room is structurally changed in any way.~~

580:10-9-4. Verification for compliance [REVOKED]

~~The inspection report described in 580:10-9-10 will be reviewed and evaluated by an industrial hygienist employed by the Department.~~

~~(1) **Report Acceptance.** If the facts contained in the report confirm compliance with the requirements of this Part, the Department industrial hygienist will endorse both copies of the report with the words "Compliance Verified by the Department of Central Services Based Upon Certified Report Information", the date of the inspection report review and his or her signature. The original report will be filed and maintained by the Department. The copy will be returned to the agency.~~

~~(2) **Report Rejection.** If the facts contained in the report are inconclusive or insufficient so that compliance cannot be verified, the report will be returned to the agency with an explanation of the insufficiencies and corrections necessary for compliance.~~

PART 3. USE OF CAPITOL CONFERENCE CENTER AND THE CONCOURSE THEATER [REVOKED]

580:10-9-8. Purpose [REVOKED]

~~The provisions of this Part prescribe procedures and conditions for the use of the Capitol Conference Center and the Concourse Theater, designated by the Director as meeting rooms for public purposes.~~

580:10-9-9. Reservation of meeting rooms [REVOKED]

~~(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Department.~~

~~(1) A state agency shall submit an application for a reservation to the Department.~~

~~(2) The application shall specify the desired date, time period and meeting room requested. The Department may request additional information determined necessary to facilitate the reservation.~~

~~(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.~~

~~(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.~~

~~(3) The Department may impose conditions and time limitations pursuant to the rules of this Part and state law.~~

~~(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting state agency indicating the reasons for denial.~~

~~(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations for a meeting room.~~

~~(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.~~

~~(d) **Unauthorized meetings.** The Department may notify security personnel upon detection of unauthorized meetings.~~

580:10-9-10. Use of meeting rooms [REVOKED]

~~(a) **Conditions.** The following conditions shall apply to the use of all meeting rooms reserved pursuant to this Part:~~

~~(1) The number of attendees shall not exceed the maximum room occupancy.~~

~~(2) Possession and consumption of food in meeting rooms is prohibited.~~

~~(3) Possession and consumption of beverages in meeting rooms may be limited or prohibited.~~

~~(4) Smoking in meeting rooms is prohibited.~~

~~(5) Affixing, by any means, materials to walls or appurtenances in a meeting room is prohibited except as provided by specific meeting room information.~~

~~(b) **Meeting supplies.** The reserving agency is responsible for providing all materials or supplies for use with equipment or devices in meeting rooms.~~

~~(c) **Requirements at end of meeting.** Immediately following the conclusion of the meeting, the reserving state agency shall:~~

~~(1) Remove all materials used in conjunction with or created by the meeting;~~

~~(2) Deposit all waste in an appropriate container; and,~~

~~(3) Return tables and chairs to the standard configuration.~~

~~(d) **Damages.** The Department shall bill the state agency reserving the meeting room for damage occurring to the room, furniture, fixtures or equipment during the reserved period of time.~~

PART 4. ACCESS TO THE J. HOWARD EDMONDSON AND ROBERT S. KERR OFFICE BUILDINGS [REVOKED]

580:10-9-15. Purpose [REVOKED]

~~The provisions of this Part prescribe procedures and conditions for access to the J. Howard Edmondson and Robert S. Kerr Office Buildings.~~

580:10-9-16. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements [REVOKED]

~~(a) The Kerr and Edmondson Buildings operating hours are from 7:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.~~

~~(b) During operating hours, the Kerr and Edmondson Buildings may be accessed by the public through the North entrance of the Edmondson building only.~~

~~(c) All persons entering the buildings shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.~~

~~(d) All state agencies located in the buildings shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the Department of Public Safety security personnel.~~

~~(1) The list shall state the name, established location of employment in the buildings and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the buildings.~~

~~(2) The list shall be filed and maintained by Department of Public Safety security personnel.~~

~~(3) Information provided on the list shall be reviewed regularly and revisions filed with Department of Public Safety security personnel immediately.~~

~~(e) Persons in the buildings and on the grounds immediately surrounding the buildings shall at all times comply with official signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.~~

~~(f) Public entrances, operating hours and access requirements for the buildings are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.~~

PART 5. GENERAL OPERATIONS OF PUBLIC BUILDINGS MANAGED BY THE DEPARTMENT OF CENTRAL SERVICES [REVOKED]

580:10-9-21. Purpose [REVOKED]

~~The provisions of this Part provide minimum standards and criteria for the operation of public buildings managed or controlled by the Department of Central Services in order to provide a clean, safe and comfortable working environment for employees and the public of the State of Oklahoma. As used in this Part, the term "public buildings" does not apply to buildings and property covered by rules in Subchapter 5 and Subchapter 7 of this Chapter. A list of buildings managed by DCS is maintained and accessible on the Department of Central Services website.~~

580:10-9-22. General use [REVOKED]

~~(a) Use shall be restricted to the conduct of state business and to other activities whose principal purpose is to improve the efficiency of a state agency in achieving its objectives or is to promote the health, safety, welfare, morale, education or training of state employees.~~

~~(b) Such activities may include, but are not limited to: the usual business of state government, agency staff meetings, governmental task force meetings, safety meetings, employee education classes, seminars and training sessions sponsored by state institutions for the benefit of the public, employee of the month recognitions, ceremonies to recognize retiring state employees, holiday luncheons for state employees, Oklahoma State Employees Charitable Campaign meetings, employee wellness programs, and the like.~~

~~(c) The Department may impose conditions and time limitations pursuant to the rules of this Part and state law.~~

580:10-9-23. General operating procedures [REVOKED]

~~(a) The chief administrative officer of each occupying agency shall be responsible for the building space assigned to the agency and his/her agency's compliance with rules of this Part.~~

~~(b) The Department of Central Services will provide building tenants with a written Tenant Manual to ensure public dissemination of building operation information and regulations.~~

~~(c) The following requirements shall be performed pursuant to applicable state and federal laws and regulations:~~

~~(1) **Parking.** Parking should only be allowed in paved parking areas with adherence to all applicable restrictions.~~

~~(2) **Weapons.** No person entering or while on property shall carry or possess firearms or other dangerous or deadly weapons, unless authorized to do so by state or federal laws.~~

~~(3) **Intoxicating beverages, low-point beer and controlled substances.** No intoxicating beverages, or controlled, non prescribed substances are allowed inside the building or on property grounds.~~

~~(4) **Disturbances.** No conduct shall be allowed which creates a loud or unusual noise or nuisance; or which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots or which otherwise impede or prohibits the official duties of building occupants or impedes the safe evacuation for the building occupants or access for emergency response personnel in an emergency.~~

~~(5) **Posting and/or distribution of printed materials.** No notices, bulletins, circulars or other type information may be placed on any common area wall or door (common area is described herein as hall, lobby, elevator, restroom, break room or conference room). This includes all adjoining doors and door frames.~~

~~(A) This paragraph does not apply to meeting agendas posted in accordance with the Oklahoma Open Meeting Act unless alternate posting methods for public viewing become available.~~

~~(B) A bulletin board may be installed at elevator lobby for agency, building or event notices. Contact your Facilities Manager for this service. These bulletin boards are for official use only. Personal solicitations or announcements of any kind are prohibited and will be removed by DCS.~~

580:10-9-24. Use of public areas [REVOKED]

~~(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Department.~~

~~(1) A state agency shall submit an application for a reservation to the Department.~~

~~(2) The application shall specify the desired date, time period and meeting room requested. The Department may request additional information determined necessary to facilitate the reservation.~~

~~(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.~~

~~(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.~~

~~(3) The Department may impose conditions and time limitations pursuant to the rules of this Part and state law.~~

~~(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting state agency indicating the reasons for denial.~~

~~(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first come, first served basis and may limit the number of reservations for a meeting room.~~

~~(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.~~

~~(d) **Unauthorized meetings.** The Department may notify security personnel upon detection of unauthorized meetings.~~

~~(e) **Provisions for events, exhibits and art exhibits.** The provisions of section 580:10-5-6 shall apply to all events, exhibits, or art exhibits approved by the Department to be held in public areas of the property.~~

[OAR Docket #14-759; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 16. CENTRAL PURCHASING [REVOKED]

[OAR Docket #14-760]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 16. Central Purchasing [REVOKED]
AUTHORITY:
74 O.S. §85.5; Director of the Office of Management and Enterprise Services

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

580:16-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to provide information and procedures for suppliers that desire to sell products and services to state agencies, and for state agencies subject to the Central Purchasing Act, to establish fair and consistent purchasing processes that satisfy the needs of the state. All suppliers and state agencies are responsible for knowing the requirements of this Chapter. These rules are administered by the Central Purchasing Division of the Department of Central Services to provide direction and ensure compliance with the Oklahoma Central Purchasing Act, 74 O.S. §§ 85.1 et seq., and other state laws and rules, which may be applicable to state agency acquisitions. These rules have been promulgated by the Director of the Department of Central Services in accordance with the Administrative Procedures Act and pursuant to the authority of 74 O.S. §85.5, 74 O.S. §85.45s and 62 O.S. §34.28.~~

580:16-1-2. Definitions [REVOKED]

~~In addition to terms defined in 74 O.S., §85.2, the following words or terms, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:~~

~~**"Acceptable Electronic Signature Technology"** means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.~~

~~**"Acquisition authority"** means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.~~

~~**"Addendum"** means a written modification to a contract.~~

~~**"All or none bid"** means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.~~

~~**"All or none solicitation"** means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.~~

"Alteration"~~means a modification a bidder makes to a solicitation response prior to the response due date.~~

~~**"Alternate bid"** or **"alternative bid"** means a bid or proposal, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.~~

~~**"Amendment"** means a written change, addition, correction, or revision to a solicitation made by the state agency responsible for making the acquisition.~~

~~**"Authorized signature"** means a manual, electronic or digital signature or other identifier uniquely linked to a person authorized to sign documents the supplier submits to the State Purchasing Director.~~

~~**"Bid bond", "performance bond"** or **"surety"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.~~

~~**"Bidder"** means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. [74 O.S. §85.2] When used in this Chapter, bidder is synonymous with a "supplier" or "vendor" responding to a solicitation.~~

~~**"Business days"** means Monday through Friday and is exclusive of weekends and Oklahoma state holidays.~~

~~**"Central Purchasing Division"** means the Central Purchasing Division of the Department of Central Services.~~

~~**"Certified Procurement Officer"** or **"CPO"** means a state agency procurement official certified as a procurement officer or analyst by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.~~

~~**"Clarification"** means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.~~

~~**"Closing date/time"** means the date and Central Standard time a solicitation specifies responses are due.~~

~~**"Commodity classification"** means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.~~

~~**"Competitive solicitation"** means a process for acquiring goods or services wherein bidders submit bids to the Central Purchasing Division or a state agency pursuant to terms,~~

~~conditions and other requirements of a solicitation. The competitive solicitation process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirements of applicable statutes and rules are met.~~

~~**"Days"** means calendar days unless otherwise specified.~~

~~**"DCS"** means the Department of Central Services.~~

~~**"Debar"** or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the Supplier List, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for acquisitions by state agencies or a contract the Department of Central Services awards or administers and may also result in cancellation of existing contracts with the State of Oklahoma.~~

~~**"Director"** or **"DCS Director"** means the Director of the Department of Central Services.~~

~~**"Electronic Signature"** means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.~~

~~**"Emergency acquisition"** means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to place human life or safety in imminent danger or threaten significant property interests with imminent destruction; or, is a condition certified by the Governor as a serious environmental situation. [Reference 74 O.S. §85.7]~~

~~**"Firm bid"** means an offer by a bidder which contains no conditions which may prevent acceptance and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.~~

~~**"Fiscal year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.~~

~~**"Forms"** means documents the DCS Director prescribes and requires suppliers and state agencies to use to provide information to DCS or the Central Purchasing Division.~~

~~**"Indefinite quantity contract"** means a contract the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.~~

~~**"Information technology"** or **"IT"** means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text. [62 O.S. §34.29]~~

~~**"Invitation to bid"** or **"ITB"** means a type of solicitation a state agency or the State Purchasing Director sends to suppliers to request submission of bids by suppliers for acquisitions.~~

~~**"Material deficiency"** or **"material deviation"** means a supplier's failure to provide information necessary to evaluate a solicitation.~~

~~**"Minor deficiency"** or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.~~

~~**"Non-collusion certification"** means a certification submitted by a supplier with any competitive bid or contract executed by the state for goods or services in accordance with 74 O.S. §85.22.~~

~~**"Non-responsive"** means a bid or proposal that has been determined not to conform to essential requirements of a solicitation.~~

~~**"Office of State Finance"** or **"OSF"** means the Oklahoma Office of State Finance.~~

~~**"Oklahoma Central Purchasing Act"** means 74 O.S. §§85.1 et seq.~~

~~**"Oklahoma Correctional Industries"** or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.~~

~~**"Oklahoma Information Technology Accessibility Standards"** or **"IT Accessibility Standards"** means the accessibility standards adopted by the Office of State Finance together with the Department of Central Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220, August 7, 1998) to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.~~

~~**"Online Bidding"** means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.~~

~~**"Procurement"** means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services. The term also means all functions that pertain to the obtaining of any goods or services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.~~

~~**"Ratification of an unauthorized commitment"** means the act of approving an unauthorized commitment made by a state agency and the written agreement documenting the approval.~~

~~**"Reciprocity"** means a preference, which the State Purchasing Director or state agency shall apply against the price submitted for an acquisition by an out of state bidder whose home state applies a similar preference against Oklahoma bidders.~~

~~**"Registered supplier"** means a supplier that registers with the Central Purchasing Division pursuant to 74 O.S. §85.33.~~

~~**"Remedy"** means to cure, alter, correct or change.~~

~~**"Request for information"** or **"RFI"** means a non-binding procurement practice used to obtain information, comments, and feedback from interested parties or potential suppliers prior to issuing a solicitation.~~

~~**"Request for proposal"** or **"RFP"** means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.~~

~~**"Request for quotation"** or **"RFQ"** means a simplified written or oral solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of a quote for acquisitions.~~

~~**"Requisition number"** means an identifier the state agency or Central Purchasing Division assigns to a requisition.~~

~~**"Requisitioning unit"** means the unit in a state agency responsible for making acquisitions.~~

~~**"Responsible supplier"** means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but may not be limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.~~

~~**"Responsive"** means a bid or proposal that has been determined to conform to the essential requirements of a solicitation.~~

~~**"Reverse Auctioning"** means a procurement method wherein pre-qualified bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' price positions are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation.~~

~~**"Scheduled acquisition"** means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.~~

~~**"Services"** means the direct engagement of the time and effort of a contractor for the primary purpose of performing an identifiable task rather than for the furnishing of an end item of supply. [74 O.S. §85.2]~~

~~**"Solicitation"** means a request or invitation by the State Purchasing Director or a state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or a request for quotation. [74 O.S. §85.2]~~

~~**"State official"** means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.~~

~~**"State Purchasing Director"** means the director of the Central Purchasing Division of the Department of Central Services appointed by the DCS Director; and, includes any employee or agent of the State Purchasing Director, acting within the scope of delegated authority. [74 O.S. §85.2] Unless otherwise stated, the term includes employees of the Central Purchasing Division and state agency purchasing officials certified by the State Purchasing Director to which the State Purchasing Director has lawfully delegated authority to act on his or her behalf.~~

~~**"State Use Committee"** means the statutory Committee that certifies severely disabled individuals and sheltered workshops as qualified organizations to contract with the state to provide products and services, which are designated in the State Use Committee procurement schedule for state agency acquisitions pursuant to 74 O.S. §§ 3001 et seq.~~

~~**"Statement of Work"** means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.~~

~~**"Supplier"** or **"vendor"** means an individual or business entity that sells or desires to sell acquisitions to state agencies [74 O.S. §85.2].~~

~~**"Supplier complaint"** or **"performance evaluation"** means information a state agency or the Central Purchasing Division provides to the State Purchasing Director, in a manner the DCS Director prescribes, that documents the quality of service or products provided by a supplier.~~

~~**"Supplier registration"** means a process a supplier uses to register with the Central Purchasing Division to automatically receive solicitations based on a commodity class for a specified period of time.~~

~~**"Supplier List"** means a list of individuals or business entities that have registered with the Central Purchasing Division in order to receive notification of solicitations for commodities specified in their registration application.~~

~~**"Suspension"** means an action by the State Purchasing Director to suspend a supplier's authority to be included on the Supplier List, be eligible to submit bids to state agencies and be awarded a contract by a state agency subject to the Central Purchasing Act.~~

580:16-1-4. Statutory citations [REVOKED]

~~Some of the rules of this chapter restate or exactly repeat language from laws. Italic type means the language exactly repeats language from a law or other legal instrument. The specific reference appears in brackets following the language in italics.~~

580:16-1-6. Purchasing forms [REVOKED]

~~The DCS Director shall prescribe forms to be used by the Central Purchasing Division, state agencies and suppliers. The Central Purchasing Division shall make forms available to the public on the DCS website or provide forms upon request, in the event an individual is unable to access the website.~~

580:16-1-8. State Purchasing Director authority [REVOKED]

~~(a) **General.** The DCS Director, the Oklahoma Central Purchasing Act and other laws prescribe the duties, responsibilities and authority of the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(b) **Authority.** Pursuant to the provisions of Section 85.4 of this title [Title 74], the State Purchasing director, under the~~

~~supervision of the Director of the Department of Central Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. [74 O.S. §85.5]~~

~~(c) **Official directives.** The State Purchasing Director shall issue directives, instructions or written communications to state agencies regarding required procurement practices and procedures to ensure compliance with provisions of the Central Purchasing Act, the Central Purchasing rules and any other matter relating to state agency acquisitions and procurement.~~

580:16-1-10. Legal counsel [REVOKED]

~~Legal counsel for the Central Purchasing Division is legal counsel for the Department of Central Services.~~

580:16-1-12. Waivers [REVOKED]

~~(a) **Waiver request.** A state agency may request a waiver from requirements of the rules of this chapter from the Director of the Department of Central Services, if:~~

~~(1) the state agency reasonably believes that it would be unable to perform a necessary function due to the inability to make an acquisition pursuant to rules of this Chapter; or,~~

~~(2) a court order directs the state agency to make an acquisition from a specified vendor or provider.~~

~~(b) **Approval of waiver request.** After the request is reviewed, the DCS Director shall notify the state agency of the approval, conditional approval or denial of the waiver request.~~

580:16-1-14. Contract management fee, levy or rebate [REVOKED]

~~Pursuant to 74 O.S. §85.33A, the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to DCS. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Department. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S. §85.33A. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

SUBCHAPTER 3. SUPPLIER PROVISIONS [REVOKED]

580:16-3-1. Purpose [REVOKED]

~~(a) This Subchapter provides information, requirements and procedures for suppliers who desire to sell products or services to Oklahoma state agencies. It is the policy of the State to purchase goods and services from suppliers through a competitive selection process that is fair, open and objective in order to achieve optimum value, quality and serve the best interest of the taxpayers in accordance with Oklahoma laws and DCS rules.~~

~~(b) Each subchapter of this Chapter contains information and requirements related to state agency procurement. It is beneficial and the responsibility of a supplier to become familiar with all rules of this Chapter to ensure compliance with the Central Purchasing Act and other laws governing state agency procurement.~~

580:16-3-3. Supplier registration [REVOKED]

~~(a) **Purpose.** Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Supplier registration is required for any supplier selected for award or renewal of a contract pursuant to the Central Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(1) Suppliers may be required to prequalify for the purpose of responding to online solicitations.~~

~~(2) Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.~~

~~(b) **Registration.** A supplier may apply for registration online and pay a registration fee, established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers shall be notified by the Central Purchasing Division or by state agencies pursuant to applicable laws and rules, of solicitations for each commodity class for which a supplier registers. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.~~

~~(c) **Registration fee.** A registered supplier may renew a registration and pay an annual registration fee prior to the expiration date of the supplier's current registration in order to remain on the Supplier List. The Department of Central Services shall not refund supplier registration fees.~~

~~(d) **Voluntary removal from Supplier List.** A supplier may submit a written request to the Central Purchasing Division to request to be removed from the Supplier List for a commodity.~~

580:16-3-5. Procurement ethics - prohibited conduct [REVOKED]

~~(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.~~

~~(b) **Supplier gratuities.** A supplier or any prospective supplier shall not give or donate anything of value to the State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of the immediate family of the State Purchasing Director or any state employee or agent of the State~~

~~Purchasing Director, acting within the scope of delegated authority. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]~~

~~(c) **State Purchasing Director action upon supplier violation.**~~

~~(1) The State Purchasing Director shall suspend or debar a supplier determined to be in violation of provisions of this section.~~

~~(2) The State Purchasing Director shall reject bids submitted by any supplier determined to be in violation of provisions of this section.~~

~~(3) The State Purchasing Director may terminate a contract with any supplier determined to be in violation of provisions of this section, if the termination shall be in the best interest of the State.~~

580:16-3-7. Bid preparation [REVOKED]

~~(a) **Form requirements.** The bidder shall complete and submit all required forms as specified by the solicitation.~~

~~(1) Information the bidder submits shall be legibly hand written, typewritten, printed or electronically conveyed.~~

~~(2) Should the bidder alter the form or bid information, the bidder shall initial each alteration.~~

~~(3) Any form requiring a bidder's signature submitted to the Central Purchasing Division shall have an authorized signature.~~

~~(4) If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner specified by the laws of the bidder's state.~~

~~(b) **Firm bid for sixty (60) days.** A bidder's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.~~

~~(c) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. Unless otherwise provided by law, a state agency shall not pay travel expenses not specified by the successful solicitation response.~~

~~(d) **Tax exemptions.** State agency acquisitions are exempt from sales taxes and federal excise taxes. Purchases made by suppliers on behalf of a state agency are not exempt from sales or federal taxes.~~

~~(e) **Payment terms.** Suppliers are paid by state agencies pursuant to 62 O.S. §34.71. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.~~

~~(f) **Used or new products.** A bidder shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.~~

~~(g) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.~~

~~(h) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall be a complete bid. The bidder shall clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.~~

~~(i) **All or none bid.**~~

~~(1) **Award to more than one bidder.** If the solicitation specifies that the State Purchasing Director may award a contract to more than one bidder, a bidder may indicate on the bid that terms and conditions of the bid are all or none.~~

~~(2) **Award by item.** If the solicitation indicates that the State Purchasing Director may award the bid to more than one bidder by item, a bidder may indicate that the terms and conditions of the bid are all or none.~~

~~(j) **Bidder delivery.** If the solicitation does not specify a delivery date for goods and/or services, the bidder shall specify the delivery date in the bid.~~

~~(k) **Sample submission.** A solicitation may specify submission of samples of the required items or products when essential to the assessment of product quality during bid evaluation. When required, samples must be received no later than the date and time specified by the solicitation.~~

~~(1) **Sample identification.** The bidder shall clearly identify the sample the bidder submits by placing the bidder's name, bidder's address, requisition number and closing date/time on both the sample container and on the sample shipping container.~~

~~(2) **Sample costs.** The bidder shall pay costs for the sample and submission to the State.~~

~~(3) Sample requirements. A bidder shall submit a sample that represents the quality of the whole.~~

~~(4) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used. All samples submitted may be subject to consumption or destruction as a result of tests by the agency.~~

~~(5) **Sample tests costs.** If the sample a bidder submits fails to meet the specification or standards the solicitation requires, the bidder may be required to pay testing costs the acquiring state agency incurs.~~

~~(6) **Return of sample to bidder.** If return of samples is stipulated in a bidder's solicitation response, samples not destroyed by testing may be returned at the bidder's expense.~~

~~(7) **Successful bidder samples.** The State Purchasing Director may retain samples submitted by the successful bidder to ensure the products or items delivered meet specifications in the solicitation~~

~~(l) **Proof of insurance.** The successful bidder shall provide proof of all insurance required by the solicitation prior to contract award. A supplier who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.~~

~~(m) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the bidder shall provide the information in the bid.~~

580:16-3-9. Bid documents open for public inspection [REVOKED]

~~(a) Documents a bidder submits in a response to a solicitation are public records and shall be available for review, upon request, only after a supplier is selected and the contract is awarded. An electronic quote, bid or proposal submitted through an online solicitation process is subject to the same public disclosure laws.~~

~~(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:~~

~~(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;~~

~~(2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and~~

~~(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.~~

~~(c) The State Purchasing Director shall review the information and may or may not designate a bidder's financial information or proprietary information as confidential and may or may not reject all requests to disclose the information so designated. [Reference 74 O.S. § 85.10]~~

580:16-3-11. Bid submission [REVOKED]

~~(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.~~

~~(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, solicitation number and closing date shall be prominently displayed on each item submitted as specified in the solicitation.~~

~~(c) **Submission of non-collusion certification.** The certification shall have an authorized signature certifying the non-collusion statement.~~

~~(d) **Bid receipt.** Upon receipt, the acquiring state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.~~

~~(e) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the State Purchasing Director has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.~~

580:16-3-13. Bid withdrawal [REVOKED]

~~(a) **Bid withdrawal before closing date.** A bidder who desires to withdraw a bid prior to the closing date shall submit to the State Purchasing Director a written withdrawal request created on the bidder's company letterhead and signed by the bidder's authorized representative. The withdrawal request must identify the requested method of return of the proposal, the person authorized to receive the returned bid, the bidder's name, solicitation number and closing date.~~

~~(1) If the bid is to be returned via U.S. Postal Service or other small package carrier, the bidder must provide a method for return shipping charges.~~

~~(2) If the bid will be withdrawn in person, the person must provide personal identification to validate they are the person identified in the withdrawal request. After confirmation of identity, the person accepting the withdrawn bid shall sign a receipt for the bid.~~

~~(b) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove a significant error by the bidder exists in the bid.~~

580:16-3-15. Change to a submitted bid [REVOKED]

~~A bidder who desires to change a bid submitted to a state agency shall withdraw the submitted bid and submit another bid before the closing date.~~

580:16-3-17. Public bid opening [REVOKED]

~~Bidders may request a bid be opened in public. No evaluation or contract award shall be made at the public opening.~~

580:16-3-19. Contract award [REVOKED]

~~(a) **Time of award.** The contract award shall be made upon completion of bid evaluation and associated administrative tasks necessary to complete the acquisition. State agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, until the State Purchasing Director has issued the award of contract.~~

~~(b) **Reasons for bid rejection.** The State Purchasing Director may reject a bid when the bid is determined to be non-responsive or the bid is from a supplier who is not responsible, for reasons included, but not limited to, those listed in Section 16-7-32.~~

~~(c) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) business days of the contract award.~~

~~(d) **Public inspection.** The evaluation documentation shall be open for public inspection, upon request, following contract award.~~

580:16-3-21. Supplier's Protest [REVOKED]

~~(a) A supplier may protest a contract award by a state agency or the Central Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.~~

~~(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Central Purchasing Division within ten (10) business days of contract award. The supplier protest notice shall state all facts and reasons for protest.~~

~~(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents.~~

~~(A) The State Purchasing Director may determine to respond to the protest or delegate the responsibility by written notice to the state agency that awarded the contract.~~

~~(B) The State Purchasing Director or state agency, whichever is applicable, shall send written notice of the decision to deny or sustain the protest to the supplier within ten (10) business days of receipt of the protest.~~

~~(3) **Supplier appeal of decision to deny protest.** The supplier may appeal a denial of protest by the State Purchasing Director or a state agency to the OMES Director.~~

~~(A) Such appeal shall be filed by the supplier within ten (10) business days of the date of the State Purchasing Director's or state agency's notice of denial pursuant to 75 O.S. §§309 et seq.~~

~~(B) The OMES Director may enter an order staying contract performance upon such terms and conditions as the OMES Director determines to be proper. Any request for stay of contract performance must be made in writing and filed during the ten (10) business day time period in which an appeal may be commenced to the OMES Director. The OMES Director shall have continuing jurisdiction to modify any such orders made in connection with a stay during the pendency of the appeal as appropriate under the circumstances presented.~~

~~(4) **Director actions and determination.** The OMES director may hear the appeal or assign the supplier's appeal to an Administrative Law Judge retained by the agency.~~

~~(A) If the appeal is assigned to an Administrative Law Judge, the Administrative Law Judge shall review the appeal for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the Administrative Law Judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the OMES Director.~~

~~(B) If the appeal is heard by the OMES Director, the OMES Director shall have all powers granted by law including all powers delegated to the Administrative Law Judge by this section.~~

~~(C) The OMES Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.~~

~~(D) The cost of actions necessary to process a supplier's appeal, together with any other expenses incurred due to the appeal, shall be paid by the state agency responsible for the initial solicitation.~~

~~(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [Reference 75 O.S. §§250 et seq.] and the following procedures:~~

~~(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.~~

~~(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.~~

~~(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.~~

~~(D) **Proper parties.** In addition to the supplier protesting the contract award, the Central Purchasing Division, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.~~

~~(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. §§ 309 et seq. and other applicable law.~~

~~(F) Authority of the Administrative Law Judge. The Administrative Law Judge may:~~

~~(i) Establish a scheduling order;~~

~~(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;~~

~~(iii) Rule on all interlocutory motions;~~

~~(iv) Require briefing of any or all issues;~~

~~(v) Conduct hearings;~~

~~(vi) Rule on the admissibility of all evidence;~~

~~(vii) Question witnesses; and~~

~~(viii) Make proposed findings of facts and conclusions of law to the OMES Director.~~

~~(G) **Remedies.** The Administrative Law Judge may recommend that the OMES Director deny the supplier's appeal or that the contract award be cancelled and rebid.~~

~~(6) **Supplier appeal of OMES Director decision to deny appeal.** If the OMES Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S. §§ 309 et seq.~~

~~(b) An agency making an acquisition pursuant to 74 O.S. §85.5(T) shall conduct all actions and bear all costs associated with the protest or appeal of a contract award.~~

580:16-3-23. Supplier suspension from Supplier List [REVOKED]

~~(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier in accordance with this section. For the purposes of this section, "State Purchasing Director" does~~

~~not include personnel of state agencies to whom the State Purchasing Director has delegated authority. The suspension shall be for a period of time not to exceed one (1) year for any of the following reasons:~~

~~(1) a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation;~~

~~(2) a supplier fails to perform pursuant to the contract;~~

~~(3) a supplier provides acquisitions that fail to meet the requirements of the contract;~~

~~(4) a supplier fails to deliver an acquisition pursuant to the contract;~~

~~(5) a supplier fails to timely replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects;~~

~~(6) a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form;~~

~~(7) a supplier fails to keep a bid firm for the period specified in the solicitation after the solicitation closing date;~~

~~(8) a supplier fails to resolve a dispute with a state agency;~~

~~(9) upon the final decision by the appropriate regulatory authority or court of competent jurisdiction that a supplier engaged in discriminatory practices;~~

~~(10) a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation;~~

~~(11) a supplier colludes with other suppliers to restrain competitive bidding;~~

~~(12) a supplier provides a state employee with a kickback;~~

~~(13) the State Purchasing Director determines, in his or her sole discretion, that a supplier is no longer responsible or qualified to do business with the State of Oklahoma;~~

~~(14) a supplier violates any provision of the Oklahoma Central Purchasing Act;~~

~~(15) any other reason the State Purchasing Director determines appropriate.~~

~~(b) **Suspension notice.** The State Purchasing Director shall send written notice of suspension to a supplier within five (5) business days of the State Purchasing Director's determination. The notice shall include the suspension period, which shall begin three (3) business days from the date of the notice and shall expire no later than the end of the period specified in the order.~~

~~(c) **Supplier's suspension appeal.** A supplier may appeal a suspension in writing to the State Purchasing Director within five (5) business days of receipt of the suspension notice.~~

~~(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal in writing to the supplier.~~

~~(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the Supplier List.~~

~~(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the DCS Director pursuant to 75 O.S. §§ 309 et seq. and the provisions of 580:16-3-21.~~

~~(e) **Suspension.** The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.~~

~~(f) **Supplier request for reinstatement.** A suspended supplier may request reinstatement from the State Purchasing Director prior to the end of the supplier's suspension period. The State Purchasing Director may consider reinstating the supplier upon submission by the supplier of documents that indicate a change of conditions.~~

~~(g) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall send written notice of reinstatement to the supplier.~~

580:16-3-25. Supplier debarment. [REVOKED]

~~(a) **Cause for debarment.** The State Purchasing Director may debar a supplier and revoke the supplier's authority to be included on the Supplier List, to be eligible to submit bids to state agencies, to be awarded a contract by a state agency subject to the Central Purchasing Act and cancel any existing contracts with the State of Oklahoma. For the purposes of this section, "State Purchasing Director" does not include employees of state agencies to whom the State Purchasing Director has delegated authority. The debarment shall be for a period of no more than three (3) years. Debarment shall be for any of the following reasons:~~

~~(1) conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption;~~

~~(2) conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Department of Central Services, an immediate family member of an official of the Department of Central Services, or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority;~~

~~(3) conviction of an individual or business entity of a felony involving the Anti Kickback Act of 1974; or,~~

~~(4) debarment by federal government entities.~~

~~(b) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.~~

~~(1) **Disassociation.** The efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.~~

~~(2) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.~~

~~(3) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.~~

~~(4) **Time period.** The period of time during which the acts leading to conviction of the individual or business entity occur.~~

~~(5) **Failure to respond to inquiries.** Failure of the individual or business entity to respond to inquiries by the State Purchasing Director regarding factors that may lead to debarment.~~

~~(6) **Other factors.** Any other factors regarding the individual or business entity the State Purchasing Director determines appropriate.~~

~~(c) **State Purchasing Director options.** Upon review and consideration of factors relevant to the proposed debarment of an individual or business entity, the State Purchasing Director shall take one of the following actions:~~

~~(1) **Decline to debar.** Decline to debar an individual or business entity;~~

~~(2) **Suspension.** Suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate;~~

~~(3) **Debarment.** Debar an individual, a business entity, or both for a period that shall begin three (3) business days from the date of the final order of debarment and expire no later than the end of the period specified in the order.~~

~~(d) **Debarment notice.** If the State Purchasing Director debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing.~~

~~(e) **Reinstatement after debarment.** A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director. The State Purchasing Director shall consider information the individual or business entity provides to determine if the individual or business entity merits reinstatement. The State Purchasing Director shall provide written notice of the reinstatement approval or denial.~~

~~(f) **Supplier appeal of State Purchasing Director's action.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the DCS Director within ten (10) business days of the date of the final order of debarment or the denial of reinstatement notice pursuant to 75 O.S. §§309 et seq and the provisions of 580:16-3-21.~~

SUBCHAPTER 5. STATE AGENCY PROVISIONS [REVOKED]

580:16-5-1. Purpose [REVOKED]

~~The purpose of this subchapter is to provide state agencies and certified procurement officers with information and procedures to achieve consistent and effective procurement practices resulting in quality, cost-saving acquisitions that serve the best interests of the state. In addition to the rules of this Chapter, state agencies and certified procurement officers shall comply with provisions of the Oklahoma Central Purchasing Act, statutes relating to the State Use Committee, and all other state laws and rules, as applicable or as required for state agency acquisitions.~~

580:16-5-3. Certified Procurement Officers (CPO) [REVOKED]

~~(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S. §85.5. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.~~

~~(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.~~

~~(d) **Duties.** A CPO shall provide assistance and oversight to a state agency to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, the Central Purchasing rules, other statutory provisions and the state agency's internal purchasing procedures.~~

~~(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, the Central Purchasing rules, other statutory provisions, or the state agency's internal purchasing procedures.~~

~~(f) **Continuing education.** To maintain certification, a CPO shall attend continuing education as required by the CPO Procurement Training Program established by the State Purchasing Director. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall establish a policy relating to how often courses may be repeated to qualify for continuing education credit.~~

~~(1) A CPO shall submit documentation verifying continuing education course attendance to the State Purchasing Director as required by the CPO Procurement Training Program. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.~~

~~(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.~~

~~(3) Failure by a CPO to complete required continuing education within the allowed time period will result in suspension of the CPO's purchasing authority.~~

~~(4) A suspended CPO must attend the next available CPO certification course approved by the State Purchasing Director in order to be reinstated and restore purchasing authority.~~

~~(5) A suspended CPO that remains suspended for a period of more than one year must repeat the CPO certification course and demonstrate proficiency in procurement~~

~~practices by passing the CPO prescribed certification examination in order to be reinstated and restore purchasing authority.~~

~~(6) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill required continuing education credits. The State Purchasing Director may approve the request for a reinstatement period not to exceed three (3) months to provide time to fulfill education credits.~~

~~(g) **Change in status.** A CPO shall immediately notify the State Purchasing Director when they:~~

~~(1) are no longer performing as a CPO;~~

~~(2) transfer to another state agency; or,~~

~~(3) terminate their employment with the state.~~

580:16-5-5. Procurement ethics - prohibited conduct [REVOKED]

~~(a) **Standard of conduct.** The Oklahoma Central Purchasing Act, State Ethics Commission rules and other state laws contain regulations, prohibitions and penalties governing procurement ethics. Transactions relating to the public expenditure of funds require the highest degree of public trust and impeccable standards of conduct.~~

~~(b) **Prohibited activities.** The State Purchasing Director or any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, shall not:~~

~~(1) sell to or otherwise provide acquisitions to any agency subject to The Oklahoma Central Purchasing Act;~~

~~(2) be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to The Oklahoma Central Purchasing Act;~~

~~(3) be employed in any of the positions authorized by 74 O.S. §85.3 if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act; or~~

~~(4) be employed in any of the positions authorized by 74 O.S. §85.3 if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars ($5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Central Purchasing Act. [74 O.S. §85.3]~~

~~(c) **One year limitation for certain contracts.** Unless otherwise provided by law, a state agency is prohibited from entering into a sole source contract, a professional service contract or a contract for the services of any person, who has terminated employment with or who has been terminated by that agency for one (1) year after the termination date of the employee from the agency. [Reference 74 O.S. §85.42(A)] An agency may enter into a sole source contract or a contract for professional services at any time with a person who is a qualified interpreter for the deaf. [Reference 74 O.S. §85.42(D)].~~

~~(d) **Supplier gratuities.** The State Purchasing Director and any state employee or agent of the State Purchasing Director, acting within the scope of delegated authority, or any member of their immediate family, under the Oklahoma Central Purchasing Act shall not accept any gift, donation, or gratuity for himself or any member of his immediate family from any supplier or prospective supplier of any acquisition covered by the Oklahoma Central Purchasing Act. This subsection shall not apply to exceptions to the definition of "anything of value" established in rules promulgated by the Oklahoma Ethics Commission. [Reference 74 O.S. §85.13]~~

580:16-5-7. State agency purchasing procedures [REVOKED]

~~(a) **Development.** State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . .which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations". A state agency must state the method whereby a supplier may protest a contract award by the agency pursuant to 580:16-3-21 in its internal purchasing procedures. Internal purchasing procedures are not effective until approved in accordance with this section.~~

~~(b) **Submission to State Purchasing Director.** The state agency shall submit a copy of the procedures to the State Purchasing Director. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(c) **State Purchasing Director review.** The State Purchasing Director shall review the state agency's procedures to ensure compliance with provisions of the Oklahoma Central Purchasing Act, provisions of the State Use Committee, and the Central Purchasing rules.~~

~~(d) **DCS Director notice of approval or denial to state agency.** Within fifteen (15) business days of submission, the DCS Director shall notify the state agency if the procedures comply or indicate revisions necessary to bring the procedures into compliance.~~

~~(e) **State agency resubmission following disapproval.** The state agency shall resubmit procedures until the DCS Director notifies the state agency the procedures comply.~~

~~(f) **Purchasing procedure amendments.** If a state agency desires to amend the state agency's internal purchasing procedures, the state agency shall submit the new procedures in their entirety to the State Purchasing Director for review pursuant to the provisions of these rules.~~

~~(g) **State agency Purchase Card (P/Card) procedures.** A state agency shall amend its internal purchasing procedures to include the agency's Purchase Card (P/Card) procedures within six (6) months of completing the P/Card Program implementation process through DCS. The P/Card procedures must specify the process established by the agency to ensure a P/Card held by a terminated or separated employee or an employee who no longer has a job function requiring a P/Card, is promptly surrendered to the State Agency P/Card Administrator.~~

580:16-5-9. Retention of state agency acquisition records [REVOKED]

~~(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts as follows:~~

~~(1) **Acquisitions independently processed by agency.** Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later; and,~~

~~(2) **Acquisition documents submitted to Central Purchasing Division for processing.** Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.~~

~~(b) **Records retention location.** A state agency shall retain procurement records and documents in a central location unless a written waiver is provided by the State Purchasing Director.~~

~~(c) **Records availability.** A state agency shall make acquisition records available to the State Purchasing Director for review and the Department of Central Services Audit staff for audit purposes.~~

~~(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.~~

580:16-5-11. State agency acquisitions [REVOKED]

~~(a) All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S. §85.1 et seq., other applicable statutory provisions, the rules of this Chapter and the state agency's approved internal purchasing procedures. Rules located in Subchapter 7 of this Chapter provide information and requirements for uniform state agency procurement established to protect the best interest of the state and to familiarize suppliers with contracting with state agencies.~~

~~(b) A state agency shall submit a requisition to the State Purchasing Director for each of its acquisitions, whenever:~~

~~(1) the agency does not have a CPO and/or approved internal purchasing procedures pursuant to the requirements of 580:16-5-3 and 580:16-5-7 and an acquisition exceeds Five Thousand Dollars ($5,000.00);~~

~~(2) the agency's acquisition authority has been reduced by the DCS Director and the acquisition exceeds the dollar amount of the reduced acquisition authority; or,~~

~~(3) an acquisition exceeds the state agency's acquisition authority.~~

~~(c) DCS may contract with a state agency for the services of qualified personnel to assist or conduct purchasing activities for the agency upon written request by the agency or in the event the State Purchasing Director determines the needs of the agency are such to require qualified procurement personnel. [Reference 74 O.S. §85.3] The state agency shall reimburse administrative costs to DCS for the services of employees necessary to provide procurement services pursuant to this subsection.~~

580:16-5-13. Authorized signatures for state agency procurement [REVOKED]

~~(a) State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and surplus property transactions that may be submitted to the State Purchasing Director. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.~~

~~(b) State agencies shall also maintain a list of individuals designated by the appointing authority to sign and approve requisitions, sole source certifications, change order requests, and purchase orders for acquisitions within the agency's approved acquisition authority. The list shall include the name, title, and signature of each individual, the effective date of their signature authorization and ending date of the authorization, when applicable. The agency shall maintain a file of the signature authority lists in the location of the agency's centralized procurement records, and shall be available to the State Purchasing Director, upon request.~~

580:16-5-15. Agency savings reporting [REVOKED]

~~On October 1, 2010 and October 1 of each year thereafter, the chief administrative officer of each state agency shall submit an electronic report to the State Purchasing Director listing savings realized by the agency in the previous fiscal year through the application of best spend practices. The State Purchasing Director will define the report content required to collect savings data from state agencies, which will include but may not be limited to:~~

~~(1) total spend by commodity; and~~

~~(2) participation in mandatory statewide contracts.~~

580:16-5-17. Ratification of an unauthorized commitment [REVOKED]

~~If a state agency makes an unauthorized commitment on behalf of the state to a supplier, the state may, if in the best interest of the state, ratify the commitment.~~

~~(1) **State agency actions.** The chief administrative officer of the state agency shall approve or disapprove a ratification request.~~

~~(A) **Chief administrative officer approves request.** If the chief administrative officer approves the request, the state agency shall perform steps as follows:~~

~~(i) The state agency shall negotiate a proposal for a ratification agreement with the supplier.~~

~~(ii) The chief administrative officer shall document facts and circumstances of the unauthorized commitment.~~

~~(iii) The chief administrative officer shall sign the proposed ratification agreement.~~

~~(iv) The chief administrative officer shall provide a copy of the ratification agreement and, upon request, the supporting documents to the State Purchasing Director.~~

~~(B) **Chief administrative officer disapproves request.** If the chief administrative officer disapproves the request, the state agency shall retain documents from the supplier and the state agency.~~

~~(2) **State Purchasing Director actions.** The State Purchasing Director shall retain a copy of the ratification agreement.~~

580:16-5-19. Audits of state agencies [REVOKED]

~~The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, promulgated rules of the Department of Central Services, provisions of 74 O.S. §3001 through §3010, other laws of the State of Oklahoma, and the state agency's approved internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the DCS Director.~~

~~(1) **Audit notification.** DCS shall notify the state agency of all scheduled audits.~~

~~(2) **State agency responsibilities.**~~

~~(A) The state agency shall provide work space for the audit team.~~

~~(B) The state agency shall provide records for acquisitions for the audit period.~~

~~(C) The state agency shall make the state agency's CPO available to assist the audit team.~~

~~(3) **Audit following reduction of state agency acquisition authority.** If the DCS Director reduces the acquisition authority of a state agency, the Audit Team shall periodically audit the state agency's acquisitions in order to review the agency's efforts to correct audit findings of noncompliance.~~

580:16-5-21. Procedures for state agency privatization contracts [REVOKED]

~~A state agency desiring to contract to privatize a function, program, service, unit or division valued at One Hundred Thousand Dollars ($100,000.00) or more shall be subject to the Oklahoma Privatization of State Functions Act [Reference 74 O.S. §§588.1 et seq] and the privatization contract procedures established by the State Purchasing Director.~~

SUBCHAPTER 7. PROCUREMENT [REVOKED]

PART 1. GENERAL PROCUREMENT [REVOKED]

580:16-7-1. Purpose [REVOKED]

~~The purpose of this subchapter is to provide information and requirements for state agencies subject to the Central Purchasing Act, in order to establish fair and consistent procurement practices. All state agencies are responsible for knowing the requirements of this subchapter. Suppliers are encouraged to become knowledgeable in state procurement practices to expedite transacting business with the state.~~

580:16-7-3. Methods state agencies use to make acquisitions [REVOKED]

~~State agencies shall make acquisitions using a method of acquisition in this section.~~

~~(1) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.~~

~~(2) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or non mandatory.~~

~~(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.~~

~~(B) **Non-mandatory statewide contracts.** State agencies are encouraged to use non mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.~~

~~(3) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market~~

~~value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:~~

~~(A) If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.~~

~~(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to the Central Purchasing Division for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.~~

~~(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.~~

~~(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.~~

~~(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the DCS Director shall resolve the issue.~~

~~(4) **Standard contracts.** State agencies may make acquisitions within their approved acquisition authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of this Chapter, any other applicable laws or rules, and the agency's approved internal purchasing procedures. The most common types of acquisitions include:~~

~~(A) **Contract for definite quantity.** If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.~~

~~(B) **Contract for indefinite quantities.** If an agency is unable to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.~~

~~(C) **Contract for scheduled acquisitions.** When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.~~

~~(5) **Sole source and sole brand acquisitions.**~~

~~(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:16-5-3 and 580:16-5-7, may make a sole source or sole brand acquisition within the agency's acquisition authority. [Reference: 74 O.S. §85.45j]~~

~~(B) The chief administrative officer of any state agency not utilizing the State's financial and information system for acquisitions shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars ($5,000.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.~~

~~(C) If the sole source or sole brand acquisition amount exceeds the agency's acquisition authority, the agency shall submit the requisition to the State Purchasing Director.~~

~~(6) **Emergency acquisition.** State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:16-5-3 and 580:16-5-7, may make an emergency acquisition in accordance with 74 O.S. §85.7.~~

~~(7) **Acquisitions from other governmental agencies.** A state agency may contract with any other department of state government or institution pursuant to 74 O.S. §581 or §1001 through §1008. A state agency may contract with any "public agency" pursuant to 74 O.S. §1001 through §1008, which includes a political subdivision of this state or another state, and any agency of this state or of the United States. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.~~

~~(8) **Acquisition pursuant to waiver.** If the DCS Director approves a state agency's request for a waiver pursuant to 580:16-1-12, a state agency with a CPO and approved internal purchasing procedures meeting the requirements of 580:16-5-3 and 580:16-5-7 may make the acquisition for which the waiver was approved, within their approved purchasing authority limit.~~

580:16-7-5. Acquisition authority [REVOKED]

~~All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S. §85.1 et seq., other applicable statutory provisions, rules of this Chapter and the state agency's approved internal purchasing procedures.~~

580:16-7-7. Split purchases [REVOKED]

~~State agencies shall not make split purchases for the purposes of evading their approved dollar threshold for competitive bids. Split purchasing for the purpose of evading competitive bidding requirements is a felony. [Reference 74 O.S. §85.7(A)(2)(a)]~~

PART 3. REQUIREMENTS FOR ACQUISITIONS [REVOKED]

580:16-7-11. Acquisitions not exceeding $5,000.00 [REVOKED]

~~State agencies shall make open market acquisitions not exceeding $5,000.00 provided the acquisition process is fair and reasonable.~~

580:16-7-13. Acquisitions over $5,000.00 and not exceeding $25,000.00 [REVOKED]

~~(a) **Basic Requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:16-5-3 and 580:16-5-7 shall make acquisitions over $5,000.00 and not exceeding $25,000.00 pursuant to this section.~~

~~(b) **Acquisition Preparation.** The state agency shall prepare and document the state agency's specifications and all information required from the supplier for an acquisition. An agency shall choose an appropriate solicitation methodology, i.e. formal or informal competitive solicitation, based on the complexity of an acquisition.~~

~~(c) **Supplier selection.**~~

~~(1) The state agency shall solicit from a minimum of three (3) suppliers for acquisitions over $5,000.00 and not exceeding $10,000.00 and ten (10) registered suppliers for acquisitions over $10,000.00 and not exceeding $25,000.00, from the Supplier List in the appropriate commodity classification. Selection of suppliers shall be rotated whenever more than ten (1) suppliers are registered.~~

~~(2) State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce.~~

~~(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. Documentation of prices, delivery dates and the evaluation shall be placed in the acquisition file.~~

~~(4) All awards shall be based on lowest and best or best value criteria.~~

~~(5) Certifications, verifications and other required documents.~~

~~(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.~~

~~(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.~~

~~(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:~~

~~(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]~~

~~(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]~~

~~(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]~~

~~(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.~~

~~(i) Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashiers check.~~

~~(ii) Irrevocable letter of credit. In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.~~

580:16-7-15. Acquisitions over $25,000.00 and not exceeding $50,000.00 [REVOKED]

~~(a) **Basic requirements.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:16-5-3 and 580:16-5-7 shall make acquisitions exceeding $25,000.00 but not exceeding $50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.~~

~~(b) **Acquisition preparation.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include evaluation criteria for the acquisition.~~

~~(c) **Supplier selection.**~~

~~(1) The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.~~

~~(2) State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.~~

~~(3) The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.~~

~~(4) All awards shall be based on lowest and best or best value criteria.~~

~~(5) Certifications, verifications and other required documents.~~

~~(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.~~

~~(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.~~

~~(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:~~

~~(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]~~

~~(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4]~~

~~(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]~~

~~(D) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.~~

~~(i) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.~~

~~(ii) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.~~

~~(E) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204.~~

580:16-7-17. Acquisitions over $50,000.00 and not exceeding $100,000.00 [REVOKED]

~~State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:16-5-3 and 580:16-5-7, shall send a written request to the State Purchasing Director to request acquisition authority exceeding $50,000.00 but not exceeding $100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the~~

~~agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall:~~

~~(1) make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including Section 580:16-7-15;~~

~~(2) award all contracts based on lowest and best or best value criteria; and,~~

~~(3) solicit all suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency using solicitation forms prescribed by the DCS Director.~~

580:16-7-19. Emergency acquisitions [REVOKED]

~~State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:16-5-3 and 580:16-5-7, may make an emergency acquisition authorized by 74 O.S. §85.7. For an emergency acquisition, the State Purchasing Director shall:~~

~~(1) select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce;~~

~~(2) Obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:~~

~~(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.~~

~~(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.~~

~~(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:~~

~~(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]~~

~~(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]~~

~~(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]~~

~~(iv) **Bonds and sureties.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.~~

~~(I) **Form of bond.** The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashiers check.~~

~~(II) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit.~~

~~(III) **Bond or surety return.** When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.~~

~~(v) **Verification of registration and status with Secretary of State.** Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204.~~

580:16-7-21. Acquisition pursuant to a waiver [REVOKED]

~~If the DCS Director approves a state agency's request for a waiver [Reference 580:16-1-12], a state agency with a CPO and approved internal purchasing procedures as required by 580:16-5-3 and 580:16-5-7, may make the acquisition for which the waiver was approved, within their approved purchasing authority limit. When an acquisition is made pursuant to a waiver, the State Purchasing Director:~~

~~(1) may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce;~~

~~(2) shall obtain the following certifications, verifications and other required documents, as applicable, from the supplier selected for contract award:~~

~~(A) **Non-collusion certification.** Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion~~

~~statement with full knowledge and acceptance of all its provisions.~~

~~(B) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the vendor's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.~~

~~(C) **Certifications for services contracts.** Additional documents required to be included in contracts for professional or nonprofessional services include:~~

~~(i) If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]~~

~~(ii) An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]~~

~~(iii) Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]~~

580:16-7-23. State agency acquisitions processed by the Central Purchasing Division [REVOKED]

~~A state agency submitting requisitions to the Central Purchasing Division pursuant to 580:16-5-11 shall comply with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(1) **Forms.** State agencies shall use forms for requisitions provided or approved by the State Purchasing Director.~~

~~(2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract, which includes applicable statutory language required by the Oklahoma Central Purchasing Act, signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]~~

~~(3) **Evaluation Criteria.** An agency shall include written criteria necessary to evaluate a supplier's response to a solicitation such as technical scope, cost, experience, references etc.~~

~~(4) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.~~

~~(5) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.~~

~~(6) **Competitive bid evaluation.** The State Purchasing Director shall evaluate bids and may request assistance of the state agency.~~

~~(7) **Competitive bid award.** The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.~~

~~(8) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.~~

580:16-7-25. Acquisition limitation exception [REVOKED]

~~(a) A state agency making an acquisition pursuant to 74 O.S. §85.5(T) must have an internal CPO and approved internal purchasing procedures pursuant to the requirements of 580:16-5-3 and 580:16-5-7, in addition to the subject matter experts, legal and procurement staff required by law.~~

~~(b) Prior to making an acquisition pursuant to this section, a state agency shall submit in writing to the DCS Director, a statement of the agency's intent to make an acquisition pursuant to 74 O.S. §85.5(T). The agency may only proceed with the acquisition upon receipt of certification by the DCS Director that the proposed purchase does not conflict with consolidated statewide spend initiatives.~~

~~(c) Agencies making an acquisition pursuant to this section shall comply with 74 O.S. §85.7, the rules of this Chapter and any other applicable state laws and rules.~~

~~(d) An agency shall submit a report in electronic format to the State Purchasing Director on a quarterly basis, which lists all contracts issued pursuant to this section. The report shall be submitted by the 5th business day of each new quarter.~~

PART 5. COMPETITIVE SEALED SOLICITATIONS [REVOKED]

580:16-7-30. Competitive sealed solicitations [REVOKED]

~~(a) **General.** The State Purchasing Director shall utilize a competitive sealed solicitation as required by state law and rules of this Chapter or when it is determined by the acquiring agency to be in the best interest of the state. Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal or request for quotation.~~

~~(b) **Solicitation contents.** The solicitation shall indicate all information the supplier shall submit with the supplier's bid.~~

~~(c) **Supplier notification.**~~

~~(1) Registered suppliers. The State Purchasing Director shall notify suppliers of solicitations for commodities for which the supplier registers.~~

~~(2) Suppliers a state agency recommends. The State Purchasing Director will also notify suppliers recommended by a state agency for a solicitation.~~

~~(d) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify each supplier sent the original solicitation of the amendment.~~

~~(1) A supplier shall acknowledge receipt of an amendment in the supplier's bid or quotation for submission by the closing date and time specified in the solicitation.~~

~~(2) If a supplier has already submitted a bid, the supplier shall submit an acknowledgment of receipt of the amendment by the closing date and time specified in the solicitation.~~

~~(e) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and the acquiring agency related to a solicitation shall:~~

~~(1) be limited to the acquiring agency's designated procurement personnel;~~

~~(2) strictly prohibited from any other acquiring agency personnel, unless otherwise stated in the solicitation; and,~~

~~(3) be documented in writing and filed in the acquisition file.~~

~~(f) **Evaluation method.** The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:~~

~~(1) lowest and best; or,~~

~~(2) best value.~~

~~(g) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.~~

~~(h) **Terms and conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.~~

~~(1) Copyrights, patents or intellectual property. If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition. Except as otherwise provided by Section 3206.3 of Title 70 of the Oklahoma Statutes and Section 1365 of this title, any patented property or copyrighted material developed by contracts subject to the Central Purchasing Act, shall be the property of the State of Oklahoma under the sole management of the Department of Central Services. [74 O.S. §34.3(B)]~~

~~(2) Other terms and conditions. The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contract shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.~~

~~(3) Other rights and remedies. Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.~~

~~(4) Rejection of all bids. If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any or all bids or proposals may be rejected and a solicitation may be reissued or canceled.~~

~~(i) **Non-Collusion certification.** The State Purchasing Director shall include a non-collusion certification statement in a solicitation. The non-collusion certification shall be included with any bid or proposal submitted to the agency issuing the solicitation.~~

~~(j) **Pre-bid conference.** The State Purchasing Director may state in a solicitation that a supplier pre-bid conference will be held and shall state whether supplier attendance is mandatory or non-mandatory.~~

~~(k) **Shipping.** Bidders shall include all costs associated with delivery of the acquisition F.O.B. destination to the receiving state agency in the solicitation response, unless otherwise specified in the solicitation.~~

~~(l) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the DCS Director may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.~~

~~(m) **Bid receipt.** Upon receipt, a state agency shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.~~

~~(n) **Firm bid for sixty (60) days.** A supplier's bid shall be considered a firm bid for sixty (60) days following the bid closing date, unless otherwise stated in the solicitation.~~

~~(o) **Sample submission.** A solicitation may specify submission of samples to the State Purchasing Director for evaluation purposes. Any samples requested must be provided free of charge.~~

~~(1) **Sample tests.** Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.~~

~~(2) **Return of bidder samples.** Samples which are not destroyed by testing will be returned at the supplier's expense if return of the samples is stipulated in the supplier's solicitation response.~~

~~(3) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.~~

~~(4) **Samples become property of state.** A sample shall become the property of the State of Oklahoma~~

~~unless a bidder requests its return and will be disposed of in the same manner as surplus or salvage property.~~

580:16-7-32. Bid evaluation [REVOKED]

~~(a) **Evaluation criteria and documentation.** The State Purchasing Director shall develop evaluation criteria to be included in a solicitation, which will be considered during the evaluation of bids.~~

~~(b) **Evaluation scoring tool.** Any evaluation scoring tool utilized shall be consistent with the evaluation criteria contained in the solicitation.~~

~~(c) **Documentation.** Evaluation of the bids shall be documented and filed in the acquisition file.~~

~~(1) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid. [Reference 74 O.S. §85.2]~~

~~(2) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation methodology is best value, the State Purchasing Director shall develop and apply criteria consistent with 74 O.S. §85.2.~~

~~(d) **Prohibited disclosure.** Agency personnel shall not announce or reveal their decision regarding supplier evaluation or recommendation for award in any public manner or forum, including board meetings, until the State Purchasing Director has issued the award of contract.~~

~~(e) **Public inspection.** The evaluation documentation shall be open for public inspection following contract award.~~

~~(f) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.~~

~~(g) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.~~

~~(h) **Reasons for bid rejection.** The State Purchasing Director shall document in the acquisition file if a bid is non-responsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (h)(2) of this section, the State Purchasing Director may reject a bid that is non-responsive, or a bid from a bidder who is not responsible, for reasons including, but not limited to reasons listed in this section:~~

~~(1) **Non-responsive bid.**~~

~~(A) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation may be considered non-responsive.~~

~~(B) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered non-responsive.~~

~~(C) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered non-responsive.~~

~~(D) **Form entries improper.** If information provided in the solicitation documents is not legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered non-responsive.~~

~~(E) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered non-responsive.~~

~~(F) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid may be considered non-responsive.~~

~~(G) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding supplier's state of residence, the bid may be considered non-responsive.~~

~~(H) **Bid does not contain bid bond or other surety.** If a bidder fails to include a bid bond or other surety specified as a requirement by a solicitation, the bid may be considered non-responsive.~~

~~(I) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered non-responsive.~~

~~(J) **Items not suitable for intended use.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered non-responsive.~~

~~(K) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid may be considered non-responsive.~~

~~(L) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the State Purchasing Director issues to a solicitation, the bid may be considered non-responsive.~~

~~(M) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered non-responsive.~~

~~(N) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid may be considered non-responsive.~~

~~(O) **Signatures on solicitation documents.** If an authorized signature is omitted from any solicitation document that requires an authorized signature, the bid may be considered non-responsive.~~

~~(2) **Bidder not responsible.**~~

~~(A) **Failure to provide required information.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.~~

~~(B) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.~~

~~(C) **Past performance.** If the State Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.~~

~~(i) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities.~~

~~(1) The State Purchasing Director shall indicate the method of testing and rate the sample's performance in the evaluation document.~~

~~(2) When the State Purchasing Director issues a solicitation on behalf of a state agency, the State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.~~

~~(j) **Other factors in determination of award.**~~

~~(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.~~

~~(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:~~

~~(A) failure to have an authorized signature;~~

~~(B) failure to obtain a notary signature, stamp or seal;~~

~~(C) failure to sign or initial amendments to bid.~~

~~(k) **Evaluation criteria.** The State Purchasing Director shall establish evaluation criteria for solicitation responses. A state agency shall maintain written documentation of bid evaluations in the acquisition file.~~

580:16-7-34. Contract negotiation [REVOKED]

~~(a) **Negotiation.** The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar threshold and shall follow the rules for negotiation in this section.~~

~~(b) **Negotiation team.**~~

~~(1) A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.~~

~~(2) The State Purchasing Director or designee shall serve as the lead negotiator for a team when negotiations are being conducted for solicitations issued by Central Purchasing.~~

~~(c) **Negotiation process.**~~

~~(1) The lead negotiator shall notify suppliers of the date and time for negotiations.~~

~~(2) The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.~~

~~(3) The lead negotiator shall determine the location and manner of negotiation.~~

~~(4) The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation.~~

~~(5) The lead negotiator may require suppliers to submit a best and final offer.~~

~~(6) The lead negotiator shall prepare a summary that shall document the following:~~

~~(A) an overview setting forth the solicitation number, names and titles of participants, description of the solicitation, date and location of the negotiation, and purpose of the negotiation; and~~

~~(B) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.~~

~~(C) A summary created under these rules shall become a part of the contract file retained.~~

580:16-7-36. Contract award [REVOKED]

~~(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The contract award shall be made upon completion of the following:~~

~~(1) bid evaluation;~~

~~(2) documentation of evaluation on each bid;~~

~~(3) determination of the lowest and best or best value bidder;~~

~~(4) verification of Oklahoma and Federal debarment status;~~

~~(5) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204, whenever the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater;~~

~~(6) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to 68 O.S. §1364 if such entity is required to do so;~~

~~(7) coordination of award with the requisitioning state agency, if applicable; and~~

~~(8) completion of any administrative tasks.~~

~~(b) **Award by item.** If a solicitation does not specify an all or none bid, the State Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.~~

~~(c) **No contract award.** A contract may not be awarded when:~~

~~(1) The State Purchasing Director determines no bid meets the requirements of the solicitation.~~

~~(2) The State Purchasing Director determines that all bids exceed fair market value for the acquisition.~~

~~(3) The State Purchasing Director determines the bid price exceeds available state agency funds.~~

~~(4) The State Purchasing Director determines the state agency no longer requires the acquisition in the form or manner the solicitation specifies.~~

~~(5) The State Purchasing Director determines not awarding the contract to be in the best interest of the state.~~

~~(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.~~

~~(e) **Notification of successful bidder.** The State Purchasing Director shall notify the successful bidder within five (5) days of the contract award.~~

PART 7. ADDITIONAL PROCUREMENT INFORMATION [REVOKED]

580:16-7-40. Fixed and uniform rate contract [REVOKED]

~~(a) "Any acquisition of a service which the Department of Central Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions . . . " of 74 O.S. §85.7 and procedures required by the Department of Central Services. [Reference 74 O.S. §85.7] The DCS Director must approve a services contract, prior to award, as qualifying for a fixed and uniform rate.~~

~~(b) Fixed and uniform rate contracts shall be limited to contracts for those services furnished to persons directly benefiting from such services and shall not be used by a state agency to employ consultants or to make other acquisitions. [Reference 74 O.S. §85.7]~~

580:16-7-42. Recycled materials [REVOKED]

~~State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.~~

580:16-7-44. Trade-ins [REVOKED]

~~State agencies may trade in items when they make an acquisition of a like item. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. Written documentation of the fair market value analysis shall be filed in the acquisition file by the state agency. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.~~

580:16-7-46. State travel [REVOKED]

~~The State Travel Office is within the Central Purchasing Division and awards contracts for travel and travel services. State agencies shall make travel arrangements through contract travel agencies for commercial air travel for state employees in the course of official duties or for persons traveling at state expense.~~

~~(1) **State agency travel coordinator.** The State Purchasing Director encourages state agencies to appoint one or more travel coordinators. The coordinators shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel coordinator, the state agency shall notify the Travel Office and provide the coordinator's name, mailing address, telephone number, and facsimile number.~~

~~(2) **State travel zones.** The Travel Office shall divide the state into geographic zones. The zone served by the travel agency shall be indicated in the statewide contract.~~

~~(3) **Airline ticket purchases.** State agencies shall purchase airline tickets from contract travel agencies within the zone of the state agency location.~~

~~(4) **Airline ticket purchases exceptions.** The state agency shall determine when an exception to airline ticket purchase shall apply. The state agency shall retain documents the state agency uses in exception determination as required by internal purchasing procedures established pursuant to 580:16-5-7.~~

~~(A) If the state agency can acquire air travel at less cost than the contract travel agency, the state agency may use this exception.~~

~~(B) If air travel originates outside the state and it is impractical for the state agency, the state agency may use this exception.~~

~~(C) If air travel is due to an emergency and time does not permit use of the contract travel agency, the state agency may use this exception.~~

~~(D) If air travel is part of a package arrangement by an organization that schedules a meeting or conference, the state agency may use this exception.~~

~~(5) **State agency credit card for airline travel.** A state agency that acquires a state travel credit card to book and pay for official airline travel shall complete mandatory training as required by the Department of Central Services and comply with all State Purchase Card procedures issued by DCS.~~

580:16-7-48. Electronic commerce and online bidding [REVOKED]

~~(a) When a state agency determines electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the state agency may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.~~

~~(b) The use of electronic commerce for solicitation, notification, and other procurement processes as provided for in 74 O.S. §85.45r and the Oklahoma Central Purchasing Act and/or the Public Building Construction and Planning Act shall be subject to the policies and procedures of the Online Bidding Standards authorized by the DCS Director and established by the State Purchasing Director.~~

PART 9. INFORMATION TECHNOLOGY ACQUISITIONS [REVOKED]

580:16-7-52. General requirements [REVOKED]

~~Unless otherwise provided by law, state agencies shall acquire information technology products and services in accordance with the Oklahoma Central Purchasing Act [74 O.S.~~

~~§§85.1 et seq.], the Oklahoma State Finance Act [62 O.S. §§34 et seq.] the rules of this chapter, and requirements established by the Office of State Finance, Information Services Division.~~

580:16-7-54. Technology system acquisitions' additional documentation [REVOKED]

~~(a) **New high technology system.** In accordance with 74 O.S. §85.7c, the State Purchasing Director shall not evaluate a bid for a high technology system unless the bid includes a statement of work and:~~

~~(1) **System upgrade schedule.** Documentation by the bidder of the projected schedule of recommended or required upgrades or improvements to the high technology system over a projected three year period following the target purchase date; or,~~

~~(2) **No system upgrades.** Documentation that the bidder does not plan any recommended or required system upgrades or improvements to the high technology system over a projected three year period following the target purchase date.~~

~~(b) **High technology system upgrades.** The State Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid includes a statement of work and:~~

~~(1) documentation that the vendor agrees to provide the upgrade or improvement at no charge to the state;~~

~~(2) documentation that the vendor previously agreed in a contract to provide the upgrade or improvement at no additional charge to the state;~~

~~(3) documentation the state agency obtained from the vendor that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or,~~

~~(4) documentation the vendor will no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.~~

580:16-7-56. Accessible information technology (IT) acquisitions [REVOKED]

~~(a) **Procurement.**~~

~~(1) To ensure accessibility of information technology for individuals with disabilities pursuant to 62 O.S. §34.28, procurement of information technology shall be subject to the Oklahoma Information Technology Accessibility Standards prescribed by the Office of State Finance and maintained by the OSF Information Services Division. These standards apply to all information technology purchased after the effective date of these rules, providing the solicitation process was not initiated prior to the effective date.~~

~~(2) When developing, procuring, maintaining or using information technology, or when administering contracts or grants that include the procurement, development upgrading, or replacement of information technology each state agency shall ensure, unless an undue burden would be imposed on the agency, that the information technology allows employees, program participants, and members of the general public access to use of information and data that is comparable to the access by individuals without disabilities. [62 O.S. §34.28(B)] When used in this section, "state agency" includes all agencies defined in 62 O.S. §34.29.~~

~~(3) Unless an exception applies, an agency must procure a product or service that best meets the business needs of the agency and the applicable IT Accessibility Standards.~~

~~(A) Accessibility determination must be conducted as part of the acquisition evaluation.~~

~~(B) Accessibility must be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it must be accomplished through review of vendor provided information submitted in the form of a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the IT Accessibility Standards.~~

~~(C) The relative accessibility weighing may be adjusted for due cause based on the specific procurement.~~

~~(D) When acquiring a product, an agency shall acquire products that comply with applicable IT Accessibility Standards when such products are available in the commercial marketplace or when such products are developed in response to an agency solicitation. Agencies cannot claim a product, as a whole is not commercially available by stating no product in the marketplace meets all of the IT Accessibility Standards. Instead, an agency must identify commercial, off-the-shelf products that best meet the general, technical and functional requirements as defined by the agency. Once those products have been identified, the agency should purchase the product that is the most accessibility compliant.~~

~~(b) **Contract clauses.**~~

~~(1) All solicitations and contracts for information technology shall include a clause, prescribed by the DCS Director pursuant to 74 O.S. §85.7d, ensuring compliance with applicable IT Accessibility Standards, which are in effect on the date of issuance of said solicitation or contract.~~

~~(2) The information technology clause(s) and IT Accessibility Standards shall be made available at the principle office of the DCS Central Purchasing Division and published on the DCS website.~~

~~(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, that the product or service complies with applicable IT Accessibility standards required by such contracts or solicitations prior to the expenditure of state funds. An agency may also utilize a VPAT published on a supplier's primary website. A VPAT obtained from a supplier website shall be good for a one year period.~~

~~(c) **Exceptions.** Exceptions to compliance with IT Accessibility Standards include:~~

~~(1) information technology operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto-logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics and personnel management applications);~~

~~(2) information technology acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;~~

~~(3) information technology located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;~~

~~(4) information technology requiring a fundamental alteration in the nature of a product or its components to achieve accessibility;~~

~~(5) Except as required to comply with the IT Accessibility Standards, state departments and agencies are not required to install specific accessibility-related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;~~

~~(6) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than where the information technology is provided to the public;~~

~~(7) information technology that would impose an undue burden on the agency.~~

~~(d) **Documentation of exceptions.** Whenever an agency determines that an acquisition exceeding $5,000.00 meets the criteria of a general exception or undue burden, the agency shall document the explanation of why, and to what extent, compliance with applicable IT Accessibility Standards meets an exception or creates an undue burden on the agency. Agencies are encouraged but not required to maintain documentation for commercial off the shelf acquisitions of $5,000.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.~~

~~(1) The explanation shall be documented on a form prescribed by the DCS Director and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for accessibility compliance has been delegated.~~

~~(2) The documentation shall be retained in the acquisition file to support the procurement.~~

~~(e) **Alternative means of access.** When compliance with IT Accessibility Standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.~~

SUBCHAPTER 9. CONTRACT MANAGEMENT [REVOKED]

580:16-9-1. Supplier contract performance [REVOKED]

~~(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.~~

~~(b) **Inspection.** Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.~~

~~(c) **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.~~

~~(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items.~~

~~(e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.~~

~~(f) **Contract changes.** If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 580:16-9-3.~~

~~(g) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization unless otherwise specified in the solicitation.~~

~~(h) **Performance evaluation.**~~

~~(1) State agencies shall develop a process to consistently assess and document the quality of products and/or services acquired from a supplier.~~

~~(2) State agencies shall retain written documentation of evaluation of the performance of services provided pursuant to a professional services contract with the acquisition file. If the evaluation indicates deficiencies with the supplier's work, the state agency shall submit a Professional Service Evaluation (DCS-FORM-CP-017) to the State Purchasing Director. [Reference 74 O.S. §85.41]~~

580:16-9-3. Change orders [REVOKED]

~~(a) Contract increases. Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation. For the purposes of (b) and (c) of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.~~

~~(b) Acquisitions by a state agency. If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.~~

~~(c) Acquisitions by the Central Purchasing Division. If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency.~~

580:16-9-5. Supplier invoice submission [REVOKED]

~~(a) Supplier invoice submission. Following transfer of title of an acquisition to a state agency, the supplier shall submit invoices to the state agency.~~

~~(b) Advance payment for acquisitions. The state agency shall not pay for acquisitions a supplier has yet to deliver, unless otherwise authorized by law.~~

~~(c) Payment and state agency acceptance. State agency payment to a supplier for an acquisition may not constitute final acceptance of the acquisition by the state agency. If subsequent state agency inspection affirms that the acquisition does not meet or exceed the specifications of the contract, or that the acquisition has latent defects, the state agency shall notify the supplier. The supplier shall retrieve and replace the acquisition at the supplier's expense, or the state agency shall request a refund from the supplier if the supplier is unable to replace the acquisition.~~

580:16-9-7. State agency and supplier disputes [REVOKED]

~~(a) **Quality assurance inspections by state agencies.** A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. It is critical that problems with delivery or the quality of the acquisition delivered be promptly communicated to the agency's primary procurement official and the State Purchasing Director.~~

~~(b) **Resolution of dispute between a state agency and supplier.** Whenever a supplier provides a state agency with defective products or fails to perform in accordance with contract requirements, a state agency shall notify the supplier in writing of the deficiency and include information necessary for the supplier to resolve the problem. If the state agency and supplier are unable to resolve the dispute, the state agency shall submit a written request for dispute resolution to the State Purchasing Director.~~

~~(c) **State agency submission of supplier complaint form.** A state agency shall request the State Purchasing Director seek dispute resolution by submitting a Vendor Performance Quality Report (DCS-FORM-CP-016), whenever a supplier:~~

~~(1) fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;~~

~~(2) does not refund payment for an acquisition that does not meet or exceed contract specifications; or,~~

~~(3) fails to resolve any other problem that conflicts with the contract specifications in a timely manner.~~

~~(d) **State Purchasing Director dispute resolution action.**~~

~~(1) **State Purchasing Director resolves dispute.** If the State Purchasing Director resolves the dispute, the supplier and state agency shall be notified of the dispute resolution terms and conditions.~~

~~(A) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.~~

~~(B) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:16-5-19.~~

~~(2) **State Purchasing Director fails to resolve the dispute.** If the State Purchasing Director fails to resolve the dispute between the state agency and the supplier, the State Purchasing Director shall take an action in this subparagraph.~~

~~(A) **Supplier fails to meet terms and conditions.** If the State Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the State Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.~~

~~(B) **State agency fails to meet contract terms and conditions.** If the State Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the State Purchasing Director may order an audit of the state agency's acquisitions pursuant to 580:16-5-19.~~

580:16-9-9. Contract termination [REVOKED]

~~(a) The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency if:~~

~~(1) a supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies;~~

~~(2) a supplier fails to deliver an acquisition pursuant to the contract;~~

~~(3) a supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;~~

~~(4) a supplier misrepresents the supplier's ability to provide an acquisition;~~

~~(5) a supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform;~~

~~(6) a supplier commits an unlawful act or an act that impairs the supplier's ability to perform;~~

~~(7) a supplier commits an act that could result in the supplier's suspension or debarment from the Supplier List;~~

~~(8) the State Purchasing Director determines that an administrative error occurred prior to contract performance; or,~~

~~(9) if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements.~~

~~(b) Supplier responsible for damages. If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.~~

SUBCHAPTER 11. PURCHASE CARDS AND OTHER ELECTRONIC PAYMENT MECHANISMS [REVOKED]

580:16-11-1. State Purchase Card Program [REVOKED]

~~(a) **Use of State Purchase Cards.** Use of State Purchase Cards (P/Cards) authorized by the State Purchasing Director [Reference 74 O.S., §85.5] shall be subject to the policies and procedures of the State Purchase Card Program established by the State Purchasing Director to ensure compliance with the statewide contract for this service.~~

~~(b) **Condition of participation.** A condition of participation in the State Purchase Card Program shall be compliance with the terms of the State Purchase Card Procedures established by the State Purchasing Director. Failure to comply with all conditions of participation may result in a state entity's removal from the purchase card program by the State Purchasing Director.~~

580:16-11-3. State Purchase Card Employee Agreement [REVOKED]

~~State entity P/Card Program participants must sign the State of Oklahoma Purchase Card Employee Agreement form (DCS/Purchasing Form 059) prior to assuming their duties and being issued State Purchase Cards.~~

580:16-11-5. Training [REVOKED]

~~(a) State entity P/Card Program participants. State entity P/Card participants must successfully complete the training prescribed by the State Purchasing Director prior to assuming their duties and prior to being issued P/Cards.~~

~~(b) State entity responsibility. It is the responsibility of the State Entity P/Card Administrator to ensure employees maintain the continuing program training in accordance with DCS requirements.~~

580:16-11-7. Security [REVOKED]

~~(a) Use of any State Purchase Card authorized by the State Purchasing Director is limited to the person whose name is embossed on the card. The card shall not be loaned to another person.~~

~~(b) The cardholder shall ensure the State Purchase Card is kept in a secure manner and the State Purchase Card account number on the card is not posted or left in a conspicuous place.~~

~~(c) The state entity is responsible for maintaining adequate security of State Purchase Card account numbers and related information.~~

580:16-11-9. Recordkeeping [REVOKED]

~~A receipt shall be obtained for all purchases regardless of the order method. The receipt shall give an itemized and detailed description of the purchase and must include at a minimum:~~

~~(1) name and location of supplier;~~

~~(2) date of purchase;~~

~~(3) description of product purchased;~~

~~(4) unit price and quantity purchased; and, transaction total.~~

[OAR Docket #14-760; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 20. CONSTRUCTION AND PROPERTIES [REVOKED]

[OAR Docket #14-761]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 20. Construction and Properties [REVOKED]
AUTHORITY:
61 O.S. §209; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. CONSTRUCTION CONTRACTING [REVOKED]

580:20-1-1. Purpose [REVOKED]

~~(a) The Construction and Properties Division, Department of Central Services is responsible for assisting and advising the using state agency, other departments and divisions of state government, in planning, programming, arranging and contracting for the services of professionals for the planning, design and construction of assigned projects and contracting for construction. The Division is also responsible for implementing the Public Competitive Bid Act, 61 O.S., Sections 101 through 138. These rules are provided to assist concerned parties in the bidding of projects for construction, renovation or maintenance of state facilities.~~

~~(b) The State of Oklahoma does not discriminate in its hiring practices and expects its contractors to abide by all Federal rules and regulations on non-discrimination. All bidders shall acknowledge in the bidding documents they are Equal Employment Opportunity employers.~~

~~(c) The State of Oklahoma adheres to a policy which provides a drug free workplace to all of its employees. All contractors working on a state facility shall comply with the policies of the state agency controlling that facility.~~

580:20-1-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Alternate bid"** (or **"Alternate"**) means an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.~~

~~**"Base bid"** means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.~~

~~**"Bid"** means the cost proposal submitted by a construction firm in response to a request or solicitation for bids from the Division for a construction project described in plans and/or specifications provided by the State.~~

~~**"Claim"** means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.~~

~~**"Consultant"** means an *individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Department"** means the Department of Central Services.~~

~~**"Director"** means the Director of the Department of Central Services.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.~~

580:20-1-3. Bid solicitations [REVOKED]

~~The manner in which bids are solicited shall be determined by the estimated cost of the project. There are three categories, projects over the amount established by statute in 61 O.S., Section 102(6), projects under the statutory amount and minor maintenance or repair projects exempt from bidding pursuant to 61 O.S., Section 103.C.~~

~~(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section 102(6) are advertised in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of the said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Information is also provided to various bid assistance centers and to trade publications such as the Dodge Report and Southwest Construction News. The State does not control how the trade publications handle the publishing of the information. For state agencies subject to the Public Building Construction and Planning Act (61 O.S.~~

~~Section 202-209), projects are advertised and awarded by the Division.~~

~~(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section 102(6) are not usually advertised. The state agency shall develop a written, clearly defined scope of work and detailed requirements for the project. For state agencies subject to the Public Building Construction and Planning Act (61 O.S. Section 202-209), the Construction and Properties Administrator shall assess the ability of a state agency to prepare a bid package and solicit for bids under the statutory amount. [61 O.S., Section 209(3)] The state agency may adopt written procedures developed by the Division or internal procedures approved by the Administrator. The written procedures for soliciting bids shall include:~~

~~(A) Direct mail or facsimile solicitations are made by the state agency to three or more contractors whose place of business is preferably located in the general vicinity of the proposed construction.~~

~~(B) The state agency shall use procedures, forms and contracts developed by the Division.~~

~~(3) **Minor Maintenance or Repair.** Small projects below the amount stipulated in 61 O.S., Section 103.C. may be awarded by the state agency to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.~~

~~(4) **Emergency Projects.** When an emergency situation is declared to exist by the chief administrative officer or governing body of a state agency, the Division may award a contract without competitive bids to correct the emergency condition.~~

580:20-1-4. Bid documents [REVOKED]

~~(a) **Solicitation notice.** [61 O.S., Section 105] The solicitation notice shall contain:~~

~~(1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.~~

~~(2) The location where a complete set of bidding documents may be obtained.~~

~~(3) The date and time for the MANDATORY site visit, if required. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.~~

~~(4) The location and time for the pre-bid conference if one is to be held. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.~~

~~(5) The date, time and place of the opening of bids.~~

~~(6) The name and address to whom the sealed bids must be submitted.~~

~~(7) If applicable, any pre-qualification requirements.~~

~~(8) Other information deemed of benefit to the public or prospective bidders.~~

~~(b) **Bidding documents.** At least twenty days prior to the bid opening, a complete set of bidding documents shall be available for purchase, by check or money order, to prospective bidders at the location shown in the bid notice. The Division will require a reasonable deposit for each such set which shall be nonrefundable and so stated in the notice for bids.~~

~~(c) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the Division to all bidders of record.~~

580:20-1-5. Bid submittal [REVOKED]

~~(a) **Advertised projects.** Bids must be prepared on forms provided by the Division and in accordance with the instructions provided in the bid package. Instructions on obtaining the bid packages are in the solicitation notices. Bids cannot be submitted by telephone or fax machine or telegram. Bids may be delivered in person, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents. [61 O.S., Section 109] The following information must be placed on the outside of each sealed bid envelope:~~

~~(1) Company name and address.~~

~~(2) Description of project.~~

~~(3) Department of Central Services number of project.~~

~~(4) Closing date and time.~~

~~(b) **Bid envelopes.** Each envelope shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The time is determined by the stamp clock on the desk of the Division receptionist where all bids must be received and stamped. The State cannot be responsible for delay of receipt of bids due to factors beyond the control of state employees.~~

~~(c) **Direct mail, facsimile or telephone solicitations.** On projects under the statutory amount, written bids shall be received as indicated in the solicitation by telephone, facsimile or as indicated in the direct mailing according to Subsection 1-3. Before a construction contract shall be awarded by the Division, the state agency shall provide:~~

~~(1) A properly signed requisition form.~~

~~(2) Three or more original written bids, including any declined bids, signed by the bidders.~~

~~(3) Scope of work with detailed requirements.~~

~~(4) Acceptance letter to award the contract.~~

~~(d) **Equal opportunity employment requirements.** The State of Oklahoma is an Equal Opportunity Employer.~~

580:20-1-6. Modifications/withdrawal of bids [REVOKED]

~~(a) **Withdrawal of bids.** Bids may be modified or withdrawn up to the time set for bid opening. Modification notices~~

~~or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented to the Administrator or his authorized representative. A bid to be withdrawn shall not be opened and shall be returned at the conclusion of the bid opening.~~

~~(b) **Bid modifications.** A sealed bid modification shall be submitted by registered mail or delivered in person. The modification must state the amount of change, either additive or deductive, from the previously submitted sealed bid and shall not reveal the actual, new, modified bid amount. Upon acceptance of a bid modification, the Administrator or his authorized representative shall open the original bid, then open the sealed modification, add or subtract to compute the new bid amount, and publicly announce the resultant legal bid. The same bid modification procedures shall be used to submit, compute and announce any other modified bid items such as days to complete the work or unit prices. Any submission of a bid modification by fax or otherwise not in a sealed condition shall be considered an exposed bid and shall disqualify the bidder.~~

580:20-1-7. Bid openings [REVOKED]

~~(a) The public is invited to all bid openings which are held as specified in the solicitation notice. The bids are opened by the Administrator or his designee in the following manner and recorded by an assistant. Bids may be examined by the public after the bid opening on request to the Administrator. [61 O.S., Section 110]~~

~~(1) The bidder's name and city are announced.~~

~~(2) The bid is checked for completeness and correctness. Any of these deficiencies shall be grounds for disqualifying the bid:~~

~~(A) Addenda must be acknowledged. This may be waived in those cases where the addenda has no direct effect on the proposal cost.~~

~~(B) The bid must be signed.~~

~~(C) The affidavits required by the bid documents must be present, signed and properly notarized. [61 O.S., Section 108]~~

~~(D) If the total bid including alternates exceeds the amount specified in 61 O.S., Section 107, a certified check, cashier's check, bid bond or bid letter of credit for 5% of the base bid price and the price of all alternate bids must be present. [61 O.S., Section 107]~~

~~(E) All equipment lists, selected materials, or other information when required by the specifications must be present.~~

~~(F) The price is read aloud.~~

~~(b) Projects for which only a single bid is received shall not be opened until the state agency has been notified and permission has been received from the state agency to open the single bid.~~

580:20-1-8.1. Prequalification of bidders [REVOKED]

~~(a) **Scope.** The Division may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify prior to submitting bids on a public construction contract to determine the responsibility of bidders.~~

~~(b) **Notice.** The solicitation notice for specific projects described in 580:20-1-4 (a), shall contain the requirements for prequalification, if any, and the availability of forms to be submitted to the Division.~~

~~(c) **Prequalification Form.** When indicated on the solicitation notice, prospective bidders, general contractors, subcontractors and material suppliers must submit a prequalification form, prescribed by the Administrator, to the Division which may include the following information:~~

~~(1) Company organization type;~~

~~(2) Type of work or classification of work;~~

~~(3) Organization information;~~

~~(4) Licensing and registration information;~~

~~(5) Experience on current projects;~~

~~(6) Experience on projects completed within last five years;~~

~~(7) Experience of key personnel;~~

~~(8) Specialized experience for specific building types, subsystems or materials;~~

~~(9) References from construction trades, bank and surety company;~~

~~(10) Current financial statement, which according to statute shall remain confidential;~~

~~(11) Any other business information that will enable the Division to evaluate the responsibility of prospective bidders.~~

~~(d) **Evaluation.** The Division shall evaluate the information contained in the prequalification form and designate the qualification status as:~~

~~(1) "Approved" for a firm that demonstrates verifiable experience and that has successfully completed contract work with the State; or,~~

~~(2) "Approved/Conditional" for a firm that demonstrates verifiable experience but does not have a record of contract work with the State; or~~

~~(3) "Unsatisfactory" for a firm that:~~

~~(A) Does not demonstrate verifiable experience;~~

~~(B) Does not demonstrate verifiable size and scope experience required for a specific project;~~

~~(C) Does not have a verifiable record of successfully completed contract work with the State;~~

~~(D) Has an unsatisfactory record of contract work for the State due to any of the following:~~

~~(i) Unsatisfactory performance evaluations on past projects;~~

~~(ii) Failure to complete a State construction contract;~~

~~(iii) Demonstrated history of noncompliance with plans and specifications;~~

~~(iv) Quality of past work does not meet minimum industry standards;~~

~~(v) Failure to complete work in the specified contract time;~~

~~(vi) Uncooperative and/or unprofessional work manner of the company owner(s) or key personnel;~~

~~(vii) History of assigning unsatisfactory personnel to projects;~~

~~(viii) Failure to coordinate and manage subcontracts; or~~

~~(ix) Failure to maintain and provide accurate documentation of project records.~~

~~(E) Financial information does not indicate financial ability to complete a State contract.~~

~~(4) "Incomplete Submittal" for submittals that:~~

~~(A) Are incomplete;~~

~~(B) Do not contain the information requested in the solicitation notice.~~

~~(e) **Required status prior to bid.** Bidders, general contractors, subcontractors and material suppliers shall have "Approved" or "Approved/Conditional" status prior to submitting a bid on a public construction contract when prequalification is required in the solicitation notice or if the Division requires prequalification on all public construction contracts.~~

~~(f) **Additional requirements.** The Division may request additional information from an existing prequalified company whenever a solicitation notice requires prequalification for specific experience for specific project types, subsystems or materials.~~

~~(g) **Due date.** If prequalification is required, prequalification forms shall be due by the date stated on the solicitation notice. The Administrator may elect to accept prequalification forms annually according to a written public procedure in order to eliminate duplicate submission for each individual project.~~

580:20-1-8.2. Prequalification of insurance carriers, bonding companies and surety companies [REVOKED]

~~(a) Pursuant to 61 O.S., Section 204A.(11), the Division shall prequalify as good and sufficient insurance carriers, bonding companies and surety companies using the following criteria:~~

~~(1) The insurance carrier, bonding company or surety company must be licensed to do business in the State of Oklahoma pursuant to 61 O.S., Section 134.~~

~~(2) The insurance carrier, bonding company or surety company must have prior experience with insuring or bonding construction projects within the State of Oklahoma.~~

~~(3) The insurance carrier, bonding company or surety company cannot have been deemed in default by the State of Oklahoma in connection with prior construction insurance or bonds on State construction projects.~~

~~(4) The insurance carrier, bonding company or surety company shall not have a prior history of committing the following unfair claims settlement practices:~~

~~(A) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims or demands submitted in which liability has become reasonably clear.~~

~~(B) Compelling claimants or obligees, without just cause, to institute suits to recover amounts due under the insurance policy, insurance contract or bond by offering substantially less than the amounts ultimately recovered in suits brought by them or refusing to make an offer, when such claimants or obligees have made claims for amounts reasonably similar to the amounts ultimately recovered.~~

~~(C) Failing to fully disclose to claimants or obligees benefits, coverages, or other provisions of any insurance policy, insurance contract or bond, when such benefits, coverages or other provisions are pertinent to a claim.~~

~~(D) Knowingly misrepresenting to claimants or obligees pertinent facts, policy or bond provisions relating to the coverages at issue.~~

~~(E) Failing to adopt and implement reasonable standards for prompt investigations of claims or demands on bonds arising under its insurance policy, insurance contract or bonds.~~

~~(F) Except where there is a time limit specified in the policy or bond, making statements, written or otherwise, which require a claimant or obligee to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's or bonding company's rights.~~

~~(G) Requesting a claimant or obligee to sign a release that extends beyond the subject matter that gave rise to the claim or demand payment.~~

~~(H) Failing to promptly pay claims that have no reasonably apparent defect or impropriety.~~

~~(I) Failing to notify the insured or obligee in writing within 30 calendar days of receipt of claim or demand that the claim is defective and/or lacks substantiating documentation, providing the insured or obligee reasons or basis for the determination.~~

~~(J) Issuing checks or drafts in partial settlement of a claim or demand with language which releases an insurer, surety company, or bonding company from its total liability.~~

~~(K) Colluding in any way with other parties to a construction claim or dispute in an effort to jointly steer a decision against the State, including but not limited to sharing legal counsel with the Contractor.~~

~~(5) An insurance carrier that has received a notice to cease and desist from the Oklahoma Insurance Department within the previous five years shall not be eligible.~~

~~(6) A bonding company shall demonstrate an "A" rating as determined by an insurance bond rating company acceptable to the Administrator.~~

~~(b) The Division may periodically, in its discretion, reevaluate an insurance carrier, bonding company or surety company utilizing the criteria established in this section.~~

~~(c) The Division may adjust or revoke the prequalification status of an insurance carrier, bonding company or surety company if a reevaluation determines the company fails to meet criteria established in this section.~~

580:20-1-9. Bid review and evaluation [REVOKED]

~~(a) At the conclusion of the bid opening, the bid tabulation is forwarded to the state agency for review and evaluation, concurrently with the review and evaluation by the Division. The following items are reviewed:~~

~~(1) **Surety companies.** Surety companies used to issue bonds must be registered to do business in Oklahoma and prequalified as good and sufficient by the Division pursuant to 580:20-1-8.2. When a bid bond is required and the bond submitted is from a company not registered in Oklahoma or prequalified by the Division as good and sufficient, the bid shall be disqualified. [61 O.S., Section 134 and Section 204(A)(11)]~~

~~(2) **Verification of bid contents.**~~

~~(A) Extensions on unit price calculations shall be checked. In case of an error, the unit price shall govern.~~

~~(B) When there is a variance between the amount in words and the figures, the amount in words shall govern.~~

~~(C) Bid forms containing omissions, alteration of form, additions, or conditions not called for, or containing a clause in which the bidder reserves the right to accept or reject a contract, shall be disqualified.~~

~~(D) The Division may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work; and, if there is reasonable doubt that the bid will result in the lowest overall cost to the Owner even though it may be the low evaluated bid; or, if it is so unbalanced as to be tantamount to allowing an advance payment.~~

~~(E) Failure to submit unit prices for any requested work item shall cause the bid to be disqualified.~~

~~(b) Before a contract may be awarded to a bidder, the bidder's ability to perform the required work is considered. [61 O.S., Section 118] Any of the following may be grounds for disqualifying the bidder.~~

~~(1) More than one bid for the same work from an individual, firm, partnership, joint venture or corporation under the same or different names.~~

~~(2) Evidence of collusion among bidders, subcontractors or material suppliers. [61 O.S., Section 115]~~

~~(3) Lack of responsibility as shown by past work for the State of Oklahoma judged from the standpoint of workmanship and progress.~~

~~(4) Uncompleted work under any contract with the State of Oklahoma or any party which might hinder or prevent the prompt completion of the contract, if awarded.~~

~~(5) For being in arrears on existing contracts with the State of Oklahoma or having defaulted on a previous contract or failure to comply with any other just and reasonable cause.~~

~~(6) Certificate by the Oklahoma Human Rights Commission that the bidder has engaged or is engaging in a discriminatory practice as defined in 25 O.S., Section 1505 or Section 1604.~~

~~(7) Any violation of 580:20-1 or other information indicating that the bidder is no longer responsible nor qualified to do business with the State.~~

~~(c) The review/evaluation shall be completed within the amount of time specified by 61 O.S., Section 111 after the bid opening.~~

~~(d) Decisions leading to the contract award may be appealed in writing within five working days of notice of the decision to the Director, Department of Central Services.~~

580:20-1-10. Contract award [REVOKED]

~~(a) Bids are awarded to the lowest responsible bidder as determined by the review of the bids pursuant to 580:20-1-9. Approximately 15 to 20 days after the bid opening, the successful bidder shall be notified by the Division of his selection and shall be provided copies of the contract to execute. The contractor shall be given a specific period of time, not to exceed sixty days, in which to execute the contract and obtain the necessary bonds and insurance. [61 O.S., Section 113(A)]~~

~~(b) The notice to proceed, or WORK ORDER, shall not be issued until the contract has been executed by all parties. Work shall not commence until the WORK ORDER has been received by the contractor.~~

~~(c) Projects over the amount set in 61 O.S., Section 113(B) require three bonds. The bonds shall be prepared on the forms provided by the Division. All bonds required by Title 61 shall be provided by insurance carriers, bonding companies or surety companies that are prequalified by the Division as good and sufficient in accordance with criteria established in 580:20-1-8.2(a). [61 O.S., Section 204A(11)~~

~~(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material and repair of and parts for equipment as are used and consumed in the performance of the contract.~~

~~(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against defective workmanship and materials for a period of one year after acceptance of the project.~~

~~(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against claims or liens from subcontractors or suppliers for services or materials used in the project.~~

~~(d) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed in (c) of this Section. Each letter of credit must be for the total value of the contract. All letters of credit must be executed on forms prescribed by the Administrator.~~

~~(e) **Insurance.**~~

~~(1) Public liability insurance of not less than $100/300,000, property damage insurance of not less than $50/100,000 and workers' compensation insurance during construction are required for all projects, regardless of project size.~~

~~(2) Proof of workers' compensation insurance shall be required for all projects exceeding the amount stated in 61 O.S., Section 113(B). The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.~~

~~(3) For projects less than the amount stated in 61 O.S., Section 113(B), a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance. The sworn affidavit shall be executed on a form prescribed by the Administrator.~~

~~(f) **Additional insurance.** Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.~~

580:20-1-10.1. Bid protests [REVOKED]

~~A bidder may protest a contract award by a state agency or the Construction and Properties Division to the State Construction Administrator. All remedies available to bidders through the sealed bid process pursuant to the Public Building Construction and Planning Act or the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.~~

~~(1) **Bidder notification.** A bidder shall submit written notice to the Administrator of a protest of an award of contract by a state agency or the Division within ten (10) business days of contract award. The protest notice shall state bidder facts and reasons for protest.~~

~~(2) State Construction Administrator **review and determination.** The Administrator shall review the bidder's protest and contract award documents. Written notice of the decision by the Administrator to sustain or deny the protest will be sent to the bidder within ten (10) business days of receipt of the protest.~~

~~(3) **Bidder appeal of State Construction Administrator denial.** The bidder may appeal a denial of protest by the State Construction Administrator to the Director of Central Services. The bidder shall file a written appeal within ten (10) business days of the date of the Administrator's notice of denial pursuant to 75 O.S., Section 309 et seq.~~

~~(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the bidder's appeal to an administrative law judge the Department retains.~~

~~(A) If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.~~

~~(B) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.~~

~~(C) The Director shall send written notice of the decision to sustain or deny final order sustaining or denying the contractor's appeal to the contractor parties.~~

~~(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:~~

~~(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the bidder in its initial protest to the State Construction Administrator.~~

~~(B) **Burden of proof.** The burden of proof shall be upon the bidder, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.~~

~~(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.~~

~~(D) **Proper parties.** In addition to the bidder protesting the contract award and the Department of Central Services, the bidder awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.~~

~~(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.~~

~~(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:~~

~~(i) Establish a scheduling order;~~

~~(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;~~

~~(iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;~~

~~(iv) Require briefing of any or all issues;~~

~~(v) Conduct hearings;~~

~~(vi) Rule on the admissibility of all evidence;~~

~~(vii) Question witnesses; and~~

~~(viii) Make proposed findings of facts and conclusions of law to the Director.~~

~~(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the bidder's appeal or that the contract award be cancelled and rebid.~~

~~(6) **Contractor appeal of Director denial.** If the Director denies a bidder's appeal, the bidder may appeal pursuant to provisions of 75 O.S., Section 309 et seq.~~

580:20-1-11. Pre-construction conference [REVOKED]

~~Shortly after award of a contract, the design consultant or agency may schedule a pre-construction conference. This meeting shall include the design consultant, general contractor, agency representative, a representative from the Construction and Properties Division and other interested parties. The Division representative shall chair the meeting. The purpose of the meeting shall be to discuss the requirements and responsibilities of the various parties involved with the objective of expeditious handling of the construction contract.~~

580:20-1-12. Construction conferences [REVOKED]

~~(a) A construction conference may be called periodically by the design consultant or state agency which shall include essential information as follows:~~

~~(1) Project progress as it relates to schedule.~~
~~(2) Payment requests and their status.~~
~~(3) Change order requests and their status.~~
~~(4) Special problems and remedial action required.~~
~~(5) Results of previous remedial action.~~
~~(6) Other subjects as required.~~

~~(b) The meeting shall be chaired by the design consultant or state agency. Minutes of the meeting shall be kept, typed and distributed to all attendees within five (5) working days.~~

580:20-1-13. Payment requests [REVOKED]

~~(a) **Partial payments.** Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:~~

~~(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, using a format similar to the one found in the Application for Partial Payment form, and submitting it to the design consultant and the Division for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the design consultant.~~

~~(2) The contractor should meet with the design consultant when the rough draft of the pay request is prepared. Then all can agree on percentages of work completed prior to typing the final form. The contractor should furnish the design consultant with five copies of the pay request and all supporting documents.~~

~~(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable. If the contractor deems it necessary, and it is recommended by both the design consultant and Department of Central Services representative, the contractor may store material off-site if there is a written agreement between the owner and the contractor. This agreement must provide the following:~~

~~(A) Proof of applicable insurance.~~
~~(B) A written guarantee of delivery to the job site.~~
~~(C) A written title to all materials covered by the request for payment, which shall pass to the owner.~~
~~(D) An on-site inspection of facilities by the design consultant to verify the authenticity of quantities of stored materials with the contractor responsible for reimbursing the design consultant for all incurred expenses resulting from each inspection.~~

~~(4) All pay requests are submitted to the Division.~~
~~(5) All partial payments are subject to retainage as specified in 61 O.S., Section 113.1.~~

~~(b) **Final pay request.** The Certificate of Contract Completion, Consent of Surety, Lien Release and the Contractor's Warranties must be submitted with the final request for pay to the state agency.~~

580:20-1-14. Change orders [REVOKED]

~~(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the design consultant shall issue a Proposal Request to the contractor. The Proposal Request shall be completed by the contractor and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. The design consultant shall transmit the completed Proposal Request through the using agency to the Construction and Properties Division of the Department of Central Services. The change in work scope described in the Proposal Request is not authorized until it has been incorporated into a Change Order and issued by the Construction and Properties Division of the Department of Central Services. [61 O.S., Section 121]~~

~~(b) When the proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order using the form prescribed by the Division. All information required on the form shall be included. The completed Change order form shall be routed to the Consultant and using Agency for signature, and then to the Division for approval and signature.~~

~~(c) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in subsection (a) of this Section is not required.~~

~~(d) Projects under the statutory amount and not advertised according to 580:20-1-3(1), that are awarded on a unit price or basis cannot exceed the statutory amount with cumulative change orders without advertising for bids on that part of the contract.~~

580:20-1-15. Time extensions [REVOKED]

~~The contract documents shall contain the basis upon which time extensions may be granted. Substantiating data must be submitted with the requests for extensions. Such time extensions, if justified, shall be granted by Change Order only. It is important that written notices of delay be submitted to the design consultant within twenty days of the delay. Time extensions for changes in the work must be included on the Change Order form authorizing such change.~~

580:20-1-16. Substantial completion inspection [REVOKED]

~~(a) This inspection is to be requested by the contractor after he has determined that the project is substantially complete. Substantial completion is defined as the construction is sufficiently completed in accordance with the plans and specifications, as modified by any authorized changes, so that the owner can occupy the building and/or use the facility for its intended use. [61 O.S., Section 124]~~

~~(b) After receipt of a list of items to be completed or corrected from the contractor, the inspection is to be scheduled by the design consultant who shall send out written notification inviting the using state agency, the Construction and Properties Division and other interested persons to attend. After the inspection, the Certificate of Substantial Completion Form with punch list shall be prepared by the design consultant. A time limit to complete the punch list of deficiencies shall be determined by the Contractor and approved by the Consultant and the Owner. Five copies of the form shall be provided to the Division for signature.~~

580:20-1-18. Final inspection [REVOKED]

~~This inspection shall occur upon completion of construction and when requested by the contractor after he determines the project is finally complete and all punch list items have been completed. The design consultant shall send out formal notification inviting the using state agency, the Construction and Properties Division and other interested parties to attend. [61 O.S., Section 124]~~

580:20-1-19. Contract completion [REVOKED]

~~A Certificate of Contract Completion shall be prepared by the design consultant using the form prescribed by the Division. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the design consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the design consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, receipts for keys given to the using agency, warranties, and all other requirements of the contract shall have been submitted to the design consultant with signed receipts from the using agency for the items received by them, before final payment is made.~~

580:20-1-20. Termination of unperformed contracts [REVOKED]

~~Any contract under which no work has been performed or no formal claim or litigation has been pending within a period of twenty-four months shall be terminated by the agency. After termination, any amount owed to the contractor shall be determined and payment made. This shall release the agency from further liability to the contractor or surety company. If the contractor cannot be located, the payment shall be held in the care of the State Treasurer for the contractor for a period not to exceed thirty-six months at which time the payment shall be deposited in the General Revenue Fund. This shall release the State from any further liability to the contractor or surety company. [61 O.S., Section 137]~~

580:20-1-22. Contractor appeals process [REVOKED]

~~(a) If a contractor's claim has not been resolved after consideration by the consultant in accordance with the General Conditions for Construction Contracts, the claim shall be submitted in writing to the owner. The owner will render to the parties the owner's written decision relative to the claim, including any change in the contract sum or contract time or both within ten (10) calendar days.~~

~~(b) The contractor may appeal the owner's decision by submitting written notice of a protest to the Director of Central Services within ten (10) calendar days of receiving the owner's decision.~~

~~(c) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.~~

~~(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the appeal for legal authority and jurisdiction.~~

~~(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.~~

~~(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.~~

~~(d) The Director shall send written notice to the contractor of the final decision sustaining or denying the contractor's appeal.~~

~~(e) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:~~

~~(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.~~

~~(2) The burden of proof shall be upon the contractor, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.~~

~~(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.~~

~~(4) In addition to the contractor and the Department of Central Services, the contractor awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.~~

~~(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.~~

~~(6) The Administrative Law Judge may:~~

~~(A) Establish a scheduling order;~~

~~(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;~~

~~(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;~~

~~(D) Require briefing of any or all issues;~~

~~(E) Conduct hearings;~~

~~(F) Rule on the admissibility of all evidence;~~

~~(G) Question witnesses; and~~

~~(H) Make proposed findings of fact and conclusions of law to the Director.~~

~~(7) The Administrative Law Judge may recommend that the Director deny the contactor's appeal or that the contract award be cancelled and rebid~~

~~(f) If the Director denies a contractor's appeal, the contractor may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.~~

580:20-1-23. Consultant appeals process [REVOKED]

~~(a) The owner and consultant shall endeavor to resolve claims, disputes and other matters in question between them by participating in a meeting to obtain a mutual agreement. If an agreement cannot be attained, the consultant may appeal by submitting written notice of a protest to the Director of Central Services within twenty-one (21) days of the settlement meeting immediately preceding the protest.~~

~~(b) The Director will review the protest and determine to hear the appeal or assign the appeal to an administrative law judge the Department retains.~~

~~(1) If the appeal is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction.~~

~~(2) If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing in accordance with the Administrative Procedures Act, 75 O.S. Section 309 et seq., and provide proposed findings of fact and conclusions of law to the Director.~~

~~(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.~~

~~(c) The Director shall send written notice to the consultant of the final order sustaining or denying the consultant's appeal.~~

~~(d) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:~~

~~(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.~~

~~(2) The burden of proof shall be upon the consultant, who must prove his case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.~~

~~(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.~~

~~(4) In addition to the contractor and the Department of Central Services, the consultant awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.~~

~~(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.~~

~~(6) The Administrative Law Judge may:~~

~~(A) Establish a scheduling order;~~

~~(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;~~

~~(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;~~

~~(D) Require briefing of any or all issues;~~

~~(E) Conduct hearings;~~

~~(F) Rule on the admissibility of all evidence;~~

~~(G) Question witnesses; and~~

~~(H) Make proposed findings of fact and conclusions of law to the Director.~~

~~(7) The Administrative Law Judge may recommend that the Director deny the consultant's appeal or that the contract award be cancelled and rebid.~~

~~(e) If the Director denies a consultant's appeal, the consultant may appeal pursuant to provisions of 75 O.S., Section 309 et seq. of the Administrative Procedures Act.~~

580:20-1-24. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 3. SELECTION OF ARCHITECTS, ENGINEERS, AND OTHER DESIGN CONSULTANTS [REVOKED]

580:20-3-1. Purpose [REVOKED]

~~The purpose of these rules are to provide information to consultant firms desiring to do business with the State of Oklahoma. It is also to serve as a guide to agencies and political subdivisions of the State of Oklahoma in the selection of architects, engineers, and other design consultants for the purpose of providing design documents for the construction or renovation of state facilities. These procedures implement the provisions 61 O.S., Sections 60 through 65, titled "State Consultants".~~

580:20-3-2. Definitions [REVOKED]

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

~~"**Consultant**" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~"**Division**" means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.~~

~~"**Fixed fee**" means the type of fee to a consultant which is expressed as a firm, fixed amount, for the services specified in the scope of work. This fee is not determined by the amount of a construction contract.~~

~~"**Interview committee**" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available.~~

~~"**Percentage fee**" means a fee to be paid a consultant which is based upon a negotiated percentage of the resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.~~

~~"**Program**" means the detailed description of the work scope of the design services. This program is written by the state agency, or may be developed by the consultant as part of his contract.~~

~~"**Screening committee**" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available.~~

~~"**Selection criteria**" means a listing of the considerations and requirements used to evaluate each prospective consultant.~~

~~"**Short list**" means a listing of consultants chosen during the screening process for detailed interview. This list shall contain no less than three nor more than five consultants for a single project. If the process is selecting for more than one consultant contract, there should be two consultants on the short list for every planned project.~~

~~"**State agency**" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.~~

580:20-3-3. Registration of consultants [REVOKED]

~~(a) All consultants desiring to perform services for the State of Oklahoma must register with the Division by requesting and completing a Consultant Registration Questionnaire (DCS/CAP Form 254) prescribed by the Administrator and submitting it to the Division. [61 O.S., Section 62] The Consultant Registration Questionnaire can be found on the Division's website or may be obtained by calling or writing the Division.~~

~~(b) The Administrator shall review a Consultant Registration Questionnaire submitted to the Division, determine whether the consultant qualifies for registration and notify the consultant of its registration status within twenty (20) days.~~

~~(c) Registrations are valid for one year from the date of receipt by the Division.~~

~~(d) Consultants shall not be solicited for projects with the State until the date the Consultant Registration Questionnaire is received by the Division. A consultant may register with the Division any time prior to the deadline for project consideration.~~

580:20-3-4. Selection procedure [REVOKED]

~~(a) **Define project.** The state agency shall develop a description of the project which shall include: [61 O.S., Section 62(C)]~~

~~(1) A narrative description of the work being planned.~~

~~(2) The estimated cost and time schedule of the project.~~

~~(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.~~

~~(4) Any other pertinent data which would assist a consultant in determining his interest in the project.~~

~~(b) **Request list of consultants.** The state agency shall forward a request to the Division for a listing of consultants currently listed with the Division in the form of a letter which includes the description of the project developed in (a) of this Section. A draft of the solicitation letter described in (c) of this Section shall also be included with a request for a list of consultants. The Division shall review the request and solicitation letter and if approved, shall print the list and/or one set of mailing labels and return them to the state agency.~~

~~(c) **Announce project.** The state agency shall send the approved solicitation letter to each consultant on the list which includes the description developed in (a) of this Section and shall notify them of the last day their letters may be received to be considered. Any consultant not registered with the Division at the time the list is prepared, may register with the Division pursuant to this Section and submit a letter of interest to the state agency. The Consultant Registration Questionnaire (DCS/CAP Form 254) must be received by the Division at least six (6) business days, excluding state holidays, prior to the solicitation deadline, to allow the Administrator time to evaluate and complete the review process. If the registration form requires revisions and resubmission, the Division is under no further obligation to process and approve a consultant's~~

~~registration within the six-day time period. [61 O.S., Section 62(C)]~~

~~(d) **Request and review files.** The state agency shall send a list of consultants that indicated interest in being considered for the announced project(s) to the Division. The Division then assembles and transmits to the state agency a copy of the information on file for each consultant on the list. [61 O.S., Section 62(D)]~~

~~(e) **Screen the files to select the "short list".** The chief administrative officer or governing board of the state agency shall designate a screening committee of three or more persons to select the three to five best qualified consultants based upon the data in the files supplied by the Division and other information that may be supplied by the consultants. The screening committee should include licensed architects or engineers if they are available. If the selection is for more than one consultant contract, at least two consultants for each project should be included in the short list. The selection criteria is listed in 580:20-3-6. [61 O.S., Section 62(E)]~~

~~(f) **Scheduling and performing interviews.**~~

~~(1) The chief administrative officer or governing board of the state agency shall designate an interview committee. All members of the interview committee shall participate in all interviews of each consultant.~~

~~(2) An evaluation criteria list shall be developed to insure that all interviews are conducted identically. The interview committee should consider the criteria listed in 580:20-3-7.~~

~~(3) Each consultant should be notified by letter informing him that he has been selected for interview. The letter should contain:~~

~~(A) Date, time and place of interview. Interviews should be scheduled individually for each consultant.~~

~~(B) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.~~

~~(C) A copy of the interview criteria.~~

~~(D) Names of the interview committee members.~~

~~(E) The letter should contain any other information which shall help the committee to obtain information needed for them to properly evaluate the consultant.~~

~~(F) Oklahoma Statutes prohibit the requesting of any information on fees. Any consultant who discloses its fee, or any indication thereof, prior to subsection (j) of this Section, Negotiation of Contract, shall be removed from the request list or short list and receive no further consideration for the project. Consultants must be selected on the basis of qualifications and not on a bid basis.~~

~~(4) The interviews are conducted privately with each consultant out of the hearing of other consultants.~~

~~(5) At the conclusion of all interviews, the committee shall then rate each consultant in a manner as to recommend to the state agency the relative ranking of each consultant. This document does not attempt to designate the exact procedure the committee shall use to make their selections. All criteria and procedures used by the committee shall be documented for the record.~~

~~(g) **Forwarding of recommendations.** The recommendations are forwarded to the state agency for the final selection.~~

~~(h) **Preparation of report to the Division.**~~

~~(1) The state agency shall prepare a chronological report detailing the steps in the procedure actually followed by the state agency in making its selection. This report shall include the criteria used in the screening process as well as the interviews and the ratings of all firms considered. A copy of the approved minutes of any board action affecting the selection process shall be included.~~

~~(2) The report is submitted to the Division for the independent review of the entire process. Upon approval of the report by the Division, the state agency shall be notified that fee negotiations with the first ranked firm may begin.~~

~~(i) **Negotiation of Contract.**~~

~~(1) The negotiation of fees is the first time a discussion of costs is permitted. There are no defined procedures for negotiating. The Division shall usually open negotiations by designating a negotiator and by defining the detailed scope of work and forwarding that scope to the consultant in a letter formally requesting the cost proposal. The letter should require a detailed breakdown of costs to enable the Division to understand the cost items and have a basis for negotiation. The consultant should also be provided a copy of the proposed contract format. Copies of the approved contract formats may be obtained from the Division.~~

~~(2) The consultant shall develop his fee proposal and return it to the Division. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed fifteen per cent (15%). The Administrator may establish a standard format for estimating and itemizing the costs submitted with a fee proposal.~~

~~(3) The Division shall then set up a meeting to negotiate and agree to the fee, or may authorize the state agency to begin fee discussions. The fee is expressed as a firm fixed price fee according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. The choice is up to the Division. Attached as Appendix A is a table which may be used as an aid in evaluating a fee proposal. After a fee has been determined, the consultant is asked to modify the proposal to reflect the agreed upon scope of work and fee. This modified proposal shall become part of the contract. [61 O.S., Section 62(G)]~~

~~(4) The state agency then forwards an agency requisition to the Division.~~

~~(j) **Award of contract.**~~

~~(1) The contract is processed for award by the Division. After the contracts have been signed by all parties, copies shall be provided to the state agency and the consultant.~~

~~(2) Changes to the consultant's base contract may be approved by the Administrator as long as the scope of~~

~~the change is generally included within the scope of work developed in (1) of this subsection for which the consultant selection process was conducted. Changes may be requested by the state agency in writing to the Division and must reference the correct contract, and include the scope of the change, the fee for the change and the source of the funding for the change.~~

580:20-3-5. Consultant contracts [REVOKED]

~~(a) Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in contracts. Non-standard contracts for specialized projects may be proposed by the state agency and approved by the Administrator for use on a specific project.~~

~~(b) Phases of services may involve all or any of the following depending on the size and type of project:~~

~~(1) **Program planning.** Program planning may include the following:~~

~~(A) Space plan.~~

~~(B) Written and/or graphic program document as specified.~~

~~(C) Circulation allowances.~~

~~(D) Cost estimate.~~

~~(E) Specific additional features as required in the agencies request for proposal.~~

~~(2) **Schematic Design.** Schematic design may include the following:~~

~~(A) The line drawing and graphic representation of the floor plan, perspective drawings and site orientation of the project.~~

~~(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.~~

~~(C) Cost estimate.~~

~~(3) **Design Development.** A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:~~

~~(A) The site plan for parking, street and pedestrian access.~~

~~(B) Overall dimensions.~~

~~(C) Rooms and traffic circulation within the buildings.~~

~~(D) Types of materials.~~

~~(E) Building elevations.~~

~~(F) Building sections.~~

~~(G) Recommended structural systems.~~

~~(H) Recommended mechanical systems and equipment based upon life cycle studies.~~

~~(I) Cost estimate.~~

~~(4) **Construction Documents.** Construction documents may include those items necessary for a construction contractor to properly bid and construct the project. They include:~~

~~(A) Working drawings.~~

~~(B) Specifications.~~

~~(C) Project manuals.~~

~~(D) Any other item specifically required by the contract.~~

~~(E) Cost estimate.~~

~~(5) **Construction phase services.** The consultant may be required to perform specific construction phase services which include:~~

~~(A) Review and approval of shop drawings.~~

~~(B) Review and approval of pay requests.~~

~~(C) All standard contracts include a reference to construction monitoring which are periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant and sub-consultants to the construction site to determine that the contractor is following the intent of the construction contract documents. When more frequent monitoring is needed, the Division shall include this in the criteria package and negotiate this increased cost service.~~

~~(D) The primary responsibility for the administration of the construction contract lies with the consultant.~~

580:20-3-6. Screening criteria [REVOKED]

~~(a) The screening process is the examination of each consultant that has indicated interest in the project proposed by the state agency. Files on each consultant are provided by the Division for this purpose. Prior to beginning the review, a specific list of criteria must be developed and should include, but not be limited to the following:~~

~~(1) Specialized experience related to the proposed project.~~

~~(2) Similar experience on comparable projects.~~

~~(3) Technical qualifications of the design team.~~

~~(b) State agencies shall use the Consultant Screening Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator.~~

~~(c) A screening evaluation sheet should be prepared listing each consultant considered with a rating for each criteria listed as in the Consultant Screening Evaluation Form. After all consultants are evaluated, the ratings are compared and the top three to five consultants are identified for interview. If multiple projects are being considered, two consultants for each project are selected for interview. [61 O.S., Section 62(E)]~~

~~(d) A copy of the evaluation sheets shall be included in the report to the Division.~~

580:20-3-7. Interview criteria [REVOKED]

~~(a) The interview is the most important step in the selection process. Each consultant must be evaluated against a clearly established list of criteria which is provided to the consultant within seven days in advance of the interview. State agencies shall use the Consultant Interview Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator. Information should be sought during the interview which shall answer these questions:~~

~~(1) How will the consultant staff the proposed project?~~

~~(2) What is the consultant's proposed management plan?~~

~~(3) What is their previous experience for this project?~~

~~(4) Where are they located? How will they reduce travel costs if they are not close to the proposed project?~~

~~(5) What are their plans for project control?~~

~~(6) What is their proposed approach to the design of this project?~~

~~(7) What are examples of the similar projects they have completed?~~

~~(8) What are their experiences in value engineering, life cycle costs analyses, critical path method of scheduling, energy conservation, new energy resources, environmental assessments or other specialized experience, if required?~~

~~(9) Has a judgement been paid by the consultant or on their behalf for liability caused by professional errors and/or omissions in the past five years?~~

~~(10) Any other additional factors?~~

~~(b) Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 580:20-3-6.~~

~~(c) Copies of the completed evaluation sheets shall be included in the report to the Division.~~

580:20-3-8. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 5. MINIMUM CODES FOR STATE CONSTRUCTION [REVOKED]

580:20-5-1. Purpose; application [REVOKED]

~~To comply with the requirements of 61 O.S., Section 209, the following rules contained in 580:20-5 are promulgated by the Department of Central Services and shall apply to all facilities constructed for state use.~~

580:20-5-2. Definitions [REVOKED]

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

~~**"ADA"** means the Americans with Disabilities Act~~

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"ASHRAE"** means the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.~~

~~**"Code"** means the minimum building code or codes provided by this rule.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services, an agency of the State of Oklahoma.~~

~~**"Facility"** means any building or improvement to real property constructed for state use subject to the provisions of 61 O.S. This definition shall apply also to construction of real property that the state shall lease.~~

~~**"IES"** means the Illuminating Engineering Society.~~

~~**"NFPA"** means the National Fire Protection Association.~~

~~**"OSFM"** means the Oklahoma State Fire Marshal.~~

580:20-5-3. Construction requirements; reviews and permits [REVOKED]

~~(a) Each facility shall be constructed or improved in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well-being for all occupants.~~

~~(b) Building construction and renovation will require formal code review and a building permit, unless otherwise determined by the Division. When required by the Division, construction plans and specifications shall be reviewed by the agency with applicable code jurisdiction according to policy prescribed by the Administrator.~~

~~(c) Plans and specifications for State construction projects shall be reviewed and approved by the OSFM, who shall issue a permit upon approval. When directed by the Division, said plans shall also be reviewed by the Risk Management Division of the Department of Central Services. No project shall be let for public bids until such prescribed reviews are concluded and a building permit is issued by OSFM. Fees for plan review and permits shall be paid from the agency project funds.~~

~~(d) When a State construction project requiring a permit from OSFM is located within a local code enforcement jurisdiction, the Division encourages obtaining an additional building permit from the local jurisdiction or arrangement of cooperative inspections. The Division, or it's agent, may invite a cooperative review between OSFM and the local jurisdiction and authorize payment for a local permit from the project funds.~~

580:20-5-4. Adopted codes [REVOKED]

~~(a) **Codes.** State construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated.~~

~~(b) **Additional Building Codes.** The division may require compliance with additional codes not currently adopted by OSFM, including but not limited to:~~

~~(1) International Energy Conservation Code, latest edition;~~

~~(2) Americans with Disabilities Act and related standards, latest edition.~~

580:20-5-5. Adopted standards [REVOKED]

~~The following standards are adopted by reference:~~

~~(1) **ASHRAE Standards.**~~

~~(A) Standard #55. Thermal and Environmental Conditions for Human Occupancy.~~

~~(B) Standard #62. Ventilation for Acceptable Indoor Air Quality.~~

~~(C) Standard #90.1 Energy Efficient Design of New Buildings.~~

~~(2) **ASME Standards**~~

~~(A) Standard A17.1. Safety Code for Elevators and Escalators~~

~~(B) Standard A17.3 Safety Code for Existing Elevators~~

~~(3) **IES Standards.** Illuminating Engineering Society Lighting Handbook Reference and Application Volumes.~~

580:20-5-6. Sources for codes and standards [REVOKED]

~~(a) A copy of all codes adopted by reference in this subchapter are on file and available for public inspection at the following address: Construction and Properties Division, Department of Central Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405) 521-2111.~~

~~(b) Listed below are sources for the codes and standards referred to in this Subchapter:~~

~~(1) International Code Council: 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401; Telephone: 1.703.931.4533~~

~~(2) NFPA: National Fire Protection Association, Batterymarch Park, Quincy, MA 02169~~

~~(3) ASHRAE: ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329~~

~~(4) ASME: 22 Law Drive, Box 2300, Fairfield, NJ 07007-2300~~

~~(5) IES: Illuminating Engineering Society, 345 East 47th Street, New York City, NY 10017~~

~~(6) Oklahoma State Fire Marshal, 2401 N.W. 23rd Street, Oklahoma City, OK 73107; www.firemar.state.ok.us~~

SUBCHAPTER 7. PROCEDURES FOR AGENCIES TO PERFORM RESPONSIBILITIES EXERCISED BY THE CONSTRUCTION AND PROPERTIES DIVISION [REVOKED]

580:20-7-1. Purpose [REVOKED]

~~The rules contained in this Subchapter are promulgated by the Department of Central Services to comply with the requirements of Section 209(3), Title 61, Oklahoma Statues and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.~~

580:20-7-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Architect"** means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.~~

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Director"** means the Director of the Department of Central Services.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Engineer"** means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, O.S.~~

~~**"Facility"** means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes.~~

~~**"FTE"** means a full-time equivalent personnel position authorized the state agency by current legislative authority.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.~~

580:20-7-3. Requirements of law; agency responsibility [REVOKED]

~~(a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.~~

~~(b) Delegations of the statutory requirements stated in Title 61 of the Oklahoma Statutes which are permitted by the rules contained in this subchapter shall be set forth in the documents granting the exception or delegation. The requirements of law are not lessened and the agency to which the delegation of authority is granted shall be wholly responsible for the required compliance.~~

~~(c) No delegation of authority may be granted for Sections 1 through 51, sections 101 through 136, and sections 151 through 157 of Title 61 of the Oklahoma Statutes.~~

580:20-7-4. Requesting services of consultants, architects, engineers, and land surveyors [REVOKED]

~~All agencies requesting the services of consultant architects or engineers or land surveyors are hereby delegated the following responsibilities of Section 62 as modified by Sections 208(A) and (B), Title 61:~~

~~(1) Provide all of the information required by Section 62(C), Title 61, Oklahoma Statutes.~~

~~(2) Prepare the letter of solicitation as required by Section 62(C).~~

~~(3) Receive the replies of interested consultants and submit a list of the interested parties to the Administrator.~~

~~(4) Conduct the selection as described in Section 62 (E) and (F).~~

~~(5) Submit a requisition to the Administrator from which the Division shall prepare and execute a contract.~~

580:20-7-5. Request for delegation of authority to agencies [REVOKED]

~~(a) Agencies wanting to perform the responsibilities of Title 61 Oklahoma Statutes assigned to the Department of Central Services must make a request in writing to the Director, Department of Central Services. Such request must contain all of the following information:~~

~~(1) Specific reference to the section and paragraph of Title 61 to be delegated to the state agency.~~

~~(2) Complete justification for the request. Effect on FTE, appropriations and state Agency mission should be included.~~

~~(3) Complete listing of engineers and architects available to the state agency to perform the duties for which delegation of authority is requested.~~

~~(4) Any additional information which shall assist the Director to properly evaluate the request.~~

~~(b) A request in 580:20-7-5(a) may be for either a limited or indefinite period. The request should indicate what period is being requested.~~

580:20-7-6. Evaluation of requests [REVOKED]

~~All requests made pursuant to 580:20-7-5 shall be evaluated according to the following criteria:~~

~~(1) There must be a significant advantage to the State for cost savings.~~

~~(2) The exception cannot require the use of non FTE personnel. Only existing FTEs may be considered.~~

~~(3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for temporary delegation of authority may be granted.~~

580:20-7-7. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 9. FULL-TIME EMPLOYMENT BY AGENCIES FOR MINOR CONSTRUCTION PROJECTS [REVOKED]

580:20-9-1. Purpose [REVOKED]

~~The rules contained in 580:20-9 are promulgated by the Department of Central Services to comply with the requirements of Section 209(1), Title 61, Oklahoma Statutes and shall apply to all agencies subject to the provisions of Title 61, Oklahoma Statutes.~~

580:20-9-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Architect"** means a person legally qualified to practice the profession of Architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.~~

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Director"** means the Director of the Department of Central Services.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Engineer"** means a person legally qualified to practice the profession of Engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, Oklahoma Statutes.~~

~~**"Facility"** means any building or improvement to real property constructed for State use subject to the provisions of Title 61, Oklahoma Statutes.~~

~~**"FTE"** means a full-time equivalent personnel position authorized the state agency by current legislative authority.~~

~~**"Minor Construction"** means any construction which does not require the person performing the construction to have an occupational license.~~

~~**"State Agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in O.S., Section 61.~~

580:20-9-3. General construction and licensing provisions; application of rules and law [REVOKED]

~~(a) Each facility shall be constructed, renovated or repaired in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well being for all occupants.~~

~~(b) Agencies to which authority is given to hire full-time employees for minor construction under this rule shall insure that all requirements of licensing, code compliance and construction administration shall conform to existing law and rules and regulations.~~

~~(c) Agencies which had full-time employees for the purpose of performing minor construction projects on the date of promulgation of this rule are exempted from requesting authority for those employees.~~

~~(d) Nothing in 580:20-9 shall replace the statutory procedures for obtaining FTE positions. The legislature in its appropriations bills control the authorized FTE positions.~~

580:20-9-4. Requests to hire employees for minor construction [REVOKED]

~~Agencies wanting to hire employees to perform minor construction projects shall make a request in writing to the Director, Department of Central Services. Such request must contain all of the following information:~~

~~(1) A complete description of the types of projects for which the authority is requested must be shown.~~

~~(2) Complete justification for the request must be included. Number and description of positions that shall be filled must be included. All positions must be identified by a position code assigned by the Office of Personnel Management.~~

~~(3) A complete listing of engineers, architects, and consultants available to the agency to perform the duties of code compliance and observation of the project for which the authority is requested must be included.~~

~~(4) Any additional information which shall assist the Director to properly evaluate the request.~~

580:20-9-5. Evaluation of requests [REVOKED]

~~All requests shall be evaluated according to the following criteria:~~

~~(1) There must be a significant advantage to the State for cost savings.~~

~~(2) The request, if granted, cannot require the use of non-FTE personnel. Existing FTEs only may be considered.~~

~~(3) If an emergency condition exists, as defined by Section 130, Title 61, Oklahoma Statutes, a request for authority may be approved if the emergency can only be remedied by using temporary employees.~~

SUBCHAPTER 11. LIFE CYCLE COSTING FOR STATE FACILITIES [REVOKED]

580:20-11-1. Purpose [REVOKED]

~~The Oklahoma State Agencies are required by Oklahoma Statutes to perform Life Cycle Cost Analysis for alternative architectural and engineering designs and alternative major items of energy-consuming equipment to be retrofitted in state facilities. The following guidelines are promulgated by the Construction and Properties Division of the Department of Central Services in compliance with the provisions of Sections 209 and 211 of Title 61 of the Oklahoma Statutes. Guidelines in this Subchapter are to be used in performing the required analysis.~~

580:20-11-2. Definitions [REVOKED]

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

~~**"A"** means the amount of money after n years in future.~~

~~**"a"** means annually recurring costs.~~

~~**"Annually recurring costs"** means those costs which are incurred each year, usually in an equal amounts, throughout the study period.~~

~~**"Base year"** means the year in which the Life Cycle Cost analysis is conducted.~~

~~**"Base year price"** means the price of goods or services as of the beginning of the base year.~~

~~**"Cash flow"** means the stream of costs and benefits resulting from a project investment.~~

~~**"Cost escalation rate"** means the rate by which an annual expense is assumed to escalate per year.~~

~~**"Discounting"** means a technique for converting cash flows occuring over time to time equivalent values, adjusting for the Time Value of Money.~~

~~**"E"** means energy costs.~~

~~**"Economic life"** means the period of time over which a facility or a piece of equipment is considered to have the lowest total cost.~~

~~**"I"** means investment costs.~~

~~**"i"** means the interest rate per year.~~

~~**"Investment costs"** means the initial costs of design, engineering, purchase and installation, all of which are assumed to occur as lump sum at the beginning of the base year for purposes of making the Life Cycle Cost analysis.~~

~~**"j"** means the cost escalation rate per year.~~

~~**"LCC"** means life cycle costing.~~

~~**"Life cycle costing"** means a method of economic evaluation that sums discounted dollar costs of initial investment, operations, maintenance, repair and replacement less salvage value of state facility or equipment over the study period.~~

~~**"M"** means maintenance and non-fuel operating costs.~~

~~**"n"** means the number of years in the study period.~~

~~**"Nonfuel operation and maintenance costs"** means labor and material costs required for routine upkeep and operation, exclusive of energy costs.~~

~~**"P"** means present worth.~~

~~**"Present worth"** means the time-equivalent value of past, present or future cash flows as of the beginning of the base year.~~

~~**"Present worth factor"** means a factor by which annually recurring amounts may be multiplied to find their equivalent Present Worth (see Appendix B of this Chapter).~~

~~**"Present worth escalating factor"** means a factor by which a non-uniform annual expense, such as energy or labor costs, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).~~

~~**"PWEF"** means the present worth escalating factor.~~

~~**"PWF"** means the present worth factor.~~

~~**"R"** means the replacement cost.~~

~~**"Replacement costs"** means the future costs to replace equipment usually at the end of their economic life.~~

~~**"S"** means the salvage value.~~

~~**"Salvage values"** means the estimate of future salvage values of items sold as used equipment or scrap usually at the end of their economic life.~~

~~**"Single present worth"** means a factor by which a single future amount, such as replacement cost or salvage value, may be multiplied to find its equivalent present worth (see Appendix B of this Chapter).~~

~~**"SPW"** means single present worth.~~

~~**"State facilities"** means any building or improvement to real property constructed for state use subject to the provisions~~

~~of Title 61, Oklahoma Statutes. This rule shall apply also to property leased or being prepared for lease by the state.~~

~~**"Study period"** means the length of time period covered by the economic evaluation. Typically it is equal to the economic life of the evaluation subject.~~

~~**"Time value of money"** means the time-dependent value of money. The adjustment of cash flows to a common time basis is necessary to take into account the real earning potential of investment over time.~~

~~**"TLCC"** means total life cycle cost.~~

~~**"Total life cycle cost"** means the total discounted dollar cost of owning, operating and maintaining a state facility or equipment over the study period.~~

580:20-11-3. Evaluation steps [REVOKED]

~~The recommended steps in the economic evaluation are:~~

~~(1) **Objective.** Every economic evaluation should have a statement clearly defining the specific objective to be accomplished by the evaluation. Examples of objectives are: To determine which design or equipment of what size is economically preferable.~~

~~(2) **Constraints.** There could be technical, physical, budgetary or code constraints. Any of these can reduce the number of candidate strategies for which an economic evaluation must be performed.~~

~~(3) **Data, estimates and assumptions.**~~

~~(A) **Data.** The types of data that are needed are: investment costs (**I**), energy costs (**E**), maintenance and nonfuel operating costs (**M**), replacement costs (**R**), salvage value (**S**), interest rate (**i**) and escalating rates (**j**)~~

~~(B) **Estimates.** The economic life of the project has to be estimated. Appendix C of this Chapter includes the suggested economic life for a number of equipment.~~

~~(C) **Assumptions.** To simplify the cash flow calculations, the investment costs are assumed to occur in a lump sum at the beginning of the base year. All other costs occur in lump sums at the end of the respective years in which they occur.~~

~~(4) **Evaluation.** The general equation for calculating the total life cycle cost is:~~

$$\mathbf{TLCC = I + E + M + R - S} \qquad \text{(3.1)}$$

~~where:~~

~~**TLCC** is the total life cycle cost.~~

~~**I** is the investment costs, assumed to be in a lump sum at the beginning of the base year.~~

~~**E** is the total amount of energy costs during the study period, converted to an equivalent present work.~~

~~For constant energy costs, equation (A.2) in Appendix B of this Chapter is used to calculate the equivalent value of **E.**~~

$$\mathbf{E = \frac{(1+i)^{n-1}}{i\,(1+i)^{n}}} \qquad \text{(3.2)}$$

~~where:~~

~~**e** is the annual energy costs, assumed to be in a lump sum at the end of the year.~~

~~**i** is the interest rate per year.~~

~~**n** is the number of years in the study period.~~

~~If energy costs are escalating, then equation (A.3) in Appendix I of this Chapter should be used to calculate the equivalent value of **E.**~~

$$\mathbf{E = e_1\left(\frac{1+j}{1-j}\right)\left(1-\left(\frac{1+j}{1+i}\right)^{n}\right)} \qquad \text{(3.3)}$$

~~where:~~

~~$\mathbf{e_1}$ is the energy cost during the first year, assumed to be in a lump sum at the end of the first year.~~

~~**j** is the energy escalating rate per year.~~

~~If **j** = 0 then equation (3.3) is the same as equation (3.2).~~

~~If **j** = **i** then **P** = $\mathbf{e_1 n}$.~~

~~**M** is the maintenance and nonfuel operating costs, assumed to be in a lump sum at the beginning of the first year.~~

~~For constant labor costs, equation (A.2) is Appendix B of this Chapter is used to calculate the equivalent value of **M.**~~

$$\mathbf{M = m\frac{(1+i)^{n}-1}{i\,(1+i)^{n}}} \qquad \text{(3.4)}$$

~~where:~~

~~**m** is the annual maintenance and non-fuel operating costs, assumed to be in a lump sum at the end of the year.~~

~~If labor costs are escalating, then equation (A.3) in Appendix B of this Chapter should be used to calculate the equivalent value of **M.**~~

$$\mathbf{M = m_1\left(\frac{1+j}{1-j}\right)\left(1-\left(\frac{1+j}{1+i}\right)^{n}\right)} \qquad \text{(3.50)}$$

~~where:~~

~~$\mathbf{m_1}$ is the maintenance and nonfuel operating costs during the first year, assumed to be in a lump sum at the end of the first year.~~

~~**j** is the labor escalating costs per year.~~

~~If **j** = 0 then equation (3.5) becomes similar to equation (3.4).~~

~~If **j** = 1 then **M = m_1n.**~~

~~**R** is the replacement costs converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **R.**~~

$$\mathbf{R} = \frac{\mathbf{R'}}{(\mathbf{1}+\mathbf{i})^{\mathbf{n}}} \qquad (3.6)$$

~~where:~~

~~**R′** is the actual replacement costs at the end of the study period.~~

~~**S** is the salvage value converted to an equivalent present worth. Equation (A.1) in Appendix B of this Chapter is used to calculate **S.**~~

$$\mathbf{S} = \frac{\mathbf{S'}}{(\mathbf{1}+\mathbf{i})^{\mathbf{n}}} \qquad (3.7)$$

~~where:~~

~~**S′** is the actual salvage value at the end of the study period.~~

~~(5) **Sensitivity analysis.** Sensitivity analysis technique is performed by repeating an evaluation using different input values. By testing the percentage change in the output corresponding to specified percentage changes in input values, the most critical parameters can be identified. The technique is also used to produce an upper and lower boundaries for the output based on maximum and minimum estimated values for the input parameters. In some cases, expressing the answer in terms of upper and lower boundaries gives a clearer picture than a single point estimate. Although performing sensitivity analysis is not required under the TLCC rule, it is a useful technique especially where there is uncertainty about the data and estimates.~~

~~(6) **Non-quantified factors.** In many projects, some parameters with significant consequences are not adequately captured in the numerical evaluation. These parameters should be presented in descriptive terms during the decision making process. For example, replacing a window with an insulated wall will save energy, however, the effect of a windowless room on the occupants should be taken into consideration.~~

580:20-11-4. Results [REVOKED]

~~(a) The Construction and Properties Division of the Department of Central Services shall sponsor training workshops for Oklahoma State agencies purchasing personnel in the use and/or verification of the Life Cycle Cost Analysis. Until such a time as sufficient expertise is developed in state agencies, the results of the analysis, along with the input data should be submitted by the contractors, vendors or consultants to the Construction and Properties Division of the Department of Central Services for verification.~~

~~(b) The suggested ranges for applying the Life Cycle Cost Analysis to conduct the analysis without the escalation factors for projects having total costs of more than $7,500, but less than $40,000 (i.e., equations 3.2. and 3.4 in 580:20-11-3(4)). For projects costing more than $40,000, where more accurate estimates are needed, escalation factors are included in the analysis (i.e., equations 3.3 and 3.5 in 580:20-11-3)(4)).~~

SUBCHAPTER 15. ENERGY SERVICES CONTRACTS [REVOKED]

580:20-15-1. Purpose [REVOKED]

~~Pursuant to Section 210 of Title 61 of the Oklahoma Statutes, the following rules contained in OAC 580:20-15 are promulgated by the Department of Central Services and shall apply to energy services contracts for State Agencies. These rules are to aid state agencies in obtaining more efficient energy saving equipment and methods without significant capital expenditure by utilizing the services of an energy service company.~~

580:20-15-2. Definitions [REVOKED]

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

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.~~

~~**"Energy audit"** means to review facilities and systems, to identify existing operating and utility costs, to specify areas of potential savings, and to quantify those savings.~~

~~**"Energy service company"** means the company responsible for the installation of energy conservation measures and the guarantee of energy savings.~~

~~**"Energy service contract"** means a contract signed by a state agency and an energy service company which conforms to the provisions of this chapter.~~

~~**"ESC"** means energy service company.~~

~~**"Equipment portion"** means the portion of the energy service contract which deals with the purchase of equipment and its installation.~~

~~**"Guaranteed savings"** means the amount of money per year guaranteed by the ESC that shall be saved by the state agency on present utility costs.~~

~~**"Service portion"** means the portion of the energy service contract which deals with guaranteed savings, period of guaranteed savings, training, and bonds.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 61.~~

580:20-15-3. Description of the program [REVOKED]

~~Guaranteed savings program is a program whereby the agency selects and contracts with an energy service company to reduce its energy costs. The goal of this contract is energy cost savings through acquisition of energy efficient equipment, services and methods. The ESC guarantees the amount of savings from the program over a specified period of time. Since the contract is paid from the energy savings realized, the agency does not need to have the large amount of capital which would be otherwise necessary to purchase such services and equipment.~~

580:20-15-4. Request for energy services [REVOKED]

~~(a) Any agency which believes that it could benefit from participation from an energy service contract should contact the Division. The Division shall meet with representatives of the Agency to determine if an energy service contract would be beneficial.~~

~~(b) Criteria used to determine possible benefit of an energy service contract may include but not be limited to the following:~~

~~(1) Urgency of equipment replacement (i.e., the time frame until the equipment fails and is no longer repairable).~~

~~(2) Repair vs. replacement utility (i.e., the amount necessary to carry on necessary repairs as opposed to the cost of replacing of the equipment).~~

~~(3) Prioritization of available capital (i.e., of the available capital in an agency, the demands of that capital relative to the need of the equipment).~~

~~(4) Projected use and life expectancy of the equipment or its replacement.~~

~~(5) Results of an energy audit of the facility in question which indicates potential energy savings.~~

~~(c) When practical, new equipment should be purchased outright as opposed to an energy service contract.~~

580:20-15-5. Bid documents [REVOKED]

~~(a) Bid documents shall be made available to all prospective ESC's. The Division may require a deposit for the documentation. [OAC 580:20-1-4(b)]~~

~~(b) Bid documents may include, but shall not be limited to the following:~~

~~(1) Information regarding applicable administrative rules, including the rules of this chapter. Refer to OAC 580:20-1-4 and 5.~~

~~(2) Scope of the work to be performed.~~

~~(3) Energy audit, if performed by a state agency or consultant.~~

~~(4) Requirements for an energy audit if performed by the ESC. [OAC 580:20-15-6(a)]~~

~~(5) Energy usage by the agency at the facility in question.~~

~~(A) All utility bills and records for a relevant period;~~

~~(B) Current demand charges;~~

~~(C) Other energy usage information.~~

~~(6) Minimum environmental requirements of the agency (e.g., ambient air temperature, lighting levels, etc.)~~

~~(7) Building and site plans needed to both assess equipment installation and energy efficiency.~~

~~(8) Proposed evaluation criteria developed by the agency in cooperation with the Division.~~

~~(9) Sample of all contract documents.~~

~~(10) Any other information deemed necessary by the Division so that ESC's may prepare an accurate submittal on the project.~~

580:20-15-6. Energy audit [REVOKED]

~~(a) An energy audit shall be conducted for each project for which an energy service contract is sought. An energy audit is used to gain more in-depth knowledge of the agency's facility and its energy usage. The requirements for an energy audit are outlined in the bid documents.~~

~~(b) The energy audit may be conducted by one or more of the following as determined by the agency with approval of the Division:~~

~~(1) A state agency with the technical expertise to conduct the audit. This could include the Construction and Properties Division of the Department of Central Services.~~

~~(2) A contracted consultant selected consistent with Title 61 of the Oklahoma Statutes and the provisions of Subchapter 3 of this Chapter with the technical expertise to perform the energy audit.~~

~~(3) One or more ESC's consistent with the provisions of this section.~~

~~(c) If the energy audit is conducted by a state agency or a contracted consultant, the results of such audit shall be made available to all ESC's in the project bid documents. If the energy audit is conducted by one or more ESC's, the results of such audit must be included in any project submittal of the ESC.~~

~~(d) ESC's may schedule with the agency inspections of facilities and equipment in order to conduct an energy audit or to gain a greater understanding of the facility and its energy use.~~

~~(e) Any fees from a state agency or a contracted consultant incurred as a result of the energy audit must be paid outright by the agency.~~

~~(f) A contracted consultant may be selected to provide a complete set of bid documents, evaluate all bids submitted, provide construction administration, related performance contracting methods and perform energy savings reconciliation for the Division or agency. Any fees charged by the consultant must be paid outright by the agency.~~

~~(g) Division may perform any of the services described in 580:20-15-6(f), and may levy and collect a reasonable fee for the agency for said services.~~

580:20-15-7. Bid submittals [REVOKED]

~~Reference OAC 580:20-1-5 for bid submittal information.~~

580:20-15-8. Bid review and evaluation [REVOKED]

~~(a) When all of the bid submittals have been opened, they are forwarded for review and evaluation by the agency, the Division or consultant if applicable.~~

~~(b) A selection committee shall be formed composed of members of the agency and the Division to review and evaluate the bids submitted. After the review and evaluation of the bids by the review committee, the best submission shall be selected for the award of the energy service contract.~~

~~(c) Criteria used to select the ESC to perform the energy service contract may include but shall not be limited to the following:~~

~~(1) Cost~~

~~(2) Amount of guaranteed savings offered by the ESC~~

~~(3) Proposed list of equipment to be installed~~

~~(4) Length, flexibility, options and extent of the maintenance contract~~

~~(5) Experience and qualifications of the ESC in performance of similar types of projects as described in the bid documentation.~~

~~(6) Quality and depth of the energy audit if performed by the ESC~~

~~(7) Installation schedule of the equipment~~

~~(8) Quality and extent of the training program offered by the ESC~~

~~(9) Relative fiscal capacity and stability of the ESC~~

~~(10) Duration of the entire contract including both equipment and service portions.~~

~~(11) Methodology of savings calculations~~

580:20-15-9. Energy service contract [REVOKED]

~~The energy service contract shall consist of, but not be limited to the following:~~

~~(1) The duration of the equipment portion of the contract shall be equal to or less than the term of the lease purchase agreement.~~

~~(2) Service portion of the contract:~~

~~(A) The ESC shall guarantee savings for at least each year of the lease purchase agreement, but may guarantee savings beyond the completion of the lease purchase agreement.~~

~~(B) The ESC shall provide sufficient training to maintenance, custodial, and other such personnel as have need to know regarding the proper use and maintenance for the efficient operation of equipment contained in the equipment portion of the contract.~~

~~(C) ESC shall be responsible for maintaining the equipment for the duration of the lease purchase agreement but may provide maintenance for a greater duration as may be defined in the energy service contract if the State does not elect to otherwise contract for maintenance services. [61 O.S. Section 210(A)(5)]~~

~~(3) Required bonds:~~

~~(A) ESC shall provide a declining balance surety performance bond in an amount not less than 25% of the balance of agency's total financial obligation.~~

~~(B) ESC shall provide a performance bond in an amount determined by the agency to guarantee the restoration of the facility in the event of default. [61 O.S. Section 210(A)(3)]~~

~~(4) ESC shall purchase public liability insurance, property damage insurance, and workers' compensation insurance or as specified in the bid documents.~~

~~(5) All modifications to any contract or agreement which the State is requested to execute must be submitted to the Division's legal counsel for approval at least ten days prior to submitting to the Division for execution.~~

580:20-15-10. Payment of contract [REVOKED]

~~(a) Lease purchase agreements shall be competitively bid through the Purchasing Division of the Department of Central Services unless determined by the Executive and Legislative Bond Oversight Commissions to be more cost effective if financed through negotiated sales.~~

~~(1) If the sale is to be executed on a negotiated basis, such financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, §695.1 et seq.~~

~~(2) If the sale is to be competitively bid, such financing shall be processed through the Purchasing Division of the Department of Central Services. [74 O.S. Supplement 1993, Section 85.4(G.2)]~~

~~(b) The term of the lease purchasing financing shall be in conformance with and governed by 74 O.S. Section 85.4(I)(4).~~

580:20-15-11. Guaranteed savings [REVOKED]

~~(a) All identified savings must be fully reimbursable.~~

~~(b) ESC shall reimburse the agency for any shortfall below the yearly guaranteed amount contained in the contract.~~

~~(c) Excess savings realized above the amount guaranteed by the ESC within a single year shall not be used to cover deficiencies in savings from other years.~~

~~(d) Should there be three consecutive months of short fall on the amount guaranteed, the ESC shall investigate and report the cause to the agency.~~

~~(e) Guaranteed savings identified by the ESC shall include only energy savings that can be quantified and documented. Savings identified shall not include savings realized from changes in operational efficiency, cost avoidance, or adjustments in environmental levels below the minimum established by the agency.~~

580:20-15-12. Change orders [REVOKED]

~~Reference OAC 580:20-1-14 for change orders~~

580:20-15-13. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS [REVOKED]

580:20-17-1. Purpose [REVOKED]

~~This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide construction management services on state construction projects that utilize the construction management delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."~~

580:20-17-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Construction Management"** (CM) means the project delivery method based on an agreement whereby the state acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. Construction management includes:~~

~~(A) **"Construction Management/Agency"** (CMa) whereby the construction entity applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the state without taking on financial risks for the execution of the actual construction. CMa services could include a range of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.~~

~~(B) **"Construction Management/At Risk"** (CMc) whereby the construction entity, after providing construction management/agency services listed in (a) of this section during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement.~~

~~**"Construction Manager"** means a person, properly certified in accordance with 20-17-3, who acts as an agent of the state for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the state, design professional and other consultants that may be required for the project; and who utilizes skill and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions and provides advice concerning construction, safety and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the solicitation issued by the state agency.~~

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Director"** means the Director of the Department of Central Services.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Guaranteed Maximum Price"** (GMP) shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.~~

~~**"Notice to Proceed"** shall be the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.~~

580:20-17-3. Qualifications [REVOKED]

~~(a) **General.** An individual or business entity that desires to provide or provides construction management services to the state must meet minimum qualifications established in this Section.~~

~~(b) **Construction management certification.** An individual or business entity that desires to provide construction management services to the state shall possess certification that demonstrates the individual's or business entity's capability to provide the services.~~

~~(c) **Certification sources.** An educational program that provides certification of an individual as capable to provide construction management services shall include industry recognized standards for knowledge of construction, construction management and project management. An individual certified by one of the following sources may qualify to provide construction management services to the state.~~

~~(1) **Certified Construction Manager.** An individual certified by the Construction Management Association of America as a certified construction manager.~~

~~(2) **Certified Cost Engineer/Certified Cost Consultant.** An individual certified by the Association for the Advancement of Cost Engineering, International as a Certified Cost Engineer or Certified Cost Consultant.~~

~~(3) **Certified Professional Estimator.** An individual certified by the American Society for Professional Estimators as a Certified Professional Estimator.~~

~~(4) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.~~

~~(5) **Certified Construction Contract Administrator.** An individual certified by the Construction Specifications~~

~~Institute as a Certified Construction Contract Administrator.~~

~~(6) **Designated Design-Build Professional.** An individual certified by the Design-Build Institute of America as a Designated Design-Build Professional.~~

~~(d) **Other professional certification recognition.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Administrator shall determine whether the individual may provide construction management services to the state.~~

580:20-17-4. Registration [REVOKED]

~~(a) **General.** An individual that possesses the qualifications established in 20-17-3 shall register with the Division to provide construction management services.~~

~~(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Division to request consideration for registration as a construction management firm. Registration application forms are available upon request to the Division.~~

~~(c) **Administrator review and notification.** The Administrator shall review the registration application and:~~

~~(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity; or,~~

~~(2) **Grant conditional registration.** The Administrator may consider other certification sources and grant to the applicant a one-year probationary approval of the registration application. Renewal for subsequent years shall not be approved unless the applicant submits proof of certification issued by one of the certification sources listed in 580:20-17-3(C).~~

~~(3) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator shall specify reasons for rejection in the notice; or,~~

~~(4) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.~~

~~(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered construction managers maintained by the Division. Registration shall be effective for one (1) calendar year from the date of registration approval and renewed annually on or before the registration anniversary date of each succeeding year.~~

580:20-17-5. Project designation consideration [REVOKED]

~~(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the construction management delivery system.~~

~~(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for construction management. [61 O.S., §202.1]~~

~~(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:~~

~~(A) early completion of work, allowing for beneficial public occupancy;~~

~~(B) accommodating construction progress with phased funding;~~

~~(C) enabling the project to be placed under contract prior to losing expiring funding source; or,~~

~~(D) other demonstrated public benefit.~~

~~(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.~~

~~(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects involving sophisticated or complicated technical systems, renovation work or work that must be completed on a critical time frame, or otherwise when a critical mission of a public agency may be in jeopardy, shall be considered specialized and complex.~~

~~(4) Other consideration factors may include:~~

~~(A) **Time constraints.** The time period the state agency desires for project completion.~~

~~(B) **State agency capabilities.** The capabilities of the Division staff and whether the staff has the ability and experience to effectively manage a project that utilizes construction management.~~

~~(C) **State agency funding.** The state agency shall demonstrate whether the agency has adequate funding to pay for services of the construction management firm, design consultant and construction services.~~

~~(D) **Project components.** The project complexity is sufficient to benefit from advisory consulting services during design or if the construction execution could be enhanced by the services of a construction manager. Such services during design might include, but are not limited to: independent preparation of cost estimates, independent design review, evaluation of alternate construction bid strategies and constructability evaluations. Services during construction that a construction manager might perform include, but are not limited to: certain elements of construction administration desired by the state agency that are outside the normal scope of the design consultant and overall coordination of multiphase,~~

~~complex projects where one or more contractors may be involved in executing the work.~~

~~(c) **State agency request.** A state agency shall submit a written request for consideration of formal designation of a state construction project for the construction management delivery method to the Director after careful review of the factors in (b) of this section. The request shall specify reasons the state agency believes the project merits consideration for construction management and the funding amount the state agency has available for the project.~~

~~(d) **Director consideration.** Upon receipt of a state agency request for construction management services for a project, the Director shall consider whether the project merits designation for construction management and whether the state agency has adequate funds for the project.~~

~~(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for construction management.~~

~~(f) **Administrator notification.** Upon completion of the consideration of the state agency request, pursuant to Subsection 6, the Administrator shall forward the Director's official response to the requesting state agency which states reasons for the determination and whether the project has been determined to reasonably merit official designation for construction management.~~

580:20-17-6. Project designation [REVOKED]

~~(a) **General.** After consideration of factors in 20-17-5, the Director may designate the project delivery method as construction management.~~

~~(b) **Construction management type.** The Administrator shall determine the construction management type as:~~

~~(1) Construction Management/Agency (CMa) (See 20-17-2); or~~

~~(2) Construction Management/At Risk (CMc) (See 20-17-2).~~

~~(c) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for construction management and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed project designation form to the Director.~~

~~(d) **Director actions.** The Director shall determine whether the information on the project designation form is complete and agree or disagree with the Administrator's designation.~~

~~(1) Director agrees. If the Director agrees with the Administrator's designation, the Director shall sign the project designation form and return the form to the Administrator.~~

~~(2) Director disagrees. If the Director disagrees with the Administrator's designation, the Director shall return the unsigned form to the Administrator.~~

~~(e) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.~~

~~(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire construction services pursuant to provisions of this subchapter.~~

~~(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.~~

~~(f) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.~~

~~(g) **Designation form filing.** The final project designation form shall be filed and maintained in the division project file.~~

580:20-17-7. Project requisition [REVOKED]

~~(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as construction management, the state agency shall complete a requisition form which must state on the form that the project delivery method is construction management and indicate the construction management type.~~

~~(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.~~

~~(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.~~

580:20-17-8. Selection procedures for construction management services [REVOKED]

~~Selection of construction management firms shall be in accordance with Subchapter 21 of this Chapter.~~

580:20-17-9. Fee negotiation and contracts [REVOKED]

~~(a) In accordance with the qualifications based ranking of firms to perform construction management services in 580:21, the Division shall request a fee proposal from the highest ranking firm.~~

~~(b) Upon receipt of the written fee proposal, the Division shall hold fee negotiations in a manner consistent with the selection criteria.~~

~~(1) The Division shall negotiate a contract with the highest qualified firm at compensation determined in writing to be fair and reasonable.~~

~~(2) In establishing the construction management fee, the Division shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services~~

~~(3) In the event the Division is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Division shall then undertake negotiations with the second most qualified firm, beginning with a formal request for a fee proposal from that business. Failing accord with the second most qualified business, the Division shall formally terminate negotiations with that firm. This process shall continue, with proposals received from~~

~~and negotiations held with the next most highly qualified firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.~~

~~(4) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.~~

~~(5) For Construction Management/At Risk (CMc), there are essentially two phases of the contract.~~

~~(A) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the construction manager up to the point at which the design is far enough along for the construction manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the construction manager are the construction manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.~~

~~(B) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. This is accomplished through issuance by the Division of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the design consultant and the construction manager will work in conjunction with the design consultant to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.~~

~~(i) Upon receiving the Notice to Proceed, the Construction Manager/At Risk will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.~~

~~(ii) Non approval of the GMP allows the Division to terminate the services of the construction manager or to renegotiate, as required.~~

~~(iii) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the construction manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with subchapter 1, titled "Bidding Procedures", of this Chapter.~~

~~(6) When individual work packages are bid as a lump sum, the CM's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the construction manager's contract becomes all lump sum.~~

~~(7) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the construction manager and the Division must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Division may allow an adjustment to the GMP in order to allow the construction manager to award all work packages.~~

~~(8) In administering the construction contract, the construction manager will adhere to Oklahoma public bidding laws in advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.~~

~~(9) Because the construction manager is "at risk" for the total contract amount, they are permitted to self perform portions of the work, provided that they competitively bid the work as a lump sum (each work package) under the same terms and conditions as the other bidders. If the construction manager decides to bid a work package, they must declare this intent during the pre-bid meeting held by the Division.~~

~~(10) In the award of subcontracts, the construction manager will award to the lowest responsible bidder. To be considered a "responsible bidder" the offeror must meet the minimum pre-qualification requirements, if any, that may be defined in the contract bid documents. An offeror shall meet the minimum pre-qualification requirements and complete the qualifications form that will be included as part of the bid package.~~

~~(11) Procurement of project components costing less than the statutory amount established in 61 O.S., Section 103 may be accomplished by receipt of written bids pursuant to 61 O.S., Section 103. The Division may approve and direct the Construction Manager to prepare written bid solicitation for such items and furnish to at lease three known suppliers. The solicitation shall clearly state the requirements for products delivery and installation, if applicable, and shall require the written quotes to be returned to the Division or the Division's agent by a specified date and time.~~

~~(c) **Award of contract.** The construction management contract is written and processed for award by the Division. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.~~

~~(d) **Changes to base contract.** Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.~~

~~(e) **Construction Management contracts.** Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in the contracts.~~

580:20-17-10. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 19. DESIGN-BUILD PROCEDURES AND REQUIREMENTS [REVOKED]

580:20-19-1. Purpose [REVOKED]

~~This subchapter provides information pertaining to procedures and requirements for individuals or business entities that provide design-build services on state construction projects that utilize the design-build delivery system for construction. These procedures implement the provisions of 61 O.S., Sections 201 through 211 titled "Public Building Construction and Planning Act."~~

580:20-19-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Delivery System"** is the approach used to develop and construct a project where Design-Build or Design-Bid-Build are typical approaches.~~

~~**"Design-Bid-Build"**(DBB) is the delivery method used on public projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. The Division shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.~~

~~**"Design-Build"** (DB) is the project delivery method in which the Division procures both design and construction services in the same contract from a single, legal entity referred to as the design builder. The method uses Request for Qualifications (RFQ)/Request for Proposal (RFP) procedures rather than the DBB Invitation for Bids (IFB) procedures. The design-build entity is liable for all design and construction costs and must provide a firm fixed price in its proposal.~~

~~**"Design-Build Contract"** shall be a contract between the Division and a design builder to furnish the labor, materials and other services for both the design and construction for the same public project.~~

~~**"Design-Builder"** shall be the entity that proposes to design and construct any public project governed by the procedures of Title 61 and this Chapter.~~

~~**"Director"** means the Director of the Department of Central Services~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Evaluation Criteria"** shall be the requirements for the first phase of the selection process and shall include, as appropriate, specialized experience, technical competence, capacity to perform, past performance and other appropriate factors. Prices shall be considered only in the second phase of the selection process.~~

~~**"Proposal"** shall be an offer to enter into a design-build contract, as further defined in this subchapter.~~

~~**"Request for Proposals"** (RFP) shall be the document the state agency sends to each of the design-build firms on the "short list". The RFP shall contain the "Request for Proposals" (RFP) elements as described in OAC 580:20-19-11.~~

~~**"Request for Qualifications"** (RFQ) shall be the document or publication whereby a state agency solicits for qualified design-build firms.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.~~

580:20-19-3. Design-build qualifications [REVOKED]

~~(a) **Qualifications.** An individual or business entity that desires to provide design-build services to the state shall possess the construction experience that demonstrates the individual's or business entity's capability to provide the service.~~

~~(b) **Contractor Prequalification.** The contractor of the design-build team shall be authorized to do business in the state and shall be prequalified with the Division.~~

~~(c) **Architect of Record.** The Architect of Record of the design-build team, for a specific project, shall be licensed and authorized to do business in the state.~~

580:20-19-4. Registration [REVOKED]

~~(a) **General.** An individual that desires to provide design-build services to the state shall prequalify with the Division pursuant to Section 1-8.1.~~

~~(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Division to request consideration for registration as a design-build firm. Registration application forms are available upon request to the Division.~~

~~(c) **Administrator review and notification.** The Administrator shall review the registration application and:~~

~~(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written notification of the acceptance to the individual or business entity.~~

~~(2) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator may specify reasons for rejection in the notice.~~

~~(3) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.~~

~~(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered design-build firms maintained by the Division. Registration shall be effective for one (1) calendar year and renewed annually on or before January 31st of each succeeding year.~~

580:20-19-5. Project designation consideration [REVOKED]

~~(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the design-build delivery system.~~

~~(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for use of the design-build delivery system.~~

~~(1) **Time constraints.** The time period the state agency desires for project completion.~~

~~(2) **Division capabilities.** The capabilities of the Division staff and whether the staff has the ability and experience to effectively manage a project that utilizes design-build.~~

~~(3) **State agency funding.** The state agency can demonstrate it has adequate funding to pay for services of the design-build firm, a design consultant and construction services.~~

~~(4) **Project components.** The features of the project merit nomination of the project for execution using the design-build delivery approach.~~

~~(A) Project features that are compatible with using the design-build delivery method include:~~

~~(i) Projects for which the definitive space program and functional building requirements can be clearly defined by the state agency prior to the selection of the design-build team, with low likelihood of these requirements changing during the design phase. Examples include, but not limited to: general purpose storage warehouses, multifamily housing or dormitory type projects.~~

~~(ii) Repetitive type projects. For example, site adaptation of a standard or prototypical design that has been previously constructed at another location.~~

~~(iii) Projects with certain unique factors that require special knowledge or experience to produce the least cost design.~~

~~(iv) Pre-engineered structures.~~

~~(v) Performance-based projects.~~

~~(vi) Projects where the time to completion is a critical factor.~~

~~(B) Projects features that are incompatible with using the design-build delivery method include:~~

~~(i) Projects where the cost to prepare the Request For Proposal (RFP) and the cost to respond to the RFP by the design-build firms are not justified relative to the anticipated benefits.~~

~~(ii) Projects where the scope of work is hard to define. Examples include: complex renovation projects and highly technical projects where the evaluation of alternative design approaches is critical.~~

~~(iii) Projects which are design-driven, such as museums, research laboratories, medical facilities, technology centers, courthouses and executive office buildings.~~

~~(iv) Projects where the state agency or the division desires to be closely involved during the design process to exercise discretionary control over the completed project.~~

~~(c) **State agency request.** A state agency shall issue a written request for consideration of formal designation of a state construction project for the design-build delivery method to the Director after careful review of the factors in (b) of this Section. The request shall specify reasons the state agency believes the project merits consideration for design-build delivery system and the funding amount the state agency has available for the project.~~

~~(d) **Director consideration.** Upon receipt of a state agency request for design-build services for a project, the Director shall consider whether the project merits designation for a delivery-build system and whether the state agency has adequate funds for the project.~~

~~(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for a design-build delivery system.~~

~~(f) **Administrator notification.** Upon completion of the consideration of the state agency request, the Administrator shall advise the requesting person whether the project has been determined to reasonably merit official designation for a design-build delivery system. The Administrator shall provide a written response stating reasons for the determination.~~

580:20-19-6. Project designation [REVOKED]

~~(a) **General.** After consideration of factors in 20-19-5, the Director may designate the project delivery method as design-build.~~

~~(b) **Director notification.** If the Administrator determines that the project reasonably meets the criteria for designation for design-build delivery and that the state agency has adequate funds for the project, the Administrator shall complete, sign and submit the prescribed designation form to the Director.~~

~~(c) **Director actions.** The Director shall determine whether the information on the designation form is complete and agree or disagree with the Administrator's designation.~~

~~(1) **Director agrees.** If the Director agrees with the Administrator's designation, the Director shall sign the project designation form and return the form to the Administrator.~~

~~(2) **Director disagrees.** If the Director disagrees with the Administrator's designation, the Director shall return the unsigned designation form to the Administrator.~~

~~(d) **Project designation.** The Administrator shall apply the applicable project delivery method to the project in accordance with the action of the Director.~~

~~(1) **Director signs designation form.** If the Director signs the designation form, the Administrator shall acquire~~

~~construction services pursuant to provisions of this subchapter.~~

~~(2) **Director does not sign designation form.** If the Director does not sign the designation form, the Administrator shall acquire design consultant and construction services pursuant to provisions of subchapters 1 and 3 of this chapter.~~

~~(e) **State Agency notification.** The Administrator shall provide the state agency written notice of the final designated project delivery method.~~

~~(f) **Designation form filing.** The final designation form shall be filed and maintained in the division project file.~~

580:20-19-7. Project requisition [REVOKED]

~~(a) **State agency requisition preparation.** Upon receipt from the Administrator of the notice of project designation as design-build, the state agency shall complete a requisition form which must state that the project delivery method is design-build on the form.~~

~~(b) **State agency requisition submission.** The state agency shall submit the requisition form to the Administrator.~~

~~(c) **Administrator review.** The Administrator shall review the requisition form to ensure the form contains the required information.~~

580:20-19-8. Selection Procedure for design consultant for design-build [REVOKED]

~~(a) The state agency shall select a design consultant pursuant to provisions of Subchapter 3 of this Chapter.~~

~~(b) The state agency shall develop, with the assistance of the design consultant, a comprehensive scope of work statement and design criteria package that defines the project. This package will be issued to competing design build teams, enabling the design builders to submit proposals that meet the state agency's needs. The scope of work/design criteria package should contain, but not be limited to, the following information:~~

~~(1) A conceptual design including, as a minimum, a space plan and programmatic summary of state agency's requirements.~~

~~(2) Topographic survey and existing utility systems survey information for the project site.~~

~~(3) Geotechnical report of soils conditions for the project site.~~

~~(4) Clear definition of type of building desired, quality of materials, finishes, etc.~~

~~(5) Disclosure of the construction price limit of the project so firms don't run the risk of~~ preparing proposals that are not price competitive.

580:20-19-9. Selection Procedures for design-build [REVOKED]

~~Selection of design-build firms shall be in accordance with Subchapter 21 of this Chapter.~~

580:20-19-10. Proposals and contracts [REVOKED]

~~(a) Following the qualifications-based ranking of firms to perform design-build in accordance with 580:20-21, the state agency shall solicit competitive Request for Proposals (RFP) from the four (4) most highly qualified firms.~~

~~(b) The Request for Proposals (RFP) shall contain, at a minimum, the following elements:~~

~~(1) The procedures to be followed for submitting proposals and the procedures for making the selection decision, including a reference to the requirements of this Chapter and the regulations of the state agency.~~

~~(2) A copy of the proposed design-build contract.~~

~~(3) The evaluation factors and their relative weights.~~

~~(4) The statement of work/design criteria package.~~

~~(5) Provision for the design-builder to offer comments, enhancements or other appropriate value engineering recommendations pertaining to the concept drawings and technical specifications provided by the state agency in the RFP.~~

~~(6) A stipend is required to be paid to each design-build firm in the event that the state agency elects to have the proposing design-builders develop design drawings as part of the submission . The RFP must describe the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable.~~

~~(A) The stipend should be sufficient to cover the cost to develop drawings, specifications or other technical narratives in response to the RFP.~~

~~(B) The RFP should state that in return for the stipend, the State will retain ownership of the plans submitted by the competing design-build teams.~~

~~(C) Stipends may not be required if the RFP documentation is complete enough that the proposing design-builders do not have to perform additional design work in order to respond to the requirements of the RFP.~~

~~(7) A schedule for commencement and completion of the design-build contract.~~

~~(8) Budget limits for the design-build contract.~~

~~(9) Requirements for design-builders to have bonds and insurance.~~

~~(10) Any other information that the state agency in its discretion chooses to supply, including without limitation, surveys, drawings or models of existing structures, environmental studies, photographs, or references to public records.~~

580:20-19-11. Evaluation factors [REVOKED]

~~(a) The state agency, in consultation with the design consultant, shall determine the scope and level of detail required for the evaluation factors and shall submit the factors to the Division for approval. The evaluation factors should be detailed enough to permit qualified design-builders to submit proposals in accordance with the solicitation, without having to perform additional design services to meet the requirements of the RFP.~~

~~(b) The design consultant who consults in the development of the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional who developed the evaluation factors.~~

~~(c) The design consultant who develops the evaluation factors shall be either a full-time employee of the state agency or shall be engaged in compliance with Title 61 of Oklahoma Statutes, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to other consultants.~~

~~(d) Evaluation factors shall include:~~

~~(1) Past performance (cost, quality, schedule)~~

~~(2) Similar experience on comparable projects~~

~~(3) Technical qualifications of design-build team~~

~~(4) Proposed schedule~~

~~(5) Proposed costs~~

~~(6) Proposed technical approach including design submittals.~~

~~(7) Any other factors relevant to project.~~

580:20-19-12. Proposals [REVOKED]

~~(a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the RFP.~~

~~(b) Upon expiration of the time established for making proposals as set forth in the RFP, all proposals received shall be submitted to and evaluated by the Selection Committee.~~

~~(c) Clarifications may be required to ensure conformance of proposals with the evaluation factors. Clarifications may require revised price and/or technical proposals. No proposal shall be considered until the Selection Committee issues certification that the proposal is consistent with evaluation factors.~~

~~(d) No proposal for a design-build contract may be accepted unless the Selection Committee determines that there was adequate competition for such contract.~~

~~(e) Proposals shall establish a cost of the design-build contract, which will not be exceeded if the proposal is accepted without change.~~

~~(f) Proposals may allow the design-builder to identify subcontractors to whom the design-builder proposes to delegate obligations under the design-build contract. Entities so identified will not be replaced without the approval of the state agency, or the award may be revoked.~~

~~(g) Each design-build team must include licensed architects and engineers independent from the state agency's design professional. The design-build team's licensed architects and engineers must be named in the proposal submitted to the state agency.~~

~~(h) The state agency shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of this Chapter. The state agency may thereafter solicit new proposals using the same or different evaluation factors, budget constraints, or qualifications.~~

~~(i) The state agency shall maintain the secrecy and confidentiality of all proposals and all information contained in the proposals, and shall not disclose the proposals or the information contained therein to the design-builder's competitors or the public. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.~~

~~(j) When a design-builder receives notification from a state agency that its proposal has not been accepted, the design-builder may, within seven (7) days, submit a written request for a written explanation of the selection process to the state agency.~~

~~(k) Proposals may be withdrawn for any reason at any time prior to acceptance.~~

~~(l) Written notice of the acceptance of a proposal shall be delivered to the design-builder that submitted the accepted proposal. The state agency shall deliver written notice to the unsuccessful design-builders that their proposals were not accepted at the same time the notice of acceptance is delivered.~~

580:20-19-13. Design-build contracts [REVOKED]

~~(a) A design-build contract is written and processed for award by the Division. Upon receipt of the Notice to Proceed, the design-builder will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum, and proof of worker's compensation, all-risk, property and general liability insurance. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.~~

~~(b) Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work evaluated during the selection process. All changes shall be in writing and signed by all parties to the contract.~~

~~(c) Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in the contracts.~~

580:20-19-14. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 21. SELECTION OF CONSTRUCTION MANAGEMENT AND DESIGN-BUILD FIRMS [REVOKED]

580:20-21-1. Purpose [REVOKED]

~~The purpose of this subchapter is to provide procedures and information to construction management or design-build firms desiring to do business with the State of Oklahoma; and, to assist state agencies and political subdivisions of the state with the selection of construction management or design-build firms for the purpose of construction or renovation of state facilities. These procedures implement the provisions of 61 O.S.,~~

~~Sections 201 through 211 titled "Public Building Construction and Planning Act."~~

580:20-21-2. Definitions [REVOKED]

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

~~**"Consultant"** means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Fixed Fee"** means a fee to be paid to a firm which is expressed as a firm, fixed amount for the services specified in the scope of work.~~

~~**"Interview committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview construction management or design build firms for the purpose of selecting such a firm for a planned project. The interview committee shall include a representative from the Construction and Properties Division. This group should include licensed architects or engineers, if available.~~

~~**"Percentage fee"** means a fee to be paid a firm which is based upon a negotiated percentage of the resultant construction contract.~~

~~**"Program"** means the detailed description of the work and the scope of the design services. This program is written by the state agency or a Design Consultant.~~

~~**"Request for Qualifications (RFQ)"** shall be the document or publication whereby a state agency solicits for qualified construction management or design build firms. [Reference 20-21-4 (d)]~~

~~**"Screening committee"** means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the qualifications of interested firms for the purpose of selecting a short list of firms to be interviewed. The screening committee shall include a representative of the Construction and Properties Division. The group should include licensed architects or engineers, if available.~~

~~**"Selection criteria"** means a list of the considerations and requirements used to evaluate each prospective construction management or design build firm.~~

~~**"Short list"** means a list of construction management or design build firms chosen during the screening process for a detailed interview. This list shall contain no less than three nor more than five firms for a single project. If the screening process is selecting for more than one construction management or design build contract, there should be two firms on the short list for every planned project.~~

~~**"State agency"** means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.~~

580:20-21-3. Registration of construction management and design-build firms [REVOKED]

~~(a) All construction management or design build firms desiring to perform services for the State of Oklahoma must register with the Division by delivering a completed registration application form to the Division.~~

~~(b) A registration is valid for one (1) calendar year and must be renewed annually on or before the anniversary date of the previous year's registration.~~

~~(c) Construction management or design build firms shall not be solicited for projects with the state until the date the company's registration application is received and approved by the Division.~~

~~(d) A construction management or design build firm may register with the Division any time prior to the deadline for project consideration.~~

580:20-21-4. Selection procedure [REVOKED]

~~(a) **Define project.** A state agency shall develop a description of the project which shall include:~~

~~(1) A narrative description of the work being planned.~~

~~(2) The estimated cost and time schedule of the project.~~

~~(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding.~~

~~(b) **Request list of construction management or design build firms.** A state agency shall submit a written request to the Division for a list of construction management or design build firms currently registered with the Division. The request must include the description of the project developed pursuant to (a) of this Section. The Division shall deliver to the state agency a printed list and/or one set of mailing labels in response to the request.~~

~~(c) **Announce project.** The state agency shall send a Request for Qualifications (RFQ) to each consultant management or design build firm on the list which must include the description developed in (a) of this Section and the deadline when letters must be received for consideration.~~

~~In special circumstances, the Director or Administrator may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management or design build firms, whichever is applicable.~~

~~(d) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:~~

~~(1) Identity of the state agency that will select the construction management or design build firm.~~

~~(2) Procedures for submitting statements of qualification and procedures for making awards, including a reference to the requirements of this Chapter and the regulations of the Division.~~

~~(3) Evaluation factors to be considered by the selection committee.~~

~~(4) A statement of work including a summary description of the project.~~

~~(5) A schedule for planned commencement and completion of the contract.~~

~~(6) Budget limits for construction of the project for which services are being sought.~~

~~(7) Requirements for Construction Management/at-risk or Design-Build firms to have bonds and insurance.~~

~~(e) **Request and review files.** The state agency shall send a list of construction management or design-build firms that submitted Letters of Interest (LOI) for the announced project(s) to the Division. Upon receipt of the list, the Division will assemble and deliver a copy of any information on file for each firm on the list to the state agency.~~

~~(f) **Selection of the "short list".** The screening committee shall select no less than three and no more than five of the best qualified construction management or design-build firms based upon the data supplied by the Division and other information which may be submitted by the construction management or design-build firms.~~

580:20-21-5. Screen criteria [REVOKED]

~~(a) The screening process is the examination of each construction management or design-build firm that has submitted a Letter of Interest (LOI) for the project proposed by the state agency. Files on each firm are provided by the Division for this purpose. A specific list of screening criteria shall include, but need not be limited to the following:~~

~~(1) Specialized experience related to the proposed project.~~

~~(2) Capacity of the firm to complete the project in the time available.~~

~~(3) Past performance in similar projects.~~

~~(b) Each firm considered shall be rated by the Screening Committee for each criteria established by (a) of this Section and additional criteria established by the state agency or division, if any. Written ratings for each firm shall be documented on a screening evaluation form which lists all criteria developed for the selection process. After all firms are evaluated, the ratings are compared and the top three to five firms are identified for interview.~~

~~(c) A copy of all screening evaluation forms shall be included in the report to the Division as required by Subsection 8.~~

580:20-21-6. Scheduling and performing interviews [REVOKED]

~~(a) All members of the interview committee shall participate in all interviews of each firm.~~

~~(b) An evaluation criteria list shall be developed to ensure that all interviews are conducted identically. The interview committee shall use the criteria listed in 580:20-21-7.~~

~~(c) Each firm shall be notified by letter of the selection for interview. The letter shall contain:~~

~~(1) Date, time and place of interview. Interviews should be scheduled individually for each firm.~~

~~(2) Period of time permitted for the interview. Indicate how much time the firm shall be permitted for the presentation and how much time shall be reserved for questions by the committee.~~

~~(3) A copy of the interview criteria.~~

~~(4) The letter should contain any other information which would help the committee to obtain information needed for them to properly evaluate the firm.~~

~~(5) Oklahoma Statutes prohibit the requesting of any information on fees. Any firm who discloses its fee, or any indication thereof, shall be removed from the request list or short list and receive no further consideration for the project. Construction management or design-build firms must be selected on the basis of qualifications and not on a bid basis.~~

~~(d) Interviews must be conducted privately with each firm.~~

~~(e) At the conclusion of all interviews, the committee shall rate each firm in a manner so as to recommend to the state agency the relative ranking of each firm. All criteria and procedures used by the committee shall be documented for the record. The recommendations are forwarded to the state agency for the final selection.~~

580:20-21-7. Interview criteria [REVOKED]

~~(a) The interview is the most important step in the selection process. Each firm must be evaluated against a clearly established list of criteria which is provided to the firm at least seven days prior to the interview.~~

~~(b) The state agency shall use the interview evaluation form, prescribed by the Director, which includes, but is not limited to the following criteria:~~

~~(1) Specialized experience and technical competence of the firm regarding the type of services required.~~

~~(2) Capacity and capability of the firm, including any consultants, to perform the work, including any specialized services, within the stated time limitations of the project.~~

~~(3) Past record of performance on contracts with government agencies or private industry with respect to control of costs, quality of work and ability to meet schedules.~~

~~(4) Proximity to or familiarity with the area in which the project is located.~~

~~(5) The volume of work previously awarded by the state to the firm.~~

~~(6) Any other factors that are relevant to the project as determined by the Division.~~

~~(c) Questions concerning fees shall not be asked.~~

580:20-21-8. Report to Division [REVOKED]

~~(a) **Contents.** The state agency shall prepare a chronological report detailing the specific steps used by the state agency during its selection process. This report shall include:~~

~~(1) the criteria used in the screening process;~~

~~(2) the interviews and the ratings of all firms considered;~~

~~(3) a copy of the approved minutes of any board action affecting the selection process, if applicable; and~~

~~(4) If an out-of-state firm is selected, the report must include the justification for the selection.~~

~~(b) **Delivery to Division.** The report must be submitted to the Division for an independent review of the complete selection process.~~

580:20-21-9. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 23. FEES FOR SERVICES [REVOKED]

580:20-23-1. Purpose [REVOKED]

~~The Construction and Properties Division may collect reasonable fees for the purpose of providing or contracting for architectural, engineering, and land surveying services to state agencies; from persons requesting plans and notification of solicitations issued by the Division; and, for contract management for a construction project. [Title 61, Section 208.1] The purpose of this subchapter is to establish a schedule of fees for services provided by the Division.~~

580:20-23-2. Fees for services [REVOKED]

~~(a) General Provisions. Upon requesting specific services, a state agency shall submit a requisition or request form prescribed by the Administrator which states the service requested and verifies the corresponding fee from the schedule provided by the Division. When required by the fee schedule, the Agency shall attach a purchase order for the specified fee amount, listing the Division as the vendor. The Division will invoice the Agency for the specified fee upon completion of the service. The fee is for a service provided by the Division and is fulfilled by the specified action by the Division. The fee is not contingent on the performance of an outside vendor retained as a result of the service rendered by the Division.~~

~~(b) Fee schedule for non-mandatory services. The following fees shall be collected for non-mandatory services provided by the Division:~~

~~(1) DCS Roof Asset Management Program - Five (5%) of roofing contract price.~~

~~(2) DCS On-Call Consultants Program - Ten (10%) of Consultant's Fee~~

~~(3) DCS Testing Program - Ten (10%) of Testing Consultant's Fee~~

~~(4) DCS Land Surveying Program - Ten (10%) of Land Surveyor's Consultant Fee~~

~~(5) Other Specialized Consulting or Contracting services - Up to 10% of Consultant's fee and/or contract price~~

~~(6) Architectural or Engineering consultation services - Hourly rates of Division personnel and administrative expenses of the Division~~

~~(c) Fees for bid document services. The Division shall collect a fee for the actual cost of notification of solicitations and printing of bid documents plus 15% for Division administrative expenses from persons requesting plans and notification of solicitations issued by the Division.~~

~~(d) Contracting and contract management fees. The Division will charge reasonable fees for providing, contracting and managing consulting or construction contracts. [61 O.S., § 208.1]~~

~~(1) Fees will be based on project size, complexity and management effort required by the Division.~~

~~(2) The Division will determine the appropriate level of contract management services for each project.~~

~~(3) A fair and reasonable fee schedule will be established by the Division for routine standard services and for expanded contract management services. The fee schedule will be published on the Department website and, in no case, will such fees exceed:~~

~~(A) a lump sum fee of $250.00 for small construction contracts not exceeding the statutory amount defined by 61 O.S., § 103 (B);~~

~~(B) 5% of the construction contract amount for large construction contracts defined by 61 O.S., § 103 (A);~~

~~(C) $500.00 for contracting for architectural, engineering and land surveying services.~~

580:20-23-3. Deposits of fees [REVOKED]

~~All fees collected in accordance with the provisions of this section shall be deposited in the Construction & Properties Division's revolving fund created by Title 61, Section 208.2.~~

580:20-23-4. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 25. PRE-CONSTRUCTION PLANNING [REVOKED]

580:20-25-1. Purpose [REVOKED]

~~This subchapter defines the process for state agencies to follow when planning a construction project, and apply to both new construction and major renovation. [O.S.61 §209(12)]~~

580:20-25-2. Definitions [REVOKED]

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Consultant"** means either the architectural/engineering firm or other professional consultant under contract to the Division or a representative of the Construction and Properties Division used for the planning, design or construction monitoring of the construction project.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Intent"** means the point in time that a State Agency decides to pursue a project, either by incorporation into the agency's long range plan, by budget action or by action to obtain future funding.~~

~~**"Pre-Design Services"** means a formal planning process to establish function, scope and cost of a future project.~~

~~**"Project or Improvement"** means the collective act of design and construction of a new State building, facility or improvement, or the renovation of an existing State building, facility or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy by the State, where the construction and/or renovation cost is reasonably anticipated to exceed $158,000.00.~~

~~**"State agency"** means *an agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.* [61 O.S., §202]~~

580:20-25-3. Project inception [REVOKED]

~~When a state agency establishes intent to pursue a Project, the agency shall notify the Division in writing. The agency shall provide information specified by the Division, including but not limited to: project name, description, location, intended purpose, new construction or renovation, anticipated cost, desired completion date and description of funding sources. The notification may be used by the Division to maintain data on projected State construction pursuant to 61 O.S., §204(A)(1).~~

580:20-25-4. Determination of a need for pre-design services [REVOKED]

~~Upon review of the notice of intent submitted by the agency, the Administrator will consult with the agency and determine the specific project planning requirements. The Administrator shall determine a need for pre-design services based on the following factors:~~

~~(1) Building type;~~
~~(2) Project complexity;~~
~~(3) Project schedule;~~
~~(4) Funding sources or funding constraints; and,~~
~~(5) Other factors unique to the project.~~

580:20-25-5. Pre-Design Services [REVOKED]

~~When the Administrator determines pre-design services are required, the Administrator shall advise the agency of the anticipated cost of the service, and the procurement methods available to the agency. To initiate pre-design services, the agency shall submit a requisition to the Division and the Division shall procure the pre-design services on behalf of the agency.~~

580:20-25-6. Applicability [REVOKED]

~~The requirements of sections 20-25-4 and 20-25-5 are not mandatory for state agencies employing licensed architects pursuant to 61 O.S., §207.2.~~

580:20-25-7. Waivers [REVOKED]

~~The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.~~

SUBCHAPTER 27. USE OF BEST VALUE COMPETITIVE PROPOSALS TO AWARD A CONTRACT [REVOKED]

580:20-27-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to provide information and procedures to issue competitive solicitations and award contracts using Best Value methodology. The rules implement the provisions of 61 O.S. §103(E) of the Public Competitive Bidding Act of 1974, which authorizes use of Best Value competitive proposals as an alternative to strictly price or qualification based competition. The rules ensure fair and consistent contracting processes that satisfy the needs of the state. All vendors and state agencies are responsible for knowing the requirements of this Subchapter. These rules are administered by the Construction and Properties Division of the Department of Central Services to provide direction and ensure compliance with the Oklahoma Public Competitive Bidding Act, and other state laws and rules applicable to state construction acquisitions. These rules have been promulgated in accordance with the Administrative Procedures Act and pursuant to the authority of 61 O.S. §103(E) and 61 O.S. §209.~~

580:20-27-2. Definitions [REVOKED]

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

~~**"Administrator"** means the State Construction Administrator of the Construction and Properties Division of the Department of Central Services.~~

~~**"Best Value"** means *an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state."* [61 O.S. §103(E)]~~

~~**"Department"** means the Department of Central Services.~~

~~**"Division"** means the Construction and Properties Division of the Department of Central Services, State of Oklahoma.~~

~~**"Past Performance Rating"** means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.~~

~~**"Project"** means the scope of services for which the Division requests competitive proposals from interested construction services vendors by issuance of a Solicitation or Request for Proposal.~~

~~**"Project Capability"** means the ability of a vendor to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.~~

~~**"Risk Assessment"** means identification of risks that the vendor does not control and the vendor's plan to minimize the risk.~~

~~**"Selection Committee"** means a group of state representatives, designated by the Administrator, assembled to evaluate and rank proposal submittals by vendors.~~

~~**"Selection Monitor"** means the Administrator or his/her appointed representative placed in the role of presiding over a Selection Committee.~~

~~**"State agency"** means an *agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions.* [61 O.S., §202]~~

~~**"Value-added"** means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.~~

~~**"Vendor"** means any service provider competing for a contract or performing work under a contract awarded by the Division. The term "Vendor" is interchangeable with Contractor, Construction Manager, Consultant, Design-Builder or other service provider. Vendor is used interchangeably with Bidder, Proposer and Offeror in context with the immediate topic herein.~~

580:20-27-3. Components of Best Value vendor selection and project delivery [REVOKED]

~~(a) **Goal.** The goal of using the Best Value contract solicitation method is, for each service delivery, to identify the construction vendor that is an expert, is efficient, can pre-plan the work and deliver the service with minimal deviation in the owner's expectations (cost, schedule and quality) and thereby provide the owner the greatest value for the lowest price.~~

~~(b) **Principles.** The intent of the Best Value solicitation process is to promote:~~

~~(1) efficiency;~~

~~(2) transparency;~~

~~(3) accountability;~~

~~(4) measurements;~~

~~(5) alignment;~~

~~(6) expertise;~~

~~(7) dominant information;~~

~~(8) risk minimization;~~

~~(9) reduced need for decision making;~~

~~(10) reduced transactions; and,~~

~~(11) win-win-win outcome (owner, vendor, customer).~~

~~(c) **Phases.** The Best Value vendor selection and project delivery process consists of three (3) primary phases:~~

~~(1) **Phase 1.** Vendor selection~~

~~(2) **Phase 2.** Clarification period, which includes but may not be limited to:~~

~~(A) agreement on scope;~~

~~(B) description of services using performance measurements, if applicable; and,~~

~~(C) creation of contract requiring a Weekly Risk Report (WRR), Risk Management Plan (RMP), and all applicable legal terms and conditions.~~

~~(3) **Phase 3.** Management by Risk Minimization, which requires:~~

~~(A) the vendor to manage and control the project using a weekly risk report and risk management plan (WRR/RMP); and,~~

~~(B) the Division to perform project quality assurance by ensuring the vendor is using a quality control plan (WRR/RMP). The Division's quality assurance personnel are not limited to quality assurance and may inspect the project on a periodic basis.~~

580:20-27-5. Selection committee [REVOKED]

~~(a) **Members.** Whenever a solicitation is issued requiring Best Value methodology to determine the successful bidder, the Administrator or Division designee will appoint members to a Selection Committee. The Committee will consist of three to five individuals with at least one representing the Division. The balance may consist of state agency representatives.~~

~~(b) **Selection Monitor.** One Committee member, which may be the Administrator or his/her appointed representative, is designated as the Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:~~

~~(1) schedule and preside over Committee meetings;~~

~~(2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;~~

~~(3) tabulation of the evaluation scores;~~

~~(4) review the Committee's rating results for dominant information and/or inconsistencies;~~

~~(5) discuss evaluations with Committee members to seek clarifications, if necessary;~~

~~(6) prioritize the final rating score in matrix;~~

~~(7) assist the Committee in determining the highest ranked firms for further consideration in interviews.~~

~~(8) assist the Committee in determining the apparent Best Value firm; and,~~

~~(9) assisting with the Clarification Period activities.~~

580:20-27-7. Vendor selection [REVOKED]

~~The Best Value Selection Phase uses a series of filters to identify which bidder provides the most value (lowest cost and highest performance) to the State. On or before the date stated in the solicitation, vendors submit documentation requested in the solicitation or bid documents information that will be evaluated, rated and/or weighted, and include, but are not limited to:~~

~~(1) **Past performance information.** On forms specified by the Administrator, the vendor submits performance information collected from past customers about past projects/services the vendor has completed. The selection committee does not evaluate this information and does not see the past performance scores until the selection process enters the Prioritization filter.~~

~~(2) **Project capability.** Using forms or formats specified by the Administrator, the vendor submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, technical capability and documented performance measurements, vendor's ability to provide additional value to the~~

~~State, and pricing as information required by the solicitation.~~

~~(3) **Interviews.** The Selection Monitor will schedule interviews with representatives of short-listed organization as designated by the Committee. The interview provides a forum for the vendor to discuss the project and answer questions concerning their ability to deliver the project/service to the State.~~

~~(4) **Prioritization.** After completion of (1) through (3) of this subsection by the Selection Committee, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each vendor.~~

~~(5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value vendor. The Selection Monitor evaluates all information to ensure that the prioritization is justifiable and there is no evidence warranting adjustment of the prioritization and ratings in any way. If the committee's ratings are not balanced, supporting past performance information is absent or pricing is not competitive or justified, the Selection Monitor may override the prioritization by providing written justification of the actions taken.~~

580:20-27-9. Clarification Period [REVOKED]

~~(a) The identified apparent Best Value vendor is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. This period is the final 'filter' and the invited firm is still at risk (the project is the identified firm's to lose). The clarification period is not a contract negotiation activity. Once invited to the clarification period, the vendor is responsible for scheduling and management of the related activities. The objective is to:~~

~~(1) ensure the vendor understands the project scope; and,~~

~~(2) allow the vendor to clarify how they will deliver the project/service on time;~~

~~(3) identify the accountabilities of other parties; and~~

~~(4) explain how the vendor will mitigate and manage any risk the vendor does not control.~~

~~(b) The vendor is responsible for understanding the project requirements and expectations.~~

~~(c) To complete the Clarification Phase, the vendor conducts required meetings, indentifies specific requirements and provides relevant documents, including but not limited to, the following:~~

~~(1) Executive Summary;~~

~~(2) A critical milestone schedule that includes the clarification period, the award, project/service delivery and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;~~

~~(3) Identify (ask questions) all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how they will satisfy those concerns; make any additional investigations as warranted;~~

~~(4) Provide a listing of major sub-vendor and suppliers. Ensure that any sub-vendors have a complete understanding of the project and have no technical or non-technical questions or concerns;~~

~~(5) Identify activities where the vendor will experience situations where there may be a lack of information, where un-foreseen conditions may exist and activities where the vendor has no control over other participants or required activities in the delivery of the service.~~

~~(6) Identify and document in writing any value added ideas the Division has accepted or rejected, along with corresponding adjustments to the contract terms;~~

~~(7) A project plan including any final clarification of their proposal and any omitted information and identification of value added provisions accepted by the owner;~~

~~(8) Validation that the proposal is accurate and complete prior to submitting their final project scope;~~

~~(9) Develop a weekly risk report template to communicate accountabilities and deviations, beginning with the clarification period;~~

~~(10) Develop a risk management plan, which includes any risks the vendor does not control and how the vendor will mitigate or minimize those risks should they occur;~~

~~(11) Identify a performance measurement plan to communicate to the Division how the vendor is performing during the project duration; and~~

~~(12) Provide assurances to satisfy any remaining project concerns that the Division may have, including but not limited to adverse publicity, noncompliance with local, State or Federal law, Safety and accident prevention or other risks within the control of the vendor that would cause unnecessary time and effort transactions by the Division.~~

~~(d) If the bidder determines their proposal contains errors or their proposal is inaccurate, the bidder may withdraw the project proposal without incurring a penalty. The bidder shall be prohibited from modifying their proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the Administrator.~~

~~(e) The vendor must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized and suitable for attachment to the Division's owner-vendor agreement.~~

~~(1) The final clarification meeting is not a question and answer session.~~

~~(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Division must be conducted prior to the clarification meeting.~~

~~(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.~~

~~(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Division determines progress being made by the invited bidder is unsatisfactory, the Division may terminate Clarification Phase activities~~

~~with the invited bidder. The Division may then commence a new Clarification Phase with the next highest ranked bidder.~~

580:20-27-11. Risk minimization and performance [REVOKED]

~~(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality or project schedule caused by the vendor, the State, unforeseen conditions or other parties. The Phase consists of, but is not limited to:~~

~~(b) **Weekly Risk Report System (WRR).** The WRR is a project requirement and tool the vendor must use to manage and document all risks that occur throughout a project. The WRR is a standardized format prescribed by the Administrator, which may include:~~

~~(1) all key contact information;~~

~~(2) project milestone schedule;~~

~~(3) risk sheet;~~

~~(4) modification/deviation tracking;~~

~~(5) risk management plan (RMP);~~

~~(6) any risks the Division may require the vendor to document that could impact the customer or the Division's satisfaction.~~

~~(7) performance measurements~~

~~(c) The vendor shall submit a risk report for the project/service weekly throughout their contract, or as otherwise required by the Administrator.~~

580:20-27-13. State transparency and Best Value documentation [REVOKED]

~~(a) For successful outcomes, the Best Value operating environment must be transparent to all stakeholders. The following key components are critical to the integrity of Best Value methodology:~~

~~(1) A solicitation must clearly state submittal requirements.~~

~~(2) A solicitation must clearly define the solicitation/acquisition schedule, which may include a Pre-Bid Education meeting to review Best Value concepts, process and submittal requirements~~

~~(3) Following a contract award, the Division will provide a debriefing meeting to bidders, upon request. Alternatively, if scheduled by the solicitation, the Division will provide a debriefing review for all participants.~~

~~(b) To protect the integrity of the selection process and fairness to bidders, the following will remain confidential as stated:~~

~~(1) Identities of individual bidders will not be revealed to voting members of a selection committee during evaluation of key submittals as identified in the solicitation until such time as the highest rated bidders are identified and advanced to the oral interview or award phase.~~

~~(2) To preserve integrity in the event a re-bid is necessary, contents of the individual bidders' submittals shall not be open to public inspection until such time as the contract award is made.~~

~~(3) A bidder shall clearly identify any information submitted in a response to a solicitation that the bidder considers confidential or proprietary. The Administrator shall review the information and may or may not designate a bidder's information or proprietary information as confidential and may or may not reject requests to disclose the information so designated.~~

~~(c) Following the contract execution, all selection process documentation not otherwise protected will be available to the public for inspection. The following shall be posted on the Division's website:~~

~~(1) Tabulation of bid evaluation scores, and~~

~~(2) Tabulation of bid pricing, and~~

~~(3) Identification of Awardee and awarded price.~~

580:20-27-15. Post project vendor performance rating [REVOKED]

~~(a) Upon completion of a project, the Administrator, in consultation with the customer agency, will conduct a performance review of the vendor.~~

~~(b) The final vendor project performance review will replace previous performance evaluations for use in future contract award evaluations.~~

580:20-27-17. Other requirements for contracts awarded using Best Value methodology [REVOKED]

~~Rules of this section apply to any contract awarded by the Division using Best Value methodology to select the successful vendor.~~

~~(1) When otherwise prohibited by state law, fee proposals shall not be requested by a solicitation or considered by the selection committee prior to commencement of the Clarification Period (ie. Consultant or Construction Manager solicitations).~~

~~(2) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.~~

~~(3) Solicitations for on-call, indefinite delivery and statewide specialty service contracts resulting in multiple contract awards may include the following provisions:~~

~~(A) Top ranked vendors may receive awards as set forth by the solicitation and determined by the selection committee.~~

~~(B) Multiple vendors may be invited to the clarification period to facilitate multiple awards. Multiple vendors must not be placed in competition with one another during this period.~~

~~(C) Ranking, price schedule and performance information for awardees will be published by the Division as information to potential end users.~~

~~(D) Authorized end users may utilize the available contracts according to procedures established by the Division for issuing proposal requests, making requisition and issuance of work orders.~~

~~(E) Following completion of a work order assignment, the vendor's performance will be documented and added to the published performance line for consideration by future customers.~~

~~(4) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the Administrator. Components of the plan must, as a minimum, include the following provisions:~~

~~(A) Bid Notices: Method of making uniform public notification to interested subcontractors and suppliers;~~

~~(B) Availability of Bid Documents for inspection or acquisition by interested bidders;~~

~~(C) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.~~

~~(D) Method of evaluation of bid documents to determine final recommended contract awards.~~

~~(E) Method of public publication of pricing, scoring and final award information.~~

580:20-27-19. Industry Advisory Committee [REVOKED]

~~(a) **Committee.** In order to maintain a balanced approach among stakeholders, the Administrator may establish an advisory committee comprised of volunteers from organizational stakeholders of the state construction program.~~

~~(b) **Purpose.** The purpose of the Committee is to assist with procedures, review case studies, recommend implementation strategies, promote education and promote continual improvement. The Administrator may ask the committee to review complaints or concerns from stakeholders and recommend resolution thereof.~~

~~(c) **Membership.** Committee membership is comprised of delegates from organizations representing general construction contracting; specialty contracting, suppliers, consultants and customers.~~

~~(d) **Meetings.** The Administrator or designee is the Committee Chairperson and has responsibility for scheduling meetings.~~

580:20-27-21. Third party oversight [REVOKED]

~~The Administrator may arrange for program oversight by an independent research organization or university. Services provided by the third party may include:~~

~~(1) auditing the selection and project delivery processes;~~

~~(2) preparing case study documentation;~~

~~(3) ensure correct application of Best Value principles and processes; and,~~

~~(4) provide educational support on theory, principles, application and updates to Best Value best practices.~~

580:20-27-23. State Best Value methodology training [REVOKED]

~~(a) The Division will provide training opportunities for vendors, which may include:~~

~~(1) educational information at Best Value pre-bid meetings;~~

~~(2) additional educational opportunity(s) to vendors when solicitations are for services exceeding ten million dollars ($10,000,000.00);~~

~~(3) periodic or annual Best Value training for the customer and vendor community to review Best Value theory, application, selection process, case studies, and updates to the Division's adopted processes; and,~~

~~(4) additional training for vendor and customer groups, upon request and subject to availability.~~

~~(b) The Division will publish or otherwise make education materials available to parties interested in additional Best Value training.~~

580:20-27-27. Bid protests [REVOKED]

~~A bidder may protest a contract awarded pursuant to this subchapter in accordance with OAC~~

580:20-27-29. Waivers [REVOKED]

~~The Administrator may waive or modify any provision or requirement of this subchapter when such waiver is in the best interest of the State.~~

APPENDIX A. GUIDELINES FOR DETERMINING CONSULTANT FEES [REVOKED]

GUIDELINES FOR DETERMINING CONSULTANT FEES

The following information is provided as a guide, only, and must be tempered with informed judgment during the negotiation process.

BASIC FEES EXPRESSED AS A PERCENTAGE OF THE PROGRAMMED COST OF CONSTRUCTION

CONSTRUCTION COST

0 to 50,000	Negotiated
50,000 to 100,000	$ 6,000 plus 9.0% over $ 50,000
100,000 to 200,000	$10,000 plus 8.0% over $ 100,000
200,000 to 300,000	$18,500 plus 7.5% over $ 200,000
300,000 to 400,000	$26,000 plus 7.0% over $ 300,000
400,000 to 500,000	$33,000 plus 6.5% over $ 400,000
500,000 to 600,000	$39,500 plus 6.0% over $ 500,000
600,000 to 700,000	$45,500 plus 5.9% over $ 600,000
700,000 to 800,000	$51,400 plus 5.8% over $ 700,000
800,000 to 900,000	$57,200 plus 5.7% over $ 800,000
900,000 to 1,000,000	$62,900 plus 5.6% over $ 900,000
1,000,000 and over	$68,500 plus 5.5% over $1,000,000

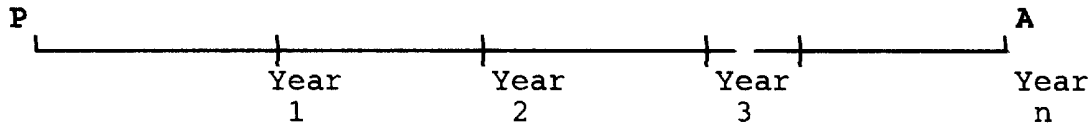
The following multipliers may be used to adjust for the nature and complexity of the work in the specific contract. They should be adjusted based upon the users knowledge of the specific project.

New work of average complexity	1.00
New work, below average complexity	0.95
New work, above average complexity	1.05
Renovation, average complexity, record drawings of existing facility available	1.20
Renovation, average complexity, record drawings of existing facility not available	1.25
Renovation, below average complexity, record drawings of existing facility available	1.20
Renovation, below average complexity, record drawings of existing facility not available	1.35
Renovation, above average complexity, record drawings of existing facility available	1.45
Renovation, above average complexity, record drawings of existing facility not available	1.55

These fees assume that the consultant is to provide all of the services required by the basic consultant contract written by the Division.

APPENDIX B. FORMULAS FOR DETERMINING SINGLE PRESENT WORTH, PRESENT WORTH FACTOR, AND PRESENT WORTH ESCALATING FACTOR [REVOKED]

I. Single Present Worth (**SPW**)



To convert a single future amount **A** to an equivalent present worth **P** use the single present worth (**SPW**).

$$\mathbf{P = A \times (\ SPW\ )}$$

$$\mathbf{(\ SPW\ )} = \frac{1}{(\ 1 + i\ )^{n}}$$

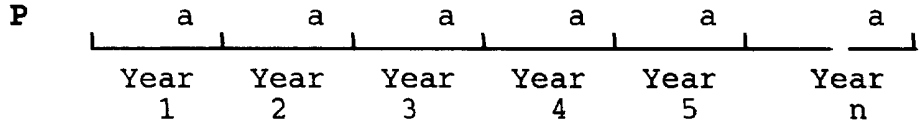
where

i is the interest rate per year.

n is the number of years.

$$\mathbf{P} = \frac{\mathbf{A}}{(\ 1 + i\ )^{n}} \qquad \text{(A.1)}$$

II. Present Worth Factor (**PWF**)



To convert an annual recurring amount (a) to an equivalent present worth P use the Present Worth Factor (**PWF**).

$$P = A \times (PWF)$$

$$(PWF) = \frac{(1+i)^n - 1}{i(1+i)^n}$$

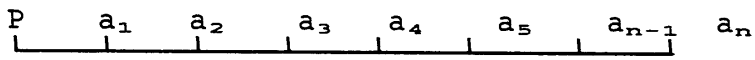
where

i is the interest rate per year.

n is the number of years

$$P = a\left(\frac{(1+i)^n - 1}{i(1+i)^n}\right) \qquad (A.2)$$

III. Present Worth Escalating Factor (PWEF)



To convert a non-uniform, escalating annual amounts (a_1, a_2, ... a_n) to an equivalent present worth **P** use the Present Worth Escalating Factor (**PWEF**).

$$(PWEF) = \left(\frac{1+j}{1-j}\right)\left(1 - \left(\frac{1+j}{1+i}\right)^n\right)$$

$$P = a_1 \times (PWEF)$$

where

i is the interest rate per year.

j is the escalating factor per year.

n is the number of years.

$$P = a_1 \left(\frac{1 + j}{1 - j}\right)\left(1 - \left(\frac{1 + j}{1 + i}\right)^n\right) \qquad (A.3)$$

If **j** = 0, then (**PWEF**) becomes equal to (**PWF**) and equation (A.3) becomes similar to (A.2).

If **j** = 1 then (**PWEF**) = **n** and **P** = a_1 x **n**

APPENDIX C. SUGGESTED EQUIPMENT LIFE [REVOKED]

EQUIPMENT	LIFE
Air conditioners	
Window Unit	20
Residential single or split level	14
Commercial through-the-wall	15
Water-cooled package	15
Heat pumps	
Residential air-to-air	15
Commercial air-to-air	15
Commercial water-to-air	15
Roof-top air conditioner	
Single-zone	15
Multizone	15
Boilers, hot water	
Steel, hot water tube	24
Steel fire-tube	24
Cast iron	35
Electric	15
Boiler, steam	
Steel water-tube	30
Steel fire-tube	25
Cast iron	30
Electric	30
Burners	21
Furnaces	
Gas or oil-fired	18
Unit heaters	
Gas or electric	13
Hot water or steam	20
Radiant heaters	
Electric	10
Hot water or steam	25
Air terminals	
Diffusers, grilles and registers	27
Induction and fan-coil units	20
VAV and double-duct box	20
Air washers	17
Duct work	30
Dampers	20

EQUIPMENT	LIFE
Fans	
Centrifugal	25
Axial	20
Propeller	15
Ventilating roof-mounted	20
Coils	
DX, water, or steam	20
Electric	15
Heat exchangers	
Shell-and-tube	24
Reciprocating compressor	20
Package chillers	
Reciprocating	20
Centrifugal	25
Absorption	23
Cooling towers	
Galvanized metal	20
Wood	20
Ceramic	34
Air-cooled condensers	20
Evaporative condensers	20
Insulation	
Molded	20
Blanket	24
Pumps	
Base-mounted	20
Pipe-mounted	10
Sump and well	10
Condensate	15
Reciprocating engines	20
Steam turbines	30
Electric motors	18
Motor starters	17
Electric transformers	30
Controls	
Pneumatic	20
Electric	16
Electronic	15
Valve actuators	
Hydraulic	15
Pneumatic	20
Self-contained	10

[OAR Docket #14-761; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 25. RISK MANAGEMENT PROGRAM [REVOKED]

[OAR Docket #14-762]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
580:25-1-1. Purpose [REVOKED]
580:25-1-2. Definitions [REVOKED]
580:25-1-3. Source of authority [REVOKED]
580:25-1-4. Administration [REVOKED]
580:25-1-5. Responsibilities and duties [REVOKED]
Subchapter 3. Casualty or Liability Incident Management [REVOKED]
580:25-3-1. Establishment of programs [REVOKED]
580:25-3-2. Functions of Program [REVOKED]
Subchapter 5. Casualty or Liability Claims Management, Payment and Reports [REVOKED]
580:25-5-1. Claims management [REVOKED]
580:25-5-2. Claims payment [REVOKED]
580:25-5-3. Reports and recommendations [REVOKED]
Subchapter 7. Establishment of Centralized State Risk and Insurance Management Program [REVOKED]
580:25-7-1. Source of authority [REVOKED]
580:25-7-2. Functions of Oklahoma Risk Management Program [REVOKED]
Subchapter 9. Driver and Vehicle Safety Standards for Motor Vehicle Operations [REVOKED]
580:25-9-1. Driver and vehicle safety standards for motor vehicle operations [REVOKED]
Subchapter 11. Coverage for State Owned Buildings, Contents and Other [REVOKED]
580:25-11-1. Deductible levels and premiums [REVOKED]
580:25-11-2. Basic coverage [REVOKED]
580:25-11-3. Claims payment [REVOKED]
AUTHORITY:
62 O.S. §908; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

580:25-1-1. Purpose [REVOKED]

~~(a) In order to accomplish the objectives contemplated for the Risk Management Program under 74 O.S. Section 85.34 et seq., it will be necessary to establish an on-going relationship between each state agency covered by the act and the Risk Management Division of the Oklahoma Department of Central Services, as well as with any other covered entity.~~

~~(b) State agencies and other covered entities which do not presently maintain any Risk Management Program will be directed and instructed to establish a program. Existing programs must be standardized to the extent necessary for their consolidation and administration by the Risk Management Division. Reporting, investigation, adjustment, settlement and litigation of claims must be standardized. Effective means for monitoring and improving agency performance in these areas must be found. These requirements suggest the need for criteria, standards, guidelines, and reporting procedures to govern these activities. Chapter 25 of Title 580 will provide some of the resources.~~

580:25-1-2. Definitions [REVOKED]

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

~~**"Administrator"** means the officer appointed by the Director of Central Services to serve as Risk Management Administrator.~~

~~**"Agency Risk Management Coordinator"** means the individual, officer or employee of any state agency or other covered entity appointed by the state agency or other covered entity as the designated point of contact for the Risk Management Administrator for all risk management purposes, and shall include any employee or agent of the Risk Management Coordinator and such assistants as may be necessary shall be employed or appointed by such state agency or other covered entity to supervise and manage the agency Risk Management Program.~~

~~**"Agency Risk Management Program"** means the system within any individual state agency or other covered entity for coordination of risk management within such state agency or other covered entity for coordination of risk management activities between the state agency or other covered entity and the Risk Management Division, and for elimination, reduction, and minimizing of all insured or self-insured risks through a continuous effective loss prevention and loss control program, under the direction of the Risk Management Division.~~

~~**"Authorized legal Counsel"** means:~~

~~(A) The Attorney General of the State of Oklahoma;~~

~~(B) An attorney authorized to represent a state agency or other covered entity.~~

~~**"Casualty incident"** or **"liability incident"** means:~~

~~(A) Any liability occurrence or event:~~

~~(i) Taking place upon or within any real property owned or used by the State of Oklahoma; or,~~

~~(ii) Involving participation by any officer, employee or volunteer of any agency of the State of Oklahoma who may be acting within the scope of his or her employment; or,~~

~~(iii) Involving the temporary detention of a child in a juvenile detention facility which qualified as an other covered entity under the provision of 74 O.S. Section 85.34D; or~~

~~(iv) Involving any vehicle or other personal property owned by an agency or other covered entity and operated by an employee or volunteer of that agency or other covered entity; and,~~

~~(B) Any liability occurrence or event:~~

~~(i) Which results in personal injury or property damage; and,~~

~~(ii) Where there is probable cause to believe that such occurrence or event may give rise to a claim for damages against the state, an agency, an other covered entity or any of their employees.~~

~~**"Claim"** means the formal notice served upon proper legal authority by any claimant or the representative of any claimant, as provided by the Tort Claims Act, 51 O.S. Section 151 et seq., or any civil lawsuit brought against the state or its employees, or any administrative or arbitration proceeding brought against the state or its employees.~~

~~**"Claimant"** means the person or his authorized representative who files notice of a claim in accordance with 51 O.S. Section 151 et seq.~~

~~**"Liability Insurance"** means any type of commercial insurance, including self-insurance, administered or procured by the Risk Management Division including Directors and Officers Liability and any other liability insurance coverage for professional liability or errors and omissions coverage, including but not limited to, Law Enforcement Liability, Accountants Errors and Omissions, and Legal Liability.~~

~~**"Loss Prevention and Loss Control"** means any and all programs and systems designed to transfer, prevent, eliminate, mitigate, manage, and minimize the risk of loss due to any physical or financial cause, human or otherwise, and that may result in or give rise to a claim against the State, an agency, and any other covered entity, or any officers, directors, or employees of any group participating in the Risk Management Program.~~

~~**"Other covered entity"** means any organization or entity other than a state agency for which the Risk Management Administrator is authorized or required by law to obtain or provide insurance coverage.~~

~~**"Payment of claim"** means partial or full payment of a claim in compromise thereof by the appropriate lawful authority, and subject to any procedural requirements imposed by statute, resolution or written policy.~~

~~**"Premiums"** means the fees or payments levied and collected for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof.~~

~~**"Property incident"** means:~~

~~(A) Any occurrence or event involving any real or personal property owned by the state or in the possession of the state for safekeeping; and~~

~~(B) The result of which the property is damaged lost or destroyed by accident, misfortune or mishap.~~

~~**"Reportable vehicle incident"** means any occurrence or event involving a vehicle resulting in a liability incident including acts arising out of law enforcement practices. The term also includes any incident involving any vehicle or property used to conduct business within the scope of authority or employment of any employee, volunteer or official of the state, any agency or any other covered entity.~~

~~**"Risk Management Division"** means the organizational unit of the Oklahoma Department of Central Services which administers the Risk Management Program under the direction of the Risk Management Administrator.~~

~~**"Risk Management Program"** means the consolidated and centrally administered system for coordination of risk management activities between any state agency or other covered entity and the Risk Management Division for acquisition through the Risk Management Division of property and casualty insurance for the management of all property, casualty and liability incidents, and for eliminating, reducing and minimizing all risks through a continuous, effective loss prevention and loss control program, under the direction of the Risk Management Administrator.~~

~~**"State" or "Agency"** means any board, commission, committee, institution, department, instrumentality or entity designated to act on behalf of the State of Oklahoma.~~

~~**"Vehicle"** means:~~

~~(A) In case of other covered entities extended services by authority of 74 O.S. Section 85.34A, any vehicle, vessel or aircraft used for or in fire fighting by any such entity:~~

~~(B) In case of other covered entities extended services by authority of 74 O.S. Section 85.34C, any vehicle used for transportation of elderly or handicapped person by such entity:~~

~~(C) In the case of other covered entities extended services by authority of 74 O.S. Section 85.34D, any vehicle used to provide for the temporary detention of children in a juvenile detention facility by such entity;~~

~~(D) In the case of the state or any agency, any self propelled vehicle or mobile equipment which is owned by the state, or operated by any state employee who may be acting within the scope of state employment, whether or not the equipment is licensed for road use.~~

580:25-1-3. Source of authority [REVOKED]

~~The Risk Management Division of the Department of Central Services receives its authority from 74 O.S. Section 85.34 et seq. Section 85.34A explains its creation and authority. Section 85.34B deals with selection of personnel. Section 85.34C explains powers and duties of the director which govern the activities of the Risk Management Division of the Department of Central Services. Authority for extension of insurance acquisition services or self-insurance program administration services is authorized at 74 O.S. Section 85.34A for vehicles, vessels and aircraft used by certain fire departments and districts; at 75 O.S. Section 85.34C for transportation of elderly or handicapped persons, performed or provided by counties, municipalities, certain community action agencies, certain charitable corporations or certain nonprofit organizations operating pursuant to a contract with the State of Oklahoma or a political subdivision; and at 74 O.S. Section 85.34D for tort liability risks resulting from providing for the temporary detention of children in certain juvenile facilities.~~

580:25-1-4. Administration [REVOKED]

~~The Director of the Department of Central Services hires or contracts for the services of a Risk Management Administrator who administers the comprehensive professional risk management program and directs the activities and functions of the Risk Management Division.~~

580:25-1-5. Responsibilities and duties [REVOKED]

~~The Administrator is responsible for the acquisition and administration of all insurance purchased by the state or administration of any self-insurance plans and programs adopted for use by the state. On a competitive bid basis, the Administrator has the authority to purchase insurance for the state for any type of coverage which may be necessary to protect the state from financial loss. The Administrator is also empowered to provide insurance acquisition services or self-insurance program administrative services for certain organizations and bodies outside of state government, at the sole expense of such organizations and bodies, as provided by law.~~

SUBCHAPTER 3. CASUALTY OR LIABILITY INCIDENT MANAGEMENT [REVOKED]

580:25-3-1. Establishment of programs [REVOKED]

~~There is hereby established the Oklahoma Risk Management Program. Under this program each agency or other covered entity shall appoint an agency risk management coordinator and maintain an agency risk management program.~~

580:25-3-2. Functions of Program [REVOKED]

~~Each Agency Risk Management Program shall have assigned to it sufficient personnel to fulfill each of the following functions:~~

~~(1) **Incident scene management.**~~

~~(A) **General.** The Agency Risk Management Coordinator shall be responsible for assuring that proper steps are taken at the scene of any liability incident to ensure the safety and security of personnel and property, and to otherwise manage the scene in the best interest of the Oklahoma Risk Management Program. Employees of all agencies and other covered entities must be informed and encouraged to promptly report any potential liability incident in which they might be involved, or which they might witness, to proper supervisory and security personnel.~~

~~(B) **Reports by witnesses.** Any employee or officer of any agency or other covered entity who is involved in any potential liability incident, as a witness or otherwise, must immediately notify his or her immediate supervisor, as well as the security office or law enforcement officer with responsibility for the area where such incident occurs, if any. In case of any liability incident involving motor vehicles, the following procedure specified in paragraph (2) of this section, shall be followed.~~

~~(2) **Reporting vehicle liability incidents.**~~

~~(A) The operator of a vehicle involved in a reportable vehicle incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area where such incident occurs, unless incapacitated by injury to the extent that notification is impractical. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.~~

~~(B) The operator shall remain at the scene until completion of all acts required by law or the rules in 580:25-3 to be performed at the scene, unless injuries sustained require treatment or other extenuating circumstance exist preventing the operator from remaining at the scene.~~

~~(C) The operator shall fill out a required "In Case of Accident" form furnished in the glove compartment or other applicable designated place of all vehicles. This form shall be given to the Agency Risk Management Coordinator who will fill out a "Standard Liability Incident Report" from which, together with the "In Case of Accident" form, and "Scope of Employment" form shall be forwarded to the Risk Management Division as soon as the Risk Management Coordinator has completed an investigation of the liability incident.~~

~~(D) Any liability incident involving a fatality, personal injury or property damage must be reported immediately to the Risk Management Division. An answering service is available 24 hours a day, seven days a week.~~

~~(3) **Statements by parties involved.**~~

~~(A) Employees of any agency or other covered entity, whose conduct or performance of duty give rise to a "Liability Incident" shall be required to cooperate in good faith with the defense of any claim which may be presented in connection with the "Liability Incident". Any such employee's cooperation shall include, but not be limited to refraining from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, any law enforcement authority investigating the "Liability Incident" at the scene, or by statute. No employee involved in a "Liability Incident" has the authority to agree to or promise to settle any claim~~

~~(B) Any employee who is a witness to a "Liability Incident", but who did not commit or perform any act or omission contributing to the occurrence giving rise to the "Liability Incident" shall refrain from making any statement or comment, or from executing any writing or document concerning such incident, except as may be required by the employee's employer, authorized legal counsel, the Risk Management Division, or any law enforcement authority investigating the "Liability Incident" at the scene. Providing, however, that all such employees shall remain free to make any statement or comment concerning agency operations which are protected by 74 O.S. Section 841.7 and 841.8.~~

~~(4) **Investigation.** The Agency Risk Management Coordinator shall ensure that each liability incident involving the property or personnel of the agency or other covered entity is promptly investigated and that such investigation shall, at a minimum, involve ascertainment of the identities of all possible claimants and all known witnesses. A description of the occurrences giving rise to damages including the date time and location, shall be provided and an estimate of the possible amount of damages shall be made. Photographs of the accident scene or property damage should be taken as close to the date and time of the liability incident as possible. The identification of a party or a witness shall include full name, address, home and business phone numbers, date of birth, social security number and brief summary of what is known or reported by such witness.~~

~~(5) **Records keeping.** The Agency Risk Management Coordinator shall keep orderly records, organized so as to be readily retrievable by date, location of incident and names of parties potentially giving rise to liability, of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incident, nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Management Division.~~

~~(6) **Reporting procedures.** The Agency Risk Management Coordinator shall:~~

~~(A) **Give telephone notice to the Risk Management Division.** The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Division not later than the next working day following the occurrence of any such incident.~~

~~(B) **Fill out "Standard Liability Incident Report".** The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Liability Incident Report" form furnished by the Administrator to all agencies and other covered entities by the Risk Management Division. This report should include but not be limited to the following information:~~

~~(i) The time, date, and location of accident.~~

~~(ii) The department involved, and where a vehicle is involved, vehicle number or tag number, year and make, operator's name and telephone number at home and work. Owner's name if leased or rented.~~

~~(iii) A description of other property or vehicle, if any, year and make, name and address of operator and owner and telephone numbers.~~

~~(iv) The names of injured persons and the name of hospital(s) where such persons may receive treatment.~~

~~(v) The damage to the vehicle, if any, and the vehicle's location.~~

~~(vi) The name of the investigating officer.~~

~~(vii) A brief description of the incident.~~

~~(viii) The names, addresses and telephone numbers of all witnesses.~~

~~(ix) Photographs of the incident scene.~~

~~(C) **Forward "In Case of Accident Form" and "Scope of Employment Form" to the Risk Management Division.** The Agency Risk Management Coordinator shall send to the Risk Management Division the "In Case of Accident" form filled out by the operator of any vehicle involved in a reportable vehicle incident. Be sure to place a new "In Case of Accident" form in the vehicle as soon as possible if the vehicle is to be subsequently used to conduct business after applicable repairs have been procured and the agency or other covered entity is satisfied the vehicle is safe to operate.~~

~~(D) **Send informational material to the Risk Management Division.** The Agency Risk Management Coordinator shall complete all preliminary investigations following a liability incident and send a completed "Standard Liability Incident Report", the "In Case of Accident" report, if any, and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. The Scope of Employment form shall include a full and~~

~~accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.~~

~~(7) **Training and notices.** Every Agency Risk Management Program shall make adequate provision for training and notification to all employees regarding their responsibilities under the Oklahoma Risk Management Program. Employees shall be trained or notified regarding necessary reporting requirements in the event they may witness or be participants in a liability incident. Posters and signs shall be posted in conspicuous places informing employees, supervisors and other officers of their various responsibilities under the program.~~

~~(8) **Risk Management Manual.** Every agency or other covered entity shall formulate and adopt an "Agency Risk Management Procedure Manual" consistent with the minimum requirements of the rules and regulations contain in OAC 580:25-3. Such a manual shall fully describe the organization and procedures for the conduct of Risk Management activities within such agency, shall contain samples of all forms in current use, shall describe the proper reporting chain of command for routing necessary information to the Agency Risk Management Coordinator, shall identify all personnel having specified responsibilities for risk management activities and shall contain such other information as shall be required from time to time by the Risk Management Division or deemed pertinent by the Administrator. Agency Risk Management procedures shall be updated from time to time to maintain the currency of the information contained in the manual, and such modifications or revised editions shall be promptly filed with the Risk Management Division.~~

~~(9) **Coordination with the Risk Management Division.** One of the primary functions of the Agency Risk Management Coordinator will be to facilitate cooperation between the agency or other covered entity, the Risk Management Division, and legal counsel, when necessary, in cases where a liability incident actually gives rise to a claim for damages against the state or other covered entity. It will often be necessary for meetings, interviews, record reviews and other investigative activities to be arranged between Risk Management Division personnel and covered employees. The Agency Risk Management Coordinator will be the primary source of contact with an agency or other covered entity for purposes of arranging such matters.~~

~~(10) **Forms.** From time to time, the Risk Management Division may promulgate forms for use in the various Risk Management activities described above, including forms of notices, reports, manuals, etc. Unless a form has been prescribed by the Risk Management Division, it shall be the duty of the Agency Risk Management Coordinator to establish standard forms for use within the other covered entity to carry out Risk Management activities under 74 O.S. Section 85.34 et seq. and the rules contained in OAC 580:25-3. In any case where such a form has been prescribed by the Administrator for any purpose, it shall be adopted and made the exclusive form for such purpose by each Agency Risk Management Coordinator. Seminars may be conducted from time to time by the Risk Management Division to inform state or other covered entities employee(s), officer(s), Agency Risk Management Coordinator(s), Director(s), manager(s), supervisor(s), and other responsible personnel of systematic changes in standard forms of notices, reports, manuals, etc. Instructions, dates, identity of personnel expected to attend, etc., will be communicated by the Risk Management Division on an as-needed basis.~~

SUBCHAPTER 5. CASUALTY OR LIABILITY CLAIMS MANAGEMENT, PAYMENT AND REPORTS [REVOKED]

580:25-5-1. Claims management [REVOKED]

~~(a) **Settlement and payment of claims.**~~

~~(1) **General.** While the Risk Management Division will explore alternatives, most claims may be paid from the state's respective risk pools and not from commercial insurance. This requires that procedures be established to administer and settle claims. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the Administrator shall, upon receiving notice of any liability incident or claim from an agency or other covered entity, ascertain the existence and applicability of such insurance, and, within a reasonable time thereafter, notify the insurer of the incident or claim, as may be required by the applicable policy or contract of insurance. The terms and conditions of the contract or policy shall govern the rights and obligations of the state, agency or other covered entity and the insurer with respect to the investigation, settlement, payment and defense of claims or suits against the state, an agency, and other covered entity or any of their employees.~~

~~(A) With respect to claims subject to a contract or policy of liability insurance the following shall apply:~~

~~(i) A State agency, or any other covered entity, and its authorized attorney shall cooperate with any and all requests for information made by the Risk Administrator, or his/her representative or the insurer, or risk denial of coverage.~~

~~(ii) In the case of any possible settlement, regardless of the deductible or self-insured retention level claim, a state agency or any other covered entity and its attorney, shall notify the Risk Administrator or his/her representative prior to a settlement offer being made.~~

~~(iii) If any State agency, or any other covered entity, or its attorney fails to reasonably cooperate with Risk Management or the insurer, or fails to notify the Risk Administrator or his representative, prior to a settlement offer being made on any~~

~~claim subject to a contract or policy of liability insurance, the Risk Administrator may refuse to pay the claim.~~

~~(iv) Settlement of claims subject to a commercial contract of policy of liability insurance shall also be subject to the liquidity of any accounts created for the self-insured retention pool established for that particular liability insurance policy or contract.~~

~~(v) Any litigation concerning the Comprehensive Professional Risk Management Program of the Department of Central Services shall be handled by the Attorney General of the State of Oklahoma. [74 O.S., Section 61.4] Accordingly, settlements of matters in litigation shall not be settled without consultation with the Office of Attorney General and the Risk Administrator.~~

~~(vi) Private counsel hired by Risk Management or by any state agency are subject to and must also comply with the rules and regulations of Risk Management with respect to claims subject to a contract or policy of liability insurance.~~

~~(B) Claimants shall provide to Risk Management any and all requested information in order for Risk Management to comply with all State and Federal laws. If a claimant fails to comply with such requests, claimant's claim shall be invalid and ineffective unless and until claimant provides the information to Risk Management necessary for it to comply with State and Federal laws. However, nothing in this section shall toll or delay the time limits provided by the Oklahoma Governmental Tort Claims Act governing a claimant's obligation in reporting a claim.~~

~~(C) Risk Management shall not be responsible, accountable, or liable for any insurance or self-insurance program outside of those offered by Risk Management under 74 O.S. § 85.58A or any other insurance or self-insurance program which fails to comply with the requirements of 74 O.S. § 85.58A under any State or Federal law.~~

~~(D) Otherwise, in the absence of any applicable contract or policy of insurance, the following regulations shall be controlling:~~

~~(2)~~ **~~"Official State Business" and "Scope of Employment".~~** ~~Claims against the state shall be investigated to determine whether the employee was on official state business within the scope of their employment. For the purposes of the Risk Management Program, the determination of whether an employee's negligent actions will be covered is at the sole discretion of the Risk Management Division of the Department of Central Services. Risk Management will first look to see if the employee is paid for their employment from state tax proceeds, in the case of a volunteer, Risk Management will look to the organization utilizing the volunteers services to determine if the volunteer was reported as such in the annual Risk Management state employee/volunteer count. Next, Risk Management will determine whether the activity engaged in by the employee/volunteer at the time of said claim is officially sponsored by the insured organization. This determination is made by review of the information as well as additional investigation if necessary supplied on an official "Scope of Employment" form completed and turned into Risk Management by the organization. The Scope of Employment form shall be completed and signed by the supervisor of the employee involved in the accident. The Scope of Employment form shall include a full and accurate description of the specific work activity or assignment the employee was engaged in at the time of the accident.~~

~~(A) In the case of Institutions of Higher Education, for liability coverage purposes all extracurricular activity clubs, associations or organizations shall be treated in the following manner:~~

~~(i) Clubs, associations, and or organizations affiliated with a college or university shall be covered under the states self-insured liability insurance program for claims arising under the Oklahoma Governmental Tort Claims Act as long as the members are enrolled students of the college or university and the activity is part of a university/college course, athletic competition, or deemed by the college or university as an official university or college sponsored activity.~~

~~(ii) In order to obtain liability coverage for such clubs, associations, and or organizations, the college or university must have paid the annual tort and motor vehicle premiums assessed by State Risk Management. Premiums for such clubs, associations and organizations shall be established by State Risk Management. Any use of state property utilized in the activity sponsored by the university or college shall be in compliance with state law regarding the use of state property.~~

~~(iii) Claims arising out of the use of state vehicles or personal vehicles, while on official state business by students, will be deemed denied if the student is acting outside the scope of their volunteer/employment status.~~

~~(B) In the case of state agencies, use of state vehicles and liability coverage for such use shall be provided by State Risk Management in the following manner:~~

~~(i) Liability coverage will be afforded any state employee operating a motor vehicle while in the scope of their employment and on official state business. For the purposes of this section, motor vehicle includes state vehicles owned or leased by the agency, personal vehicles used by an employee for official state business, and privately leased vehicles.~~

~~(ii) State employees provided a state vehicle on a "24 hour" take home basis will be deemed to be covered during their established lunch period if the use of the vehicle is for driving to and from an eating establishment. Personal errands or activities~~

~~undertaken during a lunch hour will not be covered by State Risk Management. The employee will assume all liability while engaging in such activities.~~

~~(3)~~ ~~**Claims settled for amounts not exceeding $25,000.00.**~~ ~~A claim settlement in which a payment not exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel.~~

~~(4)~~ ~~**Claims settled for amounts exceeding $25,000.00.**~~ ~~A claims settlement in which a payment exceeding $25,000.00 is agreed upon may be paid by the Administrator pursuant to a settlement agreement negotiated and approved by authorized legal counsel, except that the settlement shall not be effective until approved by the district court as provided by law.~~

~~(5)~~ ~~**Disposition of claims against the state.**~~ ~~In the case of any claim against the state or an agency, the Attorney General, or other authorized legal counsel representing the state or agency in place of the Attorney General, may defend, settle, deny, compromise or otherwise dispose of any liability incident or claim as may be deemed necessary and proper under existing Oklahoma law.~~

~~(6)~~ ~~**Disposition of claims against a political subdivision and other covered entities.**~~ ~~In the case of any claim against any other covered entity which is also a political subdivision as defined by the Oklahoma Governmental Tort Claims Act, 51 O.S. Section 151 et seq. (the Act), defense, settlement or compromise of any claim or liability incident may be made by authorized legal counsel for the political subdivision, and payment or settlement may also require approval of the governing body, if any, of such political subdivision, as required by the Act, in addition to the approvals specified in 580:25-5-1(a)(2) and (3).~~

~~(7)~~ ~~**Limitations.**~~ ~~In no event shall self-insurance coverage provided to the state, an agency or other covered entity exceed the limitations on the maximum dollar amount of liability specified by the Oklahoma Governmental Tort Claims Act, which limits are codified at the time of adoption of these rules at 51 O.S. Section 154. These limits shall be applicable in cases of liability incidents involving any other covered entity, without regard to whether the other covered entity is qualified for treatment as a political subdivision as that term is defined in the Oklahoma Governmental Tort Claims Act. Where the Risk Management Division has approved the acquisition of a policy or contract of liability insurance, the terms of which make it applicable to any liability incident, the applicable limits of liability shall govern the dollar amount of indemnity available to the state, any agency or another covered entity, and no self-insurance coverage shall be provided or paid.~~

~~(b)~~ ~~**Collection of liability claims owed to the state.**~~ ~~In the case of any incident where the state has incurred a loss through the wrongful or negligent acts of a private person or other entity, the following procedures will apply:~~

~~(1)~~ ~~Money damages collected by the Risk Management Division in any case of loss of property belonging to the state by a private person or other entity is liable for a wrongful act, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Accounting Division of the Department of Central Services to the injured agency having charge of such damaged or lost property pursuant to 74 O.S., Section 85.9A.~~

~~(2)~~ ~~In the event a private person or other entity, whether insured or uninsured, is liable for a wrongful act giving rise to damage or loss of property of the state and such person, entity, or its insurer declines or refuses to pay or settle a written demand by the Risk Management Division for damages within a reasonable time, the Administrator shall refer the matter to the Attorney General who may take whatever action he deems necessary and proper to collect all money damages owed to the state for its loss. All money damages collected pursuant to this provision by the Attorney General, less any amounts properly credited to the Attorney General's Evidence Fund, will be paid to the Risk Management Division and subsequently disbursed through the agency clearing account by the Finance Division of the Department of Central Services to the injured agency pursuant to 74 O.S., Section 85.9A.~~

580:25-5-2. Claims payment [REVOKED]

~~The Risk Management Division has several methods in which to pay claims against the state or other covered entities. Methods of paying claims for liability incidents include:~~

~~(1)~~ ~~**Issuance of a state warrant.**~~

~~(A)~~ ~~Upon approval of a claim payment by authorized legal counsel, the Risk Management Division shall:~~

~~(i)~~ ~~Forward a request for a warrant to be issued with copies of documents showing all required approvals for claim payment.~~

~~(ii)~~ ~~Attach to the request for a warrant to be issued, a fully and properly executed release of liability, if available, or a copy of the court approval.~~

~~(B)~~ ~~The Accounting Division of the Department of Central Services shall:~~

~~(i)~~ ~~Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.~~

~~(ii)~~ ~~Issue a warrant.~~

~~(2)~~ ~~**Agency special account voucher.**~~

~~(A)~~ ~~Upon approval of claim payment by authorized legal counsel, the Risk Management Division shall:~~

~~(i)~~ ~~Forward a request for a voucher to be issued from the Risk Management "Quick Settlement Account", pursuant to 74 O.S. Section 85.38.~~

~~(ii)~~ ~~Attach to the request for a voucher to be issued, a release of liability form, if available, and copies of documents showing all required approvals for claim payment.~~

~~(iii)~~ ~~The "Quick Settlement Account" shall not be used for payment of claims, settlements or judgments against other covered entities.~~

~~(B)~~ ~~The Accounting Division of the Department of Central Services shall:~~

~~(i) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws.~~

~~(ii) Issue the voucher.~~

~~(3) **Limitations on payments in connection with other covered entities.**~~

~~(A) Because other covered entities, as defined in Chapter 25 of Title 580 largely constitute political subdivisions or private entities, and further because the State of Oklahoma is constitutionally prohibited from assuming the debts of such bodies, it is necessary that the funds, reserves and other financial resources for payment of claims, settlements and judgments against other covered entities be drawn entirely from contributions and premiums paid by such other covered entities which shall be maintained in one or more segregated revolving funds and which shall not be commingled with funds of the State of Oklahoma.~~

~~(B) The Risk Management Division shall also be empowered to charge against the premiums and contributions paid into the above described segregated revolving fund or funds the actual, reasonable administrative expense of all services provided to other covered entities under Chapter 25 of Title 580.~~

580:25-5-3. Reports and recommendations [REVOKED]

~~(a) The Risk Management Division shall:~~

~~(1) Immediately notify the Attorney General of any claims against the state presented to the Risk Management Division.~~

~~(2) Transfer to the Attorney General or other authorized legal counsel all investigative material available.~~

~~(3) At the request of the Attorney General or other authorized legal counsel, submit a recommendation of the division as to whether any claim should be paid, compromised or denied, and forward with such recommendation all evidence or other informational material supporting the recommendation.~~

~~(b) The Attorney General shall:~~

~~(1) Periodically report to the Risk Management Division a summary of all monies collected in behalf of the state and designate the agency to whom the collected monies must be paid.~~

~~(2) Submit a report at least monthly to the Administrator of the status and expected disposition of all claims against the state which the Risk Management Division may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and claimant's attorney fees.~~

~~(c) The authorized legal counsel handling each claim shall submit a report at least monthly to the Administrator of the status and expected disposition of all claims which the Risk Management Division may be required to pay, including an updated estimate of the amount of any expected judgment, settlement, payment, costs and attorney fees.~~

SUBCHAPTER 7. ESTABLISHMENT OF CENTRALIZED STATE RISK AND INSURANCE MANAGEMENT PROGRAM [REVOKED]

580:25-7-1. Source of authority [REVOKED]

~~Pursuant to 74 O.S. Section 85.34(A)(1), the Department of Central Services is directed to identify and evaluate tort liability risks for state agencies; and, pursuant to 74 O.S. Section 85.34(A)(2), identify and evaluate all risks for state agencies. In addition, the Department of Central Services is directed to eliminate, reduce or minimize all risks through a continuous, effective loss prevention and loss control program pertinent to all state agencies and other covered entities authorized by law to utilize the services of the Risk Management Division.~~

580:25-7-2. Functions of Oklahoma Risk Management Program [REVOKED]

~~(a) In order to protect the assets of the state or any other covered entity against liability loss, the Risk Management Division shall consolidate and administer:~~

~~(1) All plans to transfer liability risks, if it is economically advantageous to do so, by acquiring commercial liability insurance, by pass-off of liability or by other means.~~

~~(2) All plans and programs pertaining to Risk Management including liability self insurance programs, except workers' compensation insurance and state employees group, health, dental and life insurance.~~

~~(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.~~

~~(b) In order to protect the assets of the state against property or casualty loss, the Risk Management Division shall consolidate and administer:~~

~~(1) All plans to transfer property or casualty risks, if it is economically advantageous to the state to do so, by acquiring property or casualty insurance, pass-off of responsibility through transfer of risk, or by other means.~~

~~(2) All plans and programs pertaining to Risk Management including property or casualty self insurance programs.~~

~~(3) All plans and programs pertaining to Risk Management for consolidation of any combination of the above types of insurance or re-insurance programs or policies.~~

~~(c) In order to take every practical measure to eliminate or prevent injury to employees, private persons, entities or others, the Risk Management Division shall consolidate and administer a continuous effective loss-prevention and loss-control program designed to:~~

~~(1) Protect the state's assets.~~

~~(2) Ensure a safe environment for state employees and for the public who come into contact with state employees or property.~~

~~(3) Minimize the possible interruption of vital public services.~~

~~(4) Safeguard that all exposures to financial loss are discovered and handled appropriately.~~

~~(5) Reduce the costs and consequences of accidents, including insurance premiums, through effective safety management.~~

~~(d) In order to ensure the continuity of services to the state or other covered entities:~~

~~(1) The Risk Management Division shall protect the assets of the state or any other covered entity against liability loss by:~~

~~(A) Insuring through either commercial liability insurance or other commercial insurance for the protection of the state and any other covered entity; and,~~

~~(B) Administering of a self-insured retention plan for providing insurance for the state and any other covered entity against liability.~~

~~(C) Insuring through a combination of self-insured retention and commercial insurance for the state and any other covered entity against liability.~~

~~(2) The Risk Management Division shall protect the assets of the state against property or casualty loss by:~~

~~(A) Insuring through either property insurance or other commercial insurance for the protection of the state against property or casualty loss.~~

~~(B) Administering of a self-insured retention plan for providing insurance for the state against property and casualty loss.~~

~~(C) Insuring through a combination of self-insured retention and commercial insurance for the state against property or casualty loss.~~

SUBCHAPTER 9. DRIVER AND VEHICLE SAFETY STANDARDS FOR MOTOR VEHICLE OPERATIONS [REVOKED]

580:25-9-1. Driver and vehicle safety standards for motor vehicle operations [REVOKED]

~~In order to help protect the general public, as well as the state and other covered entities' property and their employees, the rules contained in OAC 580:25-9 shall apply:~~

~~(1) **Primary requirements.** It being imperative that in order to assure the driving public that state vehicles will be operated properly and by trained individuals, State Risk Management reserves the right to insure for liability insurance only those state employees or volunteers it deems insurable. In order to facilitate this right, Risk Management may, from time to time, request Motor Vehicle Records (MVR's) from the Department of Public Safety. Any information found on the report that may be negative towards the driving record of the individual employee may be cause for Risk Management to inform the employing agency of said employee that the driver is uninsurable and that in the event of a loss involving said employee, Risk Management will refuse to pay for such loss(es) out of the Risk Management Comprehensive Risk Pool. Losses incurred under such conditions shall be borne by the employing agency. In addition to the above, the following are minimum requirements:~~

~~(A) To operate a vehicle of any type, an individual must have a valid driver's license. Risk Management may assist agencies in checking whether or not an employee has a valid Oklahoma drivers license.~~

~~(B) Driver will use the vehicle only for state or other covered entity business within the scope of the driver's employment/authority.~~

~~(C) Driver will wear his/her safety belt.~~

~~(D) Driver will observe all traffic laws.~~

~~(E) Driver will not allow an unauthorized person to drive the vehicle.~~

~~(F) Consumption of alcoholic beverages or narcotics prior to the operation of a vehicle is prohibited.~~

~~(2) **General requirements.**~~

~~(A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with an assistance of a guide. If a second person is in the vehicle, he/she should guide the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.~~

~~(B) Drivers will ensure that windows, headlights, taillights, and wipers are clean and operational at all times.~~

~~(C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.~~

~~(D) Do not "tail-gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.~~

~~(E) On hills, curves, intersections or in any area where your vision is obstructed, do not make a turnabout, i.e., u-turn.~~

~~(F) Vehicles and equipment shall not be parked or left adjacent to the roadway in such a manner as to constitute a traffic hazard to the driving public. Vehicles will not be parked where they will obstruct the sight of other drivers.~~

~~(3) **Specific requirements.**~~

~~(A) It shall be unlawful for any driver of any vehicle to operate said vehicle without a valid drivers license, pursuant to 47 O.S. 1981, Section 6-101 et seq. Drivers will carry a valid drivers license at all times, pursuant to 47 O.S. 1981, Section 6-112.~~

~~(B) Any volunteer or employee who operates a state or other covered entity vehicle regularly or occasionally is required to report suspension or revocation of his/her license to their agency. Failure of an employee or volunteer to report a change in license status may result in denial of insurance coverage by the Risk Management Division in the event of an accident, pursuant to 580:25-9-1(3)(A).~~

~~(C) All items or materials, which may move around during transport by truck or trailer, will be secured or tarped.~~

~~(D) No more than three (3) persons will ride in the front seat of a state or other covered entity vehicle.~~

~~Where only two single seats exist, only one rider may ride in each seat.~~

~~(E) Drivers of state or other covered entity vehicles will drive in a courteous manner at all times.~~

~~(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. 1981, Section 11-106.~~

~~(G) Any Driver of a motor vehicle involved in an at fault accident or accidents while functioning as an agent of the State and in which the driver acted negligently (and caused personal injury and/or property damage) shall be required to attend and successfully complete a Motor Vehicle Improvement (MVI) course. Such course shall be approved by the State Risk Management Division and must be attended within six (6) months of the date of the accident. Failure to successfully complete an approved MVI course shall result in the driver of the state vehicle being declared uninsurable by the State Risk Management Administrator until such time that the driver successfully completes the required course. The Risk Management Administrator may waive this requirement and paragraph H upon proper application and for good cause.~~

~~(H) Any driver of a motor vehicle, while functioning as an agent of the State, that is involved in two at fault accidents in a twenty four (24) month period shall, in addition to paragraph G, be declared uninsurable by the Risk Management Administrator for a period of three (3) months following the second accident.~~

~~(I) Special equipment such as tractor trailers, mowers, construction equipment, mobile cranes, fork lifts and emergency vehicles shall not be operated without adequate training provided by the Agency and authorization by the agency in charge.~~

~~(4) **Maintenance requirements.**~~

~~(A) Before operating a state or other covered entity vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates it. These items should include;~~

~~(i) Lights.~~

~~(ii) Directional signals.~~

~~(iii) Steering wheel.~~

~~(iv) Brakes~~

~~(v) Rear view and side view mirrors.~~

~~(vi) Horn.~~

~~(vii) Tires.~~

~~(viii) Safety belts~~

~~(ix) Windshield wipers.~~

~~(x) Defroster.~~

~~(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in 580:25-9-1(4)(A) should be checked for emergency use:~~

~~(i) Reflectors.~~

~~(ii) Fire extinguisher, type B-C.~~

~~(iii) First aid kit.~~

~~(C) No state or other covered entity vehicle will be operated without a current state safety inspection sticker.~~

~~(5) **Accident reporting.** Any state or other covered entity vehicle involved in an incident with a third party shall report the incident to his Agency Risk Manager or the Risk Management Division not later than the next working day following the occurrence of the incident. Risk Management, in order to adequately investigate and come to a timely determination as to whether or not a claim is valid, relies on the agency Risk Coordinator to assist them in the investigation. Risk Management may require additional information other than the initial incident report and claim report. Information request(s) by Risk Management must be responded to within four (4) weeks of date of the request by the agency. If it is determined that an agency has not responded or is not acting in good faith to assist State Risk Management, Risk Management reserves the right to make a determination on the information received which could result in the approval of a claim when it might not otherwise be. In that case, Risk Management will pay the claim and invoice the full amount back to the responsible agency. The Risk Management Administrator reserves the right to waive this requirement for good cause.~~

~~(6) **Safety standards for other covered entities entitled to services from the Risk Management Program.** To meet eligibility criteria for approval and participation under the State Risk Management Program, drivers and vehicles shall meet or exceed the following requirements;~~

~~(A) Drivers of fire apparatus shall have a valid drivers license to drive the vehicle.~~

~~(B) There shall be documentation of the drivers license for any individual who drives or may be required to drive a vehicle.~~

~~(C) Drivers of fire apparatus must be thoroughly trained and the training documented.~~

~~(D) Each other covered entity shall have a written policy that sets forth speed limits for its vehicles on emergency runs.~~

~~(E) All emergency vehicles shall be provided with audible and visible warning devices. These devices shall be kept in proper working order and utilized without fail on emergency runs.~~

~~(F) Every covered vehicle shall have a current state safety inspection sticker displayed on the front windshield, unless the vehicle is exempt pursuant to 47 O.S. 1981, Section 851.~~

~~(G) Wheel chocks must be used for rear wheels while using any aerial ladder apparatus to help prevent the apparatus from slipping.~~

~~(H) There shall be a preventive maintenance program in place to ensure that all emergency vehicles are maintained in a safe condition. This list is not meant to be a complete listing, but only a guide. The IFSTA 106 Manual, sixth edition, Chapter 8, provides~~

~~good examples of maintenance schedules. The following items are suggested safety areas that should be checked:~~

~~(i) Visible and audible signals~~
~~(ii) Lighting system.~~
~~(iii) Tires.~~
~~(iv) Steering~~
~~(v) Brake system air tanks.~~
~~(vi) Brake fluid.~~
~~(vii) Windshield wipers.~~
~~(viii) Rear view mirrors.~~

~~(I) Applications of risk management coverage, pursuant to Section 85.34 of Title 74, are subject to review by the Administrator. The review may include a physical inspection of the vehicles and related records.~~

~~(J) Other covered entities are subject to random safety and loss prevention inspections of equipment for as long as they choose to participate in the State Risk Management Program.~~

~~(K) Non compliance with safety standards as required by the Administrator could result in a denial to participate in the program or cancellation of coverage.~~

SUBCHAPTER 11. COVERAGE FOR STATE OWNED BUILDINGS, CONTENTS AND OTHER [REVOKED]

580:25-11-1. Deductible levels and premiums [REVOKED]

~~(a) Deductible amounts payable by the agency or other covered entity for losses to buildings, contents, and other property will be set by the Administrator with the approval of the Director of Central Services. Deductible amounts or percentages may vary by types and use of property, and by actual or replacement value.~~

~~(b) An annual premium will be levied and collected from each state agency pursuant to 74 O.S. Section 85.37, in order to cover the purchase of excess insurance against catastrophic losses and to cover future losses using verifiable loss histories. Each state agency shall pay in full the premiums billed to them by the Risk Management Division for property and casualty insurance coverage. An invoice is due and payable upon receipt. Delinquent accounts will be collected pursuant to 74 O.S. Section 85.37.~~

~~(c) Annual premiums will be determined using a combination of identified markets available for acquisition of commercial excess insurance and verified loss history. The annual premiums will be reasonable and determined by the Risk Management Administrator with the approval of the Director of Central Services.~~

~~(d) Property losses will be determined by the Risk Management Division and/or a third party administrator under contract. These losses will be based on industry accepted investigations and resulting appraisals of estimated damages.~~

580:25-11-2. Basic coverage [REVOKED]

~~(a) **Property covered.** Property losses covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.~~

~~(b) **Property excluded.** Property losses excluded from coverage will be specified in an annual statement of coverage issued by the Risk Management Administrator.~~

~~(c) **Perils covered.** Perils covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.~~

~~(d) **Perils not covered.** Perils not covered will be specified in an annual statement of coverage issued by the Risk Management Administrator.~~

~~(e) **Amount payable for losses.**~~

~~(1) The amount payable for covered losses will be specified in an annual statement of coverage issued by the Risk Management Administrator.~~

~~(2) The amount payable for any loss to property shall not exceed the lesser of the actual replacement cost or the reported value of the property.~~

~~(3) The amount payable for any loss shall be reduced by the amount of any delinquent premiums or fees for coverage under the Risk Management Program.~~

~~(f) **Conditions under which coverage is provided.**~~

~~(1) The building and/or contents must have been reported to Risk Management in writing prior to the date the loss occurs.~~

~~(2) For boiler explosion losses to be covered, boilers must have been reported to Risk Management and all inspections required by the Oklahoma Department of Labor must have been completed.~~

~~(3) The loss must be reported to Risk Management immediately upon learning of the occurrence of a loss. Failure to report a loss in a timely manner may negatively impact your recovery or result in denial of coverage.~~

~~(A) The Agency Risk Management Coordinator shall give telephone notice of any property loss incident to the Risk Management Division immediately upon learning of the occurrence of such incident.~~

~~(B) The Agency Risk Management Coordinator shall fill out and send to the Risk Management Division a "Standard Property Loss Report" form. This report shall be submitted within three working days from the date of first awareness of a loss and shall include but not limited to the following information:~~

~~(i) The time, date, and location of the loss~~
~~(ii) The department involved.~~
~~(iii) A description of the property damage.~~
~~(iv) A brief description of the incident.~~
~~(v) An estimate of the amount of loss~~

~~(C) The Agency Risk Management Coordinator shall complete all preliminary investigations following a property loss incident and send a completed "Standard Party Loss Report" and any other pertinent information that is the result of a thorough investigation to the Risk Management Division. All investigative information and loss data shall be submitted within ten working days from the date of~~

~~first awareness of a loss, unless an extension of date is approved by the Administrator.~~

~~(4) Losses occurring due to the negligence of the insured or insureds contractor may result in no coverage being provided under the Risk Management property insurance program. In such case, Risk Management reserves the right to make a determination as to liability, extent of loss and amount which Risk Management may reimburse insured for the loss. It is the responsibility of the insured to determine whether contractors are adequately insured prior to any remodel, renovation or new construction.~~

~~(5) Other conditions under which coverage is provided will be specified in an annual statement of coverage issued by the Risk Management Administrator. Failure to comply with any condition in 580:25-11-2(f) or in the annual statement of coverage may result in denial of coverage.~~

~~(g) **Questions and loss reporting.** If there are any questions or to report a loss, contact the Risk Management Division.~~

~~(h) **Time Limit to File a Claim.** A final claim along with the requested supporting documentation must be submitted to Risk Management within 2 years of the date of the incident or the claim will be considered invalid.~~

580:25-11-3. Claims payment [REVOKED]

~~The amount payable for each loss shall be determined by the Administrator. Payment of claims shall be made as funds are available and upon the approval of the Administrator. Final payment shall not be made until a loss affidavit and a release of all claims has been properly executed and the covered entity has complied with all procedures for claim payment as set forth in the Annual Statement of coverage. On a loss where the property covered is to be replaced under the terms of the Annual Statement of Coverage, and a final settlement has been reached, the Administrator reserves the right to require that the covered entity be paid only that portion of the actual cash value until the property suffering the loss has been put back whole. At that time, all remaining settlement funds will be released.~~

~~(1) The Risk Management Division shall:~~

~~(A) Acquire a release of all claims and a loss affidavit by the chief administrative officer or other authorized official of the agency where a property loss has occurred; or.~~

~~(B) Acquire an attestation from the chief administrative officer of the agency where a property loss has occurred that the agency does not intend to replace the property loss and will accept actual cash value in lieu of replacement; and,~~

~~(C) Forward a request for a warrant for either replacement value or actual cash value to be issued reflecting all approval(s) necessary under the rules and regulations contained in 580:25-11.~~

~~(2) The Accounting Division of the Department of Central Services shall:~~

~~(A) Review all documents and ensure that payment of the claim complies with all applicable procedures, rules, and laws; and,~~

~~(B) Issue a warrant, such warrant and subsequent endorsement serving as indicia for proof of payments of a property loss.~~

[OAR Docket #14-762; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 35. FLEET MANAGEMENT DIVISION [REVOKED]

[OAR Docket #14-763]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:35-1-1. General Provisions [REVOKED]
580:35-1-2. Vehicle inventory control [REVOKED]
580:35-1-3. Vehicle management control [REVOKED]
580:35-1-4. Use of state owned vehicles [REVOKED]
580:35-1-5. Service and rental rates [REVOKED]
580:35-1-6. Daily reservations and monthly assignments [REVOKED]
580:35-1-7. Gasoline and oil purchases [REVOKED]
580:35-1-8. Wrecker service, on-the-road breakdown and repairs [REVOKED]
580:35-1-9. Other credit and cash purchases [REVOKED]
580:35-1-10. Care and maintenance of vehicles [REVOKED]
AUTHORITY:
74 O.S. §78; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
580:35-1-1. General Provisions [AMENDED]
580:35-1-2. Vehicle inventory control [AMENDED]
580:35-1-3. Vehicle management control [AMENDED]
580:35-1-4. Use of state owned vehicles [AMENDED]
580:35-1-5. Service and rental rates [AMENDED]
580:35-1-6. Daily reservations and monthly assignments [AMENDED]
580:35-1-7. Gasoline and oil purchases [AMENDED]
580:35-1-8. Wrecker service, on-the-road breakdown and repairs [AMENDED]
580:35-1-9. Other credit and cash purchases [AMENDED]
580:35-1-10. Care and maintenance of vehicles [AMENDED]
Gubernatorial approval:
July 10, 2013
Register publication:
30 OkReg 2115
Docket number:
13-1137
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.

CONTACT PERSON:

Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:35-1-1. General Provisions [REVOKED]

~~(a) **Purpose.** This Chapter provides information and establishes procedures and standards to administer the operations to provide fleet management services to state agencies and oversight to agencies that own, operate and utilize motor vehicles. The Director of Central Services promulgated these rules pursuant to 74 O.S., Section 78 and the Administrative Procedures Act to ensure an adequate fleet of safe, reliable motor vehicles is available to meet the needs of the state.~~

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

~~(1) **"Chief administrative officer"** means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency.~~

~~(2) **"Class"** means compact car, medium size car, full size car, medium size station wagon, full size station wagon, police car, pickup, truck, SUV, van, bus, aircraft or motorcycle.~~

~~(3) **"Departmen"** means the Department of Central Services.~~

~~(4) **"Director"** means the Director of the Department of Central Services.~~

~~(5) **"Division"** means the Fleet Management Division within the Department of Central Services.~~

~~(6) **"Fleet Card"** means the card assigned to vehicles under the leasing or ownership authority of the Division for the purchase of fuel, ancillary accessories and services, and general service maintenance.~~

~~(7) **"Fleet Manager"** means the administrative head of the Fleet Management Division appointed by the Director.~~

~~(8) **"State agency"** means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, and the Office of the Governor.~~

~~(9) **"VIN"** means vehicle identification number.~~

~~(10) **"Written"** or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.~~

~~(c) **Forms.** The Director shall approve forms and instructions for use by state agencies to facilitate requirements of this chapter. The Department shall provide forms upon request.~~

~~(d) **Agency authorized signatures.** A chief administrative officer shall designate in writing to the Division, the name of any person authorized to sign on behalf of the agency for the purposes of this chapter.~~

~~(e) **Waivers.** The Director may waive any requirement of this chapter unless statutes mandate the requirement.~~

~~(1) All requests for waivers shall be in writing and must include justification for the waiver request.~~

~~(2) The Department shall respond in writing as to the approval, conditional approval, or denial of a waiver request within fifteen (15) working days of receipt of the request.~~

580:35-1-2. Vehicle inventory control [REVOKED]

~~(a) **Fleet inventory.** The Division shall maintain a current and complete inventory of all state vehicles compiled from the following:~~

~~(1) Each state agency shall maintain a current and complete inventory of the motor vehicles it owns which includes the following information for each vehicle:~~

~~(A) **Current agency vehicle number.**~~

~~(i) Agencies that do not have a vehicle numbering system shall develop one for the purposes of this Chapter.~~

~~(ii) A state agency shall not change an established vehicle number without prior written authorization of the Fleet Manager.~~

~~(B) Make, model, class and year of all vehicles;~~

~~(C) Purchase date;~~

~~(D) Original cost;~~

~~(E) VIN number;~~

~~(F) License tag number;~~

~~(G) Vehicle location; If the operator is authorized to take the vehicle home [Reference 47 O.S., Section 156.1], the operator's legal name, residence street address and telephone number shall be available upon request.~~

~~(H) Designation of "owned", "loaned" or "leased" and the legal name and address of the vendor; and,~~

~~(I) Type of fuel used in the vehicle~~

~~(2) Each state agency shall submit written notice of the acquisition or disposal of a motor vehicle to the Division no later than fifteen (15) days after said transaction takes place. Notice of the acquisition of a vehicle shall include the information required in (1) of this subsection.~~

~~(b) **Vehicle acquisition by a state agency.** All state agencies with authority to own motor vehicles shall submit to the Division a vehicle acquisition request for approval by the Director, or delegate, not less than thirty (30) days prior to the proposed purchase of any vehicle, whether or not exempt from the Oklahoma Central Purchasing Act.~~

~~(1) The request for approval shall include a copy of the purchase order or requisition and state the following:~~

~~(A) The intended use and justification for the vehicle;~~

~~(B) Whether the vehicle is a replacement, addition, etc.~~

~~(C) Whether the purpose of the vehicle has changed since the last replacement;~~

~~(D) Any options selected over the standard equipped vehicle with justification for the options.~~

~~(E) The supplier of the vehicle;~~

~~(F) The agency has sufficient funds to acquire and maintain the vehicle;~~

~~(G) The statutory authority of the agency to acquire a vehicle.~~

~~(2) **Director consideration.** Within fifteen (15) days of receipt of a state agency request, the Director, or delegate, will review the information and send notice to the agency of the approval or denial of the acquisition.~~

~~(3) **Fleet Manager consideration.** The Director, or delegate, may request the Fleet Manager to review and verify information provided in a state agency acquisition request.~~

~~(4) **Director notification.** The Director shall provide the state agency written notice of the approval or denial of the acquisition request in the following manner:~~

~~(A) Issue a notice of approval indicating the proposed purchase is appropriate; or,~~

~~(B) Issue a notice of denial of the proposed purchase; or~~

~~(C) Issue a notice of an alternative acquisition recommendation.~~

~~(c) **Vehicle disposal.** A vehicle owned by a state agency may be sold or disposed of in the manner authorized by OAC 580:65 and the Surplus Property Act, if:~~

~~(1) the vehicle has been in use for sixty thousand (60,000) miles; or~~

~~(2) at least twenty-four (24) months have elapsed since the day the purchase claim was approved for payment thereof; or~~

~~(3) the vehicle has damage of Two Thousand Five Hundred Dollars ($2,500.00) or more; or~~

~~(4) the Fleet Manager has provided written authorization to dispose of the vehicle.~~

~~(d) **Vehicle disposal procedure.** All agencies shall notify the Fleet Management Division not less than thirty (30) days prior to the proposed disposal of any state-owned vehicle. The notice shall be in writing and include the following:~~

~~(1) Agency vehicle number;~~

~~(2) Reason for selling, (age, mileage, or other);~~

~~(3) Estimated value of vehicle;~~

~~(4) Type of sale (public auction, sealed bid, etc.); and~~

~~(5) Proposed date of sale.~~

~~(e) **Notification of final disposition.** All agencies shall provide written notice to the Division of the final outcome of sale within fourteen (14) days after disposition, which shall include:~~

~~(1) Agency vehicle number~~

~~(2) Selling price of vehicle~~

~~(3) Any changes in the method of disposal~~

~~(4) A list of any vehicle(s) not disposed of.~~

~~(5) A completed copy of the inventory report information required by (a)(1) of this section;~~

~~(6) Any other information the Division may request to maintain accurate inventory of state vehicles.~~

580:35-1-3. Vehicle management control [REVOKED]

~~(a) **Agency fleet management policies and procedures.** A state agency shall file a detailed written description of its current fleet management policies and procedures with the Division.~~

~~(b) **Agency monthly inventory report.** A state agency shall submit a report of all vehicles it owns monthly to the Division. The report shall be due on the 10th of each month and shall contain information for each vehicle owned representing the month preceding the report, which includes:~~

~~(1) Agency name and number;~~

~~(2) Vehicle number;~~

~~(3) Hours or mileage;~~

~~(4) Fuel cost and number of gallons used;~~

~~(5) Type of maintenance performed on vehicle specified in the following manner:~~

~~(A) **"P"** - preventive maintenance - internal repair;~~

~~(B) **"E"** - preventive maintenance - outside repair;~~

~~(C) **"B"** - body work - internal repair;~~

~~(D) **"W"** - body work - outside repair;~~

~~(E) **"M"** - mechanical repair - internal repair; or~~

~~(F) **"R"** - mechanical repair - outside repair.~~

~~(6) Cost of any repairs listed pursuant to (5) of this subsection.~~

580:35-1-4. Use of state owned vehicles [REVOKED]

~~(a) **State vehicle driving conditions.** Every driver of a state owned vehicle shall comply with the following conditions:~~

~~(1) A state owned vehicle shall not be used for personal transportation to stores, shopping centers, lakes, parks, golf courses, athletic events, etc.~~

~~(2) A state owned vehicle shall not be used for hauling a trailer other than a trailer that is state-owned or that is rented or leased for official business.~~

~~(3) All state traffic rules and regulations shall be observed.~~

~~(4) All city ordinances related to traffic, parking, etc. shall be observed.~~

~~(5) Safe and courteous driving habits shall be used at all times.~~

~~(b) **Prohibited drivers and passengers.** Persons other than state employees shall not be permitted to drive or ride in state owned vehicles, unless authorized by the using agency and then only on official state business.~~

~~(c) **Traffic violations.** State-owned vehicles shall not be driven in excess of the speed limit posted by states and municipalities. All traffic violation fines shall be the sole responsibility of the driver involved.~~

580:35-1-5. Service and rental rates [REVOKED]

~~(a) **Fleet operation funding.** The Division shall fund all operation, repair, insurance, and maintenance expenses for vehicles issued on a rental basis.~~

~~(b) **Service rates.** A rate shall be set by the Division and charged to each agency renting Division vehicles to recover the costs listed in (a) of this section. A copy of these rates shall be furnished to all agencies upon request.~~

~~(c) **Notice of rate change.** If the Director determines it is in the best interest of the State to change the rental rate to ensure the recovery of expenses listed in (a) of this section, the Director will send written notice to the chief administrative officer of each agency or department of the new rate at least thirty (30) days prior to its effective date.~~

~~(d) **Payment due date.** Payment for Division services as authorized by 74 O.S., Section 78c. shall be paid no less than monthly to the Department of Central Services.~~

~~(e) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency chief administrative officer.~~

~~(1) Accounts delinquent for more than 90 days shall be subject to suspension by the Director. Suspension of an account bars the agency from use of Division services until payment is received and the account is no longer in arrears.~~

~~(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.~~

~~(f) **Other agency expenses.** An agency that rents Division vehicles is responsible for and shall pay the Division for any expenses related to the replacement or repair of a rented vehicle when the agency is found to be at fault.~~

~~(1) For accidents, "at fault" shall be determined by the results of an investigation by a qualified external organization, e.g. law enforcement, insurance company etc.;~~

~~(2) An agency shall be considered "at fault" if it is determined that certain conditions contributed to the replacement or repair which include, but are not limited to, the following:~~

~~(A) failure to comply with Division preventative maintenance standards established in 580:35-1-10;~~

~~(B) operation of a vehicle in unsafe conditions, e.g. continuing to operate a vehicle after a vehicle caution light has engaged;~~

~~(C) use of a vehicle inconsistent with the performance of work related activities.~~

580:35-1-6. Daily reservations and monthly assignments [REVOKED]

~~(a) **Advance reservations.** All reservations require prior approval of the Division.~~

~~(1) An agency shall submit a verbal or written request for reservation to the Division at least ten (10) working days prior to the beginning date of the reservation. The reservation must be submitted during the Department's business hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays.~~

~~(2) The reservation shall specify the desired class of vehicle and desired date and time period for use of the vehicle. The Division may request additional information as determined necessary to facilitate the reservation.~~

~~(3) A request for use of a vehicle for two or more weeks shall be made in writing.~~

~~(4) The Division may impose conditions and time limitations pursuant to the rules of this subchapter and state law.~~

~~(b) **Prioritization of reservations.** Except as otherwise provided, the Division shall issue approved reservations on a first-come, first-served basis.~~

~~(c) **Fleet Management requisition.** A Fleet Management requisition form, signed by the chief administrative officer or designee shall be presented to the Division each time a vehicle is picked up for use by a state agency.~~

~~(d) **Cancellations of reservation.** Written notice of cancellation shall be submitted to the Division no less than one (1) working day prior to the reservation date. An agency shall be charged the minimum daily rate for the applicable vehicle class for failure to cancel a reservation prior to the scheduled pick up time.~~

~~(e) **Monthly assignments.** A written request for a vehicle to be assigned to an agency on a monthly basis shall be signed by the appointing authority of the agency or designee and include the following information:~~

~~(1) Legal name of employee assigned to the vehicle~~

~~(2) Address of employee~~

~~(3) Employee's work telephone number~~

~~(4) Official duty station of employee~~

~~(5) Type of work performed by employee~~

~~(6) Territory to be covered, and~~

~~(7) Approximate miles to be driven per month.~~

~~(A) The requesting agency will be advised of the approval or denial for each request.~~

~~(B) A new, signed request shall be submitted monthly to the Division between the 25th and the last working day of each month. The request shall include the name of the driver and current mileage of the vehicle.~~

580:35-1-7. Gasoline and oil purchases [REVOKED]

~~(a) **Fuel card purchases.** Gasoline and oil for Division vehicles shall be purchased from authorized fueling locations with the state issued fuel card furnished with each vehicle.~~

~~(1) The current vendor of the state fuel card is determined by award of SW Contract 101 "Automated Fuel Management System".~~

~~(2) A list of fuel card provider locations by city is provided inside each vehicle.~~

~~(b) **Purchases from the Department of Transportation.** Gasoline and oil may also be purchased from Department of Transportation facilities.~~

~~(c) **Required fuel for Division vehicles.** Unless otherwise specified in this subsection, use only regular unleaded fuel in Division vehicles. Regular unleaded fuel may be blended to~~

~~contain ethanol at levels approved by the federal Environmental Protection Agency (EPA). Division vehicles identified by marking or decal as:~~

~~(1) **"Flex fuel"** may use blended fuel up to and including eighty-five percent ethanol;~~

~~(2) **"CNG"** may use compressed natural gas (CNG).~~

~~(3) **"LPG"** may use liquefied petroleum gas;~~

~~(4) **"LNG"** may use liquefied natural gas;~~

~~(5) **"Biodiesel"** may use fuel that contains a blend of diesel fuel and biological products at a level approved by the EPA.~~

~~(6) **"Plug-in hybrid (PHEV)"**, **"electric vehicle (EV)"**, **"neighborhood electric vehicle (NEV)"**, or **"low-speed vehicle (LSV)"** may use electricity.~~

~~(7) **"Dual fuel"** or **"bi-fuel"** may use a combination of the fuel types specified in this subsection.~~

580:35-1-8. Wrecker service, on-the-road breakdown and repairs [REVOKED]

~~(a) **Division wrecker service.** An agency shall contact the Division whenever towing or a service call is required in or near the Oklahoma City metro area and between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays.~~

~~(b) **Private wrecker service.** An agency shall contact a wrecker service listed on the Roadside Assistance (RA) card provided by the Division in the Fuel/Maintenance locator guide whenever towing or a service call is required outside the Oklahoma City metro area and/or after 4:30 p.m. on Monday through Friday, on weekends or holidays.~~

~~(1) In the absence of the Roadside Assistance (RA) card, an agency shall contact a wrecker service listed in the Fuel/Maintenance locator guide.~~

~~(2) If the locator guide does not list a wrecker service in the area, a local wrecker service may be contacted and expenses charged to the Division in accordance with 580:35-1-9.~~

~~(3) An agency shall notify the Division of the use of a private wrecker service on the following workday.~~

~~(4) The driver shall be reimbursed for towing expenses if a private wrecker service refuses to invoice the Division.~~

~~(c) **Driver negligence.** The Division shall not be responsible for towing and/or service calls required because of driver negligence and related expenses shall not be reimbursed. (See also 580:35-1-5(f).]~~

~~(d) **Vehicle breakdown.** In the event of an on-the-road breakdown, contact the Division immediately. If it is impossible to contact the Division, proceed as follows:~~

~~(1) If the vehicle is operable, drive it to the nearest maintenance location listed in the locator guide provided with the vehicle~~

~~(2) If the vehicle is inoperable, contact a wrecker service following the procedure in subsection (b) of this section and have the vehicle towed to a garage or dealership listed in the locator guide. If there are no locations available, call a local dealership or garage to have the vehicle towed in.~~

~~(e) **Authorization of repairs.** Contact the Division as soon as possible to report the status and location of the vehicle. All repairs to a vehicle require prior authorization from the Division. An agency shall be responsible for payment of any unauthorized repairs.~~

580:35-1-9. Other credit and cash purchases [REVOKED]

~~(a) **Invoices.** All invoices or sales slips for expenses approved by the Division shall be billed to the Division. An invoice must contain the following:~~

~~(1) Vendor's legal name, street and mailing address and telephone number;~~

~~(2) Date of purchase;~~

~~(3) Vehicle number;~~

~~(4) Quantity and cost of each item used, labor time and charge;~~

~~(5) Division purchase order number;~~

~~(6) Driver's signature; and~~

~~(7) No state sales tax shall be charged.~~

~~(b) **Cash purchases.** The Division does not provide reimbursements for cash purchases. A state agency must make all authorized vehicle-related purchases in accordance with the Fleet Card procedures established by the Director.~~

~~(c) **Invoices to other agencies.** The Division is not responsible for payment of invoices charged to any other agency.~~

580:35-1-10. Care and maintenance of vehicles [REVOKED]

~~A state agency and each driver employed by said agency shall assume the responsibility for proper maintenance of any state-owned vehicle in its possession, according to the maintenance schedule established by the Director.~~

[OAR Docket #14-763; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 40. ASBESTOS ABATEMENT DIVISION [REVOKED]

[OAR Docket #14-764]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:40-1-1. Purpose [REVOKED]
580:40-1-2. Asbestos abatement guidelines [REVOKED]
580:40-1-3. Appeals [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:40-1-1. Purpose [REVOKED]

~~The Asbestos Abatement Division of the Office of Public Affairs was created to remove or otherwise abate asbestos in public schools and state owned buildings. The administrative rules contained in Chapter 40 of Title 580 establish policies and procedures to accomplish this objective.~~

580:40-1-2. Asbestos abatement guidelines [REVOKED]

~~(a) All requests for abatement services shall be in writing and submitted to the Director of Asbestos Abatement by the chief administrative officer of the entity seeking services or a representative with authority to negotiate a contract for asbestos abatement.~~

~~(b) Requests for abatement services will not be accepted from state agencies, colleges, universities or school districts who have not paid for previously completed contracted services.~~

~~(c) Upon receipt of a request, the Asbestos Abatement Division will conduct a pre-job conference with representatives of the requesting entity, the Department of Labor and the State Department of Health to determine asbestos conditions and abatement procedures.~~

~~(d) After the pre-job conference, a cost estimate will be prepared based upon the estimated labor, materials and overhead required for the job. A price will then be established by applying a percentage factor, determined every six months by the Director of Asbestos Abatement based upon the availability of operating funds for the Division. If the state agency or school district provides verifiable documentation indicating an inability to pay the cost as determined above, the price and/or a payment schedule may be negotiated by the Director of Asbestos Abatement.~~

~~(e) The Asbestos Abatement Division will prepare and obtain required approval of plans and specifications (Project Design) for abatement projects to be done by the Asbestos Abatement Division. Under no circumstances will the Asbestos Abatement Division provide cost estimates based on plans and specifications prepared by others or participate in formal competitive bidding against private abatement contractors.~~

~~(f) Upon receipt of signed contract or letter agreement, abatement work will be scheduled consistent with State Department of Health priorities.~~

~~(g) Upon completion of an abatement project, including acceptable final inspection by the Department of Labor, reoccupancy clearance must be obtained from the State Department of Health before the facility may be returned to service.~~

~~(h) The Asbestos Abatement Division may leave critical barriers and/or other non-contaminated abatement materials for removal and disposal by the school district or state agency if requested by the school district or state agency and approved by the State Department of Labor.~~

~~(i) At the completion of a project, the Asbestos Abatement Division will invoice the customer according to the contract or letter agreement. Payment is due within thirty (30) days of invoicing.~~

~~(j) The Asbestos Abatement Division will request that each school district or state agency report any actual or estimated costs incurred in connection with a particular asbestos abatement project. Such information will become a part of the job file.~~

~~(k) The rules contained in Chapter 40 of Title 580 notwithstanding, in cases of extreme emergency, the Asbestos Abatement Division will respond as quickly as possible at the written or verbal request of any responsible party at public schools or state agencies.~~

580:40-1-3. Appeals [REVOKED]

~~Any decision of the Director of the Asbestos Abatement Division may be appealed in accordance with the Administrative Procedures Act. Appeals must be submitted in writing to the General Counsel, Office of Public Affairs, within ten (10) days of notification of the decision.~~

[OAR Docket #14-764; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 45. PLAN OF OPERATION FOR OKLAHOMA STATE AGENCY FOR SURPLUS PROPERTY [REVOKED]

[OAR Docket #14-765]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:45-1-21. Purpose [REVOKED]
580:45-1-23. Definitions [REVOKED]
580:45-1-25. Citations [REVOKED]
580:45-1-27. Authority [REVOKED]
580:45-1-29. Designation of State Agency [REVOKED]
580:45-1-31. Inventory control and accounting system [REVOKED]
580:45-1-33. Return of donated property [REVOKED]
580:45-1-35. Agency financing and service charges [REVOKED]
580:45-1-37. Property use restriction and requirements [REVOKED]
580:45-1-39. Disposition of undistributed property [REVOKED]
580:45-1-41. Fair and equitable distribution [REVOKED]
580:45-1-43. Eligibility [REVOKED]
580:45-1-45. Compliance and utilization [REVOKED]
580:45-1-47. Consultation with advisory groups-public and private [REVOKED]
580:45-1-49. Audits [REVOKED]
580:45-1-51. Cooperative agreements [REVOKED]
580:45-1-53. Liquidation [REVOKED]
580:45-1-55. Forms [REVOKED]
580:45-1-57. Records [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:45-1-21. Purpose [REVOKED]

~~(a) The Director of Central Services promulgates the rules of this chapter pursuant to authority of 80 S., Section 34.2 and subject to provisions of the Administrative Procedures Act, 75 O. S., Section 251, et. seq.~~

~~(b) Pursuant to provisions of Title 40, United States Code - Public Buildings, Property and Works, Subtitle I, Chapter 5, Section 549 (hereinafter referred to as 40 USC 549), Federal Management Regulation (FMR), Subchapter B - Personal Property, 41 CFR Part 02-37 and state law, the State Agency for Surplus Property shall operate pursuant to this State Plan of Operation.~~

~~(c) This State Plan of Operation establishes provisions for the Oklahoma State Agency for Surplus Property to acquire and distribute Federal surplus personal property to donees that meet the eligibility criteria specified by Federal law and regulation as determined by the state agency.~~

580:45-1-23. Definitions [REVOKED]

~~As used in this chapter, the following terms, unless the context clearly indicates otherwise, shall mean:~~

~~**"Aircraft"** means a civilian or demilitarized aircraft.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Direct allocation"** means shipment of property directly to a donee from the "holding agency."~~

~~**"Director"** means the Director of Central Services or a person the Director designates.~~

~~**"Donee"** means a service educational activity; public agency that uses surplus personal property to carry out or promote one or more public purposes; an eligible nonprofit tax exempt educational or public health institution to include a provider of assistance to homeless or impoverished families or individuals; or a state or local government agency, or nonprofit organization or institution that receives funds appropriated for a program for older individuals. (Note: Public airports are only considered donees when they elect to receive surplus property through the state agency. This does not include transactions of property where a public airport elects to receive surplus property through the Federal Aviation Administration (FAA)).~~

~~**"GSA"** means the United States General Services Administration.~~

~~**"Holding agency"** means the executive agency having accountability for, and generally possession of the property involved.~~

~~**"Item"** means a single unit or measurable lot of property.~~

~~**"Original acquisition cost"** or **"OAC"** means the original cost the GSA reports the Federal government paid to acquire an item.~~

~~**"Property"** means Federal surplus personal property.~~

~~**"Revolving fund"** means the fund created by 80 0. S., Section 34.6 that serves as the depository and working capital reserve fund for the agency.~~

~~**"State Agency for Surplus Property"** and **"Agency"** means the Oklahoma State Agency for Surplus Property operating as the Property Distribution program of the Department of Central Services.~~

~~**"State Plan"** means a plan of operation for the State Agency for Surplus Property.~~

~~**"State Surplus Property Agent"** and **"Agent"** means the administrator of the Property Distribution program of the Department of Central Services or a person the Agent assigns to perform agency tasks.~~

~~**"Vessel"** means a watercraft exceeding 50 feet in length.~~

580:45-1-25. Citations [REVOKED]

~~(a) Statutory citations in this chapter refer to the most recent codification of state and federal statutes.~~

~~(b) Regulation citations in this chapter refer to the most recent codification of federal regulations.~~

580:45-1-27. Authority [REVOKED]

~~The State Agency for Surplus Property operates under the authority and supervision of the Director of the Department of Central Services pursuant to the provisions of 80 O. S., Section 34.1 et. seq. (Appendix A), 40 USC 549 and 41 CFR 102-37.~~

580:45-1-29. Designation of State Agency [REVOKED]

~~(a) As appointed by the Governor, the Director of the Department of Central Services shall appoint a State Surplus Property Agent and employ persons the Agent supervises to ensure that the State Agency for Surplus Property (Agent) provides services that meet the requirements of 41 CFR 102-37 and the State Plan of Operation for property acquisition, transportation, inventory control, warehousing, eligibility, compliance and program related responsibilities.~~

~~(b) The Agent shall administer the Agency pursuant to the provisions of this State Plan which satisfies the requirements of 80 O. S., Section 34.1 et seq., 40, USC 549 and 41 CFR 102-37.~~

~~(c) Under the supervision of the Director, the Agent shall acquire, warehouse and distribute property to donees and ensure that donees comply with property use restrictions and requirements.~~

~~(d) The Agency occupies approximately seven and one half (7.5) acres of land owned by the State of Oklahoma at 3100 North Creston Drive, Oklahoma City, Oklahoma. The property includes an administrative office building, receiving and distribution warehouses, outdoor display and storage areas, mechanic shop, maintenance shop and paved and gravel parking areas.~~

580:45-1-31. Inventory control and accounting systems [REVOKED]

~~(a) **Inventory Control System.**~~

~~(1) The agency shall use, maintain and support an automated inventory control system to document and track property receipt, warehouse location, transfer, sale, utilization and disposal.~~

~~(2) The Agent shall assign an inventory control identifier to property so that the inventory control system shall recognize the quantity received, property location, quantity distributed, service charges and other information the Agent requires.~~

~~(3) The Agent shall conduct an annual physical inventory of property on hand. The Agent shall reconcile physical inventory findings to system produced records and report results to the GSA.~~

~~(4) The Agent may retain surplus property for use in operating the donation program in conjunction with an active cooperative agreement with GSA. However, the Agent will obtain GSA approval prior to using surplus property for agency use. Records of property approved for agency use will be maintained separately and apart from records of inventory of donation property.~~

~~(b) **Accounting System.**~~

~~(1) The Agent shall record and maintain financial records in an accounting system. The Director and the Agent shall adhere to methods the State Auditor and Inspector and state finance officials prescribe for the accounting system. System records shall indicate payments due and received for property to accurately indicate donee accounts status including balances due to the agency.~~

~~(2) The accounting system shall review accounts on a periodic basis so that the Agent may identify accounts that may become past due.~~

~~(3) The Director and the Agent shall ensure that the system provides financial information that the Director and Agent may use to evaluate agency financial performance.~~

580:45-1-33. Return of donated property [REVOKED]

~~(a) If a donee fails to place donated property into use for the purpose for which it was donated within one year of donation, the Agent shall advise the donee of actions required to return, transfer or dispose of the item at the donee's expense.~~

~~(b) If a donee ceases to use donated property for the purpose for which it was donated within one year after the property was placed into use, the Agent shall advise the donee of actions required to return, transfer or dispose of the item at the donee's expense.~~

~~(c) If the Agent determines that property in the possession of a donee is usable and the donee has not met the requirements set forth in (a) and (b) of this Section, the property must be returned, transferred or disposed of in accordance with (d) of this Section.~~

~~(d) Return of usable property shall be accomplished in one of the following ways as directed by the Agent:~~

~~(1) **Returning Property to the Agent.** A donee shall notify the Agent whenever it wishes to return usable donated property to the warehouse. The Agent shall make every effort to locate another donee within the state to determine if the property can be retransferred. If the property cannot be retransferred to another donee within the state,~~

~~the Agent will instruct the donee to return the property to the Agent's warehouse.~~

~~(2) **Direct transfer to another donee within the state.** In cases where donated property is retransferred from one donee within the state to another or returned to the Agent's warehouse for retransfer to another donee, the Agent shall process documentation showing the return to inventory. If the property, however, is being retransferred directly from one donee to another within the state, the Agent shall prepare and process a Distribution Document. The Agent shall indicate on the document that the property is, in fact, being transferred from one donee to another.~~

~~(3) **Transfer to another State Agency for Surplus Property or Federal agency.**~~

~~(A) **Transfers to other State Agencies for Surplus Property.** Whenever property is not needed by a donee within the state, the Agent, in accordance with 41 CFR 102-37.290 (a) (2) shall immediately offer it to a State Agency for Surplus Property in another state. When donated property is being transferred to another State Agency, the gaining agency will prepare and submit an SF-123 to the General Services Administration. GSA, upon request from the holding State Agency, shall assist in making it known to other State Agencies that unneeded property in one state is available for transfer and arranging and coordinating visits between State Agencies. Transfers between State Agencies are subject to the disapproval of GSA within 30 calendar days after notice to the GSA regional office.~~

~~(B) **Transfers to federal agencies.** Property not retransferred directly to another donee within the state or another State Agency will be reported to GSA for redisposal instructions which may include retransfer to a Federal agency. When a federal activity requests property from the Agent, the Federal (gaining) agency will prepare and submit an SF-122 to GSA.~~

~~(4) **GSA approval for disposal by sale.** Usable returned property that is not transferred to another donee within the state or another State or Federal agency may, with GSA approval, be disposed of by public sale. The Agent may act as GSA's agent in selling donated property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. The GSA regional office will inform the Agent of those property item(s) that can be sold and the Agent, in turn, shall prepare and submit a Standard Form 126 (Report of Personal Property for Sale) to GSA as directed. GSA will then determine and approve the actual point of sale and required sales method. If GSA authorizes disposal of the item by means of sale, the Agent shall provide return instructions to the donee and follow the guidelines set forth in 41 CFR 102-37.305 through 102-37.315.~~

~~(e) **Abandonment and destruction.** Unusable property items in the possession of a donee may only be abandoned or destroyed when the Agent makes a written finding that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The finding shall be written in accordance with 41 CFR 102-37.320 and submitted to GSA for approval. GSA will notify the Agent within 30 calendar days as to whether the Agent may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves the Agent's request for abandonment and destruction of the property. If GSA does not reply to the Agent's request within 30 calendar days of notification, the property may be abandoned or destroyed. However, the Agent shall further consult GSA for guidance regarding prior public notice of proposed abandonment or destruction actions. The Agent shall also prepare and retain certification documentation as directed by GSA to account for the physical abandonment or destruction action. The certification document must be signed by the Agent and an employee of the Agent who witnessed the actual abandonment and destruction action of the item(s) referenced in the document itself.~~

~~(f) **Failure of donee to follow property return instructions.** If an item is usable and the donee fails to adhere to instructions the Agent provides for return, transfer or disposal of the item, the Agent shall attempt to retrieve the item with retrieval expenses to be borne by the donee. If the Agent is unable to retrieve the item, the Agent shall utilize the provisions of (g) of Section 580: 45-1-45 to notify GSA of donee noncompliance.~~

~~(g) **Donee credit and reimbursement.**~~

~~(1) **Donee reimbursement for unused property.** When a donee acquires property from the Agent and believes it to be unsuitable for the intended purpose, the Agent may authorize the donee to return the item to the Agent for a determination of the amount of the credit due to the donee. The return credit shall not exceed the original service charge for the item. The Agent shall utilize the table shown below to determine the return credit for an "unused" item if the item is in the same condition as at the time of acquisition:~~

~~(A) Returned within 30 days - Up to 100% Credit~~
~~(B) Exceeding 30 to 60 days - Up to 90% Credit~~
~~(C) Exceeding 60 to 90 days - Up to 75% Credit~~
~~(D) Exceeding 90 to 180 days - Up to 50% Credit~~
~~(E) Exceeding 180 days - As determined by the Agent~~

~~(2) **Donee reimbursement for used property.** When a donee no longer has a need or use for donated property and there has been no breach of the terms and conditions of the donation or special handling conditions or use limitations imposed by GSA, the donee may be reimbursed on a prorated basis for the following expenses:~~

~~(A) Service charge paid to the Agent;~~
~~(B) Transportation charges paid by the donee in initially acquiring the property; and~~
~~(C) Initial costs of repairs required to make the item usable. If the donee has incurred repair expenses for property it is returning to the Agent, it will inform the Agent. The donee will provide the Agent documentation to substantiate the amount claimed for the cost of initial repairs to make the returned item usable. The~~

~~donee may be reimbursed for all or part of the initial cost of repairs required to make the item usable if:~~

~~(i) The property is transferred to a federal agency or sold for the benefit of the United States Government:~~

~~(ii) No breach of the terms and conditions of donation has occurred; and~~

~~(iii) GSA authorizes the reimbursement.~~

~~(D) **Reimbursement amount recommendations for used property.** The Agent shall recommend for GSA approval the amount of reimbursement that takes into consideration the benefit the donee has received from the use of returned property and making appropriate deductions for that use. Reimbursement is not authorized unless the used item was placed into use by the donee within 1 year of its receipt. However, in cases where used returned property is sold, reimbursement shall not exceed the proceeds of the sale of the item. When making a reimbursement recommendation to GSA for used property, the Agent will provide the following information:~~

~~(i) Indicate whether or not the item was placed into use by the donee within 1 year of receipt; and~~

~~(ii) Item restriction period; and~~

~~(iii) The number of months the property was actually used by the donee; and~~

~~(iv) The item's total service charge and initial transportation and repair costs (if applicable.)~~

~~(E) GSA will approve, revise or disapprove the recommended reimbursement amount to be allowed a donee based on an internal computational method that considers the item's individual period of restriction, number of months utilized and the total of the service charge, initial transportation costs and repair costs (if applicable.)~~

580:45-1-35. Agency financing and service charges [REVOKED]

~~(a) The Agent shall assess, collect and expend service charges for surplus property transferred to eligible donation program donees as authorized by 80 O. S. Sections 34.2 through 34.6 and this State Plan.~~

~~(b) The Agent shall assess reasonable service charges in a fair and equitable manner based on services performed (or paid for) by the Agent in relation to the original acquisition cost (OAC) of the property. Service charges assessed by the Agent shall cover costs the Agent incurs to screen, retrieve, receive, package, crate, warehouse, ship and transport property. Funds accumulated from service charges may be used to maintain and improve the agency facilities and other purposes as specified in accordance with 41 CFR 102-37.280.~~

~~(c) For items the Agent makes available to donees, the Agent shall assess a service charge determined as a percentage of the OAC of an item.~~

~~(1) The Agent shall use the following table to assess service charges to items:~~

~~(A) OAC not exceeding $1000: 0% to 50% of OAC~~

~~(B) OAC exceeding $1000, but not exceeding $20,000: 0% to 40% of OAC~~

~~(C) OAC exceeding $20,000: 0% to 30% of OAC~~

~~(2) The Agent may authorize direct allocation of items to donees. If the Agent authorizes direct allocation, the service charge shall not exceed 10% of OAC. The Agent may establish a minimum service charge of $10.00 for direct allocation for property, if the total OAC for all property does not exceed $100.00.~~

~~(3) The Agent shall provide property to eligible donees that provide assistance to homeless individuals at a nominal cost for care & handling.~~

~~(d) The Agent may adjust the service charge for property for which repairs were paid for by the Agent. The Agent shall prepare a work order detailing expenses the Agent incurs to repair the item and advise the amount of a work order prior to a donee acquiring the item.~~

~~(e) The Director shall deposit funds the Agent receives from service charges in the revolving fund in accordance with 80 O.S., Section 34.6. The State Treasurer shall manage the revolving fund for the benefit of donees and the agency.~~

~~(f) The Director and the Agent shall expend the funds for allowable costs of the agency, including staff salaries, agency facilities maintenance and improvement, equipment and administrative expenses, for the benefit of donees and performance of duties pursuant to 80 O. S. Section 34.1 et seq. and the State Plan.~~

~~(g) If the Director determines that excess funds exist in the revolving fund, the Director shall reduce service charges for property.~~

~~(h) If the State were to decide to liquidate the SASP, the method of disposing of any financial assets realized upon the sale or other disposal of the facilities will be provided as part of a liquidation plan to GSA in accordance with 41 CFR 102-37.365.~~

~~(i) Financial assets realized upon the sale or other disposal of the facilities, other than to liquidate the SASP will be utilized to acquire new facilities.~~

580:45-1-37. Property use restrictions and requirements [REVOKED]

~~(a) The Agent shall inform donees that property the donee receives is subject to the use restrictions and requirements of 41 CFR 102-37, GSA and as specified by this Section. Donees shall acknowledge and agree to restrictions and requirements at the time of acceptance of property. The Agent may only grant releases from state imposed use restrictions, conditions or special handling instructions.~~

~~(b) A donee shall present an encumbrance (or certification) document to the Agent certifying adequate funds to pay service charges the donee incurs to acquire the property.~~

~~(c) A donee accepts property as is, with no expressed or implied warranty, except that a donee may return property to the agency pursuant to provisions of (g) of Section 580:45-1-33.~~

~~(d) The state and federal governments are not liable for and held harmless from actions incident to acquisition of the property, its use or final disposition.~~

~~(e) A donee shall use property to carry out or promote the public purpose of the donee entity.~~

~~(f) A donee shall not encumber property the donee acquires from the agency by lien or other method of encumbrance.~~

~~(g) A donee shall place donated property in use within one year of donee receipt of the property.~~

~~(h) A donee shall return property to the Agent if the donee does not use the property within one year of receipt at the expense of the donee.~~

~~(i) A donee shall retain and use an item with an OAC not exceeding $5,000 for the purpose for which it was donated for one year after the donee places the property in use.~~

~~(j) A donee shall retain passenger motor vehicles or items with an OAC of (or exceeding) $5,000 in its possession for 18 months after the donee places the property in use.~~

~~(k) A donee that acquires an aircraft or vessel shall meet additional use requirements.~~

~~(1) A donee shall submit a Letter of Intent that states the uses for which the donee intends to use the aircraft or vessel. The Agent shall advise the donee of all information required to be included in a Letter of Intent in accordance with 41 CFR 102-37.230.~~

~~(2) A donee shall use an aircraft or vessel for a period of five years. The period of restriction for combat-configured aircraft is perpetuity.~~

~~(3) A donee shall apply to the Federal Aviation Administration (FAA) to register an aircraft for flight use within 30 calendar days of donee receipt of the aircraft.~~

~~(4) A donee shall apply to register or document a vessel pursuant to applicable federal, state and local laws within 30 calendar days of donee receipt of the vessel and record each document with the U. S. Coast Guard.~~

~~(5) A donee shall include with its request for registration or documentation a fully executed copy of the transfer document and a copy of the donee Letter of Intent.~~

~~(6) Upon receipt, a donee shall provide a copy of FAA registration or Coast Guard documentation to the Agent and GSA.~~

~~(7) A donee shall use an aircraft or vessel in accordance with the executed Conditional Transfer Document and as set forth in the donee Letter of Intent.~~

~~(8) A donee may request amendments to the donee Letter of Intent by submitting amendments in writing to the Agent and GSA.~~

~~(9) A donee shall use an aircraft or vessel for purposes the donee states in the donee Letter of Intent unless the Agent and GSA provide approval of amendments to the Letter of Intent.~~

~~(10) If required by FAA or the U.S. Coast Guard, a donee shall provide a copy of the amended version of the Letter of Intent (which must be approved by both the Agent and GSA) to the FAA or U.S. Coast Guard, as applicable.~~

~~(11) If a donee breaches the terms and conditions of an original or amended Conditional Transfer Document, title to the aircraft or vessel may revert to the federal government, GSA may require the donee to return the aircraft or vessel and may require the donee to pay for any unauthorized disposal, transaction or use in accordance with FMR 102-37.460 (d).~~

~~(12) A donee may submit a request to return an aircraft or vessel during a period of use restriction to the Agent. The Agent shall notify GSA of the request. If GSA accepts the request, the Agent will then request that GSA provide written instructions for disposition. If GSA approves and provides instructions for disposal, the Agent shall provide notice and disposal instructions to the donee.~~

~~(13) A donee shall not modify for flight purposes military aircraft the donee receives for ground training or static display.~~

~~(14) A donee that receives an aircraft for non-flight use shall provide the Agent with aircraft historical records within 30 calendar days of donee receipt of the aircraft. The Agent shall forward the records to GSA.~~

~~(l) A donee shall agree upon execution of the Agent's Distribution Document that the donee holds conditional title to property during the period of use restrictions. Full title to the property will vest in the donee only after the donee meets all property use requirements.~~

~~(m) A donee shall not remove the property from the state for permanent use or sell, trade,lease, loan or otherwise dispose of property during periods of use restriction without written authorization from the Agent.~~

~~(n) The Agent shall evaluate a donee request for removal or property disposition as described in this Section and, if required, seek GSA approval of the action. The Agent shall notify the donee of approval or disapproval of the request.~~

~~(o) A donee shall report information pertaining to property to the Agent, as the Agent requires, during periods of use restriction.~~

~~(p) If a donee insures property and the donee experiences an insured loss of the property during a period of use restriction, the Agent or GSA is eligible to claim reimbursement from insurance proceeds for an amount equal to the unamortized portion of the fair market value for the insured item.~~

~~(q) A donee may request authorization to cannibalize property from the Agent .~~

~~(1) A cannibalization request for donated property which is in the custody of the donee and under a use restriction period must be made in writing and approved by the Agent prior to actual cannibalization action.~~

~~(2) The cannibalization request shall identify all components of an item the donee intends to utilize.~~

~~(3) The Agent shall determine the value of components of the item the donee intends to utilize.~~

~~(4) The Agent shall evaluate a donee request for cannibalization pursuant to conditions of the transfer document and approve or disapprove the request.~~

~~(5) The Agent may grant authority to the donee to cannibalize the property if he/she determines that such action will result in increased utilization of the property. However, the Agent must not authorize cannibalization if the item can be better used in its existing form or if GSA has not approved cannibalization for property with special handling conditions or use limitations imposed by GSA.~~

~~(6) If the Agent approves the request, the Agent shall advise the donee of the following use restrictions and requirements:~~

~~(A) Cannibalization by the donee must begin within 1 year of receiving the property and shall continue until the requirement for parts no longer exists (e.g., as parts are needed they are to be removed)~~

~~(B) Property authorized for cannibalization must remain under the use restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions stated on the transfer/distribution document. Components with a unit acquisition cost less than $5,000 may be released from state imposed restrictions only.~~

~~(C) When cannibalization actions are completed before the end of the period of restriction and residue remains, the Agent may authorize or require the donee to:~~

~~(i) Return unneeded residue to the Agent;~~

~~(ii) Retain the residue for use in other eligible programs; or~~

~~(iii) Report residue with an estimated fair market value over five hundred dollars to the Agent, for which the Agent may perform the following:~~

~~(I) Re-donate the residue.~~

~~(II) If unable to re-donate the residue, the Agent must report such residue to GSA for disposal instructions.~~

~~(III) The Agent may consider use restrictions satisfied if the fair market value of the remaining residue is less than five hundred dollars and release such residue to the donee, provided the proceeds of any disposal are returned to the account from which the service charges were paid to the Agent for the property and used by the donee in the eligible program.~~

~~(7) In cases where property is specifically requested for the purpose of cannibalization, the intended donee must provide written justification for the proposed action which shall accompany the SF 123 transfer document. The justification should provide detailed information concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will only approve donation of property for cannibalization when it is clear from the justification that disassembly of the item for component parts will provide greater potential benefit than use of the item in its existing form.~~

~~(8) All property donated specifically for cannibalization remains subject to the same terms, conditions, reservations, use restrictions and special handling conditions imposed by GSA reflected in (q)(6) of this Section.~~

~~(r) Vessels and aircraft shall remain subject to the terms and conditions stated on the respective Conditional Transfer Document (and based on the requirements of 41 CFR 102-37.450 and 102-37.460).~~

~~(s) The Agent shall advise the donee of the terms and conditions for the use, retention, return or disposal of property having an OAC of $5,000 or more and any passenger motor vehicle or other donated item. The donee will therefore obtain permission from the Agent before attempting to dispose of donated property during the item's period of use restriction.~~

~~(1) When a donee requests disposal instructions, the Agent shall follow the provisions outlined in Section 580:45-1-33.~~

~~(2) Subsection (s) of this Section is not applicable to Service Educational Activities (SEAs) donees as only Department of Defense (DOD) property may be donated to SEAs. In these cases, the Agent shall observe any restrictions imposed on the property by the sponsoring military service.~~

~~(t) A donee may submit a request to the Agent for release from use restrictions for property.~~

~~(1) The Agent may approve a request for release from state requirements if the Agent determines by item review or inspection that the property retains no capacity for useful purpose.~~

~~(2) A donee may request release from the special handling conditions or use limitations imposed by GSA by submitting a request to the Agent. The Agent shall forward the request to GSA and provide additional information as required by GSA. The Agent will advise the donee of the GSA determination.~~

~~(3) Upon request from a donee, the Agent may, with GSA approval, grant an extension of the time period to place property in use if the Agent determines that a delay results from factors beyond the predictable control of the donee.~~

~~(u) A donee may request that the Agent exchange an item that the donee used for a minimum of six months subject to item use restrictions and requirements for one like item having similar use potential if the exchange will result in increased utilization value to the donee.~~

~~(1) The use restrictions and special handling requirements for the item received by the donee shall commence upon donee receipt of the item.~~

~~(2) The Agent shall ensure that the OAC of the item the donee receives in exchange is of equal or greater value than the item the donee originally received.~~

580:45-1-39. Disposition of undistributed property [REVOKED]

~~(a) The Agent shall adhere to provisions of this section to dispose or abandon/destroy property the Agent is unable to distribute to donees. If the Agent determines that items are not usable, the Agent shall provide a signed request to GSA to seek approval to abandon or destroy the items.~~

~~(1) The Agent shall list items and advise GSA of reasons the Agent believes the items warrant abandonment or destruction in accordance with 41 CFR102-37.320.~~

~~(2) The Agent shall provide a description of each item, the condition of the items and the OAC.~~

~~(3) The Agent shall advise the method the Agent prefers for abandonment or destruction of the item.~~

~~(4) The Agent shall state that the method of abandonment or destruction the Agent prefers shall not pose a detriment or health hazard to other persons, will not cause risk to public safety or infringe on the rights of other persons.~~

~~(5) Within 30 calendar days after the Agent issues the request, GSA will approve, disapprove, provide alternate disposition instructions or not respond to the Agent. If GSA does not respond to the agent within 30 calendar days, the agent may abandon or destroy the items.~~

~~(6) If the Agent reasonably believes that unusable items may have value as scrap, the agent shall implement a cooperative agreement or adhere to provisions of an executed cooperative agreement with GSA to act as Agent for GSA to affect sale of the scrap items.~~

~~(b) If at least nine months after receiving items, the Agent does not distribute the items and the Agent determines that undistributed items are usable, the agent shall adhere to provisions of this Subsection to dispose of the items.~~

~~(1) The Agent shall, with GSA approval, offer the items to State Agencies for Surplus Property located within the same GSA region as that of the Agent.~~

~~(2) If no State Agency for Surplus Property within the region indicates interest in the property, the Agent may, with GSA approval, offer the property to State Agencies for Surplus Property outside the region.~~

~~(3) If another State Agency for Surplus Property requests to acquire the property, subject to GSA approval, the agency and requesting agency shall adhere to provisions of 41 CFR 102-37.295 to facilitate transfer of the items.~~

~~(4) The Agent may recoup costs the Agent incurred for the transfer or sale of items from the requesting State Agency for Surplus Property pursuant to provisions of 41 CFR 102-37.315.~~

~~(5) The Agent, with GSA approval, will transfer to other Federal agencies or sell undistributed property to donees in accordance with Section 580: 45-1-33.~~

~~(6) The Agent shall adhere to provisions of 41 CFR 102-37.290 through 41 CFR 102-37.310 for disposal of usable undistributed items that another State Agency for Surplus Property does not want. The Agent may recoup disposal expenses pursuant to 41 CFR 102-37.315.~~

580:45-1-41. Fair and equitable distribution [REVOKED]

~~(a) The Agent currently operates a warehouse to serve eligible donees. The Agent shall ensure fair and equitable distribution of property to donees based on their relative needs and resources and abilities to use the property. The Agent will generally have a firm requirement or an anticipated demand for any donable property requested. Factors to be considered in the fair and equitable distribution of property are:~~

~~(1) Contemplated use and frequency of use of the property;~~

~~(2) Criticality or urgency of need;~~

~~(3) Ability to pay the required service and handling charge; and~~

~~(4) Availability of funds to repair or maintain the property.~~

~~(b) The Agent shall provide priority distribution to donees responding to disaster or emergency situations.~~

~~(c) The Agent shall solicit advice from donees on types of items donees prefer to acquire from the agency.~~

~~(d) The Agent shall offer donees opportunities to request specific items. This may be done by providing the donee with "search only" access to GSA's online computerized inventory of excess and surplus property. This may also be done by obtaining "want lists" for those items needed by donees.~~

~~(e) The Agent may request GSA assistance to acquire specific items for a donee.~~

~~(f) The Agent may authorize and assist with direct shipment of property to donees.~~

~~(g) The Agent may provide property to eligible donees in another state pursuant to provisions of 41 CFR 102-37.265 and 41 CFR 102-37.335.~~

~~(h) Eligible donees that wish to screen property at Federal holding agencies shall make a written request to the Agent. If approved, the Agent shall submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) to the GSA Regional Office. If approved, GSA will complete the Optional Form 92 and return it to the Agent. Screening approval for the Agent's personnel must also be requested from GSA with the Optional Form 92. The appropriate Agent personnel member or eligible donee will then be authorized to screen surplus property at Federal holding agencies. The Agent will maintain records of authorized screeners in accordance with 41 CFR 102-37.190.~~

~~(i) When the donee has completed screening at a Federal holding agency, the donee will submit the screening sheet to the Agent. After review and final approval by the Agent, the item(s) will be frozen on behalf of the donee in GSA's automated inventory system. In situations where property being physically screened does not appear in the GSA automated inventory, the Agent shall first consult with GSA prior to submitting a manual SF 123 transfer document to confirm availability status of the property desired. If GSA approves use and submission of a manual SF 123, the donee will be notified when the actual transfer has been approved. Once transfer action (whether initiated by automated or manual means) has been approved by GSA, the donee shall make arrangements to remove the property from the holding agency. A donee may also pick up property directly from the holding agency or may make arrangements to have the property shipped directly to its location. The property will be subject to the same terms and conditions as property that is acquired through the Agent's warehouse.~~

580:45-1-43. Eligibility [REVOKED]

~~(a) Pursuant to provisions of 49 USC 549, 41 CFR.102-37.380 through 102-37.430 and provisions of this Section, the Agent shall accept and review applications from donee applicants and determine whether an applicant conforms to one of the categories of eligible donees and meets eligibility requirements to receive surplus property.~~

~~(b) The Agent shall utilize a standard application form for completion and submission by public and nonprofit donee applicants, for use by the Agent to determine whether the applicant meets eligibility requirements. The Agent may request GSA assistance to determine whether an applicant meets eligibility requirements.~~

~~(c) The application form shall request the following information:~~

~~(1) Legal name, address and, if necessary, directions to the physical location of the donee applicant;~~

~~(2) Function of the donee applicant as a public agency or an eligible non-profit agency;~~

~~(3) Explanation of the donee applicant program or mission and types of property needed;~~

~~(4) Donee applicant financial information including funding sources;~~

~~(5) Donee applicant certification of compliance with applicable federal nondiscrimination statutes, including Title 40, United States Code – Public Buildings, Property and Works, Subtitle I, Chapter 5. Section 122, Title VI of the Civil Rights Act of 1964 (42 U. S. C. 2000d 2000d-4a), Section 504 of the Rehabilitation Act of 1973 (29 U. S. C. 794), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U. S. C. 6101-6107) and Title IX of the Education Amendment of 1972 (20 U.S.C. 1681-1688 (as amended) ;~~

~~(6) If applicable, donee applicant certification of recognition as a state public agency by adopted resolution of a governing body;~~

~~(7) Evidence of donee applicant approval, accreditation, or licensing or other standards of operation documentation as defined by 41 CFR.102-37.395;~~

~~(8) Certification that the donee applicant is not currently debarred, suspended, declared ineligible or otherwise excluded from any federal program including procurement programs; and~~

~~(9) Require that a nonprofit and tax-exempt applicant donee provide evidence that it is tax-exempt pursuant to Section 501 of the Internal Revenue Code;~~

~~(d) The Agent may request a donee applicant to submit additional documentation to substantiate or clarify information the applicant submits on the eligibility form.~~

~~(e) The Agent shall maintain donee eligibility records in donee-specific files.~~

~~(f) In determining the eligibility of a donee applicant, the Agent will follow the guidelines of 41 CFR.102-37.380 though 102-37.430.~~

~~(g) The donee shall provide the Agent written authorization from the donee's governing body or Chief Executive Officer (CEO) designating at least one person to act for the donee in acquiring property. The Agent shall seek updated information from donees as required to ensure the Agent maintains current donee information. The Agent shall update eligibility records as needed, but no less than every three years from the eligibility approval date.~~

~~(1) If a donee changes its CEO prior to expiration of the eligibility time period established by the Agent, the donee shall submit a new application to the Agent. The application must designate at least one person to act for the donee in acquiring property.~~

~~(2) The Agent shall establish an eligibility expiration date for nonprofit donees to correspond with the expiration of annual appropriations, licensing or certification.~~

~~(h) If a donee fails to submit documents to substantiate continued eligibility, the Agent shall terminate distribution of property to the donee and seek recovery of usable property subject to use restrictions and requirements at the expense of the donee. If the Agent is unable to retrieve the property, the Agent shall utilize provisions of (g) of Section 580: 45-1-45 to notify GSA of donee noncompliance.~~

~~(i) If the Agent renders a negative eligibility determination, the donee applicant may appeal the decision.~~

~~(1) The applicant shall provide written notice to the Agent requesting appeal of the determination. The Agent, will, in turn, forward all related documentation to GSA. GSA's decision will be final.~~

~~(2) The Agent shall provide written notice to the applicant citing reasons for denial.~~

~~(3) The applicant may request GSA review of the Agent determination.~~

~~(4) If the applicant requests GSA review, the Agent shall abide by the final GSA determination.~~

~~(j) The Agent may grant conditional eligibility and provide property to a donee applicant pursuant to provisions of 41 CFR 102-37.420 through 102-37.430.~~

580:45-1-45. Compliance and utilization [REVOKED]

~~(a) The Agent shall employ methods to ensure that donees adhere to property use restrictions and requirements pursuant to provisions of 41 CFR 102-37 and Section 580: 45-1-37.~~

~~(b) For items with an OAC of less than $5,000, at any time during property use restriction or requirement time periods, the Agent may conduct a utilization review to determine whether a donee complies with property use restrictions and requirements for an item.~~

~~(1) The Agent may issue notice or contact a donee and request the donee to provide information or conduct an on-site inspection to determine whether the donee is complying with property use restrictions and requirements.~~

~~(2) The Agent shall record the findings and advise the donee of the findings.~~

~~(3) If the Agent determines that a donee does not meet property use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.~~

~~(c) For items with an OAC of or exceeding $5,000 and passenger vehicles, the Agent shall provide an in-use form to a donee at the time the donee acquires the item.~~

~~(1) The in-use form shall state property use restrictions and requirements.~~

~~(2) A donee shall provide information for the data elements contained in the form and submit it to the Agent. The donee shall advise the Agent the date the donee placed the item in use, the location of the item and how it will be used.~~

~~(3) Following receipt of an in-use form, the Agent shall log information provided by the donee.~~

~~(4) At least once during the time period of property use restrictions and requirements, the Agent shall conduct a utilization review by contact with a donee or an on-site inspection and request the donee to provide information to determine whether the donee complies with the restrictions or special handling limitations imposed by GSA.~~

~~(5) The Agent shall record and advise the donee of the findings.~~

~~(6) If the Agent determines that a donee does not meet property use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.~~

~~(d) For aircraft and vessels, the Agent shall provide an in-use form to a donee at the time of property transfer or when the Agent issues an invoice to the donee.~~

~~(1) The in-use form shall state aircraft and vessel use restrictions and requirements.~~

~~(2) A donee shall provide information for the data elements contained in the form and submit it to the Agent. The donee shall advise the Agent the date the donee placed the aircraft or vessel in use, the location of the property and how it will be used.~~

~~(3) Following receipt of an in-use form, the Agent shall log information the donee provides.~~

~~(4) On an annual basis, the Agent shall solicit information from the donee or perform an on-site inspection to confirm that the donee uses the aircraft or vessel subject to use restrictions and requirements. Whether by request or on-site inspection, the Agent shall acquire photographs of the aircraft or vessel.~~

~~(5) At least once during the time period of aircraft or vessel use restrictions and requirements, the Agent shall conduct a utilization review by on-site inspection, photograph the aircraft or vessel and request the donee to provide information to determine whether the donee is complying with the restrictions and requirements.~~

~~(6) The Agent shall record the findings and retain the findings and photographs in a donee specific compliance file.~~

~~(7) If the Agent determines that a donee does not meet aircraft or vessel use restrictions or requirements, the Agent shall advise the donee of actions the Agent intends to take pursuant to (g) of this Section.~~

~~(e) If the Agent does not receive an in-use form for property received by the donee within 30 days after the property invoice date, the Agent shall issue an in-use reminder form to the donee.~~

~~(1) The in-use reminder form shall advise the donee of actions the Agent may take if the donee fails to submit the form to the agent.~~

~~(2) The in-use reminder form shall state property use restrictions and requirements.~~

~~(3) The in-use reminder form shall contain data elements the donee shall submit to the Agent. The donee shall advise the Agent the date the donee placed the item in use, the location of the item and how it will be used.~~

~~(4) If a donee does not submit an in-use reminder form to the Agent within 30 days of the form issue date, the Agent shall advise the donee of actions the Agent may take pursuant to (g) of this Section.~~

~~(f) If the Agent determines that a donee fails to pay service charges to the Agent within 90 days of property acquisition, the Agent shall advise the donee that failure of a donee to pay service charges within 180 days will cause the Agent to perform actions pursuant to (g) of this Section.~~

~~(g) If the Agent determines that a donee fails to adhere to property use restrictions and requirements, including nonpayment of service charges after 180 days of property acquisition, the Agent shall document actions the Agent took to attempt to bring the donee into compliance and report donee noncompliance to GSA. The Agent shall coordinate subsequent actions with GSA in accordance with provisions of 41 CFR 102-37.480 through 102-37.495.~~

~~(1) The Agent will promptly remit funds derived by the Agent from enforcement of compliance efforts to GSA for deposit into the Treasury of the United States. The Agent shall provide supporting documentation to indicate the source of the funds and essential background information.~~

~~(2) The Agent shall retain funds derived from compliance actions involving violations of state-imposed use restrictions.~~

~~(h) If the Agent finds evidence that an agency employee engaged in unethical, fraudulent or illegal acts, the Agent shall advise GSA and, if applicable, local law enforcement authorities with appropriate jurisdiction and coordinate subsequent actions with them as required.~~

580:45-1-47. Consultation with advisory groups-public and private [REVOKED]

~~(a) Pursuant to provisions of 41 CFR 102-37. Appendix B, Section (k) and 80 O. S., Section 34.3, the Agent shall consult with donees and seek participation in public or private groups that include donees to determine relative needs and resources of donees, proposed utilization of property by donees and how distribution of property can be accomplished to fill existing needs of donees.~~

~~(b) The Agent shall offer speakers and presentations to participate in meetings of public or private groups that include donees or potential donees.~~

~~(1) The Agent shall encourage participation in agency programs by donees and potential donees.~~

~~(2) The Agent shall encourage donees to provide requests for types of property specific to an individual donee or group of donees for transmission to GSA.~~

~~(3) The Agent shall provide information on factors the Agent considers to determine donee eligibility.~~

~~(4) The Agent shall provide information on property use restriction and requirements.~~

~~(c) The Agent shall encourage potential donees to tour the agency or meet with agency staff to provide specific or in-depth agency information.~~

~~(d) The Agent shall maintain contact with donees through a periodic newsletter or other communication, whether distributed as printed or electronic media.~~

~~(e) The Agent shall consult with an advisory body which may consist of legislators and persons representing public and nonprofit donee types to advise and support the Agent's management and operation. If the Agent self-appoints the advisory body, the Agent shall determine the number and makeup of its members.~~

580:45-1-49. Audits [REVOKED]

~~(a) Periodic internal audits of the Agency's operations and financial affairs shall be conducted in accordance with the schedule established by the Oklahoma State Auditor and Inspector.~~

~~(b) The Agent shall comply with the external audit requirements and donee audit submission requirements of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" for each year in which the Agent receives $500,000 or more in Federal surplus property or other Federal assistance.~~

~~(c) The Agent shall provide GSA with two copies of any audit report made pursuant to OMB Circular A-133 or two copies of those sections that pertain to the Federal donation program.~~

~~(d) The Agent shall provide GSA an outline of all external audit related corrective actions and scheduled completion dates for the actions required.~~

~~(e) The Agent shall provide for cooperation in GSA or Comptroller General conducted audits. GSA shall notify the Chief Executive Officer of the State of the reasons for a GSA audit.~~

~~(f) The Agent shall advise donees that if a donee receives property with a value of or exceeding $500,000 during a fiscal year, that the donee shall provide the Agent with a copy of an audit of the donee conducted in accordance with OMB Circular No. A-133. The Agent shall advise the donee that it is the donee's responsibility to identify and determine the amount of property received by the donee and to arrange for audits.~~

580:45-1-51. Cooperative agreements [REVOKED]

~~41 CFR 102-37.325 through 102-37.340 and 40 USC 549 provide authorization for GSA, or federal agencies designated by GSA to enter into cooperative agreements with the Agent to provide support to the Agent's operations and facilitate transfer or disposal of property. The Agent may enter into, renew or revise such agreements.~~

580:45-1-53. Liquidation [REVOKED]

~~(a) Whereas the Legislature authorizes state participation in federal assistance programs to provide federal surplus property to donees in the state, it assigns the Director of the Department of Central Services to appoint the Surplus Property Agent and authorizes the Agent to effect property transfer to donees. Should the Legislature determine that the state should terminate participation, the Director and the Agent shall provide public notice of final distribution of property, liquidation of agency assets, distribution of liquidation proceeds, designation of a successor agency to perform continuing agency obligations and retention of agency records pursuant to a liquidation plan as required by 41 CFR 102-37.365 and 102-37.370.~~

~~(b) If the Legislature acts to terminate the agency, the Director and Agent shall issue notice to GSA within 10 days of the date of final legislative and gubernatorial action advising effective dates of the action, reasons and, if applicable, terms the action specifies for agency termination.~~

~~(c) Within 20 days of the date of final legislative and gubernatorial action, the Director and Agent shall submit a liquidation plan to GSA of proposed steps and a timetable to effect liquidation.~~

~~(1) The liquidation plan shall include methods of property distribution such as transfer to federal agencies, transfer to other State Agencies for Surplus Property and transfer to donees.~~

~~(2) The liquidation plan shall include methods and dates of public notice.~~

~~(3) The liquidation plan shall include legislative requirements or Director proposals for distribution of Agency financial and physical assets.~~

~~(4) The liquidation plan must include methods and dates for disposal of federal property and Agency physical assets through public auction.~~

~~(5) The Director and Agent shall specify a successor agency to ensure continuing Agency obligations on property donated prior to the closing of the Agency are fulfilled as a part of its liquidation plan.~~

~~(6) The liquidation plan shall include methods of record retention and location of records storage for two years following liquidation.~~

~~(7) The liquidation plan shall include methods to finalize disbursement of Agency funds for liquidation activities.~~

~~(8) The liquidation plan shall include a final Agency termination date.~~

~~(d) Within 30 days of submission of the liquidation plan to GSA, the Director shall commence the liquidation plan.~~

~~(e) The Director may include GSA recommendations in the liquidation plan.~~

~~(f) The Director shall include GSA requirements in the liquidation plan.~~

~~(g) The Director shall issue notice to GSA upon completion of Agency liquidation that includes summaries of property and asset distribution and disposal, and financial assets distribution and disbursement.~~

580:45-1-55. Forms [REVOKED]

~~(a) The Agent shall utilize forms to enable property receipt and distribution, donee eligibility and other components of Agency operations. The Agent shall comply with Department requirements for form review and approval.~~

~~(b) For forms that require GSA approval, following Department approval, the Agent shall submit forms to GSA for review and possible approval.~~

~~(1) If GSA approves the form, the Agent shall record the beginning date of form use.~~

~~(2) If GSA disapproves the form, the Agent shall incorporate form amendments required by GSA. Following incorporation of GSA amendments and, if applicable, further Department or GSA review and approval, the Agent shall record the beginning date the form was placed into service.~~

580:45-1-57. Records [REVOKED]

~~(a) The Agent shall retain Agency property acquisition records to comply with state and Federal records retention requirements. The Agent shall retain Agency records for a minimum of three years following completion of the period of use restrictions (POR) and requirements.~~

~~(b) The Agent shall retain records pertaining to items with use restrictions and requirements as shown in the table, below:~~

~~(1) Combat-configured aircraft – Perpetual Period of Restriction (POR) – Perpetual Records Retention after POR;~~

~~(2) Firearms – Perpetual Period of Restriction (POR) – Perpetual Records Retention after POR;~~

~~(3) Non-combat aircraft – 5 Year Period of Restriction (POR) – 3 Year Records Retention after POR;~~

~~(4) Vessels – 5 Year Period of Restriction (POR) – 3 Year Records Retention after POR;~~

~~(5) Motor vehicles and items with OAC of or exceeding $5,000 – 18 months Period of Restriction (POR) – 3 Year Records Retention after POR;~~

~~(6) Items with OAC less than $5,000 – 1 Year Period of Restriction (POR) – 3 Year Records Retention after POR.~~

~~(c) The Agent shall retain records pertaining to noncompliance cases for a minimum of three years following the conclusion of the noncompliance case.~~

[OAR Docket #14-765; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 50. RECYCLING [REVOKED]

[OAR Docket #14-766]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:50-1-1. Purpose [REVOKED]
580:50-1-2. Definitions [REVOKED]
580:50-1-3. Recyclable materials collection [REVOKED]
580:50-1-4. Recycled products procurement [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:50-1-1. Purpose [REVOKED]

~~The rules in this Chapter are promulgated by the Director of Central Services to implement the Oklahoma State Recycling and Recycled Materials Procurement Act (74 O.S. § 85.50 et seq.).~~

580:50-1-2. Definitions [REVOKED]

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

~~**"Agency"** means any department, board, commission, institution, authority, or agency of the State of Oklahoma.~~

~~**"Asphalt materials containing ground tire rubber"** means asphalt material mixed with recovered rubber from scrap automobile, truck, or bus tires. The term includes asphalt rubber and rubber modified asphalt.~~

~~**"Department"** means the Oklahoma Department of Central Services.~~

~~**"Director"** means the Director of Central Services.~~

~~**"Economically feasible"** means that the cost of an action is reasonable in consideration of the beneficial result, as determined by the Director of Central Services.~~

~~**"Life cycle cost"** means a cost which is distinguished from a product's purchase price in that the additional considerations of waste disposal cost, durability, and reusability are incorporated into the concept of product cost.~~

~~**"Post-consumer material"** means those products or recyclable materials generated or discarded by a business or a consumer that have served their intended end uses, and that have been recovered from or otherwise diverted from the solid~~

~~waste stream for the purpose of recycling. Wastepaper generated in paper mill operations such as cutting, trimming, coating, or converting, along with mill broke and other in-plant residual wastes, although present in recycled paper products, shall not be included in the determination of the percentage of post-consumer material, but may be included in the determination of the percentage of total recycled materials content.~~

~~**"Practicable"** means capable of being used consistent with:~~

~~(A) performance in accordance with applicable specifications;~~

~~(B) availability at a reasonable price;~~

~~(C) availability within a reasonable period of time;~~

~~(D) maintenance of a satisfactory level of competition.~~

~~**"Price preference"** means the percentage over and above the price of non-recycled products and materials which may be allowed for the purchase of recycled products and materials.~~

~~**"Products manufactured from virgin materials"** means products which are composed entirely of materials which have not been previously used in manufacture.~~

~~**"Products manufactured with recycled materials"** means products that are manufactured with a minimum content of ten percent (10%) post-consumer materials.~~

~~**"Recyclable materials"** means materials or products which are capable of being recycled, including, but not limited to paper, glass, plastics, metals, automobile oil, and batteries.~~

~~**"Recycled paper products"** means all paper products manufactured from recoverable waste paper, with not less than ten percent (10%) of their total weight consisting of waste paper.~~

~~**"Recycling"** means a three-step process:~~

~~(A) the identification and collection of usable materials from the solid waste stream;~~

~~(B) the processing of these materials into new products; and,~~

~~(C) the purchase and use of products containing reused materials.~~

~~**"Recycling plan"** means a scheme, method, schedule, and outline for action which is designed to fulfill the intent, requirements, and goals of the Oklahoma State Recycling and Recycled Materials Procurement Act.~~

~~**"Recycling program"** means a system of instructions, procedures, services, and tasks by which source reduction is accomplished, recyclable materials are salvaged, separated, and disposed of, and products manufactured with recycled materials are procured, in accordance with the intent of the Oklahoma State Recycling and Recycled Materials Procurement Act. A recycling program may include services provided by private, nonprofit, and/or cooperative contractors.~~

~~**"Re-refined oils"** means used oils from which the physical and chemical contaminants acquired through prior use have been removed through a refining process.~~

~~**"Retreaded tire"** means any tire that utilizes an existing casing for the purpose of vulcanizing new tread to such casing and which meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.~~

~~**"State public entity"** means the State Legislature, any bureau, agency, board, commission, or authority of the state; the Office of the Governor, the judiciary, or any state university, school district or county of the state which is supported in whole or in part by state funds.~~

~~**"The Act"** means the Oklahoma State Recycling and Recycled Materials Procurement Act.~~

580:50-1-3. Recyclable materials collection [REVOKED]

~~(a) Adoption of recycling plan. Each state public entity shall adopt a comprehensive recycling plan to meet or exceed the legislative intent, requirements, and goals of the Act. A sample recycling plan shall be made available by the Department.~~

~~(b) Recycling plan operation. Each state public entity shall develop and operate its own recycling program, or join and participate in a joint recycling program, for the purpose of implementing its recycling plan. The results of implementation of the plan during the previous fiscal year shall be described in a report to the Director by December 31 of each year. The report shall be in a format determined by the Department .~~

~~(c) Assistance in plan development. The Department shall provide assistance and coordination to state public entities in the development and implementation of recycling plans, and in the operation of recycling programs to achieve recycling objectives.~~

~~(d) Determination of quantity and market value of recycled materials. The Department may determine whether the quantity and market value of recyclable materials, separately or in combination, in any solid waste generated by any state public entity is sufficient to make recycling economically feasible.~~

~~(e) Joint recycling operations. The Department may operate one or more recycling programs, where it is feasible to do so, and may require state public entities to participate. The Department may determine whether any state public entity must participate in a joint recycling program with other state public entities, or may operate a partially or completely separate recycling program of its own.~~

~~(f) Designation of agency recycling coordinator. Each state agency shall designate at least one employee as a recycling coordinator for that agency.~~

~~(1) The Department may require the designation of additional coordinators if necessary for the efficient operation of the recycling effort.~~

~~(2) State agencies with more than one office, shop, or working venue shall designate a recycling coordinator for each location or venue at which more than fifty employees usually work.~~

~~(3) The Department may, at its discretion, require an agency to appoint a recycling coordinator for locations which produce large amounts of recyclable materials.~~

~~(4) The identity and contact information for each recycling coordinator shall be submitted to the Director and shall be updated or revised as changes occur.~~

~~(5) Recycling coordinators shall serve as contact persons with the Department for implementation of the Act and the rules in 580:50-1-3.~~

~~(g) Representatives of entities other than state agencies. Each state public entity other than a state agency shall designate at least one employee to represent that entity in coordination with the Department for implementation of the Act and the rules in 580:50-1-3. The identity and contact information for each representative shall be submitted to the Director and shall be updated or revised as changes occur.~~

~~(h) Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 580:50-1-3 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.~~

580:50-1-4. Recycled products procurement [REVOKED]

~~(a) Purchase of recycled products. Each state public entity shall procure products which are manufactured with recycled materials, and products which are recyclable and/or durable, to meet or exceed the legislative intent, requirements, and goals of the Act.~~

~~(b) Reporting of purchases of recycled products. Each state public entity shall submit a report to the Director by December 31 of each year. This report shall describe the results of its procurement of recycled paper products and other products manufactured with recycled materials over the past fiscal year. The report shall be in a format determined by the Department.~~

~~(c) Assistance in procurement objectives. The Department shall provide assistance to state public entities in the achievement of procurement objectives in their recycling programs.~~

~~(d) Procurement specifications for recycled materials. Each state public entity shall use procurement specifications to require, to the greatest extent practicable, that a product and its packaging or container contain recycled materials and that the product and its packaging or container be recyclable.~~

~~(1) Product and packaging specifications shall require the use of post-consumer materials to the greatest extent practicable without jeopardizing the intended end-use of the product.~~

~~(2) In writing specifications and selecting products for procurement, life cycle costs shall be part of the evaluation criteria when the costs of waste disposal or the durability and reusability of a product may be significant.~~

~~(3) A state public entity may determine that, for technical reasons, and for a particular end-use, a product containing recycled materials will not meet reasonable performance standards, and may therefore declare the purchase of a product manufactured with recycled materials to be unpracticable. Such a determination shall be documented and based solely upon technical performance information related to a specific item, and not to a grade or type of product. This documentation may be requested for review by the Department.~~

~~(4) Each state public entity shall reduce the generation of solid waste at its source, whenever practicable, by minimizing the purchase of single-use, disposable products and requiring the purchase of durable products which can be reused.~~

~~(5) Each state public entity shall, whenever practicable, purchase only office paper, photocopier paper, printer paper, and printed paper products which are not coated with plastic, clay, or other material used to create a glossy finish.~~

~~(6) Each state public entity shall take reasonable steps to minimize the procurement of colored paper products. If color is necessary for a particular use, full consideration shall be given to the use of white paper printed with colored, soy-based ink.~~

~~(e) Declaration of vendors of percentage of recycled materials in products. State public entities shall require vendors to declare the minimum, if not exact, percentage of recycled materials content in the products offered, including both the post-consumer and total recycled materials content, regardless of whether the product meets the percentage of recycled materials specified for that product.~~

~~(f) Certification by vendor of recycled content claim. The vendor of any product for which a recycled content claim is made must both possess and rely upon a reasonable basis for the claim and must be able, upon request by the Department, to certify and demonstrate this claim. Any fraud or deception in the representation of recycled materials content may result in cancellation of the contract and the removal or suspension of the vendor from the bidders list pursuant to OAC 580:15-1.~~

~~(g) Preferences for recycled materials. If several products manufactured with recycled materials are being considered for purchase, and if all cost and quality considerations are comparable, preference shall be given to the product with the highest content of post-consumer material. If this measure fails to identify the more preferable product, the award shall go to the product with the highest content of total recycled materials.~~

~~(h) Preferences by public entities. Each state public entity responsible for the maintenance of public lands in this state shall, to the greatest extent practicable and consistent with sound environmental practices, give preference to the use of compost materials in land maintenance activities which are to be paid for by public funds.~~

~~(i) Provisions for Oklahoma Department of Transportation and Oklahoma Turnpike Authority. The Department of Transportation and the Oklahoma Turnpike Authority shall review and modify all bid and paving material specifications:~~

~~(1) To provide that the specifications encourage the maximum purchase, when practicable, of recyclable asphalt pavement and paving materials utilizing recycled materials, including but not limited to:~~

~~(A) crushed concrete sub-base;~~

~~(B) fly ash;~~

~~(C) glass and glassy aggregates; and~~

~~(D) asphalt material containing ground tire rubber.~~

~~(2) Life cycle cost analysis shall be used in determining practicability.~~

~~(j) Provisions for public entities using motor vehicles. Each state public entity which owns or maintains motor vehicles is encouraged, to the greatest extent practicable to:~~

~~(1) Equip such vehicles with retreaded tires.~~

~~(A) Efforts should first be made to procure retreading services for the entity's own waste tire casings.~~

~~(B) If the services in 580:50-1-4(j)(1)(A) are not practicable, retreaded tires should be procured for use as replacements.~~

~~(C) Emergency vehicles defined in 47 O.S. 1991 § 1-103 (Highway Safety Code) are exempt from this recommendation.~~

~~(2) Procure re-refined oils for all practicable uses, including, but not limited to, such uses as:~~

~~(A) engine lubricating oils;~~

~~(B) gear oils; and,~~

~~(C) hydraulic fluids.~~

~~(k) Price preference on bids. When accepting bids for purchases of supplies, equipment and materials, the Central Purchasing Division of the Department of Central Services and each state public entity shall extend price preferences to products manufactured with recycled materials whenever the Director determines that such products are unable to be price competitive with products of comparable grade and quality manufactured from virgin materials.~~

~~(1) Those products manufactured with at least the minimum content level of recycled materials as established by the Federal Environmental Protection Agency (EPA) shall receive a price preference not to exceed a five percent differential.~~

~~(2) A copy of the EPA specified content requirements and a list of products meeting the requirements will be maintained as a public record by the Department.~~

~~(3) A product which contains recycled materials but falls short of the EPA minimum requirements may receive a price preference if no other product is bid or offered which meets the EPA requirements.~~

~~(4) Price preferences allowed pursuant to this section shall not be combined with other price preferences or differentials.~~

~~(5) In response to product market conditions, the Director may temporarily increase, reduce, or eliminate any recycled product price preference.~~

~~(l) Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 580:50-1-4 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.~~

[OAR Docket #14-766; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 55. ALTERNATIVE FUELS PROGRAM [REVOKED]

[OAR Docket #14-767]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [REVOKED]
580:55-1-21. Purpose [REVOKED]
580:55-1-23. Definitions [REVOKED]
580:55-1-25. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners [REVOKED]
580:55-1-27. Duties and responsibilities of the Alternative Fuels Technician Hearing Board [REVOKED]
580:55-1-29. Alternative Fuels Technician Certification Revolving Fund [REVOKED]
Subchapter 5. Testing, Certification and Recertification [REVOKED]
580:55-5-1. Applications for examination, certification or renewal of certification [REVOKED]
580:55-5-2. Contents of application [REVOKED]
580:55-5-4. Certificate required by agency [REVOKED]
580:55-5-6. Fees [REVOKED]
580:55-5-8. Processing and handling of applications and examinations [REVOKED]
580:55-5-10. Certificate qualification and transfer or loan of certificate [REVOKED]
580:55-5-12. Change of address of holder of certificate or registration [REVOKED]
580:55-5-13. Insurance requirements [REVOKED]
580:55-5-14. Guidelines for certificate renewal [REVOKED]
Subchapter 7. Standards for Alternative Fuels Technicians-Conversion and Compression [REVOKED]
580:55-7-1. Work of alternative fuels technician by non-certified person [REVOKED]
580:55-7-3. Standards for equipment installation and inspection [REVOKED]
580:55-7-4. Decals and conversion reporting procedures [REVOKED]
Subchapter 9. Violations [REVOKED]
580:55-9-1. Alternative Fuels Technician Hearing Board; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate [REVOKED]
580:55-9-3. Violations; criminal penalties [REVOKED]
580:55-9-4. Violations to public safety [REVOKED]
580:55-9-5. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine [REVOKED]

AUTHORITY:
74 O.S. §130.18; Director of the Office of Management and Enterprise Services

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 19, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

580:55-1-21. Purpose [REVOKED]

~~The purpose of this chapter is to fulfill the mandate of Title 74 Section 130.18 by establishing rules in accordance with the Alternative Fuels Technician Certification Act.~~

580:55-1-23. Definitions [REVOKED]

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

~~(a) **"Administrator"** means the Program Administrator and Recording Secretary of the Committee.~~

~~(b) **"Agency"** means the Division of Capital Assets Management of the Office of Management and Enterprise Services.~~

~~(c) **"Alternative fuels"** means fuels which result in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulate matter or any combination thereof and includes CNG, LPG, LNG, methanol, ethanol, reformulated gasoline and electricity.~~

~~(d) **"Alternative fuels compression technician"** means any person who installs, services, modifies, repairs or renovates fill stations.~~

~~(e) **"Alternative fuels equipment technician"** means any person who installs, modifies, repairs or renovates equipment used in the conversion of any engines to engines fueled by alternative fuels and includes OEM vehicles either dedicated to operate on an alternative fuel or manufactured bi-fueled, i.e., capable of operating on gasoline or an alternative fuel.~~

~~(f) **"Alternative Fuels Technician Certification Act"** means O.S.Title 74, Section 130.11 through 130.24.~~

~~(g) **"Board"** means the Alternative Fuels Technician Hearing Board.~~

~~(h) **"Capable of operating on an alternative fuel"** means any motor vehicle converted or designed to operate on an alternative fuel.~~

~~(i) **"Charge station"** means the physical device that provides a connection from a power source to an electric vehicle as defined by the Electric Power Research Institute, and the Society of Automotive Engineers.~~

~~(j) **"CNG"** means compressed natural gas.~~

~~(k) **"Committee"** means the Committee of Alternative Fuels Technician Examiners.~~

~~(l) **"Electric vehicle technician"** means any person who installs, modifies, repairs, performs maintenance on, motors, controllers, on board power sources, or the drive systems of vehicles powered by electricity. This includes vehicles originally equipped as electric vehicles, vehicles converted from gliders, and vehicles converted from internal combustion engine vehicles.~~

~~(m) **"Engine"** means the propulsion system of a motor vehicle. Nothing in this definition is meant to cover any stationary engine.~~

~~(n) **"Fill station"** means the property which is directly related to the delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas otherwise known as propane, into the fuel tank of a motor vehicle propelled by such fuel including the compression equipment and storage vessels for such fuel at the point where the fuel is delivered. Compressed Natural Gas and Liquefied Petroleum Gas are subject to the NFPA code 52 and 58 respectively.~~

~~(o) **"Glider"** means a vehicle built without an engine or fuel system for the purpose of converting it to an electric vehicle.~~

~~(p) **"LNG"** means liquefied natural gas.~~

~~(q) **"LPG"** means liquefied petroleum gas otherwise known as propane.~~

~~(r) **"Motor vehicle"** means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; provided, however, the definition of "motor vehicle" herein shall not include implements of husbandry.~~

~~(s) **"NFPA"** means the National Fire Protection Association.~~

~~(t) **"OEM"** means original equipment manufacturers.~~

~~(u) **"Person"** means individuals, corporations, partnerships, cooperatives, associations and governmental subdivisions.~~

~~(v) **"Work"** means any procedure involved in the physical installation or servicing of all components used in the conversion of motor vehicles to operate on alternative fuels and the servicing of original equipment manufacturers vehicles that operate on alternative fuels, including:~~

~~(1) LPG and CNG components;~~

~~(A) tubing;~~

~~(B) fittings;~~

~~(C) valves;~~

~~(D) gauges;~~

~~(E) brackets;~~

~~(F) fuel lines;~~

~~(G) cylinders;~~

~~(H) tanks; and~~

~~(I) electronic or electrical devices.~~

~~(2) Electric vehicle components;~~

~~(A) traction battery packs or modules;~~

~~(B) motor controllers;~~

~~(C) subsystem controllers;~~

~~(D) inverters;~~

~~(E) drive motors;~~

~~(F) auxiliary components powered by high voltage; and~~

~~(G) any high voltage circuits.~~

~~(w) **"Written"** or **"In writing"** means a tangible or electronic record of a document, communication or representation, including handwriting, typewriting, printing, photostating, photography, e-mail or other electronic format or record. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.~~

580:55-1-25. Duties and responsibilities of the Committee of Alternative Fuels Technician Examiners [REVOKED]

~~(a) The Committee shall assist and advise the agency on all matters relating to the formulation of rules and standards in accordance with the Alternative Fuels Technician Certification Act.~~

~~(b) The Committee shall administer the examination to applicants for certification as alternative fuels technicians provided that such examination is in accordance with the provisions of the Alternative Fuels Technician Certification Act.~~

580:55-1-27. Duties and responsibilities of the Alternative Fuels Technician Hearing Board [REVOKED]

~~(a) The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels technician or certified alternative fuels installation company, partnership or corporation.~~

~~(b) The Board is authorized to suspend or revoke any certificate; in addition, the board is authorized to impose civil penalties pursuant to the Administrative Procedures Act.~~

580:55-1-29. Alternative Fuels Technician Certification Revolving Fund [REVOKED]

~~(a) Funds derived from the "Alternative Fuels Technician Certification Act" shall be deposited with the State Treasurer and credited to the "Alternative Fuels Technician Certification Revolving Fund".~~

~~(b) The revolving fund shall be a continuing fund not subject to fiscal year limitations and shall be under the control and management of the Agency.~~

~~(c) Expenditures from this fund shall be made pursuant to the purposes of the Alternative Fuels Technician Certification Act and shall include, but not be limited to:~~

~~(1) Payment of administrative costs and other operational costs supporting program existence; and,~~

~~(2) Payment of the costs of programs designed to promote public awareness of the alternative fuels industry; and,~~

~~(3) Expenditures for the preparation and printing of regulations, bulletins or other documents and the furnishing of copies of such documents to those persons engaged in the alternative fuels industry or the public.~~

SUBCHAPTER 5. TESTING, CERTIFICATION AND RECERTIFICATION [REVOKED]

580:55-5-1. Applications for examination, certification or renewal of certification [REVOKED]

~~(a) All applications for examination, certification or renewal of certification shall be made in writing to the agency on forms provided, if necessary, by the agency.~~

~~(b) All applications shall be accompanied by the appropriate fee as set forth in section 580 :55-1-41.~~

580:55-5-2. Contents of application [REVOKED]

~~The application shall be verified, and shall contain the following information, together with any additional information that the agency may require:~~

~~(1) Name of the applicant;~~

~~(2) Mailing Address;~~

~~(3) Address of all locations that the applicant proposes to engage in the installation or modifications of vehicles using an alternative fuel; and~~

~~(4) The type of service, set forth specifically, which the applicant intends to perform and the type of permit that the applicant seeks to secure, such as LPG, CNG, LNG, EV or other alternative fuel.~~

580:55-5-4. Certificate required by agency [REVOKED]

~~The mere filing of an application for a certificate does not of itself authorize the engaging in any of the installations or modifications of any equipment listed in the definition of "Work" in 580:55-1-23.~~

580:55-5-6. Fees [REVOKED]

~~(a) The fee schedule for the Alternative Fuels Technician Certification Act is as follows:~~

~~(1) Alternative fuels technician examination - $50~~

~~(2) Alternative fuels technician certificate - $50~~

~~(3) Company, partnership or corporation - $100~~

~~(4) Training program certification (one-time) - $500~~

~~(5) Alternative fuels installation certification per location - $1,000~~

~~(6) Certificate renewal (if made within 30 days after expiration):~~

~~(A) Alternative fuels technician certificate - $50~~

~~(B) Company, partnership or corporation - $100~~

~~(C) Alternative fuels installation certification - $1,000 per location~~

~~(7) Penalty for late certification renewal - $10~~

~~(8) Prorated fee for new technician certification after March first of each year - $25; after June 1 of each year - $12.50~~

~~(b) Form of payment from non-governmental entities and general public.~~

~~(1) Payment may be only in the form of:~~

~~(A) Certified funds,~~

~~(B) Business check,~~
~~(C) Personal check,~~
~~(D) Money order, or~~
~~(E) Cashier's check.~~

~~(2) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.~~

~~(3) Unguaranteed checks and 2-party checks shall not be accepted.~~

~~(4) Payment refunds. All payments received are non-refundable.~~

580:55-5-8. Processing and handling of applications and examinations [REVOKED]

~~(a) Upon receipt of an application for a certificate, required documentation, and appropriate fees, the Administrator shall schedule the applicant for an examination.~~

~~(b) Examinations shall be administered in the following manner:~~

~~(1) Questions for an examination shall be selected from appropriate sources deemed applicable by the committee.~~

~~(2) The format of examination questions shall be varied and include multiple choice and true/false.~~

~~(3) Prior to being put into the reservoir, the questions shall be reviewed by the committee.~~

~~(4) For each examination, a total of 75 questions shall be drawn from the reservoir.~~

~~(5) Applicants testing during a scheduled examination session will not be given identical versions of the examination.~~

~~(6) The examination shall be administered in a manner that the identity of the applicant shall be unknown during the grading process.~~

~~(7) Examinations for certification as alternative fuels technician shall be uniform and practical in nature as determined by the committee for alternative fuels technician certification and shall be sufficiently strict to test the qualifications and fitness of the applicants for certification.~~

~~(8) An oral examination may be administered by prior arrangement.~~

~~(9) The committee shall conduct examinations twice a year and at such times as it deems necessary.~~

~~(10) A score of eighty percent (80%) correct shall be a passing grade for all examinations.~~

~~(11) Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of forty five (45) days.~~

~~(12) All applicants can petition the committee if they feel the committee's grade was incorrect. An applicant may petition the committee if the applicant disagrees with his or her examination grade issued by the committee. The applicant must notify the administrator of the petition prior to the next scheduled committee meeting in order for the petition to be placed on the meeting agenda.~~

~~(13) All decisions of the committee are final.~~

~~(14) Applicants that pass the examination and are notified by the committee of such must make arrangements for certification within one hundred and eighty (180) days of such notification.~~

~~(15) After the one hundred and eighty (180) days, and such applicant has not been certified (i.e., paid the fee and provided proof of insurance), the applicant must retest prior to their certification.~~

~~(16) The agency shall enforce the provisions of this section.~~

580:55-5-10. Certificate qualification and transfer or loan of certificate [REVOKED]

~~(a) The Agency issues a certificate as:~~

~~(1) An alternative fuels equipment technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.~~

~~(2) An alternative fuels compression technician to any person who has been certified by the Committee as either having successfully passed the appropriate examination or having a valid license or certificate issued by another governmental entity with licensing or certification requirements similar to those provided in the Alternative Fuels Technician Certification Act.~~

~~(b) The agency shall have the authority to determine the validity of a certificate issued by another governmental entity.~~

~~(c) The agency shall assess the required certification fee and ascertain that an applicant has also complied with the provisions of the Alternative Fuels Technician Certification Act.~~

~~(d) In the case of a company, partnership or corporation engaged in the business of installing, servicing, repairing, modifying or renovating equipment used in the conversion of engines to engines fueled by alternative fuels, a separate certificate shall be issued by the agency to that individual company, partnership or corporation. The certificate is for the purpose of recognizing that the company, partnership or corporation is an authorized alternative fuels conversion business and employs state-certified alternative fuels technicians.~~

~~(e) Any violation by a certified alternative fuels equipment or compression technician shall be deemed a violation by the certified company, partnership or corporation employing such certified technician.~~

~~(f) The agency shall issue an alternative fuels equipment installation certification to any public entity or private company, partnership or corporation that operates commercial, private or public fleets of vehicles and employs ten (10) or more auto service technicians per location. The certification shall be based on the ability of the applicant to provide their own alternative fuels technician training program, which shall be certified by the committee. This certification applies only to the conversion or service of vehicles owned or operated by such public entity or private company, partnership or corporation.~~

~~(g) All alternative fuels technician equipment or compression certificates shall be non-transferable.~~

~~(h) It shall be unlawful for any person certified pursuant to the provisions of the Alternative Fuels Technician Certification Act to loan or allow the use of such certificate by any other person.~~

580:55-5-12. Change of address of holder of certificate or registration [REVOKED]

~~Any holder of a certificate or registration issued in accordance with the provisions of the Alternative Fuels Technician Certification Act shall notify the agency of any change in such holders address no later than thirty (30) days of such change.~~

580:55-5-13. Insurance requirements [REVOKED]

~~A certificate shall not be issued to any applicant unless and until the agency has received proof of insurance as required by this section.~~

~~(1) Alternative fuels technicians and conversion companies, partnerships or corporations engaged in the installation of alternative fuel equipment are required to have on file with the agency proof of certificate holders liability insurance coverage, with limits of not less than three hundred thousand dollars ($300,000.00) commercial general and garage keeper's liability, that is in full force and effect covering the plant, garage, equipment and motor vehicles used in such business.~~

~~(2) Insurance under this section shall be kept and remain in force during the lifetime of the certification issued hereunder. An insurance certificate or certificates showing that the required insurance coverage is in force must be filed with the agency.~~

~~(3) Such insurance coverage will not be canceled or terminated unless written notice of such cancellation or termination is given to the agency thirty (30) days prior to cancellation date.~~

~~(4) Nothing in this section shall be deemed or construed to require product liability insurance coverage.~~

~~(5) If in the event insurance is canceled and the agency is not notified within the thirty (30) day period or not provided with proof of insurance renewal, the agency will notify the board of such action and request that the certificate be revoked or suspended.~~

580:55-5-14. Guidelines for certificate renewal [REVOKED]

~~(a) All certificates issued under the agency shall expire on September 1st of each year.~~

~~(b) A late fee of Ten Dollars ($10.00) will be charged after September 1st.~~

~~(c) After September 30th, re-testing will be required to retain certification status.~~

~~(d) At the time of recertification, proof of insurance coverage will be required.~~

~~(e) Applicants failing to provide proof of insurance at said time of renewal will be subject to the late penalty, outlined in 580:55-1-43, if insurance verification is made after the September 1st date.~~

~~(f) All Alternative Fuel Technicians are required to re-test every three (3) years to receive a renewal of certification.~~

~~(g) All applications for examination for the renewal of certification shall be made in writing to the agency on forms provided by the agency.~~

~~(h) All applications shall be accompanied by the appropriate fee as set forth in section 580:55-1-43.~~

SUBCHAPTER 7. STANDARDS FOR ALTERNATIVE FUELS TECHNICIANS - CONVERSION AND COMPRESSION [REVOKED]

580:55-7-1. Work of alternative fuels technician by non-certified person [REVOKED]

~~(a) From and after July 1, 1991, it shall be unlawful for any person to perform the work or offer, by advertisement or otherwise, to perform the work of an alternative fuels technician until such person is certified as an alternative fuels technician by the agency.~~

~~(b) Nothing in this Chapter shall prevent a non-certified person from converting the engine of a farm tractor, as defined in Sections 1-118 of Title 47 of the Oklahoma Statutes, to an engine fueled by alternative fuels, as long as such farm tractor is not operated on the roads and highways of this state.~~

~~(c) Activities directly related to normal, vehicle maintenance and service are exempt from the definition of work. It is not the intent of this section to prevent any individual, corporation, company from servicing, repairing or maintaining general systems not directly related to the alternative fuel delivery system. Such non-alternative motor fuels related activities include:~~

~~(1) For LPG and CNG vehicles;~~

~~(A) Tune-ups;~~

~~(B) Filter replacement;~~

~~(C) Oil changes;~~

~~(D) Electrical/electronic component replacement; and,~~

~~(E) Belts and hoses.~~

~~(2) For Electric vehicles;~~

~~(A) Replace auxiliary battery;~~

~~(B) Replace hoses or coolant, not affecting high voltage circuits or components;~~

~~(C) Replace brake and suspension components not linked to any high voltage circuits or components~~

~~(d) Non-certified individuals participating in a agency authorized training program, under the guidance of a state certified instructor, are exempt from the certification requirement during the training period.~~

580:55-7-3. Standards for equipment installation and inspection [REVOKED]

~~(a) The standards for the equipment installation and inspection of liquefied petroleum gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 58.~~

~~(b) The standards for the equipment and compression installation and inspection of compressed natural gas vehicular fuel systems adopted by NFPA are published in the latest edition of its pamphlet No. 52.~~

580:55-7-4. Decals and conversion reporting procedure [REVOKED]

~~(a) After an alternative fuel conversion or modification of equipment is completed for any motor vehicle, the technician shall affix a blue CNG diamond, black propane diamond or green EV diamond, whichever is applicable, according to NFPA pamphlet No. 52.~~

~~(b) No certified technician shall install, service, repair or modify any motor vehicle, capable of operating on an alternative fuel that does not have the required decals.~~

~~(c) Converted alternative fueled vehicles and OEM alternative fueled vehicles shall have placed on the vehicle, decals & labels required by NFPA and the following:~~

~~(1) The date of installation;~~

~~(2) The name of the installing technician; and,~~

~~(3) State of Oklahoma Certification number of the alternative fuels equipment technician.~~

~~(4) The expiration date of time sensitive parts and components used in the conversion.~~

~~(5) Converted vehicle information: year, make, model, and vehicle identification number (VIN).~~

~~(6) New gross vehicle weight (GVW)~~

~~(d) The following reporting procedure must be performed after each vehicle conversion:~~

~~(1) On forms, provided by the Administrator, each vehicle converted shall be reported to the Administrator by the alternative fuels technician. Information deemed necessary by the agency shall be included on the form. These forms must be sent to the Administrator no later than ten (10) days after the completion of the conversion. Photocopying of these forms is permissible.~~

~~(2) The penalty for failure to comply with 580:55-1-61(d)(1) shall be determined by the Board.~~

SUBCHAPTER 9. VIOLATIONS [REVOKED]

580:55-9-1. Alternative Fuels Technician Hearing Board; complaints, investigations, false or fraudulent representation, suspension or revocation of certificate [REVOKED]

~~(a) A person or persons designated by the Agency Director or designee and the Committee shall act as the Alternative Fuels Technician Hearing Board and shall comply with the provisions of the Administrative Procedures Act.~~

~~(b) The Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any certified alternative fuels equipment or compression technician.~~

~~(c) The Board shall suspend or revoke any certificate or registration obtained by false or fraudulent representation.~~

~~(d) The Board shall also suspend or revoke any certificate or registration for any of the following reasons:~~

~~(1) Making a material misstatement in the application for a certificate or registration, or the renewal of a certificate or registration;~~

~~(2) Loaning or illegally using a certificate;~~

~~(3) Demonstrating incompetence to act as an alternative fuels equipment or compression technician;~~

~~(4) Violating any provisions of the Alternative Fuels Technician Certification Act, or any rule or order prescribed by the agency; or~~

~~(5) Willfully failing to perform normal business obligations without justifiable cause.~~

~~(e) The Board shall convene at the request of the committee and/or the agency director and shall have as its counsel the general counsel of the agency.~~

~~(f) The Board shall authorize the general counsel to investigate the matter or matters being considered by the Board.~~

~~(g) The General Counsel of the Agency may elect to delegate the investigation to a person or persons of his choice.~~

~~(h) Investigations are to be secret until presented to the Board for recommendations.~~

~~(i) Upon the review of the facts of the investigation, the Board may determine whether or not to hear a case.~~

~~(j) The Board and its activities shall comply with the Administrative Procedures Act.~~

~~(k) Any person whose Alternative Fuels Equipment or Compression Technician Certificate has been revoked by the Board may apply for a new certificate one (1) year from the date of such revocation.~~

580:55-9-3. Violations; criminal penalties [REVOKED]

~~(a) Any person convicted of violating any provision of the Alternative Fuels Technician Certification Act shall be guilty of a misdemeanor.~~

~~(b) The continued violation of any provision of the Alternative Fuels Technician Certification Act during each day shall be deemed to be a separate offense.~~

~~(c) Upon conviction thereof the person shall be punished by imprisonment in the county jail not to exceed one (1) year, or by a fine of not more than one thousand dollars ($1,000.00) or by both such fine and imprisonment for each offense.~~

~~(d) If the Board makes a determination of a violation, it may request the appropriate district attorney to prosecute such violation and seek an injunction against such practice.~~

580:55-9-4. Violations to public safety [REVOKED]

~~(a) Pursuant to the authority of 47 O.S. §12-101 A. 1., 47 O.S. §13-101, it shall be unlawful for any person to operate on any highway:~~

~~(1) A vehicle that has not been converted according to, or does not meet the standards stated in section 580:55-7-9;~~

~~(2) An OEM alternative fueled vehicle that fail the manufacturer's standards.~~

~~(b) An alternative fuels technician shall notify the Administrator within three (3) business days of any instance where the driver and, or owner of a vehicle that was found unsafe refused to correct safety issues with a vehicle.~~

580:55-9-5. Violations; civil penalties; determination of penalty amount; surrender of certificate in lieu of fine [REVOKED]

~~(a) Any person who has been determined by the Board to have violated any provision of the Alternative Fuels Technician Certificate Act or any rule or order issued pursuant to the provisions of the Alternative Fuels Technician Certification Act may be liable for a civil penalty of not more than one hundred dollars ($100.00) for each day that said violation occurs.~~

~~(b) The maximum civil penalty shall not exceed one thousand dollars ($10,000) for any related series of violations.~~

~~(c) The amount of the penalty shall be assessed by the Board pursuant to the provisions of 580:55-9-1, after notice and hearing.~~

~~(d) In determining the amount of the penalty, the Board shall include but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person or persons found to have committed the violation, the degree of culpability and any show of good faith in attempting to achieve compliance with the provisions of the Alternative Fuels Technician Certification Act.~~

~~(e) All monies collected from such civil penalties shall be deposited with the State Treasurer of Oklahoma and placed in the Alternative Fuels Technician Certification Revolving Fund.~~

~~(f) Any certificate holder may elect to surrender his certificate in lieu of said fine but shall be forever barred from obtaining a reissuance of said certificate.~~

[OAR Docket #14-767; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 60. LEASING AND SPACE STANDARDS [REVOKED]

[OAR Docket #14-768

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:60-1-1. Purpose [REVOKED]
580:60-1-2. Definitions [REVOKED]
580:60-1-3. General provisions for securing space [REVOKED]
580:60-1-4. Space standards [REVOKED]
580:60-1-5. Requests for space [REVOKED]
580:60-1-6. Leasing of non-state owned property [REVOKED]
580:60-1-7. Lease documents for non-state owned space [REVOKED]
580:60-1-8. Positions descriptions [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:60-1-1. Purpose [REVOKED]

~~The principal objective of the state's space management program is:~~

~~(1) To provide adequate space to satisfy appropriate functional and locational requirements for state programs.~~

~~(2) To obtain the most favorable and economical space occupancy rates.~~

~~(3) To obtain maximum utilization of existing public and private buildings, which meet state space requirements.~~

~~(4) To provide uniform space allocation standards.~~

~~(5) To provide an avenue for state office space planning.~~

~~(6) To maintain a single communications point and information source between the State and the private real estate market.~~

~~(7) To insure as much uniformity as practical in lease terms and space planning.~~

580:60-1-2. Definitions

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

~~**"Administrator of State Leasing"** means the person designated by the Director of the Department of Central Services to formulate, enter into, or administer contracts for real property leases or make written determinations and finding with respect to them.~~

~~**"Agency"** means commission, authority, council, department, division, bureau, board or section of the State of Oklahoma.~~

~~**"Full-time employee (FTE)"** means those permanent state employees as defined by the Office of Personnel Management.~~

~~**"Leasing Forms"** means forms the Director of the Department of Central Services shall approve for real property leasing transactions to be utilized by the State Leasing office, vendors and other state agencies.~~

~~**"Maintenance"** means the repair or preventative up-keep of equipment, machinery, property, and building features or fixtures.~~

~~**"Net usable square feet"** means the space in non-state owned facilities for which the State shall pay a square foot rate.~~

~~(A) If the space is on a single tenancy floor or building, computing the inside gross area of the space by measuring from the normal inside finish of the permanent exterior walls, or from the face of the convector (pipes or other wall-hung fixtures) if the convector occupies at least 50% of the length of the walls.~~

~~(B) If the space is on a multiple tenancy floor, measure from the exterior building walls as above (#A) and to the room side finish of the fixed corridor and shaft walls and/or the center of tenant separating partitions.~~

~~(C) In all measurements, make no deductions for the columns and projections enclosing the structural elements of the building; and deduct from the gross area the following, including enclosing walls:~~

~~(i) Toilets and lounges;~~

~~(ii) Stairwells and bearing partitions;~~

~~(iii) Elevator and escalator shafts;~~

~~(iv) Building equipment and service areas;~~

~~(v) Entrance and all elevator lobbies;~~

~~(vi) Stacks and shafts; and~~

~~(vii) Fixed or common use corridors~~

~~(D) Common Area space accessible to and/or utilized by entities other than the State is not included as net usable square feet.~~

~~(E) If restrooms are available in a common area of a multiple tenant building, those restrooms within the state's leased space which are for the state's exclusive use, shall be included as net usable square feet.~~

~~(F) When the only accessible restroom facilities in a building are within the state's leased space, one set of restrooms and their enclosing walls shall be deducted from the net usable square feet.~~

~~**"Office space"** means space used primarily as work areas for personnel, conference areas, reception areas, hearing rooms, drafting areas, etc. Minor storage areas, such as storage of miscellaneous supplies or stationary and file cabinet space within a private office or adjacent to clerical personnel are also included in "office space".~~

~~**"Personnel"** means the peak number of persons to be located in the space, to include permanent employees of the agency, temporaries, contractual employees and budgeted vacancies.~~

~~**"Rental Rate Ceiling"** means the net usable square foot rate established by the Office of Management and Enterprise Services as the maximum rental consideration to be made for non-state owned facilities. The ceiling is not to be interpreted as the standard rate, only as the maximum.~~

~~(A) On full-service leases, which include all utilities except telephones, 5-day per week janitorial services and supplies, and general parking, the rental rate shall not exceed the ceiling rate.~~

~~(B) On net leases, which exclude utilities and/or 5 day per week janitorial services or general parking, the rate shall not exceed the ceiling rate when rent related expenses are added to the base rate (i.e. utilities except telephones, 5 day per week janitorial, parking, etc.).~~

~~(C) If a lease rate does not include all or part of the utility expenses, documentation of the most recent 12 month period in which the space was occupied shall be utilized to estimate what the total rent related expenses will be to the agency and shall be considered in both rental negotiations and by the Office of Management and Enterprise Services in evaluation/authorization of the lease.~~

~~(D) On those full service or net leases wherein the janitorial services is to be provided less than five days per week (either at the Lessor or state's expense), the Office of Management and Enterprise Services Office of Management and Enterprise Services shall provide the agency with the acceptable rental rate.~~

~~**"Standard space specifications"** means those specifications, as developed and approved by the Department of Central Services, which define the building requirements in privately leased space.~~

~~**"State owned space"** means space, the title to which is vested, or will become vested pursuant to existing agreement with the State of Oklahoma.~~

~~**"State space standards"** means the standard guidelines for the determination of an agency's space needs in state owned and non-state owned facilities, and all real property purchased or lease-purchased by the State.~~

~~**"Storage space"** means a structure or area used primarily for storing items such as furniture, fixtures, equipment and inactive files. Desk space for warehousemen located within larger storage areas are is also included in "storage space."~~

580:60-1-3. General provisions for securing space [REVOKED]

~~(a) It is the policy of the Department of Central to house agencies of state government in state owned property whenever feasible. However, when requirements for space cannot be satisfied in state facilities, the Department of Central Services shall authorize the agency to secure such space in non-state owned facilities.~~

~~(b) The State Space Standards shall be utilized by the Department of Central Services to facilitate space planning, to establish office space needs, and for authorization of space requirements for state agencies in all state owned buildings and all leased non-state owned facilities.~~

~~(c) Agencies shall submit a Space Request to the Department of Central Services when requesting new or additional space in either state-owned or non-state-owned facilities, or when purchasing or lease-purchasing real property.~~

~~(d) All leases for space, regardless of size and dollar value, shall be authorized by the Department of Central Services.~~

~~(e) The Director of the Department of Central Services may, at his/her discretion, waive the requirements as set forth in 580:60-1 when it is shown to be in the best interest of the State of Oklahoma.~~

580:60-1-4. Space standards [REVOKED]

~~(a) **Purpose.** The purpose of the space allocation standards is to present a uniform and consistent method of evaluation of the amount of space required to support a specific program or agency in state-owned, non-state-owned space, and all real property to be purchased or lease-purchased by the State.~~

~~(b) **General provisions.**~~

~~(1) Agencies shall indicate their space needs through the use of the Space Request.~~

~~(2) Agencies are expected to implement the space standards both for major moves and internal space reorganization.~~

~~(3) Whenever possible, the Department of Central Services shall satisfy new space requests through the assignment of vacant space available in state-owned facilities.~~

~~(4) Funding allocated to an agency by the Legislature for an increase in the amount of space or the rental rate is not intended as final approval of such. In these cases, new/additional space or rate increases shall still be authorized by the Department of Central Services in accordance with the leasing procedures and space standards.~~

~~(5) Unless otherwise noted, all square footage listed and the term "square feet" means "net usable square feet" as defined in 580:60-1-2. As such, it represents the amount of space that is usable for personnel, the placement of furniture and internal circulation areas.~~

~~(6) The quality and the type of space actually assigned or approved by the Department of Central Services may vary depending on various factors. Such factors shall include, but not be limited to, functional considerations, the magnitude of contiguous space required, and configurations of available space for assignment, including economic consideration when the available space requires remodeling to conform to the State Space Standards.~~

~~(7) The final decision concerning the allowable amount of square footage for a given space request shall be made by the Department of Central Services.~~

~~(8) The state space standards shall be the standard guidelines for the determination of an agency's space needs. They are intended to balance full and intensive use of the allocated space with productivity and program needs.~~

~~(c) **Personnel space standards.**~~

~~(1) The state space standards shall ordinarily not exceed the product of 150 square feet times the number of full-time, funded employees. This standard is not to be interpreted as an entitlement per individual employee., but rather entitlement to space allocated to the agency as a whole. It is therefore recommended that individual space allocations within the total be made on a basis of job function, not on position classification.~~

~~(A) The allocation of space for those employees who are in the office less than 60 percent of the time shall be seventy (70) square feet per position.~~

~~(B) Space needs for an individual employee may only be considered for the primary office location.~~

~~(C) Space for employees who work out of their homes or other offices shall not be included.~~

~~(D) The allocation of space for personnel who report to the facility on a weekly basis, or less, shall be determined through the Special Space Requirements, rather than on the standard 150 or 70 square foot allowance.~~

~~(E) The state space standard allocations include work stations, circulation between work stations, and work station related support space, such as reception and office equipment areas, unless specified in 580:60-1-4(d).~~

~~(2) Space is primarily allocated according to the number of funded authorized positions in the agency or program.~~

~~(A) Project and limited term positions are not normally included; exceptions may be made for projects of over two years or limited term positions that recur regularly.~~

~~(B) Future expansion needs shall not be considered until positions have been authorized and funded unless there is a documented history of frequent expansion in the agency's programs and number of employees required to support the programs.~~

~~(3) The allocation of space for personnel in warehouses, print shops, motor pools, large data centers, etc., where the employees support the functions and/or equipment, not vice versa, shall be determined through the Special Space Requirements, rather than on the standard 150 or 70 square foot allowance. Administrative personnel of such functions shall, however, be included in the standard FTE space allocation.~~

~~(d) **Special space standards.** This Subsection represents the special space standards which shall be the standard guidelines for determining an agency's special space requirements. With appropriate written documentation and justification in an agency's Space Request, additional square footage shall be allowable if the space meets the specified criteria. All figures used to compute the justification of Special Space shall be based on the average number of occupants utilizing the particular space at any given time.~~

~~(1) **Reception/client areas.** Most office locations require some type of reception area; however, the allowable space may vary based on the program being administered.~~

~~(A) Space allocation will be determined on the basis of the following criteria:~~

~~(i) Average number of visitors utilizing the space per day; at any given time;~~

~~(ii) Type of visitors; (i.e., accompanied by families, etc.); and~~

~~(iii) Special requirements (i.e., tables, etc.)~~

~~(iv) An agency requiring an unusual amount of reception space for this purpose may be required to provide documentation of the actual number of visitors.~~

~~(B) Allowable space shall be ten (10) square feet times the average number of visitors per day at any given time. This does not include the requirements for a receptionist which is included in the Personnel Section of the Space Request form.~~

~~(2) **Conference rooms.** A separate conference room shall be established only when it will be in use at least twenty hours per week. (Note: The agency shall provide documentation of actual history of usage of conference rooms and/or meetings to verify need.)~~

~~(A) Space allocation shall be determined on the basis of the following criteria:~~

~~(i) Average number of persons in attendance;~~

~~(ii) Frequency of meetings (average hours per week);~~

~~(iii) Availability of private office space; and~~

~~(iv) Special requirements (i.e., blackboard, projector and screen, etc.)~~

~~(v) Availability of existing meeting facilities at little or no cost to building tenants.~~

~~(B) Allowable space for conference rooms which meet the above criteria shall be twenty (20) square feet per person, based on the overall average number of attendees as documented by the agency, not the average of one or two specific meetings.~~

~~(C) It is acknowledged that these standards may be adjusted with appropriate documentation when special equipment is regularly used in a given meeting or conference setting. In addition, the methods for calculating the actual room size may vary according to use and the number of participants and/or spectators.~~

~~(3) **Classroom and training rooms.** Classrooms/Training Rooms shall be combined with the conference room usage unless there exists justification for separate areas. If separate classrooms and training rooms are justified, they should be established only when they are in use at least 20 hours per week. Occasional space for five or six people will not qualify as special space. The agency shall provide documentation of the actual history of usage of classes or training sessions.~~

~~(A) Space allocation shall be determined on the following criteria:~~

~~(i) Average number of persons in attendance as documented by agency records;~~

~~(ii) Frequency of classes/training (average hours per week);~~

~~(iii) Special requirements; and~~

~~(iv) Availability of existing meeting facilities at little or no cost within the building and/or the space occupied by the agency.~~

~~(B) Allowable space shall be twenty (20) square feet per person based on the overall average number of attendees, not the average of one or two specific sessions.~~

~~(4) **Intake/interview room.** This type of space shall be established only when it will be in use at least twenty-five hours per week and shall be considered on a case-by-case basis as special space by the Department of Central Services.~~

~~(A) This space shall be determined on the following criteria:~~

~~(i) Frequency of use (average hours per week); and~~

~~(ii) Availability of private office space or other meeting space.~~

~~(B) Allowable space shall not exceed one hundred (100) square feet per individual room, with the total number of qualifying rooms dependent on the documented demonstrated need for such space.~~

~~(5) **Libraries.**~~

~~(A) The allowable square footage for book cases shall be based on the following formula:~~

~~(i) Determine the total number of book cases within the space (i.e. open areas; private offices; libraries, etc.).~~

~~(ii) If the total number of book cases is greater than the total number of FTE's occupying the space, the difference shall be considered as is the number of book cases which shall be allowable as special space. Contract, temporaries, or volunteers shall not be included in the number for this allowance.~~

~~(B) Allowable space shall be six (6) square feet each for the number of book cases which exceed the total number of FTE's occupying the space.~~

~~(6) **File cabinets.**~~

~~(A) The allowable square footage for file cabinets shall be is based on the following formula:~~

~~(i) Determine the total number of file cabinets within the space (i.e., open areas; private offices; file rooms; 2, 3, 4, and 5 drawer, lateral and vertical cabinets).~~

~~(ii) If the total number of file cabinets is greater than the total number of FTE's occupying the space, the difference will be considered as the number of file cabinets which will be allowable as special space. Contract, temporaries, or volunteers shall not be included in the number for this allowance.~~

~~(B) Allowable space will be nine (9) square feet each for the number of file cabinets which exceeds the total number of FTE's occupying the space.~~

~~(C) Space for mobile filing systems should be justified separately on the Space Request form and shall include exact system dimensions.~~

~~(7) **Storage, copiers, mail.** The agency shall be allocated additional space, based on the number of FTE's to be~~

~~used by the agency for general storage, copiers, and mail areas.~~

~~(A) Space allocation will be based on the following formula:~~

~~(i) Less than fifty FTE's. Allowable space shall be ten (10) square feet per FTE;~~

~~(ii) Fifty or more FTE's. Allowable space shall be up to 5% of the space allowed for the total number of FTE's, excluding any special space allowances.~~

~~(iii) Contract, temporaries, or volunteers shall not be included when computing this allowance.~~

~~(B) Unusual space needs for any of these three areas in excess of the allowable space shall be justified separately on the Space Request.~~

~~(8) **Large copiers, reproduction and printing areas.** These areas may, with appropriate documentation, be considered as special space if they are in a physically delineated area with staff dedicated to operating the equipment. The allowable space shall be the actual measurement of the equipment plus circulation or the manufacturer's recommended allowance. The square footage shall not include space requirements for personnel. which shall be included in the Personnel Section of the Space Request form.~~

~~(9) **Equipment dominated area.** This area shall be considered as special space if people shall support the equipment, not vice versa. Occasional microfiche machines, word processing areas, computer terminals used or assigned to employees as a routine part of their work will not qualify as special space. The allowable space shall be the actual measurement of the equipment plus circulation or the manufacturer's recommended allowance. The square footage shall not include space requirements for personnel. Personnel shall be included in the Personnel Section of the Space Request form.~~

~~(10) **Smoking room.** The allocation of this type of space shall be dependent strictly on current laws or rules.~~

~~(A) Should the laws or rules require such space be provided, the maximum allowable space allocated to the agency will be 150 square feet. This figure is not to be interpreted as the standard, only as the maximum allowance. The number of employees and the type of space shall be a factor in the actual space allowed for this purpose.~~

~~(B) An agency shall not be allocated space for a Smoking Room for public use unless the Department of Central Services determines that there is a significant need/justification.~~

~~(C) A Smoking Room shall be isolated, shall have an independent, dedicated ventilation system exhausting directly to the outdoors, and shall be in accordance with federal and state codes and rules.~~

~~(11) **Employee break room.** This area shall be considered on a case-by-case basis as special space.~~

~~(A) Space allocation shall be is based on the following criteria:~~

~~(i) Availability of a food service area within a selected facility;~~

~~(ii) Availability of a conference, classroom, or other multi-purpose room; and~~

~~(iii) Total number of employees.~~

~~(B) Allowable space shall be is ten (10) square feet per average occupancy.~~

~~(12) **Multi-purpose room.** This type of space shall be considered for multiple use purposes for those agencies who are unable to justify other specific "Special Space," such as a conference room, break room, central storage, etc., and where there is a justified need for such a room. Allowable space will be determined by using a combination of the other special space allowances. The allocation of this type of space shall be considered by the Department of Central Services on a case-by-case basis.~~

~~(13) **Other.** Any specialized space requirement which an agency needs that has not been defined herein as "Special Space" may be included in Section 14 of the Space Request form. Justification shall be included in order for the space to be considered. Examples might include, but not be limited to, training kitchens, restrooms for medical/correctional purposes, laboratories (photography, medical, etc.), examination rooms, vaults, observation rooms, direct patient care requirements, etc.~~

~~(e) **Space planning.**~~

~~(1) Space allocation planning shall, to the fullest extent possible, employ the open space concept. In most cases the elimination of internal fixed walls makes maximum use of space, is more flexible in accommodating change, facilitates better control of lighting, heating, air conditioning, and ventilating, and reduces construction and maintenance costs.~~

~~(2) Private office space shall be provided only when there is a demonstrated functional need, ; however, no additional square footage will be allowed for the purpose of providing for private office space.~~

~~(3) No private office within the total amount of space allowable to the agency shall exceed 300 square feet in size.~~

~~(4) The actual design of the space to be occupied shall include those Special Space areas which were authorized by the Department of Central Services. Further, these areas shall be as consistent as possible with the amount of space authorized on the Space Request for such use. The Department of Central Services may alter the final square footage allocation if the agency fails to utilize space in accordance with the agency's space justification as designated on the authorized Space Request form.~~

~~(5) The Department of Central Services may aid agencies in preparation of the initial space layout. When an agency requires space design assistance, a request for such assistance should be made to the Administrator of State Leasing. An agency may utilize the services of a space planner or architect provided at the building owner's expense; however, the Department of Central Services will~~

~~have final review of the plan. An agency should not contract for space planning services without specific authorization from the Department of Central Services.~~

~~(f) **Space for short-term use.** Agencies having a need for facilities for short-term use, such as conferences and testing, shall utilize available state-owned or leased facilities whenever possible. Agencies shall make inquiries regarding availability of such space to the Administrator of State Leasing. If it is determined that no suitable state controlled facilities are available, an agency may arrange for the use of privately owned facilities for a period not to exceed 10 days, provided that the agency has the authority to contract for such facilities. Any extensions beyond 10 days shall be approved by the Department of Central Services.~~

~~(g) **Measurement of space.** Unless otherwise noted, all square footages indicated in both the Space Request form, the Space Standards and leases of non-state owned facilities shall mean "net usable square feet." As such, it represents the amount of space that shall be usable to the agency and its personnel, to include the placement of furniture, interior wall space and internal circulation areas.~~

~~(1) Net usable square feet is defined as that space in privately owned facilities for which the State of Oklahoma will pay a square foot rate.~~

~~(2) Net usable square feet shall be determined as follows:~~

~~(A) If Single Tenant, computing the inside gross area of the space by measuring from the normal inside finish of the permanent exterior walls, or from the face of the convector (pipes or other wall-hung fixtures) if the convector occupies at least 50% of the length of exterior walls.~~

~~(B) If Multiple Tenant, measuring from the exterior building walls as above (#1) and to the room side finish of the fixed corridor and shaft walls and/or the center of tenant-separating partitions.~~

~~(C) In all measurements, make no deductions for columns and projections enclosing the structural elements of the building, and deduct the following from the gross area including their enclosing walls:~~

~~(i) Toilets and lounges;~~

~~(ii) Stairwells and bearing partitions;~~

~~(iii) Elevator and escalator shafts;~~

~~(iv) Building equipment and service areas;~~

~~(v) Entrance and all elevator lobbies;~~

~~(vi) Stacks and shafts~~

~~(D) Common Area Space accessible to and/or utilized by entities other than the State is not included as net usable square feet.~~

~~(E) If restrooms are available in a common area of a multiple tenant building, those restrooms within the State's leased space which are for the State's exclusive use will be included as net usable square feet.~~

~~(F) When the only accessible restroom facilities are within the State's leased space, one set of restrooms and their enclosing walls shall be deducted from the net usable square feet.~~

580:60-1-5. Requests for space [REVOKED]

~~(a) Purpose. The purpose of the Space Request form is to provide a means whereby an agency supplies the Department of Central Services with information and justification necessary for determining the agency's space requirements. in both state-owned and non-state-owned facilities.~~

~~(b) **General provisions.**~~

~~(1) Requests for space shall be submitted to the Administrator of State Leasing on the Space Request form. The request shall be utilized by all agencies where there is a need for one of the following:~~

~~(A) New space;~~

~~(B) Increased space at current location; and~~

~~(C) When an agency has been at its present location over four (4) years and every fourth year thereafter as determined necessary by the Department of Central Services.~~

~~(2) The Space Request is required whether request is for space in a state-owned or non-state owned facility. as well as those agencies planning to purchase or lease purchase real property.~~

~~(3) The Space Request shall be submitted to the Administrator of State Leasing no less than ninety (90) days prior to the anticipated need for the space.~~

~~(4) When requesting space, the original and one copy of the Space Request should be submitted to the Administrator of State Leasing. The original will be retained by the Department of Central Services and, after review and analysis, the copy will be returned to the requesting agency indicating the action or amount of space to be authorized.~~

~~(5) Each agency director, or designated representative approved by the Department of Central Services, shall certify by signature the information on the Space Request form.~~

~~(6) Requests which do not contain the required information will be returned to the agency without action.~~

~~(7) The Department of Central Services is responsible for evaluating an agency's request for space and shall authorize what action shall be taken on the request.~~

~~(8) A Space Request which has been authorized by the Department of Central Services shall be valid for a maximum period of six months, unless authorized otherwise by the Department of Central Services. If a new lease or addendum to a lease has not been signed within that time, a new Space Request may be required at the discretion of the Department of Central Services should the agency still desire to acquire new or additional space.~~

~~(9 If an agency's request exceeds the guidelines, written justification shall be provided by the agency which addresses the request on an item-by-item basis.~~

~~(10) When a request for expansion of existing space is received, the Administrator of State Leasing may review the currently assigned area prior to authorizing additional space. An effort shall first be made to absorb the expansion through a more efficient rearrangement of the existing space.~~

~~(11) If the agency is requesting additional space at its current location for new employees or programs, the~~

~~Space Request shall reflect the total number of FTE's and any special space which the agency may justify based on the Space Standard allowances, not the actual square footage of the special space areas currently occupied by the agency.~~

~~(12) Four (4) Year Space Review.~~

~~(A)If the Department of Central Services determines that a Four Year Space Review is necessary, it will be evaluated before an agency is authorized to renew its current lease; however, relocation and/or alterations to the space shall be required only if it is determined to be in the best interest to the State.~~

~~(B)The information on the Space Request should reflect only what the agency may justify based on the Personnel and Special Space Standard allowances, not the actual amount of space currently occupied by the agency.~~

~~(C)The "Estimated Space Allocation" and the "Total Space Requested" on the Space Request do not need to reflect the same square footage. In most cases, the amount of space currently occupied by the agency will be more or less than the amount of space that may be justified in accordance with the Space Standards.~~

~~(c) Analysis of space request. In analyzing an agency's space request, Seven key elements shall normally be considered in determining the amount of space necessary to support the agency or program. These areas are: a general justification of the need and amount of space, type of program, special requirements, type and quality of space, location, and availability of state-owned space.~~

~~(1) **Justification.** The intent of the information required is to indicate how the requested space shall be used. Sufficient information shall be provided to permit the Department of Central Services to fully understand the purpose of the program to be housed in the space. At a minimum, agencies' justification for the need for the requested space shall include staffing and special space needs.~~

~~(2) **Amount of space.** Through the information provided by the agency on the Space Request and use of standards outlined in 580:60-1-4, the Department of Central Services shall make a preliminary decision of the amount of space required.~~

~~(3) **Type of program.** The type of program to be housed in the space shall be a consideration in the agency's request. Factors to be considered include the estimated life of a program and fluctuations in the scope of the program (i.e., work activities, number of clients).~~

~~(4) **Special requirements.** A number of special requirements may be of particular importance to the function of a program. Among these are parking, security, after hours use, laboratories, private restrooms, floor loadings and structural conditions.~~

~~(5) **Type of Space.** There are two basic types of space: office and storage. Agencies shall request the type of space based on the following criteria:~~

~~(A) Office space shall be requested when the primary purpose of the space is to provide work areas for professional and clerical personnel. Normally such areas require a minimal amount of storage area for forms, files, etc. (This "storage" space shall be accommodated within the office area unless the storage exceeds 10% of the area or 1,000 square feet, whichever is less.)~~

~~(B) Storage or warehouse space shall be requested when the primary purpose of space is to store or warehouse equipment, furniture, forms, etc.~~

~~(C) Non-typical types of space include, but are not limited to airplane hangers, correctional housing, daycare centers, group homes, towers, and parking lots.~~

~~(6) **Quality of space.** The quality of space to be acquired depends on several factors and is not always within the control of the State. The predominant factors affecting the quality of space include:~~

~~(A) The State shall solicit modern, air conditioned, general purpose office space. The intent is to obtain moderately priced, average quality space. The selection of quality may be consistent with the use to which the space will be put. However, space shall comply with all applicable federal, state and local laws, codes, ordinances, rules, and regulations pertaining to health, safety, fire, and public welfare.~~

~~(B) The geographic boundaries wherein the space is to be located may, in many cases, affect the quality of space. Some areas may have a wide range of different quality space available, while other areas contain only high quality or poor quality facilities.~~

~~(C) Where a wide range of quality space is available, the rental rates offered are normally the prevailing factor having an affect on quality. When selecting a site, quality shall be considered an important criteria. However, "quality" shall not normally override the "price" factor unless the quality of a less expensive location is substantially below what is considered adequate for operational purposes for employees' morale.~~

~~(7) **Location.** The geographic location selected for a desired space is normally dictated by the operational requirements of the program. In many cases, where the space is located will have no bearing on the operational effectiveness of the program. Some common criteria to be considered when selecting a location include the following:~~

~~(A) Operational necessity shall be the prime concern when geographic location limits are determined. Space shall be located within the geographic limits of the area to be served and as close as possible to the population center of the citizens to be served.~~

~~(B) Generally, the location shall be well served by public transportation and main road networks.~~

~~(C) Proximity to related agencies or agencies with which frequent contact is expected may be a consideration. In some cases, such contact may make co-location highly desirable.~~

~~(D) High rent areas shall be avoided in favor of moderately priced areas whenever possible.~~

~~(8) **Availability of state-owned space.** After a complete review of the agency's request for space, the Department of Central Services shall make a determination as to whether state-owned or non-state-owned facilities will be assigned. The determination shall be based on, but not limited to, the following considerations:~~

~~(A) State-owned space shall be filled prior to any non-state-owned space being acquired, unless determined otherwise by the Department of Central Services.~~

~~(B) Priorities for available state-owned space will be considered in the following order:~~

~~(i) Agencies already occupying space in the facility;~~

~~(ii) Agencies whose functions are closely related; and~~

~~(iii) Generally, agencies who experience the least amount of client contact.~~

~~(C) When large blocks of state-owned space become available, such as when new buildings are acquired, agency headquarters currently in non-state-owned facilities shall have priority.~~

~~(d) **Authorization of request.** The Department of Central Services shall review the agency's request for space and ancillary information and either approve or deny the request. The agency shall be notified within approximately thirty days of the action or amount of space to be authorized with the exception of those Space Requests submitted between April and August which shall be evaluated as time allows.~~

~~(e) **Appeal procedure.** If an agency does not concur with the amount of square footage authorized, it shall first attempt to resolve the difference informally with the Administrator of State Leasing. Both parties shall make every attempt possible to reach an agreement which meets with the needs of the agency while remaining in compliance with the State Space Standards. If an agreement cannot be reached, the agency may submit a written request for an appeal to the Chief Administrator of Construction and Facilities at the Department of Central Services explaining the situation in as much detail as possible. A copy of all pertinent documentation shall be attached to the letter.~~

580:60-1-6. Leasing of non-state owned property [REVOKED]

~~(a) **Purpose.** The purpose of the rules for the leasing of non-state owned property is to provide state agencies with policies and procedures concerning acquisition methods for leasing such space.~~

~~(b) **General provisions.** (1)All leases for space, regardless of size and dollar value, shall be submitted to the Department of Central Services for authorization.~~

~~(2) The Department of Central Services has the responsibility to act as the leasing agent for all state agencies.~~

~~(A) Agencies shall at no time, directly or indirectly contact potential Lessors for the purpose of making oral or written representation, commitments, or agreements before a Space Request is authorized by the Department of Central Services.~~

~~(B) Inquiries made by potential Lessors or their agents are to be referred to the Administrator of State Leasing.~~

~~(C) It is the policy of the Department of Central Services to deal directly with an owner, building manager or primary listing broker of a property.~~

~~(D) An agency shall not, at any time, contract with a broker to secure space on their behalf.~~

~~(3) Any state agency in need of new or additional space shall submit a request from the agency director to the Administrator of State Leasing on the Space Request form.~~

~~(4) No agency shall enter into lease negotiations for new space with any building owner or representative without an approved Space Request in which specific delegation of authority is given from the Department of Central Services.~~

~~(5) Standards for the utilization and allocation of space to state agencies have been adopted by the Department of Central Services and are a part of 580:60-1-4. These standards shall be used as a basis for all planning, leasing of space, or allocation of space.~~

~~(6) The State uses net usable square feet as the standard method of measurement.~~

~~(7) State agencies shall adhere to any ceilings on rental rates as established by the Department of Central Services. "Rental Rate Ceiling" means the net usable square foot rate established by the Department of Central Services as the maximum rental consideration for non-state owned facilities as defined in 580:60-1-2. The ceiling is not to be interpreted as the standard rate, only as the maximum rate. The fair rental prevailing in a geographic area for comparable space may be a factor in the actual rate to be paid by the State.~~

~~(A) On full-service leases, which include all utilities except telephones, 5-day per week janitorial services and supplies, and general parking, the rental rate shall not exceed the ceiling rate.~~

~~(B) On net leases, which exclude utilities and/or 5 day per week janitorial services, or general parking, the rate shall not exceed the ceiling rate when rent related expenses are added to the base rate, (i.e. utilities except telephone, 5 day per week janitorial, parking, etc.).~~

~~(C) If a lease rate does not include all or part of the utility expenses, documentation of the most recent 12 month period in which the space was occupied shall be utilized to estimate what the total rent related expenses will be to the agency and shall be considered in both rental negotiations and by the Department of Central Services in evaluation/authorization of the lease.~~

~~(D) On those full service or net leases wherein the janitorial services is to be provided less than five days per week (either at the Lessor or state's expense), the Department of Central Services shall provide the agency with the acceptable rental rate.~~

~~(8) No lease agreement shall contain an open rate including Consumer Price Index, or rental escalation clauses unless authorized by the Department of Central Services.~~

~~(9) State agencies may not pay rental deposits on non-state-owned space.~~

~~(10) The State shall not be obligated to pay rent for any period prior to the time that the space is occupied by the State.~~

~~(11) The Department of Central Services shall authorize all increases in rental rates.~~

~~(12) The Administrator of State Leasing shall serve as a contact between the State and the Lessor as needed and upon request by the agency.~~

~~(13) Whenever possible, the State shall lease space requiring as little renovation as possible to accommodate the requesting agency and meet required building codes and specifications. When renovation is necessary, the cost of such renovation shall be borne by the Lessor.~~

~~(14) All acquisitions of non-state-owned space being leased which exceed 2,500 square feet shall be obtained through means of public advertisement otherwise exempted by the Department of Central Services. Exceptions shall include space requirements declared an emergency by the Department of Central Services and leases of non-state-owned space for nominal consideration.~~

~~(15) Non-state-owned space may not be occupied or accepted by a state agency for nominal or no consideration without the express written authorization of the Governor.~~

~~(16) A lease shall be entered into with the party who has legal ownership of the property. A broker or property manager cannot be listed as the "Lessor" unless they have legal authority to receive rental payments on behalf of the owner. In such cases, written documentation of the delegation of authority shall be provided by the legal owner to be attached to the lease.~~

~~(17) An agency may not lease space in which a current state employee has a right of ownership, or other financial interest in the property without express written authorization from the Governor.~~

~~(18) An agency may not lease space from a current member of the Oklahoma State Legislature or former member of the Oklahoma State Legislature who has been out of office less than two years.~~

~~(19) The State Leasing forms shall be utilized in all leasing transactions in non-state-owned buildings. No provisions to the State Leasing forms may be changed or non-standard terms or conditions added without prior authorization by the Department of Central Services.~~

~~(20) The lease period shall not exceed one twelve month period; however, it does not have to end the last day of the fiscal period if that date would be less than one year.~~

~~(21) The standard Lease Agreement and Renewal Agreement shall allow the agency (Lessee) the right to terminate the lease with thirty days written notification to the Lessor.~~

~~(22) Requests for deviations from the standard lease term may be considered by the Department of Central Services when the agency may show programmatic necessity or financial advantage to be in the best interest of the State that would justify a longer or shorter lease term. The agency shall provide written justification to the Department of Central Services for any variance from the terms of the standard lease.~~

~~(23) All non-state-owned space occupied by the State shall meet all applicable federal, state and local laws, codes, ordinances, rules, and regulations pertaining to health, safety, fire, and public welfare. All construction or renovation to space a state agency leases shall comply with applicable professional architectural and engineering laws. A facility shall also meet the criteria for the Standard Space Specifications as approved by the Department of Central Services, with exceptions to be determined at the discretion of the agency.~~

~~(24) The State Fire Marshal's office shall inspect the facility to be leased prior to initial occupancy or renovation to existing space, and/or approve building plans for new construction, for compliance with the Life Safety Code, Fire Prevention Code, and National Fire Protection Association Standards. A written report, or floor plan, signed by the State Fire Marshal shall be obtained. The required inspection and documentation may be delegated at the discretion of the State Fire Marshal to a City Fire Marshal.~~

~~(25) Prior to occupancy of non-state-owned space, the proposed space shall be inspected by the State Department of Labor for the presence of friable asbestos containing materials, and written documentation of the inspection shall be obtained. In the event that friable asbestos containing materials are found to be present, the agency shall not be authorized to occupy said space unless the Department of Central Services finds there to be a demonstrated need to do so.~~

~~(26) The Lessor shall adhere to the requirements of the Oklahoma Occupational and Safety Standards Act of 1970.~~

~~(27) The Lessor shall maintain general liability insurance to be no less than $100,000.00 per occurrence at all times during the lease or any renewal periods unless otherwise exempt by the Department of Central Services.~~

~~(28) It is a Lessor's responsibility to ensure that the facility leased by the State complies with the American's with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this act in so far as the requirements of the Act affects the agency.~~

~~(c)~~ **Delegation of authority.** ~~Department of Central Services' involvement in obtaining space will vary on a case by case basis. At the time of the approval of a request for space, the Administrator of State Leasing shall determine what tasks the agency shall assume.~~

~~(1) The Department of Central Services shall review proposals obtained by an agency and review, assist, and make recommendations during the negotiation of lease terms and conditions.~~

~~(2) The Department of Central Services shall specify any delegation of authority to acquire space in writing on the Space Request which is returned to the agency.~~

~~(3) If the agency is not delegated specific authority, the Department of Central Services shall provide the leasing service.~~

~~(4) When the agency is delegated the authority to acquire non-state owned space, the acquisition shall be consistent with existing rules and regulations.~~

~~(d) **Leasing of non-state owned space.** The acquisition of non-state owned leased space shall be divided into two categories.~~

~~(1) Leases under 2,500 square feet.~~

~~(A) With delegated authority by the Department of Central Services, the agency shall locate potential space from building owners, real estate agencies, or through public advertisement. Where possible, at least three separate sources shall be contacted.~~

~~(B) The agency may be required to solicit for space through public advertisement at the discretion of the Department of Central Services. In such cases, if a lease has not been authorized by the Department of Central Services within six months from the initial date of advertisement, the agency may be required to re-advertise for the space at the discretion of the Department of Central Services.~~

~~(C) The agency shall deal directly with the owner, building manager, or primary listing broker of a property. At no time shall an agency utilize the services of a secondary broker for the acquisition of non-state owned space without specific authorization from the Department of Central Services.~~

~~(D) The agency shall provide the selected prospective Lessor with a copy of the Standard Space Specifications.~~

~~(E) Agencies shall negotiate lease terms consistent with the policies of the Department of Central Services and rental rates equivalent to or below market rates in the locality wherein the space is located. The agency shall also adhere to any rent "ceilings" established by the Department of Central Services. Agencies will be notified by the Department of Central Service as changes in rental rate ceilings occur.~~

~~(F) Upon selection of a space, the agency shall submit the following information to the Administrator of State Leasing:~~

~~(i) A draft copy of the proposed lease which includes:~~

~~(I) Location of proposed space.~~

~~(II) Lessor's name.~~

~~(III) Total net usable square footage of space.~~

~~(IV) Rate per square foot.~~

~~(V) Services to be provided by the Lessor. (i.e. utilities, # of days/week janitorial services, etc.)~~

~~(VI) Renewal options.~~

~~(ii) A copy of the proposed floor plan on an 1/8" = 1' or dimensionalized scale.~~

~~(G) A list of all properties considered, their locations, condition, rental rates and reasons for eliminating them in final consideration, shall be provided to the Department of Central Services.~~

~~(H) If more square footage is proposed than has been authorized by the Department of Central Services, an explanation of the difference is required from the agency.~~

~~(I) Upon review and approval of an agency's selection and draft lease by the Department of Central Services, the agency shall proceed with the preparation of the leasing documents.~~

~~(J) At no time shall an agency direct or authorize a potential Lessor to begin remodeling or construction before a lease has been signed by the Department of Central Services.~~

~~(K) An agency shall not take possession of new or additional space until a Notice of Award has been issued by the Department of Central Services unless otherwise approved by the Department of Central Services.~~

~~(L) Agencies who elect to advertise, or are required by the Department of Central Services to advertise for space, shall follow the procedures outlined in 580:60-1-6 (e) and (f).~~

~~(2) Leases of 2,500 square feet or more.~~

~~(A) An agency shall not enter into a lease for 2,500 square feet or more of space in a non-state owned building except upon advertisement for and receipt of competitive proposals.~~

~~(B) Exceptions that are applicable when considering leases of 2,500 square feet or more include:~~

~~(i) The standard renewal of leases unless otherwise determined necessary by the Department of Central Services.~~

~~(ii) Any lease having a term of less than ninety days, or otherwise authorized by the Administrator of State Leasing.~~

~~(iii) Any lease with another government or quasi-government entity for nominal or no consideration. As used herein, "nominal consideration" means consideration for $100.00 or less per year.~~

~~(iv) A modification of a lease of non-state owned space to increase the footage if the modification is based upon the same terms and conditions of the approved lease, provided the total square footage of the lease after modification is less than one half the total of the original square footage.~~

~~(v) If the space is deemed to be a single source (tower sites, boat docks, hangars, etc.).~~

~~(vi) Space needs arising due to an emergency situation or other circumstances that preclude advertising for space may be exempt from these rules upon written statement of circumstances by the agency to the Administrator of State Leasing for recommendation to and consideration of approval~~

~~by the Director of the Department of Central Services.~~

~~(C) The agency shall follow the procedures set forth in 580:60-1-6 (e), and (f), in regards to regarding the advertisement for and selection of non-state owned space.~~

~~(D) If a lease has not been submitted to and approved by the Department of Central Services within six months from the initial date of advertisement, the agency may be required to re-advertise for the space at the discretion of the Department of Central Service.~~

~~(E) Written notification describing the agency's general space requirements shall be given to entities subscribing to the notification service on the Office of Management and Enterprise Services website in appropriate local real estate companies in the applicable geographic area.~~

~~(F) Upon selection of space, the agency shall submit the following to the Administrator of State Leasing:~~

~~(i) A draft copy of the proposed lease which includes:~~

~~(I) Location of proposed space.~~

~~(II) Lessor's name.~~

~~(III) Total net usable square footage of space.~~

~~(IV) Rate per square foot.~~

~~(V) Services to be provided by Lessor. (i.e. utilities, # of days/week janitorial services, etc.)~~

~~(VI) Renewal options.~~

~~(ii) A copy of the proposed floor plan on an 1/8" = 1' or dimensionalized scale.~~

~~(G) A list of all properties considered, their locations, condition, rental rates, and reasons for eliminating them in final consideration shall be provided to the Department of Central Services.~~

~~(H) If more square footage is proposed than has been authorized by the Department of Central Services, an explanation of the difference is required.~~

~~(I) Upon review and approval of an agency's selection and draft lease by the Department of Central Services, the agency shall proceed with the final preparation of the leasing documents.~~

~~(J) At no time shall an agency direct or authorize a potential Lessor to begin remodeling or construction before a lease has been signed by the Department of Central Services.~~

~~(K) An agency shall not take possession of new or additional space until the Notice of Award has been issued by the Department of Central Services unless otherwise approved by the Department of Central Services.~~

~~(e) **Solicitation for advertisement.** When it is determined that an advertisement is required or the Administrator of State Leasing finds that it would be in the best interest of the State to solicit a specific space requirement, the agency shall be advised to prepare and cause the advertisement to be published. The cost of the advertisement shall be borne by the agency soliciting the space.~~

~~(1) The suggested format for advertising may be obtained from the Administrator of State Leasing. Agencies may modify advertisements consistent with actual requirements but shall include, as a minimum, the following:~~

~~(A) Amount of space required.~~

~~(B) City in which space shall be located.~~

~~(C) The agency name.~~

~~(D) The name, address, and telephone number of the agency contact where proposals will be sent.~~

~~(E) Due date of proposals.~~

~~(2) Normally the advertisement shall be placed in no more than two newspapers in the community where the space is needed. The ad shall run for a minimum of two issues, with a week between notices if possible.~~

~~(3) The due date for proposals shall be no less than five days after the last publication. However, the agency may, at its discretion, permit a longer period for response.~~

~~(4) Advertisements concerning space shall be placed in the appropriate section of a newspaper publication.~~

~~(f) **Proposals.**~~

~~(1) Parties interested in leasing space to the State shall include the following information in their initial proposal:~~

~~(A) Location of space.~~

~~(B) Approximate number of square feet of net usable space available for lease.~~

~~(C) Prospective Lessor's name, address and telephone number.~~

~~(2) Initial proposals shall be accepted from the day the space is first advertised until 5:00 p.m. on the specified due date. Upon receipt, proposals should be stamped with the date received.~~

~~(A) Initial proposals received after the time and date set for receipt of offers shall be considered late. However they may be considered with mutual agreement between the agency and the Administrator of State Leasing if it is determined to be in the best interest of the agency.~~

~~(B) A modification of a proposal which makes its terms more favorable to the State shall be considered at any time it is received.~~

~~(3) When less than three responsible offers are received, the agency may, without re-advertisement, extend the date and solicit additional offers by any method approved by the Administrator of State Leasing to ensure adequate competition.~~

~~(4) In each request for proposal, the State shall reserve the right to amend the specifications at any time prior to award of a lease.~~

~~(5) The State reserves the right to reject any and all offers, to request additional information, to waive all formalities in proposals, and to negotiate with any offeror.~~

~~(6) There shall be no public opening or review of proposals in response to the advertisement for proposals.~~

~~(7) The State shall not be responsible for any costs incurred in the preparation and submission of proposals in response to solicitation for space by a state agency.~~

~~(8) After the proposals have been reviewed, the agency shall inspect the properties to determine suitability of each space to the specific needs of the agency. The agency may eliminate from further consideration those properties which do not meet the basic requirements, such as location or square footage.~~

~~(9) The agency shall provide each viable prospective Lessor with a copy of the Standard Space Specifications.~~

~~(10) As a result of the on-site inspection, with the assistance from the Administrator of State Leasing or other agency staff, the agency will prepare a preliminary floor plan on that property initially determined to best meet the needs of the agency. This information shall be submitted to the respondent in order to obtain a final annual lease price and lease term.~~

~~(11) A final proposal may, at the agency's discretion, be required from the selected vendor on the Standard Proposal Form as developed and approved by the Department of Central Services.~~

~~(12) All proposals shall be kept confidential and shall be released only to state employees having a need for the information until such time as an Award of Contract has been issued.~~

~~(g) **Specifications.**~~

~~(1) Specifications shall be followed by the agency leasing a non-state owned facility in general terms with exceptions to be determined at the discretion of the agency. They shall afford each viable prospective Lessor interested in submitting a serious proposal with knowledge of the agency's space requirements. In specific instances it may, on occasion, be necessary to issue additional specifications due to some unique requirements of a particular agency.~~

~~(2) Cost of all construction or renovation to meet the requirements of the specifications or remodeling as determined necessary by the agency shall be borne by the Lessor.~~

~~(h) **Evaluation of proposals.**~~

~~(1) It is recommended that the agency, in conjunction with preparing specifications, develop evaluation criteria. The criteria items most significant to the agency's needs should bear the highest consideration. Rental, the cost of relocation, if any, consolidation of activities, if desirable, and any other factors deemed necessary should be weighed.~~

~~(2) The evaluation and selection of the best and most economical proposal shall be made by the agency and submitted to the Department of Central Services for final authorization.~~

~~(3) Criteria to be used in the evaluation of space will include, but not be limited to, the following:~~

~~(A) The comparison of the square footage required to satisfy the agency's needs with the square footage available in a given facility. Square footage required shall be determined according to 580:60-1-4.~~

~~(B) An analysis of the quality and condition of building facilities such as elevators, toilets, parking, public traffic areas, and location relative to associated agencies.~~

~~(C) The cost of occupying the space for the term of the lease should include the following factors:~~

~~(i) Square footage cost of the proposed space.~~

~~(ii) Estimated cost of utilities, if not included in the proposed rate.~~

~~(iii) Cost of custodial services, if not included in the proposed rate.~~

~~(iv) Cost of parking, if not included in the proposed rate.~~

~~(D) Time factors affecting need for the space.~~

~~(E) Capability to accommodate future needs of the agency for space and services.~~

~~(F) The building's compliance and/or the owner's willingness to assure that the building complies with the requirements of the Americans with Disabilities Act.~~

~~(G) Availability of adequate public and client access through public transportation and parking.~~

~~(H) Space efficiency and effectiveness for the agency's purpose.~~

~~(4) Documentation to support the selection shall be provided to the Department of Central Services. Such documentation shall include the following:~~

~~(A) A copy of the advertisement.~~

~~(B) A synopsis of the agency's findings for each proposal or site considered.~~

~~(5) The agency shall notify, in writing, each party who submitted a proposal regarding a decision on the space. The agency is not, however, obligated to provide the party with a specific reason for rejection of a proposed site.~~

~~(6) In the event either no proposal or no acceptable proposal is received after advertising, the agency may negotiate in the open market for leasing of the needed space after obtaining authorization from the Department of Central Services.~~

~~(7) The agency may reject all sites; however, specific reasons for rejecting proposals shall be provided in writing to the Department of Central Services. The Administrator of State Leasing shall then determine whether the space requirement should be re-advertised or whether other acquisition methods are required. Reasons for rejection of proposals include, but are not limited to:~~

~~(A) Rents exceed available funds and it would not be appropriate to adjust the amount of space to come within available funds.~~

~~(B) There is reason to believe that the proposals may not have been independently arrived at, may have been collusive, or may have been submitted in bad faith.~~

~~(C) All otherwise acceptable proposals are at unreasonable rents.~~

~~(D) No proposal met or could meet the specified requirements of the agency.~~

~~(i) **Negotiations of non-state owned space.**~~

~~(1) Negotiations may be conducted with the offeror of each acceptable site as follows:~~

~~(A) Each responsible offeror of a viable facility may be individually contacted and apprised of the weak and strong points of his offer and any changes or revisions to the specifications.~~

~~(B) A written best and final offer may be solicited from each viable party with a specific due date.~~

~~(2) The agency shall negotiate lease terms consistent with the policies of the Department of Central Services to include any rent "ceiling" established by the Department of Central Services.~~

~~(3) When negotiations have produced final offers for one or more sites with equitable rental rates, the agency will proceed with the remaining requirements to conclude the transaction.~~

~~(j) Preparation of lease agreement of non-state owned space. Once space has been selected and exact terms and conditions of a lease have been approved by the Department of Central Services, the agency shall prepare for signature the Lease Agreement and obtain all requested documentation in accordance with 580:60-1-7.~~

~~(k) Lease renewal of non-state owned space. The agency shall begin to evaluate its space needs no less than three months prior to the expiration of a lease term.~~

~~(1) The condition of space which has been occupied by an agency shall be evaluated and required improvements discussed with a Lessor prior to initiating a Renewal Lease Agreement.~~

~~(A) Any requests made by the agency to the Lessor for alterations related to general maintenance, upkeep, or repair, as designated in the original Lease Agreement, may be included as an "Attachment to the Lease Agreement" to specify the action required, dates of completion, and signature of both the Lessor and the agency.~~

~~(B) General maintenance and repairs shall not justify a rental increase.~~

~~(C) A change in the vendor, square footage, or rental rate shall not be made in a renewal lease agreement.~~

~~(2) If the agency intends to exercise a renewal option at the same terms and conditions set forth in the existing lease, the lease shall be renewed without pre-authorization from the Administrator of State Leasing.~~

~~(A) The agency shall submit the Standard Renewal Lease Agreement, and other required documents to the Administrator of State Leasing for signature.~~

~~(B) If any of the required documents are incomplete, the renewal shall be returned to the agency for corrective action prior to final execution.~~

~~(3) When an agency has been at its present location over four years, and every fourth year thereafter, it may be required to justify continued need of the space by submitting a Space Request to the Administrator of State Leasing. The agency shall be notified if such action is necessary.~~

~~(A) The Request shall be completed in accordance with the procedures outlined in 580:60-1-5.~~

~~(B) The Administrator of State Leasing shall review the agency's staffing, specialized requirements and program functions and shall notify the agency of the action or amount of space to be authorized in accordance with its current needs. Relocation will be considered only if it is determined to be in the best interest of the State.~~

~~(4) The agency shall advise the Administrator of State Leasing immediately if a Lessor requests a rental increase or is seeking termination of the contract at the end of the current lease term. The Administrator of State Leasing shall provide assistance to the agency in negotiating a new lease, or shall determine if it is necessary for the agency to seek new space.~~

580:60-1-7. Lease documents for non-state owned space. [REVOKED]

~~(a) **Purpose.** The purpose of the development of standard state leasing documents is to insure uniformity and legality of leasing transactions in all non-state owned space.~~

~~(b) **General provisions.**~~

~~(1) The use of the forms, as developed by the Department of Central Services, is required by all agencies regardless of the size or dollar amount of the lease, unless otherwise authorized by the Department of Central Services.~~

~~(2) No provisions to the State Leasing forms may be changed or non-standard terms or conditions added without prior authorization by the Department of Central Services.~~

~~(3) The name of the state agency leasing the space shall be indicated as the responsible party (Lessee) on a lease. Neither an individual employee nor a division of an agency shall be indicated as the party leasing the space.~~

~~(4) A lease shall be entered into with the party who has legal ownership of the property. A broker or property manager cannot be listed as the "Lessor" unless they have legal authority to represent the owner on the contract and have legal authority to receive rental payments on behalf of the owner. In such cases, written documentation of the delegation of authority shall be provided by the legal owner to be attached to the lease.~~

~~(5) The agency director shall sign all lease related forms unless otherwise authorized by the Department of Central Services.~~

~~(6) The agency shall prepare four original lease documents to be signed by the Lessor and the agency director. After the appropriate signatures are obtained from the building owner and the agency, all original contracts shall be submitted to the Department of Central Service for final authorization.~~

~~(7) A lease is not fully executed until signed by the Lessor, the agency (Lessee), and the Department of Central Services.~~

~~(8) Any reduction in the amount of space/rental rate, or the Department of Central Services' authorized increase in the amount of space or the rental rate shall be made~~

~~a part of the lease through a new lease agreement or an Addendum to the Lease.~~

~~(9) If the effective date of a change of the terms and conditions of the lease coincides with a renewal period, a new Lease Agreement may be required.~~

~~(10) If an agency wishes to terminate a lease, it shall provide a written request to the Administrator of State Leasing no less than forty-five days prior to the anticipated cancellation date of the lease.~~

~~(A) The Department of Central Services is the responsible party for notifying the Lessor of the cancellation of the contract.~~

~~(B) The agency shall also notify the Lessor in person or in writing of the anticipated termination date.~~

~~(C) If the cancellation of a lease coincides with the termination date of a lease, the agency shall provide notification to the Lessor and the Administrator of State Leasing of such action.~~

~~(11) The State uses net usable square feet as the standard method of measurement.~~

~~(12) The agency shall not exceed the fair rental prevailing in a community for comparable space nor the State's rental rate ceiling as set by the Department of Central Services.~~

~~(13) No lease agreement shall contain an open rate, including Consumer Price Index, or rental escalation clauses unless authorized by the Department of Central Services.~~

~~(14) State agencies may not pay rental deposits.~~

~~(15) The State shall not be obligated to pay for any rent for any period prior to the time that the Space is occupied by the State.~~

~~(16) The lease period shall not exceed one twelve month period; however, it does not have to end the last day of the fiscal period if that date would be less than one year.~~

~~(17) The standard Lease Agreement and Renewal Agreement shall allow the agency (Lessee) the right to terminate the lease with thirty days written notification to the Lessor.~~

~~(18) Requests for deviations from the standard lease term may be considered by the Department of Central Services when the agency may show programmatic necessity or financial advantage to be in the best interest of the State that would justify a longer or shorter lease term. The agency shall provide written justification to the Department of Central Services for any variance from the terms of the standard lease.~~

~~(19) An agency may not lease space in which a state employee has a right of ownership or other financial interest in the property without express written authorization from the Governor.~~

~~(20) An agency may not lease space from a current member of the Oklahoma State Legislature or a former member of the Oklahoma State Legislature who has been out of office less than two years.~~

~~(21) A lease may be amended during its term with authorization by the Administrator of State Leasing so long as it is in the best interest of the State.~~

~~(22) Any changes to the original Lease Agreement shall be pre-authorized by the Administrator of State Leasing before the agency initiates action to alter the lease.~~

~~(23) If an increase in rental rate is a direct result of renovations required by the agency after initial occupancy of the space, a specified time limit in which the renovations shall be completed shall be included in the appropriate lease document.~~

~~(24) If the costs for utility services (gas, electricity, or water/sewer) are not to be included in the rental rate, these services shall be separately metered for the space to be occupied by the State.~~

~~(25) It shall be the responsibility of the building owner to notify the State of any transfer of ownership of the leased premises.~~

~~(26) An Affidavit of Non-Collusion shall be signed by all parties contracting for services with the State.~~

~~(27) Leased space shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations pertaining to health, safety, fire, and public welfare. All construction or renovation to space a state agency leases shall comply with applicable professional architectural and engineering laws. A facility shall also meet the criteria for the Standard Space Specifications as approved by the Department of Central Services, with exceptions to be determined at the discretion of the agency.~~

~~(28) The State Fire Marshal's office shall inspect the facility to be leased prior to initial occupancy or renovation to existing space, and/or approve building plans for new construction, for compliance with the Life Safety Code, Fire Prevention Code, and National Fire Protection Association Standards. A written report, or floor plan, signed by the State Fire Marshal shall be obtained. The required inspection and documentation may be delegated at the discretion of the State Fire Marshal to a City Fire Marshal.~~

~~(29) Prior to occupancy of non state owned space, the proposed space shall be inspected by the State Department of Labor for the presence of friable asbestos containing materials, and written documentation of the inspection shall be obtained. In the event that friable asbestos containing materials are found to be present, the agency shall not be authorized to occupy said space unless the Department of Central Services finds there to be a demonstrated need to do so.~~

~~(30) The Lessor shall adhere to the requirements of the Oklahoma Occupational and Safety Standards Act of 1970.~~

~~(31) The Lessor shall maintain general liability insurance to be no less than $1,000,000.00 per occurrence at all times during the lease or any renewal periods unless otherwise exempt by the Department of Central Services.~~

~~(32) It is a Lessor's responsibility to ensure that the facility leased by the State complies with the American's with Disabilities Act of 1990 (Public Law 101-336) and all amendments and requirements imposed by the regulations issued pursuant to this act in so far as the requirements of the Act affects the agency.~~

~~(c) Forms. Forms developed by the Department of Central Services shall be utilized in all leasing transactions in non-state owned buildings. Agencies shall adhere to the provisions of the forms and applicable instructions unless otherwise exempt.~~

580:60-1-8. Position descriptions [REVOKED]

~~The following position definitions shall be used by agencies to describe the type of employees indicated on a Space Request form.~~

~~DEFINITION OF POSITIONS~~	~~JOB CLASSIFICATION~~
~~Executive~~	~~Cabinet Secretary, Agency Director~~
~~Administrators~~	~~Administrator of Small Board or Commission; Department heads; Division Chiefs~~
~~Professionals~~	~~Supervisors, systems analysts, architects, social workers, accountants, counselors, attorneys, personnel officers~~
~~Technicians~~	~~Computer programmers and operators, drafters, photographers, assessors, technicians (medical, electronic)~~
~~Paraprofessionals~~	~~Library assistants, research assistants~~
~~Office and Clerical~~	~~Secretaries, account clerks, typist clerks, dispatchers, license distributors, payroll clerks~~
~~Skilled Craft Workers~~	~~Mechanics and repairers, electricians, carpenters, typesetters, skilled machine occupations~~
~~Service Maintenance~~	~~Custodial workers, construction laborers, gardeners and grounds keepers, laundry workers~~
~~Other~~	~~Positions (not included above) where work space requirements are defined by equipment or type of work done. Room functions include computers, reproduction, mail, labs, warehouses or other specialized areas.~~

[OAR Docket #14-768; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 61. OKLAHOMA STATE GOVERNMENT ASSET REDUCTION AND COST SAVINGS PROGRAM [REVOKED]

[OAR Docket #14-769]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:61-1-1. Purpose [REVOKED]
580:61-1-2. Definitions [REVOKED]
580:61-1-3. Requirements of law; agency responsibility [REVOKED]
AUTHORITY:
62 O.S. §908; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.

CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

580:61-1-1. Purpose [REVOKED]

~~The purpose of this Chapter is to provide information and procedures for state agencies, boards, commissions and public trusts to ensure compliance with the State Government Asset Reduction and Cost Savings Program. These rules are established pursuant to the Oklahoma State Government Asset Reduction and Cost Savings Program contained in Title 74, Section 61.7 of the Oklahoma Statutes to enable the Department of Central Services to obtain the necessary data to develop a comprehensive report detailing state owned properties and to indentify the five percent (5%) most underutilized properties.~~

580:61-1-2. Definitions [REVOKED]

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

~~**"Administrator"** means the Administrator of the Department of Central Services.~~

~~**"Agency"** means any state agency, board, commission or public trust having the State of Oklahoma as a beneficiary.~~

~~**"Appraisal"** means the practice of developing and reporting an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation.~~

~~**"Data.ok.gov website"** means Oklahoma's official website that allows users to download state files for analysis.~~

~~**"Forms"** means documents the Administrator of the Department of Central Services prescribes and requires state agencies, boards, commissions, public trusts to use to provide information to DCS.~~

~~**"Real Property"** means land, and generally whatever is erected growing upon or affixed to land; also rights issuing out of, annexed to, an exercising in or about land.~~

~~**"Real Property Inventory"** means a comprehensive list of property submitted by the state agencies, boards, commissions, and public trusts listing all real property owned, the value of the property and any underutilized property.~~

~~**"State-owned properties"** means all property lawfully appropriated by the state to its own use; all property dedicated to the state and all property which there is no other owner.~~

~~**"Underutilized property"** means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property. Underutilized property may include: Undeveloped land; office buildings; warehouses; commercial and industrial facilities; military holdings; and residences.~~

580:61-1-3. Requirements of law; agency responsibility [REVOKED]

~~(a) **General.** In accordance with section 61.7 (D), each state agency, board, commission and public trust having the State of Oklahoma as a beneficiary shall submit all information requested concerning the state-owned properties the recipient of the request controls, uses, or for which the recipient accounts, to the Department of Central Services within 60 days of the date the request is electronically sent. Each state agency that receives a request for data from the Department of Central Services pursuant to the Asset Reduction and Cost Savings Program is required to fully respond to the request.~~

~~(b) **Information Format.** The information contained in the response shall be in electronic form in the format designated by the Department of Central Services within the **request.** Forms or instructions will be developed by for use by the agencies to facilitative requirements of this chapter. The Real Estate division of the Department of Central Services shall publish the forms on the agency website and provide forms upon request.~~

~~(c) **Extension.** Additional time to respond may be granted by the Administrator or a designee, only upon a written request made ten (10) days before the expiration of the date the response is originally due. The request for extension shall include the reasons any extension is necessary and shall list the information that is not available without an extension. Such requests may or may not be granted by the Administrator.~~

~~(c) **Non-Responsive.** In the event that any agency receives a request and fails to timely respond with the information required, the recipient will be listed as nonresponsive in the report provided to the Legislature and will be published on the "data.ok.gov" website.~~

[OAR Docket #14-769; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 65. STATE SURPLUS PROPERTY [REVOKED]

[OAR Docket #14-770]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [REVOKED]
580:65-1-1. Purpose [REVOKED]
580:65-1-2. Definitions [REVOKED]
580:65-1-7. Statutory citations [REVOKED]
580:65-1-8. Program forms [REVOKED]
580:65-1-9. Exemption [REVOKED]
580:65-1-10. Prohibitions [REVOKED]
Subchapter 3. Declaration and Approval of Surplus Property [REVOKED]
580:65-3-1. Declaring state property surplus [REVOKED]
580:65-3-2. Declaration of surplus vehicles and equipment [REVOKED]
580:65-3-3. Cancellation or amendment of a surplus property transfer request [REVOKED]

580:65-3-4. Transport and delivery of surplus property [REVOKED]
Subchapter 5. Sale or Disposal of Surplus Property [REVOKED]
580:65-5-1. Methods of disposal of surplus property [REVOKED]
580:65-5-2. Disposal by other than a surplus property agent [REVOKED]
580:65-5-3. Disposal of state property by a surplus property agent [REVOKED]
580:65-5-4. Processing special class surplus property [REVOKED]
580:65-5-5. Disposal of hazardous waste [REVOKED]
Subchapter 7. Acquisition of Surplus Property [REVOKED]
580:65-7-1. Sales to related parties [REVOKED]
580:65-7-2. Transfer or sale to a state agency or authorized entity [REVOKED]
580:65-7-3. Public auction [REVOKED]
580:65-7-4. Return of property after purchase [REVOKED]
580:65-7-5. Payment provisions [REVOKED]
580:65-7-6. Conditions of service [REVOKED]
580:65-7-7. State agency reimbursement [REVOKED]
Subchapter 9. Surplus Property Records [REVOKED]
580:65-9-1. Surplus property record keeping by a state agency [REVOKED]
580:65-9-2. Surplus property record keeping by a surplus property agent [REVOKED]

AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013

COMMENT PERIOD:
January 15, 2014 through February 19, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
March 19, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.

CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

580:65-1-1. Purpose [REVOKED]

~~This chapter provides general information and provisions pertaining to the transfer, disposal and acquisition of state surplus property for use by state agencies, authorized entities, individuals and business entities pursuant to the Oklahoma Surplus Property Act. [74 O.S., Sections 62.1 et seq.] The Director of Central Services promulgated these rules pursuant to 74 O.S., Section 62.3. to ensure that state-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented.~~

580:65-1-2. Definitions [REVOKED]

~~In addition to terms the Oklahoma Surplus Property Act provides, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly requires otherwise:~~

~~**"Administrator"** means the person in the Department of Central Services designated by the Director of the Department to oversee the State Surplus Property Program.~~

~~**"Authorized entity"** means a political subdivision, school, a multipurpose senior citizen center, as such term is defined in the federal Older Americans Act of 1965, group or organization eligible to acquire surplus property from a surplus property program. [74 O.S., §62.2]~~

~~**"Authorized signature"** means the signature of a state employee duly authorized by the chief administrative officer of a state agency to sign forms on behalf of such agency for submission to the Department or a surplus property agent.~~

~~**"Business entity"** means an individual, partnership, business trust, cooperative, association, corporation or any other firm, group or concern which functions as a separate entity for business purposes.~~

~~**"Cannibalize"** means to take salvageable parts from (as a disabled machine) for use in building or repairing another machine; or to make use of (a part taken from one thing) in building or repairing something else.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Fiscal year"** means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.~~

~~**"Form"** means a document prescribed by the Director to be used by state agencies to provide information to the Department or a surplus property agent.~~

~~**"Inventory"** means an itemized list of tangible assets owned by state boards, commissions, institutes and agencies pursuant to provisions of 74 O.S., §110.1.~~

~~**"Proceeds"** means funds the surplus property agent derives from sale of surplus property.~~

~~**"Program"** means the Surplus Property Program established and administered by the Director of the Department of Central Services in accordance with 74 O.S., Section 62.1 et seq.~~

~~**"Public auction"** means either a tangible event at a public location or an electronic event which is advertised and made available to the public via the Internet.~~

~~**"Salvage or scrap"** means property which, because of its worn, damaged, deteriorated, incomplete condition or specialized nature has no reasonable prospect of sale or use as designed, but has some value in excess of its basic material content.~~

~~**"Surplus property agent "** or "agent" means a person designated by the Director to perform duties necessary to administer a surplus property program.~~

~~**"Trade-in"** means equipment which is exchanged on replacement equipment.~~

~~**"Vehicle"** or **"equipment"** means automobiles, station wagons, vans, pickups, trucks, buses, other modes of transportation and heavy equipment.~~

~~**"VIN"** means the unique vehicle identification number of a vehicle or equipment.~~

580:65-1-7. Statutory citations [REVOKED]

~~Statutory citations refer to the most recent codification of statute.~~

580:65-1-8. Program forms [REVOKED]

~~The Director shall approve forms and instructions for use by state agencies and authorized entities to facilitate requirements of this subchapter. The Department shall provide forms upon request.~~

580:65-1-9. Exemption [REVOKED]

~~(a) **State agency inability to perform Program requirements.** If a state agency reasonably believes that it is unable to perform a requirement of the Program, the state agency may submit a written request for an exemption to the Administrator. The request must be signed by the chief administrative officer of the agency and state the reason for the exemption request.~~

~~(b) **Approval of exemption and notification.** The Administrator will review the request and determine whether to approve, conditionally approve or deny an exemption. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.~~

~~(c) **Exemption expiration.** Approval of an exemption shall expire upon the completion of the transaction designated in the exemption request.~~

~~(d) **Grand River Dam Authority (GRDA).** Sale of surplus power generation equipment and by products by the GRDA shall be exempt from this Chapter. GRDA shall submit a detailed report of the sale of any surplus property disposed of pursuant to this Subsection to the Department no more than thirty days after the sale.~~

580:65-1-10. Prohibitions [REVOKED]

~~(a) **Donations of state property.** Donations of state property to private individuals, for profit organizations or state employees is prohibited.~~

~~(b) **Sales to state employees.** The sale of state property to state employees is prohibited unless items are sold at announced public sales or auctions.~~

SUBCHAPTER 3. DECLARATION AND APPROVAL OF SURPLUS PROPERTY [REVOKED]

580:65-3-1. Declaring state property surplus [REVOKED]

~~(a) **Declaration and approval.** A state agency shall determine when its personal property is surplus property in accordance with 74 O.S., Section 62.2.~~

~~(b) **Storage and preservation of surplus property by agency.** A state agency is responsible for the preservation of its surplus property prior to the official approval of its disposal required by the rules of this chapter.~~

~~(1) A state agency must make reasonable efforts to protect its surplus property from the elements, theft or any other means of destruction or deterioration.~~

~~(2) A state agency must make reasonable efforts to store surplus property no longer than six (6) months to minimize its depreciation.~~

~~(3) If a surplus property agent has reasonable cause to believe that the resale value of surplus property has been decreased because of negligent storage or handling by a state agency, costs incurred by the Department for the disposal of such property may be charged to the state agency.~~

~~(c) **Request for approval to sell or transfer surplus property.** State owned property shall not be destroyed, sold, transferred, traded in, traded, discarded, donated or otherwise disposed of without prior written approval of the Administrator. This rule applies to and includes any residue that may be remaining from agency cannibalization of property.~~

~~(d) **Surplus Property Transfer Form.** To request official approval to dispose of surplus property, a state agency must submit a form, prescribed by the Department, to the Administrator for approval. A surplus property transfer form must be signed by the chief administrative officer of the agency or an authorized agent and shall state:~~

~~(1) The legal name of the state agency;~~

~~(2) The principal address of the state agency;~~

~~(3) The name of the division or department within the agency, if applicable, where property is located.~~

~~(4) The name, telephone number, fax number and e-mail address of a contact person authorized to show and/or provide additional information concerning the surplus property to an agent;~~

~~(5) The name, telephone number, fax number and e-mail address of the person preparing the form;~~

~~(6) The complete address or location of the surplus property;~~

~~(7) A desired method of disposal of the surplus property as authorized in 580:65-5-1;~~

~~(8) The reason the property has been declared as surplus property, which may be stated as:~~

~~(A) No longer needed to perform the duties of the agency; or,~~

~~(B) Broken, cost to repair not economical; or,~~

~~(C) Obsolete. Not compatible with newer equipment; or~~

~~(D) Other, which shall be followed with a specific explanation.~~

~~(9) The inventory control number, if any, assigned to the surplus property item;~~

~~(10) A description of the surplus property item, including serial, model or other identification numbers, whenever available;~~

~~(11) A general statement as to the condition of the surplus property item (i.e. excellent, good, fair, poor, damaged, scrap, missing parts, etc.);~~

~~(12) Any known defects or enhancements;~~

~~(13) An estimate, current value, suggested selling price or minimum acceptable price;~~

~~(14) Any other information or recommendations to assist the approval and efficient disposal of the property.~~

~~(A) The name, address and telephone number of a suggested vendor, if any.~~

~~(B) Specify whether a recommended buyer is considered to be a related party as described in 580:65-7-1.~~

~~(15) A statement that the contents of the form have been reviewed by the chief administrative officer or authorized agent of the agency and that the facts contained therein are true and correct.~~

~~(e) **Approval by the Department.** The Administrator shall review the request and determine whether to approve, conditionally approve or deny the disposal of surplus property. Written notification of such determination, which shall set forth conditions for approval or reasons for denial of the request, will be sent to the state agency.~~

~~(f) **Exception.** A surplus property transfer form is not required when equipment is transferred between departments within the same agency, even though a purchase price may be charged.~~

580:65-3-2. Declaration of surplus vehicles and equipment [REVOKED]

~~(a) **Additional information.** Whenever a state agency desires to dispose of vehicles or equipment, the following information shall be included on the surplus property transfer form required by 580:65-3-1(d):~~

~~(1) Make, model and model year;~~

~~(2) Body style, load rating, seats or passenger capacity, number of cylinders, number of drive wheels (i.e. 2 x 4 or 4 x 4)~~

~~(3) Vehicle options (i.e. power steering, power brakes, air conditioning, AM/FM radio etc.)~~

~~(4) Mileage or operation hours;~~

~~(5) Color;~~

~~(6) VIN;~~

~~(7) General condition (i.e. runs, driveable, etc.);~~

~~(8) Type and location of any identifying markings on the vehicle or equipment;~~

~~(9) Any special equipment the state agency desires the surplus property agent to remove prior to vehicle or equipment disposal. Failure to request the approval and removal of special equipment at least 24 hours in advance of the disposal of the vehicle or equipment by an agent may result in the loss of the special equipment.~~

~~(b) **Required Documents.**~~

~~(1) **Disposal documents.** If laws governing a state agency require written authorization for the state agency to dispose of a vehicle, the state agency shall provide the surplus property agent a copy of required documents.~~

~~(2) **Title.** At the time of vehicle transfer to the surplus property agent, the state agency shall provide title to the vehicle to the agent with authorized signatures for legal transfer of the vehicle.~~

~~(c) **Vehicle or equipment repairs.**~~

~~(1) **Notice to state agency.** If a surplus property agent reasonably believes that the cost of minor repairs to a vehicle or equipment will enhance its potential sale value in an amount that exceeds the cost of the minor repairs, the agent shall send written notice to the state agency and request approval to authorize the repairs.~~

~~(2) **State agency approval.** Within five (5) business days after receipt of the repair notice in (1) of this subsection, the state agency shall send written notice of approval or disapproval of the repairs to the agent.~~

~~(d) **Repair documents.** Upon receipt of the written approval by a state agency, the surplus property agent shall acquire parts for and repair the vehicle or equipment. The agent shall retain receipts for the parts and document the labor time to install the parts. All repair documents shall be filed and maintained in the state agency vehicle and equipment disposal records of the Department.~~

580:65-3-3. Cancellation or amendment of a surplus property transfer request [REVOKED]

~~(a) A state agency may notify the Department of its decision to:~~

~~(1) Withdraw a request for approval of the disposal of surplus property;~~

~~(2) Cancel a request for disposal of surplus property after its approval by the Administrator;~~

~~(3) Add or delete one or more items from a list of property submitted to or approved by the Administrator.~~

~~(b) A cancellation or amendment request must be in writing and shall include an explanation of the request.~~

~~(c) The Administrator shall send written notice to the state agency of the approval or disapproval of a cancellation or amendment request.~~

~~(d) The Department may assess charges for any transportation, handling and processing expenses incurred in the return of surplus property.~~

580:65-3-4. Transport and delivery of surplus property [REVOKED]

~~(a) **Transport method.** Upon receipt of approval of the disposal of surplus property from the Department, a state agency shall advise the surplus property agent the transport method the state agency desires to utilize to transport the property, vehicle or equipment to the location the agent specifies.~~

~~(1) A state agency shall be responsible for delivering surplus property to State Surplus, whenever possible. A state agency shall notify a surplus property agent at least 24 hours prior to the date it proposes to deliver surplus property to the State Surplus location.~~

~~(2) Whenever a state agency is unable to transport surplus property, the agency shall contact a surplus property agent to schedule pick up and transport by State Surplus.~~

~~(A) A state agency shall provide State Surplus a notice of no less than thirty (30) business days prior to the date the agency desires surplus property to be picked up.~~

~~(B) The notice period required in (A) of this paragraph may be decreased if it is determined that an emergency or other conditions exist which warrant earlier removal of surplus property upon approval by a surplus property agent.~~

~~(b) **Handling and loading surplus property for transport.** A state agency shall assist, whenever possible, with loading and handling of surplus property for transport by a surplus property agent.~~

~~(1) The contact person identified on the surplus property transfer form [See 580:65-3-1(d)], or a designee, shall be present during the handling and loading of surplus property by an agent.~~

~~(2) A surplus property agent will verify surplus property for loading and transporting against the surplus property list approved in accordance with 580:65-3-1(d).~~

~~(A) Any property not specified on the approved list shall not be loaded or transported by a surplus property agent.~~

~~(B) Any property specified on the approved list which is missing at the time an agent is loading for transport to State Surplus shall be noted as missing on the copy of the approved list. Such note shall be initialed at that time by both the agent and the state agency contact.~~

SUBCHAPTER 5. SALE OR DISPOSAL OF SURPLUS PROPERTY [REVOKED]

580:65-5-1. Methods of disposal of surplus property [REVOKED]

~~(a) The method of disposal of surplus property must be approved by the Administrator in accordance with 580:65-3-1(d) prior to disposal of state property by a state agency.~~

~~(b) Methods of disposal of surplus property are:~~

~~(1) **Transfer to a state agency or authorized entity.** Property is transferred to another state agency or authorized entity with or without charge as mutually agreed by both parties.~~

~~(2) **Sealed bid.** Property is sold by sealed bid in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter by the state agency.~~

~~(3) **Public auction.**~~

~~(A) **State Agency.** Property is sold at a public auction coordinated by the state agency, if authorized by statute.~~

~~(B) **Surplus Property Program.** Property is sold at a public auction coordinated by a surplus property agent in accordance with the rules of this Chapter.~~

~~(4) **Scrap metal.** Property is sold as scrap metal.~~

~~(5) **Trade-in.** Property is exchanged as trade-in for replacement equipment by a state agency.~~

~~(6) **Transfer to Department for disposal by a surplus property agent.** Agent disposes of surplus property, with the exception of vehicles and equipment, by any method listed in this subsection with no remuneration to the state agency.~~

~~(7) **Disposal by other means.** Property is disposed of by other specified means which are deemed to be in the best interest of the state at the request of the state agency.~~

~~(c) An agency which is approved to dispose of state property shall be responsible for the removal of such property from the agency's official inventory records and submitting notification to the Risk Management Division of the Department, whenever applicable.~~

580:65-5-2. Disposal by other than a surplus property agent [REVOKED]

~~(a) **Transfer to another state agency or authorized entity.** A state agency may determine that the direct transfer of state property to another state agency or authorized entity, with or without remuneration, is in the best interest of the state and request approval of such transfer from the Administrator.~~

~~(1) Official approval must be received prior to the transfer of state property. A request to transfer state property shall be made according to 580:65-3-1(d).~~

~~(2) The transferring agency is responsible for obtaining a signed receipt for all property transferred pursuant to this section, in addition to maintaining a record of all property transferred. Records shall include, but are not limited to:~~

~~(A) Itemized list of property transferred;~~

~~(B) Reason for transfer;~~

~~(C) To whom property is transferred;~~

~~(D) Inventory number of property transferred;~~

~~(E) Acquisition cost, if known; and~~

~~(F) Estimated value at time of transfer.~~

~~(3) Whenever a state property transfer between two state agencies requires remuneration for the state property, all receipts and remittances required to effect such transactions shall be processed through the special cash fund created by 74 O.S., Section 62.5.A.~~

~~(b) **Sealed bid or public auction.** A state agency may elect to sell surplus property by sealed bid or public auction without using the services of a surplus property agent and request approval of such sale from the Administrator.~~

~~(1) Official approval must be received prior to the sale of surplus property by a state agency. A request to sell state property shall be made according to 580:65-3-1(d).) Sealed bids shall be conducted in accordance with the Oklahoma Central Purchasing Act.~~

~~(2) A public auction may be conducted utilizing the services of such state agency employees or by contracting with a professional auction service in accordance with 74 O.S., §85.1 et seq. and Subchapter 15 of this chapter.~~

~~(3) A state agency is responsible for maintaining a record of all property it sells or disposes of pursuant to this subsection which shall include, but not be limited to:~~

~~(A) Name of the selling agency;~~

~~(B) Date of the sale;~~

~~(C) Method of sale;~~

~~(D) Selling price of property; and,~~

~~(E) Name and address of buyer.~~

~~(c) **Trade in.** A state agency may determine it is in the best interest of the state to trade in property it owns to receive credit towards the purchase of new property and request approval of such trade-in from the Administrator.~~

~~(1) Official approval must be received prior to trading in state property. A request to trade in state property for credit against the purchase of new state property shall be made according to 580:65-3-1(d).~~

~~(2) In addition to the information required by 580:65-3-1(d), the following information must be submitted to the Administrator for approval:~~

~~(A) Description of the item to be purchased;~~

~~(B) Cost of the new item;~~

~~(C) Value to be allowed for the state property; and,~~

~~(D) Name and address of vendor offering the replacement property.~~

~~(3) The Administrator will review the request and determine whether to approve, conditionally approve or deny the trade-in of the state property. Written notification of such determination which shall set forth conditions for approval or reasons for denial of the request will be sent to the state agency.~~

~~(d) **Scrap.** A state agency may determine that property it owns is worn out, damaged, disassembled or in poor condition in such a manner that renders it of no value and request approval to abandon, destroy or sell the property as scrap from the Administrator.~~

~~(1) Official approval must be received prior to the abandonment, destruction or selling of state property for scrap. A request to abandon, destroy or sell state property for scrap shall be made according to 580:65-3-1(d).~~

~~(2) In addition to the information required in the surplus property form [See 580:65-3-1(d)], a detailed statement of the condition and quantity of such state property which would be useful to the approval process must be submitted to the Administrator for consideration.~~

~~(3) The Department will send written notification to the agency that:~~

~~(A) A determination was made that some reasonable value can be obtained from the sale of the property as scrap which must be coordinated by a state surplus property agent; or~~

~~(B) A determination that there is no value either for salvage or for spare parts; whereas, authorization may be given to abandon or destroy the property in a manner designated or coordinated by a state surplus property agent.~~

~~(e) **Prohibitions.** A state agency shall not arrange sales to individuals or non-state agencies.~~

580:65-5-3. Disposal of state property by a surplus property agent [REVOKED]

~~(a) **Method of disposal.** A surplus property agent shall determine the method of disposal for all surplus property transferred to State Surplus for disposal.~~

~~(b) **Public Auction.** A surplus property agent shall conduct periodic public auctions to dispose of surplus property that has been held on-site for longer than thirty (30) days.~~

~~(1) A public auction shall be open to individuals and business entities.~~

~~(2) The time, date and location of a public auction shall be advertised in a local newspaper and published on the Department website.~~

~~(c) **Disposal for salvage.** An agent may reasonably believe that surplus property has salvage value only and shall document the reasons for such a determination. Surplus property declared to have salvage value only may be disposed of by public auction, direct sale, or solicitation of bids pursuant to the Oklahoma Central Purchasing Act.~~

~~(d) **Direct sales.** An agent may sell surplus property directly to state agencies, counties, cities, non-profit organizations, rural fire departments, rural water districts and multipurpose senior citizen centers located in Oklahoma at market prices.~~

580:65-5-4. Processing special class surplus property [REVOKED]

~~(a) **Special classes of surplus property.** An agent may determine any surplus data processing copier, printer, telecommunications, other such technology equipment or portable buildings to be a special class of property based upon its value, operation, or structure.~~

~~(b) **Approval of special classes.** Special classes are declared surplus property and approved by the Administrator according to 580:65-5-1.~~

~~(c) **On-site demonstrations to potential buyers.** Whenever a state agency declares items named in (a) of this section as surplus property and requests its transfer to the Department, an agent may determine that the property be retained on-site and in operation, if applicable, to permit demonstration to potential buyers. The determination will be based on the following:~~

~~(1) Disconnection and transportation of the property may drastically decrease its value;~~

~~(2) On-site demonstration of the property is for the overall best interest of the state;~~

~~(d) **Coordination of sale.** An agent shall coordinate the sale of property named in this section with the agency and employ the most efficient, timely and cost effective method to process the property. Sales to the public shall be delayed for thirty (30) days to provide priority purchase to state agencies. [see 580:65-7-2.]~~

580:65-5-5. Disposal of hazardous waste [REVOKED]

~~(a) **Acceptance of hazardous material.** The Department shall not receive, store, handle or process any equipment, fluids, chemicals, residue or other property which have been identified as hazardous to the health or safety of the general public.~~

~~(b) **Notification of Department of Environmental Quality.** An agency discovering or suspecting the presence of hazardous material shall immediately contact the Department of Environmental Quality for direction and information related to its disposal.~~

SUBCHAPTER 7. ACQUISITION OF SURPLUS PROPERTY [REVOKED]

580:65-7-1. Sales to related parties [REVOKED]

~~(a) A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.~~

~~(b) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:~~

~~(1) Has purchasing authority.~~

~~(2) Has maintenance authority.~~

~~(3) Has disposition or signature authority.~~

~~(4) Has authority regarding the disposal price.~~

~~(5) Has access to restricted information.~~

~~(6) Is perceived to be a related party using other criteria which may prohibit independence.~~

~~(c) Owning state agencies must list any recommended purchasers on the transfer of surplus property form [See 580:65-3-1(d)] and specify whether they are considered to be a related party.~~

~~(d) When a prospective purchaser is identified or determined to be a related party, the Administrator will employ one of the following procedures:~~

~~(1) The Administrator may require written justification and authorization from the Department or Division director. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.~~

~~(2) The Administrator may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.~~

~~(3) The Administrator may hold the property for a 30 day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the rules of this chapter.~~

580:65-7-2. Transfer or sale to a state agency or authorized entity [REVOKED]

~~(a) **Priority purchase of surplus property.** An agent shall make all approved surplus property available to state agencies and authorized entities for review and priority purchase for a minimum of thirty (30) days prior to their transfer or sale.~~

~~(b) **Acquisition cutoff date.** The agent will schedule a reasonable cutoff date for final acquisition of surplus property by state agencies no less than five (5) days prior to the next regularly scheduled public auction date.~~

~~(c) **Transfer cutoff date.** All transfers to State Surplus after the cutoff date is scheduled will be approved by an Agent on a case by case basis based upon storage capacity prior to the auction.~~

~~(d) **Purchase price.** A state agency or authorized entity that desires to acquire surplus property, a vehicle or equipment from the Department may negotiate the purchase price for the property with a surplus property agent.~~

580:65-7-3. Public auction [REVOKED]

~~(a) **Public sales.** Sales to the public shall be made only by means of a public auction or sealed bids.~~

~~(b) **Payment deadline.** Final payment for surplus property by the public shall be made no later than 2:00 p.m. on the date of the auction.~~

~~(c) **Pick up deadline.** Surplus property shall be picked up after payment no later than 3:00 p.m. on the Tuesday immediately following the date of the auction.~~

~~(d) **Cancellation of transaction.** If payment is not made or property is not picked up by the cutoff time scheduled by the agent, the sale transaction shall be canceled.~~

580:65-7-4. Return of property after purchase [REVOKED]

~~All surplus property, vehicles and equipment are sold "as is" and are nonreturnable.~~

580:65-7-5. Payment provisions [REVOKED]

~~(a) **General requirements for purchases.** Payment made by the public shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 45 days following the purchase and removal of the property. The following provisions apply to all sale transactions prior to the release of property by an agent:~~

~~(1) State agency, political subdivision, school district. A state agency, political subdivision or school district shall:~~

~~(A) Provide a purchase order for the mutually agreed purchase price at the time of purchase; and,~~

~~(B) Submit a billing invoice which contains the name and address of the purchasing agency or authorized entity and the name of the representative making the purchase on behalf of the agency or authorized entity with the payment; or,~~

~~(C) Make payment with a state approved purchase card.~~

~~(2) Private business. A private business shall provide a business tax identification number and a tax exempt certificate, if applicable, at the time of payment. Otherwise, local sales tax shall be charged.~~

~~(3) General public. Sales tax shall be collected for all purchases made by the general public unless a tax-exempt certificate is presented at the time of payment.~~

~~(4) Non-governmental entities. Non-governmental entities that are not for-profit organizations shall provide a copy of the letter issued by the Internal Revenue Service granting its tax-exempt status at the time of its first purchase.~~

~~(b) Form of payment from non-governmental entities and general public. Payment may be in the form of certified funds, business check, money order, cashier's check or credit card approved for use by the Department.~~

~~(1) The presenter of a check must present a valid driver license or other picture form of identification at the time of payment.~~

~~(2) A check must be guaranteed by a letter of credit issued by the financial institution and may not be accepted for amounts exceeding $2,500.00.~~

~~(3) Unguaranteed checks and 2-party checks shall not be accepted.~~

~~(c) **Payment refunds.** All payments received for the purchase of surplus property are nonrefundable.~~

~~(d) **Cash.** Cash for exact purchase amounts may be accepted at a public auction.~~

580:65-7-6. Conditions of service [REVOKED]

~~(a) **Delinquent accounts.** State agencies that are delinquent sixty (60) days or more with payment to the Department shall be considered in arrears. Written notice of the delinquency and outstanding balance will be sent to the agency.~~

~~(1) Accounts delinquent for more than 120 days shall be subject to suspension by the Director. Suspension of an account bars the agency from the purchase of additional surplus property until payment is received and the account is no longer in arrears.~~

~~(2) The Director may waive suspension if it is determined that the suspension will disrupt vital services to the public, cause undue hardship, or is otherwise in the best interest of the agency and/or the state.~~

~~(b) **Insufficient checks.** If a check from the general public is returned by a financial institution for "insufficient funds", "account closed" or other reason, the Department shall send written notice to the debtor stating that the debtor has fifteen (15) days to pay the amount owed with cash, a money order or cashier's check, including any and all additional fees associated with the collection process, such as returned check fees.~~

~~(1) Any customer who presents the Department with an insufficient check will be notified in writing of the requirement to make payment by cash, money order or cashier's check for any future surplus property purchases made for twelve (12) months following the date of such notice.~~

~~(2) The Administrator may waive the payment requirement in paragraph (1) of this subsection.~~

580:65-7-7. State agency reimbursement [REVOKED]

~~(a) **Payment schedule.** Whenever the Department sells vehicles or equipment for a state agency, reimbursement of sales receipts shall be issued to the state agency in the month following the month of sale of the property.~~

~~(1) Sales receipts shall be accompanied by a report which includes:~~

~~(A) a description of the item(s) sold;~~

~~(B) the sale price and the portion of the sale price paid back to the agency.~~

~~(2) If the sale price of item(s) is lower than cost incurred by State Surplus to sell the item(s), no sales report shall be provided to the state agency.~~

~~(b) **Surplus Property Program fee determination and funds remittance.** A reasonable administrative fee shall be charged and retained by the Department from sales receipts for the transfer, sale or salvage of vehicles and equipment.~~

~~(1) The Department shall retain an administrative fee of ten percent (10%) of the sale price of a vehicle or equipment.~~

~~(2) The administrative fee shall be deducted from the sale receipts of a vehicle or equipment prior to remittance of sales receipts to a state agency.~~

~~(3) All administrative fees collected pursuant to this subsection shall be deposited into a revolving fund as specified by statute.~~

SUBCHAPTER 9. SURPLUS PROPERTY RECORDS [REVOKED]

580:65-9-1. Surplus property record keeping by a state agency [REVOKED]

~~The chief administrative officer of each state agency shall maintain a current list of all surplus property. (74 O.S., Section 62.6.) The list shall include the following:~~

~~(1) Detailed description of surplus property;~~

~~(2) Street address and city or town where surplus property is maintained;~~

~~(3) Original purchase price, if known. If purchase price is unknown, estimate of current market value;~~

~~(4) If surplus property is disposed of, the method of disposal approved by the Administrator, which shall include:~~

~~(A) If sold, date of sale, selling price, name and address of buyer; or,~~

~~(B) If transferred, name and address of state agency or authorized entity to which transferred; or,~~

~~(C) If otherwise disposed of, a description of the manner of disposal.~~

~~(5) Any other information that will document or account for status and location of surplus property.~~

580:65-9-2. Surplus property record keeping by a surplus property agent [REVOKED]

~~The surplus property agent shall keep and maintain the following surplus property records:~~

~~(1) **Vehicle and equipment information.** A record for each vehicle or piece of equipment received from a state agency for disposal, which contains:~~

~~(A) a description of the vehicle or equipment;~~

~~(B) the transport method;~~

~~(C) all documents required by this subchapter related to the vehicle or equipment;~~

~~(D) records for expenses incurred by the agent for:~~

~~(i) transport of the vehicle or equipment;~~

~~(ii) removal of markings from a vehicle or equipment;~~

~~(iii) removal of special equipment from a vehicle or equipment;~~

~~(iv) additional parts for a vehicle or equipment; and~~

~~(v) labor expenses to install parts on a vehicle or equipment.~~

~~(2) **Surplus property information.** A record for each surplus property item sold by the agent, which contains the following:~~

~~(A) a general description of the surplus property item;~~

~~(B) a copy of the signed receipt issued to the buyer.~~

[OAR Docket #14-770; filed 7-18-14]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 70. STATE INVENTORY
[REVOKED]

[OAR Docket #14-771]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [REVOKED]
580:70-1-1. Purpose [REVOKED]
580:70-1-2. Definitions [REVOKED]
580:70-1-3. Threshold determination [REVOKED]
580:70-1-4. Agency inventory control officer [REVOKED]
Subchapter 3. Tangible Assets Reporting [REVOKED]
580:70-3-1. Inventory report [REVOKED]
580:70-3-2. Additional asset reporting identification elements [REVOKED]
580:70-3-3. Missing, stolen and destroyed tangible assets [REVOKED]
580:70-3-4. Agency inventory submission to the Department [REVOKED]
580:70-3-5. Department review of agency inventory report submissions [REVOKED]
580:70-3-6. Director action in the event of agency noncompliance [REVOKED]
Subchapter 5. Tangible Assets Management [REVOKED]
580:70-5-1. Tangible asset identification [REVOKED]
580:70-5-2. Insurance [REVOKED]
AUTHORITY:
62 O.S. §34.6; Director of the Office of Management and Enterprise Services
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 15, 2014 through February 19, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 19, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this rulemaking action is to revoke the above-referenced rules from Title 580, as the Department of Central Services has been consolidated into the Office of Management and Enterprise Services. The rules have been re-adopted in Title 260, Office of Management and Enterprise Services.
CONTACT PERSON:
Kimberlee Williams, Deputy General Counsel, OMES, (405) 522-3615 or Kimberlee.Williams@omes.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

580:70-1-1. Purpose [REVOKED]

~~This Chapter establishes procedures and standards and provides information for the administration of inventories of tangible assets owned by state boards, commissions, institutions, agencies and the institutions comprising The Oklahoma State System of Higher Education and the University Hospitals Authority as authorized pursuant to the provisions of 74 O.S., Section 110.1 and the Administrative Procedures Act.~~

580:70-1-2. Definitions [REVOKED]

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

~~**"Agency"** means a state board, commission, institution, agency, or an institution comprising the Oklahoma State System of Higher Education and the University Hospitals Authority.~~

~~**"Agency inventory control officer"** means a person an agency appointing authority designates to provide tangible asset information to the Department.~~

~~**"Chief administrative officer"** means the individual responsible for directing the administration of a state agency. The term does not mean other individuals that make policy for a state agency.~~

~~**"Computer application"** or **"application"** means a system that allows electronic data entry, storage and transfer from one computer or system to another.~~

~~**"Department"** means the Department of Central Services.~~

~~**"Director"** means the Director of Central Services.~~

~~**"Form"** means a document the Director prescribes and requires agencies to use to provide inventory information to the Department.~~

~~**"Historical significance"** means a tangible asset that has enhanced value due to its relation to past events or circumstances.~~

~~**"Inventory"** means a detailed list of tangible assets.~~

~~**"Inventory tag"** or **"tag"** means a form of unique identification an agency applies to a tangible asset.~~

~~**"State inventory control officer"** means a person the Director designates to receive agency tangible asset information.~~

~~**"Surplus property"** means a tangible asset an agency intends to dispose of pursuant to applicable provisions of law.~~

~~**"Tangible assets"** mean machinery, implements, tools, furniture, livestock, vehicles and other apparatus that an agency may use repeatedly without material impairment of its physical condition and have a calculable period of service and a value exceeding the reporting threshold the Director of Central Services establishes for the entity. [74 O.S., Section 110.1(D)]~~

~~**"Threshold"** means the dollar amount specified by the Director as the value of tangible assets required to be reported by an agency.~~

580:70-1-3. Threshold determination [REVOKED]

~~(a) **General threshold.** Unless the Director specifies otherwise (Reference (b) of this Section), the threshold for tangible asset inventory reports is $500.00.~~

~~(b) **Specified threshold.** The Director may specify an individual threshold for an agency which shall be greater than $100.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.~~

~~(c) **Threshold considerations.** Whenever the Director specifies an individual threshold for an agency, the capabilities of the agency to provide an inventory of tangible assets to the Department shall be considered:~~

~~(1) If an agency demonstrates reliable tangible asset reporting capabilities, the Director may specify a threshold greater than $500.00 but not to exceed the amount authorized by 74 O.S., Section 110.1.~~

~~(2) If an agency demonstrates unreliable tangible asset reporting capabilities or does not meet reporting requirements, the Director may specify a threshold not to exceed $500.00.~~

~~(d) **Unreliable reporting.** Whenever it is determined that an agency with an established threshold exceeding $500.00 has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the threshold of the agency.~~

~~(e) **Review of specified threshold.** No less than six (6) months after the reduction of its threshold, an agency may submit a written request for review of the agency's inventory reporting capabilities to the Director.~~

~~(1) If the review determines the agency has demonstrated the capability to provide reliable inventory reports, the Director may increase the agency threshold to an amount not to exceed the amount authorized by 74 O. S., Section 110.1.~~

~~(2) If the review determines the agency has provided unreliable information or has not met the reporting requirements of this Chapter, the Director may reduce the agency threshold to an amount exceeding $100.00.~~

~~(f) **Notice of reporting threshold.** The Director shall provide an agency with written notice of the tangible asset reporting threshold specified pursuant to this section which states the amount and determination for the change.~~

580:70-1-4. Agency inventory control officer [REVOKED]

~~(a) **Inventory control officer.** Each agency subject to this chapter shall appoint at least one (1) agency inventory control officer.~~

~~(1) The name, address and telephone number of the individual designated pursuant to this subsection shall be submitted in writing to the Department by January 15.~~

~~(2) Written notification of any changes to information relating to the agency inventory control officer must be submitted to the Department within thirty (30) days of the change.~~

~~(b) **Internal inventory procedures.** To ensure accuracy of state inventory records, an agency shall develop internal procedures for reporting and maintaining information related to the acquisition, reallocation, relocation and disposition of tangible assets to an agency inventory control officer.~~

SUBCHAPTER 3. TANGIBLE ASSETS REPORTING [REVOKED]

580:70-3-1. Inventory report [REVOKED]

~~(a) **Report due date.** All agencies must submit an annual report of current inventory of tangible assets owned by the agency as of June 30 of the preceding fiscal year to the Department by August 15. The report shall include all tangible assets based upon the threshold stated in 580:70-1-3(a).~~

~~(1) An agency may submit a written request, signed by the chief administrative officer, for extension of the August 15 submission deadline.~~

~~(2) The request shall state a reason for the extension and be submitted no later than August 1.~~

~~(3) Within ten (10) calendar days of receipt, the Department shall review the request and provide the agency with written notification of its approval or disapproval.~~

~~(b) **Report formats.** The Director shall specify tangible asset identification data elements an agency inventory report shall contain and the forms and computer applications the~~

~~Director shall accept for the agency to report the inventory information. The Director may specify data elements applicable to a tangible asset type.~~

~~(c) **Inventory report contents.** The inventory report shall by signed by the agency inventory control officer and shall include for each tangible asset:~~

~~(1) the agency number;~~

~~(2) the asset tag number;~~

~~(3) the model and serial number, if any;~~

~~(4) the manufacturer;~~

~~(5) the description;~~

~~(6) product name;~~

~~(7) physical location;~~

~~(8) acquisition date and cost;~~

~~(9) any other information which may be requested by the Department to ensure the integrity of state inventory records.~~

~~(d) **Supporting documents.** An agency shall maintain supporting documents to identify tangible assets. Document types include acquisition, digital photographs or images and other documents that may provide pertinent tangible assets identification information.~~

~~(e) **Report forms.** An agency shall submit inventory reports on forms prescribed by the Director. The Department will provide forms upon request.~~

~~(f) **Electronic report submission.** The Director may accept electronic inventory submission. The state inventory control officer shall advise an agency of computer applications the Department may accept.~~

580:70-3-2. Additional asset reporting identification elements [REVOKED]

~~Whenever a tangible asset named in this section is reported by an agency, the asset shall be specifically identified by type in the inventory report required by 580:70-3-1(a):~~

~~(1) tangible assets with historical significance;~~

~~(2) livestock assets by breed, gender and approximate value;~~

~~(3) assets on loan to another agency; a copy of the written instrument documenting the loan shall be submitted with the annual inventory report;~~

~~(4) assets that have been traded in by the agency;~~

~~(5) assets the agency is unable to affix an inventory tag to;~~

~~(6) assets that have been disposed of in accordance with the state surplus property program;~~

~~(7) assets that reach the end of its useful life.~~

580:70-3-3. Missing, stolen and destroyed tangible assets [REVOKED]

~~(a) **Asset loss reports.** An agency shall report a loss to the state inventory control officer within thirty (30) days of discovery that a tangible asset is missing, stolen or destroyed by vandalism.~~

~~(b) **Asset loss documentation.** A report of missing, stolen or destroyed tangible assets shall be accompanied by:~~

~~(1) A copy of the notice reporting the loss submitted to the insuring entity; and,~~

~~(2) A copy of a report from a law enforcement agency made by the agency to report the loss, theft or vandalism.~~

~~(c) **Director notification of loss.** The state inventory control officer shall compile a list and report all missing tangible assets to the Director.~~

580:70-3-4. Agency inventory submission to the Department [REVOKED]

~~(a) **Electronic report submission.** An agency inventory control officer shall request prior approval of submission of inventory data via a computer application from the state inventory control officer and specify the computer application.~~

~~(b) **Acceptance of electronic inventory reports.** Upon receipt of a request pursuant to (a) of this section, the state inventory control officer shall provide written authorization to an agency to indicate the Department will accept an inventory report via the computer application identified in such request or advise the agency of alternate computer applications the Department is able to accommodate.~~

~~(c) **Rejection of electronic inventory reports.** Electronic versions of inventory reports submitted without the written authorization provided by this section will be rejected by the state inventory control officer.~~

580:70-3-5. Department review of agency inventory report submissions [REVOKED]

~~(a) **Inventory report review.** Upon receipt of an agency inventory report the state inventory control officer shall review an inventory submission and identify tangible assets that contain incorrect or irreconcilable data elements.~~

~~(b) **Report errors and additional information.** The state inventory control officer shall send written request for information to the agency appointing authority of all tangible assets with errors or irreconcilable data elements.~~

~~(c) **Agency response.** An agency shall review the state inventory control officer findings and, within thirty (30) days:~~

~~(1) shall provide written evidence of error reconciliation to the state inventory control officer; or,~~

~~(2) if unable to reconcile an error, shall provide written notice of such facts to the state inventory control officer.~~

~~(d) **Director notification of insufficient report or response.** The state inventory control officer shall submit written notice to the Director if an agency is unable to provide evidence in response to a reconciliation request or fails to respond to a reconciliation request. The notice shall include previous tangible asset data elements, a description of irreconcilable elements, the agency written notice and the agency response, if available.~~

580:70-3-6. Director action in the event of agency noncompliance [REVOKED]

~~Upon receipt of written notice that an agency is missing tangible assets, irreconcilable data elements or has failed to respond to a request by the state inventory control officer, the Director shall determine a course of action.~~

~~(1) The Director declares the asset reporting of the agency unreliable and sends written notice of a reduction in the reporting threshold to the agency appointing authority with an explanation of the declaration; or,~~

~~(2) The Director shall provide a written report of the known facts regarding missing tangible assets, irreconcilable data elements or the agency's failure to respond to a law enforcement agency with jurisdiction for the agency.~~

SUBCHAPTER 5. TANGIBLE ASSETS MANAGEMENT [REVOKED]

580:70-5-1. Tangible asset identification [REVOKED]

~~(a) **Inventory tags.** An agency shall affix a unique identifier as an inventory tag to all tangible assets.~~

~~(b) **Inventory tag location.** The inventory tag shall be affixed in a location to ensure accessibility by an inventory control officer.~~

~~(1) An agency shall affix inventory tags in a similar fashion and location on tangible assets similar in nature and use.~~

~~(2) An agency shall place inventory tags for tangible assets that do not have an affixed tag in a central location readily accessible to inventory control officers.~~

~~(3) If an agency affixes an inventory tag in an inconspicuous location on a tangible asset, the agency shall indicate the location on an inventory list.~~

~~(c) **Inventory tag material.** Inventory tags shall be a durable material designed to withstand physical elements the tag may endure.~~

580:70-5-2. Insurance [REVOKED]

~~The Director shall ensure that the agency inventory reports are accessible by the Risk Management Division of the Department. An agency that acquires insurance from the Risk Management Division of the Department for tangible assets and consumable supplies may use inventory data to identify assets and supplies as reportable losses.~~

[OAR Docket #14-771; filed 7-18-14]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 2. OPERATIONS UNDER THE FPAA~~AND MECBA~~

[OAR Docket #14-511]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
585:2-1-3 [AMENDED]
Subchapter 3. Program Administration and Description
585:2-3-1 [AMENDED]
585:2-3-2 [AMENDED]
Subchapter 5. Procedures
585:2-5-1 [AMENDED]
Subchapter 7. Hearings
585:2-7-3 [AMENDED]
585:2-7-13 [AMENDED]
585:2-7-14 [AMENDED]
AUTHORITY:
Public Employees Relations Board; 11 O.S., §51-104(D)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
August 5, 2013 through September 3, 2013
PUBLIC HEARING:
September 3, 2013
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLTURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The permanent rule revisions to Chapter 2 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq.) effective November 1, 2011 and to House Bill 1577, effective November 1, 2012.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Will Rogers Building, Room 206, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, 405-522-6723, Debbie.Tiehen@omes.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

585:2-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

~~**"Arbitrator"** means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.~~

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means ~~two~~three members of the Board ~~comprise a majority,and~~ shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of ~~two~~three members.

SUBCHAPTER 3. PROGRAM ADMINISTRATION AND DESCRIPTION

585:2-3-1. PERB Board, description and powers; hearing officer

(a) The Board is an administrative body created by 11 O.S., §51-104. The Board consists of ~~three members~~five (5) members~~ who are appointed by the Governor~~, and whose powers and duties are prescribed by the Legislature.

The Board has an Administrator to carry out certain designated functions of the Board, including, but not limited to, conducting representation elections.

(b) The Board may appoint a hearing officer to carry out functions of the Board including, but not limited to, conducting representation elections and unfair labor practice charge hearings.

(c) The Board, on its own motion, may initiate actions when the Board determines that it is necessary to do so in order to accomplish the objectives and to carry out the duties prescribed by the FPAA.

585:2-3-2. Quorum

~~Two~~ Three members of the Board ~~comprise a majority and~~ shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of ~~two~~three members.

SUBCHAPTER 5. PROCEDURES

585:2-5-1. Filing of documents

(a) **General.** All complaints, pleadings, submissions, petitions, reports, exceptions, motions, briefs, memoranda, and other papers required to be filed with the Board shall be filed at the Board's office. Such documents shall be served on all other parties on the same day that they are filed with the Board. Such documents shall be served by the filing party on all other parties on the same day that they are filed with the Board.

(b) **~~Method~~Methods of filing.** Such papers may be sent by mail or hand-delivered to the Board's office within the time limit, if any, for such filing. The Board may authorize filing by email or electronic means upon the Board's approval of a written system for such filing.

SUBCHAPTER 7. HEARINGS

585:2-7-3. Motions

(a) **Recognized motions.** The Board recognizes all motions permitted under the Oklahoma Pleading Code, 12 O. S., §2001 et seq.,as well as a party's motion requesting the Board to defer to either pending or completed grievance arbitration. Motions for summary judgment filed pursuant to 12 O.S. §2056 shall be governed by Rule 13 of the Rules for District Courts, found at Title 12, Chapter 2, Appendix.

(b) **Recorded motions.** All motions made during a hearing shall be made part of the record of the proceedings.

(c) **Motion requirements.** All motions, other than those made during a hearing shall be subject to the following:

(1) **General contents.** Such motions including, but not limited to, motions for summary judgment, shall be made in writing to the Board, shall briefly state the relief sought, and shall be combined with a brief containing a statement of relevant facts and legal argument with citations to relevant legal authority.

(2) **Format; size; filing date of certain motions.**

(A) No combined motion/brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(B) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(C) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given.

(D) A motion to file a combined motion/brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the motion/brief is due.

(3) **Required appendix to motion/brief.** Each party shall attach to that party's motion/brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(4) **Affidavits.** Affidavits regarding factual matters may be attached to the motion/brief if necessary.

(5) **Deadlines.** Deadlines for filing motions are set in the Final Pre-Hearing Order.

(6) **Service of motion/brief by moving party.** The moving party shall, concurrently with filing with the Board, serve a copy of the motion/brief on all other parties.

(7) **Response or objection to motion/brief.** Any response or objection to the motion/brief shall be subject to the same requirements as motions/briefs, shall be filed with the Board within eighteen (18) days from the date the

motion/brief was filed with the Board and shall be served on all parties.

(8) **Board hearing of oral argument or testimony.** The Board may decide to hear oral argument or testimony thereon, in which case the Board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.

(d) **Board's lack of jurisdiction or necessary legal authority.** In the event that the Board determines that it lacks jurisdiction or necessary legal authority to rule upon any filed motion, it shall promptly so advise the parties.

585:2-7-13. Cases decided on stipulated facts

At the pre-hearing conference, the parties shall notify the Board that they can stipulate to all relevant facts. A briefing schedule shall then be set, and the case shall be decided on stipulated facts as follows:

(1) **Deadlines for statement of stipulated facts and brief.** At the pre-hearing conference, the parties shall be given a deadline for filing the statement of stipulated facts. A list of exhibits stipulated to and ~~six (6)~~eight (8) copies of these exhibits shall also be filed with the statement of stipulated facts. At the pre-hearing conference, the Complainant shall be given a deadline for filing its brief with the Board and service on the Respondent.

(2) **Filing of response by Respondent.** The Respondent shall file with the Board and serve on the Complainant its response within eighteen (18) days of the filing with the Board of the Complainant's brief.

(3) **Contents; format; size; filing date of certain motions.**

(A) Each brief shall contain:

(i) a brief background of the case and the issues to be decided; and,

(ii) a legal argument with citations to relevant legal authority.

(B) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(C) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(D) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.

(E) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(4) **Additional briefing.** Additional briefing may be requested by the Board. No oral argument will be heard on cases decided on stipulated facts unless specifically requested by the Board.

585:2-7-14. Cases decided on disputed facts

At the pre-hearing conference, the parties shall notify the Board that they cannot stipulate to all relevant facts. The case shall then be set for hearing and shall be decided on disputed facts as follows:

(1) **Statement of relevant facts.** Ten (10) days before the hearing the parties shall jointly file a statement of relevant facts to which they can stipulate. At this time, each party shall also file a statement of relevant facts in dispute.

(2) **List of exhibits.** Ten (10) days before the hearing the parties shall stipulate to admissible exhibits and file a list of these exhibits. Exhibits stipulated to shall be admitted into evidence at the hearing. A list of the exhibits to which the party cannot stipulate and the opposing party's objections thereto shall also be filed. The proponent of the exhibits shall ask for the Board's ruling on their admissibility at the hearing.

(3) **Witness list.** Ten (10) days before the hearing each party shall file its final witness list. This list shall include the address and telephone number and statement of anticipated testimony of each witness.

(4) **Exhibits.** Seven (7) days before the hearing each party shall exchange and file the original and ~~six (6)~~eight (8) copies of each exhibit.

(5) **Brief filing; contents; format; size; filing date of certain motions.**

(A) Seven (7) days before the hearing each party shall file a brief.

(B) Each brief shall contain:

(i) a brief background of the case and issues to be decided; and

(ii) a legal argument with citations to relevant legal authority.

(C) No brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(D) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(E) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given. A motion to file a brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the brief is due.

(F) Each party shall attach to that party's brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(6) **Motions in limine.** Seven (7) days before the hearing each party shall file any motions in limine.

(7) **Presentation time by parties at hearing.** At the hearing, each party will be given one (1) hour to present evidence and twenty (20) additional minutes that may be divided between opening and closing statements, unless otherwise extended by the Board. Requests for additional time shall be made at least seven (7) days before the hearing. Requests for additional time are not encouraged, and leave for additional time will not be freely given.

(8) **Refiling statement of disputed facts.** Within fifteen (15) days after the hearing, each party shall refile its statement of disputed facts with citations to the record added for each disputed fact. If a party briefs a legal issue(s) not previous briefed by the opposing party, within fifteen (15) days after the hearing, the opposing party may also file a response brief not to exceed five (5) pages in length.

[OAR Docket #14-511; filed 6-24-14]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 30. UNFAIR LABOR PRACTICE ~~AND PROHIBITED PRACTICE CHARGES~~ CHARGES

[OAR Docket #14-512]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
585:30-1-3 [AMENDED]
585:30-1-4 [AMENDED]
AUTHORITY:
Public Employees Relations Board; 11 O.S., §51-104(D)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
August 5, 2013 through September 3, 2013
PUBLIC HEARING:
September 3, 2013
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLTURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The permanent rule revisions to Chapter 30 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq.) effective November 1, 2011 and to House Bill 1577, effective November 1, 2012.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Will Rogers Building, Room 206, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, 405-522-6723, Debbie.Tiehen@omes.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

585:30-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to ~~74~~11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

~~**"Arbitrator"** means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.~~

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means ~~two~~three members of the Board ~~comprise a majority and~~ shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of ~~two~~three members.

585:30-1-4. Complaint

(a) **General.** A complaint that any person, organization, or municipal employer has engaged in or is engaging in an unfair labor practice under the FPAA may be filed by any person, employee organization or municipal employer. See 585:2-5-5.

(b) **Execution; format.** A complaint shall be in writing and signed in accordance with 585:2-5-1, and shall be in a form authorized by the Board.

(c) **Number of copies.** The complaint and ~~six (6)~~eight (8) copies shall be filed with the Board.

(d) **Required contents.** The complaint shall include the following:

(1) The name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

(2) The name and address of the respondent or respondents and any other party named therein.

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged act, the dates and

places of the alleged occurrence, and the specific section or sections of the FPAA alleged to have been violated. The purpose of the complaint is to apprise the respondent fairly of the substance of the complaint against it. The sufficiency of a complaint may be challenged by motion, answer or other responsive pleading.

[OAR Docket #14-512; filed 6-24-14]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 35. CERTIFICATION CASES

[OAR Docket #14-510]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
585:35-1-3 [AMENDED]
AUTHORITY:
Public Employees Relations Board; 11 O.S., §51-104(D)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
August 5, 2013 through September 3, 2013
PUBLIC HEARING:
September 3, 2013
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLTURE:
February 13, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The permanent rule revisions to Chapter 35 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq.) effective November 1, 2011 and to House Bill 1577, effective November 1, 2012.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Will Rogers Building, Room 206, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, 405-522-6723, Debbie.Tiehen@omes.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

585:35-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to 11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

~~**"Arbitrator"** means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.~~

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means ~~two~~three members of the Board shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of ~~two~~three members.

[OAR Docket #14-510; filed 6-24-14]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-719]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
590:1-1-9. Designee Board members [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §§ 905, 909.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 26, 2013
COMMENT PERIOD:
January 2, 2014-February 19, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendment to 590:1-1-9 allows the Corporation Commission to select a designee of the Commission to act in place of the Commissioner as a member of the Board. The amendment also updates references to other Board positions. The amendment complies with the statutory changes made in Enrolled HB 1477 in 2013.
CONTACT PERSON:
Joseph A. Fox, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

590:1-1-9. Designee Board members

(a) The ~~Administrator of the Office of Personnel Management, the~~ State Insurance Commissioner ~~and~~, the Director of ~~State Finance~~the Office of Management and Enterprise Services, and the Corporation Commission are authorized to designate an individual to act in his or her place as a member of the Board of Trustees. This designation must be in writing, signed by the designating official and filed with the System. The designation must clearly indicate the identity of the designee and whether the designation is limited as to duration or is an on-going designation. The designation should also set forth instructions as to membership on any Committees where the official is a member. Absent specific instructions regarding committee attendance, it is assumed that the designee is authorized to appear at both Committee and Board meetings. Once a proper designation is filed, the designee may appear at meetings and may act on any items properly before the Board.

(b) The Corporation Commission and the Oklahoma Tax Commission shall each select a member of the respective Commission to serve on the Board of Trustees. Each Commission shall provide a notification of the selection in writing, signed by the Chairman of the respective Commission to be filed with the System. In lieu of such selection of a member, the Corporation Commission may select a designee of the Commission with notification as provided in subsection (a) of this section.

[OAR Docket #14-719; filed 7-14-14]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #14-720]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Credited Service
590:10-3-8. Actuarial cost for purchases; delinquent service cost [AMENDED]
590:10-3-9. Purchase price payments [AMENDED]
590:10-3-10. Incentive credit [AMENDED]
590:10-3-14. Elected official service credit [AMENDED]
Subchapter 7. Retirement Benefits
590:10-7-3. Longevity and other annual lump-sum payments [AMENDED]
590:10-7-6. Failure to submit documents; benefit estimates [AMENDED]
590:10-7-10. Final benefit [AMENDED]
590:10-7-14. Permanent part-time employment [AMENDED]
Subchapter 9. Survivors and Beneficiaries.
590:10-9-4. Probate Waivers [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §§ 902, 909, 913b, 913.4, 913.5, 914, 915, 916.1, 917.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 26, 2013
COMMENT PERIOD:
January 2, 2014-February 19, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Retirement benefits
590:10-7-3. Longevity and other annual lump-sum payments [AMENDED]
590:10-7-10. Final benefit [AMENDED]
590:10-7-14. Permanent part-time employment [AMENDED]
Subchapter 9. Survivors and Beneficiaries
590:10-9-4. Probate waivers [AMENDED]
Gubernatorial approval:
August 28, 2013
Register publication:
31 Ok Reg 53
Docket number:
13-1200
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendment to 590:10-3-8 requires the member's exact age to be used when calculating the actuarial cost for service credit purchases. This rule is intended to prevent illogical results that could occur as a result of rounding.

The amendment to 590:10-3-9 requires lump sum payments for purchases of service or repayments of withdrawn service to be made no less than 30 days prior to the retirement date. This deadline is consistent with the deadline for installment payments and is intended to prevent a delayed retirement date or a delayed benefit payment.

The amendment to 590:10-3-10 clarifies inconsistencies between OPERS' rules and statutes. Elected officials are permitted to purchase incentive credit

similar to regular employees and are no longer limited to purchases to reach the Rule of 80 only. The amendment also clarifies that Hazardous Duty members can make incentive purchases, but cannot use the purchases to reach the 20 years and out requirement.

The amendment to 590:10-3-14 clarifies the statutes relating to how the benefit of an elected official, elected on or after November 1, 2011, is calculated. Statutory cross-references have been updated to be consistent with recent law changes and to remove any confusion on which compensation or salary is used in the benefit calculation.

The amendment to 590:10-7-3 is necessary to comply with Enrolled House Bill 1325, amending 74 O.S. §902 and §915, which was effective July 1, 2013. This amendment brings the rule dealing with longevity payments into compliance with the new definition of final average compensation for members whose first participating service occurs on or after July 1, 2013.

The amendment to 590:10-7-6 requires all documents necessary to retire to be received by OPERS within 6 months after the requested retirement date or the retirement will be cancelled. The member must reapply and request a new retirement date, but will not be required to meet the 60-day notice requirement. The amendment also requires members to provide all required documents to OPERS when a benefit estimate is requested.

The amendment to 590:10-7-10 is necessary to comply with the newly enacted provisions of Enrolled House Bill 1325, amending 74 O.S. §917, which became effective July 1, 2013. This amendment sets forth the process for paying a deceased member's final benefit.

The amendment to 590:10-7-14 is necessary to comply with the newly enacted provisions of Enrolled House Bill 1325, amending 74 O.S. §902 and §915, which was effective July 1, 2013. This rule sets forth how the final average compensation is calculated for permanent part-time employees. The amendment incorporates the new definition of final average compensation for those members whose first participating service occurs on or after July 1, 2013.

The amendment to 590:10-9-4 is necessary to comply with the newly enacted provisions of Enrolled House Bill 1325, amending 74 O.S. §916.1, which was effective July 1, 2013. This rule sets forth how OPERS can pay benefits or unpaid contributions to a member's heirs without the appointment of an administrator or an executor. The amendment increases the amount that can be paid without the appointment. This amendment was approved as an emergency rule.

CONTACT PERSON:

Joseph A. Fox, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-8. Actuarial cost for purchases; delinquent service cost

(a) **Actuarial Costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost~~,~~ shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary, and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's exact age in months shall be ~~rounded up or down to the nearest birthday~~ used in the calculation.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in paragraph (1) of this section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current month's payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

(b) **Delinquent service costs.** The cost for purchases of delinquent service credit for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum.

(c) **Remittance errors.** In the event a participating employer timely remits contributions for an individual member which are determined to be insufficient as a result of being based on an incorrect contribution rate or incorrectly-reported compensation, the employer shall be notified and pay the amount of the insufficiency plus ten percent (10%) simple interest per annum. The provisions of this paragraph shall not be applicable to employer remittances not received in a timely manner and which are subject to the provisions of paragraphs (a) and (b) of this section and 74 O.S. §920B.

590:10-3-9. Purchase price payments

(a) An active member of the System may elect the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other purchase or repayment permitted and authorized by the statutes governing the System, to be amortized in monthly installments to the extent allowed by law.

(1) A payment schedule may be established allowing the member to make monthly payments through payroll deductions by the member's employer if the employer agrees to make the deductions and remit payments to the System. Payments remitted by an employer for its employees must be kept separate from employer's regular

retirement contributions or any other payments to the System including Deferred Compensation. Such payments do not qualify as "pre-tax" contributions under "employer pick-up" provisions of Section 414(h) of the Internal Revenue Code.

(2) The installment payment schedule provided for in this section must be in monthly increments. The minimum total monthly payment is $25.00. The member shall be responsible for maintaining the payment schedule. The payment due date will be based on the payroll schedule set by the member's employer. An installment not paid within sixty (60) days of the due date will result in termination of the installment payment schedule with the member given the option of paying the balance of the actuarial cost or receiving partial credit for payments made under the installment schedule as provided for in subsection (4) of this section.

(3) The monthly payment will be determined by amortizing the total amount due for the service to be purchased over the period of the installment schedule using an interest rate equal to the actuarially assumed interest rate adopted by the Board of Trustees for investment earnings for the year in which the payment schedule is commenced.

(4) Except as provided in subsection (8) of this section, if the installment payment is terminated for any reason, including termination of employment, death of the member or by cessation of payments, the member or the beneficiary of the member will have the option of paying the remaining balance within six (6) months. If the balance is not paid, the member will receive credit for service prorated for only the principal amount paid and rounded to the last full month paid for. No refunds will be paid to the member.

(5) Credit for service purchased on an installment schedule will not be added to the member's account until the entire balance is paid, except as provided for in subsection (4) of this section. All payments must be completed in the month prior to the effective retirement date of the member. If any member or beneficiary elects to pay the balance during the 6 month period provided for in Subsection (4) of this Section, no benefits will be payable until the completion of said 6 month period, or receipt of a signed waiver. In no event will retroactive benefit payments be made, and the effective retirement date will be adjusted to the first day of the month following the completion of payments or receipt of waiver.

(6) Payments may be made directly to the System by the member or beneficiary if the member is in an unpaid leave status, if the payroll is not sufficient to handle the entire payment, in the event of payroll error where employer fails to withhold the proper amount or during the six (6) month period referred to in subsection (4) of this Section.

(7) Except as provided in subsection (8) of this section, if the purchase is terminated for any reason, the purchase cannot be made at ~~anytime~~ <u>any time</u> in the future~~,~~ following the 6 month option referred to in Subsection (4) of this Section. By failing to complete this purchase, the member or beneficiary forfeits the right to the purchase at any other time.

(8) If the installment payment for the repayment of a previous withdrawal is terminated for any reason, the member, upon returning to employment and meeting the eligibility requirements for membership, may pay the remaining principal balance at any time prior to the month of the effective retirement date. The total due shall be the unpaid principal balance, plus interest pursuant to 74 O.S. § 917(5), calculated from the date of the last installment payment received and paid in a one-time lump sum amount.

(b) Effective January 1, 2002, in lieu of installment payments, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee to trustee transfer from a 457 deferred compensation plan or a 403(b) tax sheltered annuity program.

(c) Effective January 1, 2002, in lieu of installment payments or a direct transfer, an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating elected service, or to purchase an increase in the contribution rate, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by a rollover. The payment may be made by participant rollover contributions and/or direct rollovers of eligible rollover distributions made after December 31, 2001, from the following:

(1) a qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code;

(2) an annuity contract described in section 403(b) of the Internal Revenue Code;

(3) an eligible plan under section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(4) a participant rollover contribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over.

<u>(d) Any payments permitted and authorized by this section or by the statutes governing the System which are elected by a member in lieu of installment payments shall be made no later than the month prior to the effective retirement date of the member.</u>

590:10-3-10. Incentive credit

(a) Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value. Incentive credit may be used as participating service or addition to age.

(b) Those eligible to purchase incentive credit include the following:

(1) Employees who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age;

(2) members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90;

(3) ~~elected officials who are first elected or appointed prior to November 1, 2011, may purchase incentive credit to qualify for the Rule of 80 only;~~

~~(4)~~ elected officials ~~who are first elected or appointed on or after November 1, 2011,~~ who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age; and

(~~5~~4) Hazardous Duty Members ~~may purchase incentive credit to qualify only for the Rule of 80 or 90 or for~~who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age, or to qualify for the Rule of 80 or 90. Hazardous Duty Members are not eligible to purchase incentive credit to qualify for retirement pursuant to the twenty (20) years of full-time-equivalent employment requirement.

(c) Incentive credit ~~can not~~cannot be used as full time equivalent employment. Members must have at least four (4) years of the required six (6) years of full time equivalent employment in order to be eligible for this purchase and must accrue six (6) years of full time equivalent employment prior to retirement.

(d) Members must be active and participating at the time of purchase or at the time of the transfer pursuant to subsection (f) of this section.

(e) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(f) Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to purchases already made by an eligible member or to purchases currently being made through installment payments pursuant to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

590:10-3-14. Elected official service credit

(a) **First elected service on or after August 22, 2008.** Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, but prior to November 1, 2011, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.

(b) **Joining System on or after August 22, 2008.** Any member who first joins the System on or after August 22, 2008, and who is first elected or appointed prior to November 1, 2011, shall have elected and non-elected service separately calculated as follows:

(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.

(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.

(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.

(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.

(c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.

(d) **Effective date.** The authorizing legislation for determining elected official service credit provided by subsections (a) through (c) of this section is Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008.

(e) **First elected on or after November 1, 2011.** Pursuant to 74 O.S. §913.4(A)(5) and §913.4(B), as amended in Enrolled Senate Bill 794 of the 1st Regular Session of the 53rd Legislature (2011), Section 2, Chapter 206, O.S.L. 2011, any member of the System joining prior to or on or after November 1, 2011, and who is first elected or appointed on or after November 1, 2011, shall have the contribution rate specified in 74 O.S. §919.1(1)(a) and the amount of the benefit for all elected and non-elected service credit shall be based on the provisions of 74 O.S. §915(A)(1), and §915(A)(2) if applicable, including the calculation of final average compensation pursuant to 74 O.S. §902(18).

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-3. Longevity and other annual lump-sum payments

(a) ~~Only~~ The three (3) highest annual longevity payments will be added into the sum of three years of salary (thirty-six months) used in computing the final average compensation for members whose first participating service occurs before July 1, 2013. The five (5) highest annual longevity payments will be added into the sum of five years of salary (sixty months) used in computing the final average compensation for members whose first participating service occurs on or after July 1, 2013. If a retiring member is scheduled to receive a prorated longevity payment at or near the effective date of retirement, the prorated longevity payments will be used only in the amount actually paid and if it is one of the three highest longevity payments for members whose first participating service occurs before July 1, 2013, or one of the five highest longevity payments for members whose first participating service occurs on or after July 1, 2013. The final average salary shall not be reduced if the annual longevity payment causes any one month's salary to exceed the maximum monthly compensation level, provided the annual salary including longevity does not exceed the maximum compensation level.

(b) Other lump-sum annual payments that are included as compensation for retirement purposes shall be averaged over the previous twelve (12) months of salary immediately preceding the month of payment for use in computing the final average compensation. These lump-sum payments include those which are paid on an annual basis at the discretion of the employer such as performance or skill based pay adjustments.

590:10-7-6. Failure to submit documents; benefit estimates

(a) If all of a retired member's required documents have not been received by the fifteenth day of the month in which the first ~~two~~ retirement benefit ~~payments are~~ payment is to be issued, the System will withhold payment of any benefit until all required documents have been received. If all the required documents are not received within six (6) months after the requested retirement date, the retirement shall be cancelled and no retroactive benefits shall be paid. In the event the retirement is cancelled pursuant to this section, the member shall be required to reapply for a new retirement date which shall be considered as having met the sixty (60) day notice requirement.

(b) In order to receive a benefit estimate, a member shall provide all the required documents necessary for the System to calculate the benefit estimate. No benefit estimate shall be processed until such documents have been received. The System shall determine which documents are necessary to calculate a benefit estimate.

590:10-7-10. Final benefit

The retirement benefit payable for the month of death of a member, joint annuitant or survivor shall be payable to said member, joint annuitant, or surviving spouse. In the event the final benefit is returned to the System or is not otherwise paid, ~~said~~ the benefit ~~will~~ shall be paid to the member's ~~estate~~ named beneficiary. If there is no named beneficiary or estate, the final monthly benefit payment shall be paid to the first of the following:

(1) surviving spouse;
(2) surviving children in equal shares;
(3) surviving parents in equal shares;
(4) surviving siblings in equal shares;
(5) member's estate.

590:10-7-14. Permanent part-time employment

(a) For purposes of this rule, permanent part-time employment is less than full time employment and is defined as employment with a participating employer of the System in a position which is certified by the employer to require, on an on-going basis, less than forty (40) hours of work per week, or 173 hours per calendar month, or 80 hours per bi-weekly payroll period. If a question exists as to whether or not a member's employment is permanent part-time employment, written certification signed by the participating employer or an agent of the participating employer will be required to qualify a member as a permanent part-time employee for the purpose of computing the member's final average compensation under the provisions of ~~Section 915 C. of Title 74 of the Oklahoma Statutes~~ 74 O.S. §915(D).

(b) The provisions of this rule for the computation of an annualized final average compensation shall not apply to ~~retirants~~ retirees who have returned to work unless they have waived receipt of their benefit and subsequently re-retire with a recomputation of their benefit.

(c) The phrase "last ten (10) years immediately preceding termination or retirement" is defined as the last ten (10) years of participation in the System. Any breaks in participation are not counted as part of the ten (10) years.

(d) Any employee having thirty-six (36) or more months of full-time participation in the last ten (10) years of participation is not considered to be permanent part-time for the purposes of annualization of the final average compensation.

(e) ~~In~~ For members whose first participating service occurs before July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members~~, only salary received during the last ten (10) years of participation in the System is considered~~. Out of these ten (10) years, the System will use the 36 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 36 months ~~are~~ shall be added together. The number of hours of work reported for each of these 36 months ~~are~~ shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 6,240 hours plus the three (3) highest eligible longevity payments (if any), and divided by three (3) to arrive at the final average compensation.

(f) For members whose first participating service occurs on or after July 1, 2013, only the salary received during the last ten (10) years of participation in the System shall be considered in the actual calculation of the final average compensation for permanent part-time members. Out of these ten (10) years, the

System will use the 60 monthly entries of salary at the highest hourly rates received by the member. The gross salaries for each of the 60 months shall be added together. The number of hours of work reported for each of these 60 months shall be added together. The total salary will be divided by the total number of hours reported, multiplied by 10,400 hours plus the five (5) highest eligible longevity payments (if any), and divided by five (5) to arrive at the final average compensation.

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-4. Probate waivers

In the event a member dies, leaving no living beneficiary or having designated his Estate as beneficiary, the System may require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. This requirement may be waived for payments in an amount of ~~Ten~~ Twenty Five Thousand Dollars ~~($10,000.00)~~ ($25,000) or less upon presentation of the member's valid Last Will and Testament, trust documents or affidavit that a will does not exist, an Affidavit of Heirship naming all heirs to the member's estate, a Hold-Harmless Agreement signed by all heirs, a corroborating affidavit from someone other than an heir who is familiar with the deceased member, and proof of payment of all last debts of the member. These documents shall comply with the provisions of 74 O.S. ~~Section~~ §916.1. If there is any question as to the validity of any document herein required, the judicial appointment shall not be waived.

[OAR Docket #14-720; filed 7-14-14]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN

[OAR Docket #14-721]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Contributions
590:35-7-1. Employer contributions [AMENDED]
AUTHORITY:
Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §§ 1701, 1707.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 26, 2013
COMMENT PERIOD:
January 2, 2014-February 19, 2014
PUBLIC HEARING:
February 20, 2014
ADOPTION:
February 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendment to 590:35-7-1 deletes language to remove any uncertainty or discretionary authority in the amount that is to be contributed to the Savings Incentive Plan ("SIP"). This amendment is necessary for plan qualification with the Internal Revenue Service.
CONTACT PERSON:
Joseph A. Fox, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. CONTRIBUTIONS

590:35-7-1. Employer contributions

(a) The Employer shall contribute to the Trust Fund an amount referred to as an Employer Contribution. Such contribution shall be calculated as follows: in accordance with 74 O.S. §1707, a contribution in the amount of or equivalent to Twenty-Five Dollars ($25.00) per month~~, or such amount as may be appropriated by the Legislature of the State of Oklahoma~~ shall be made to the Plan on behalf of each Qualified Participant, as soon as practicable after receipt.

(b) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Internal Revenue Code.

(1) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(2) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Internal Revenue Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u)

of the Internal Revenue Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had the Participant resumed and then terminated employment with the Employer on account of death.

[OAR Docket #14-721; filed 7-14-14]

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

[OAR Docket #14-649]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Sale and Auction of Surplus and Forfeited Property
595:1-15-3. Sale of surplus property [AMENDED]
595:1-15-4. Auction of surplus and forfeited property [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These permanent rules update and clarify information pertaining to the Sale of Surplus Property by the Department of Public Safety, including amending the contact information and location of items addressed in the rules.
CONTACT PERSON:
Kimberly D. Dammen, DPS Legislative Services Manager, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.2757. E-mail: kdammen@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 15. SALE AND AUCTION OF SURPLUS AND FORFEITED PROPERTY

595:1-15-3. Sale of surplus property

(a) **Limitation.** The Department shall offer for sale and actually sell surplus property only to an agency. As used in this section, "sale" means direct sale to an agency, not as the result of a purchase at an auction.

(b) **Obtaining information regarding surplus property for sale.**

(1) **Availability of surplus property.** Any agency may contact the Director regarding the availability of surplus property for sale. The Director will provide a list of surplus property and its location that is available for sale at that time.

(2) **Contact.** The Direct may be contacted by:

(A) Telephone: (405) 425-2122

(B) Mail: Department of Public Safety, Director of Transportation, P.O. Box 11415, Oklahoma City, OK 73136-0415

(C) Fax: (405)425-2304

~~(D) E-mail: dblackle@dps.state.ok.us~~

(3) **Examining surplus property.** If surplus property is available, the agency may visit the ~~Department, or another~~ location as indicated by the Department~~,~~ during regular business hours (8am to 4:40pm) to examine and, if desired, purchase surplus property.

~~(4) **Location.** Surplus property, when available, is located at the Garage at the headquarters of the Department, 2300 NE 36th Street, Oklahoma City, OK unless another location has been indicated by the Department. The Gar4age is located on the south side of NE 36th Street between Interstate 35 and North M.L. King Avenue, approximately one-half block east of North M.L. King Avenue.~~

(c) **Pricing.**

(1) **Vehicles.** Prices of surplus vehicles are based upon ~~the guidelines from the most current edition of the National Automobile Dealers Association Official Used Car Guide.~~ the current market value of the vehicle.

(2) **Equipment.** Prices of surplus equipment are based upon ~~twenty-five percent (25%) to fifty percent (50%) depreciation of the original price of the equipment or upon~~ the current market value of the equipment~~, whichever is higher~~.

(d) **Payment.** Payment shall be made to the Department prior to delivery of the surplus property to the purchasing agency and shall be accepted only in one of the following methods:

(1) Agency purchase order. The purchase order shall be on a form adopted by the purchasing agency and signed by an agency employee authorized to do so.

(2) Agency check, claim, or warrant.

(e) **Terms of sale.**

(1) Surplus property is sold "as is -where is" with no warranty implied or given by the Department.

(2) Surplus property which has been purchased can not be returned to the Department.

(3) If requested, the Department will provide the purchasing agency with an invoice. If the surplus property is or includes a vehicle, the Department will also provide the title to the vehicle and a letter which will give authority

for the agency to drive the vehicle from the Department to another location without a license plate ~~[47 O.S. § 1132(B)]~~. No title will be provided until payment-in-full is confirmed. The purchasing agency is responsible for transfer of title of any vehicle purchased.

(4) All sales will be transacted in good faith. Payment-in-full on a purchase order is due within forty-five (45) days of the sale. Failure to pay authorizes the Department to repossess any surplus property for which payment-in-full has not been received.

(5) Prior to sale, all identifying decals and insignias on the patrol vehicle will be removed by the Department ~~and the vehicle will be repainted, as necessary, by the Department~~. No patrol vehicle shall be sold with the intent that the vehicle represent the Oklahoma Highway Patrol.

595:1-15-4. Auction of surplus and forfeited property

(a) **General.** All auctions are open to the public. Any person or agency may purchase surplus or forfeited property at an auction conducted by the Department.

(b) **Limitations.**

(1) **Property is considered obligated.** When surplus and forfeited property has been determined by the department to be included in an auction and has been obligated as such, no person or agency may request to purchase, nor will the Department sell, any of that property outside of the auction.

(2) **Property reserved for sale to agencies.** Surplus equipment may be reserved for sale only to agencies.

(3) **Property withdrawn from auction.** Notwithstanding any prior notice or published list of property to be sold at auction, vehicles, vessels, and motors which have been tampered with will be withdrawn from the auction.

(4) **Property not sold.** Any unsold surplus or forfeited property may be held by the Department to be sold at a subsequent auction conducted by the Department.

(c) **Information regarding surplus and forfeited property to be auctioned.**

(1) **Auction dates.** The Department shall determine auction dates as needed from time to time to dispose of surplus and forfeited property.

(2) **Notice of auction.** Notice to the public of an auction to be conducted by the will be by publication in newspapers throughout Oklahoma. However, announcements made the day of the sale supercede any prior terms stated in such publications. Any interested party may contact the Director regarding the auction dates.

(3) **Contact.** The Director may be contacted by:

(A) Telephone: (405) 425-2122

(B) Mail: Department of Public Safety, Director of Transportation, P.O. Box 11415, Oklahoma City, OK 73136-0415.

(C) Fax: (405) 425-2304

~~(D) E-mail: bhollars@dps.state.ok.us~~

(4) **Viewing surplus and forfeited property.** Surplus and forfeited property which is to be auctioned may be viewed ~~at the Department~~ from 12 p.m. (noon) until 2:00 p.m. on the day of the auction~~, unless a different time and/or another~~at the location ~~is~~ published in the notice of auction.

~~(5) **Location.** Surplus and forfeited property to be viewed on the day of the auction will be located at the Garage at the headquarters of the Department, 2300 NE 36th Street, Oklahoma City, OK, unless another location is published in the notice of auction. The Garage is located on the south side of NE 36th Street between Interstate 35 and North M.L. King Avenue, approximately one-half block east of North M.L. King Avenue.~~

(d) **Participation in an auction.** Any person or agency wishing to bid at an auction must register to bid on the day of the auction. A unique bidder's registration number will be assigned to each registrant. No person or agency may bid unless the person or agency has registered and been issued a bidder's registration number.

(e) **Pricing.** As in any auction, prices are dependent upon the condition of and the interest in each particular property for sale. However, the Department reserves the right to set a minimum bid. In addition, the auctioneer reserves the right to reject any or all bids.

(f) **Payment.**

(1) **Payment to be made at auction.** Successful bidders shall appear ~~at the~~before the cashier at the auction and make payment-in-full of the successful bid price, plus sales tax if applicable, or make arrangements for payment-in-full with the Director of Finance of the Department or the Director's designee. Proper identification will be required. Property will not be released by the Department to the successful bidder until payment-in-full is confirmed. Failure to appear at the cashier may result in the Department nullifying the successful bid and in the loss of right to the property by the successful bidder.

(2) **Form of payment from a person.** Acceptable forms of payment from any person are:

(A) Cash.

(B) Personal or business check accompanied by a notarized letter of credit from the financial institution's president or vice president guaranteeing funds are available in the account to cover the check.

(C) Cashier's check.

(D Money order.

(E) ~~Traveler checks.~~

~~(F)~~ Personal or business check not accompanied by a notarized letter of credit [see (g)(6) of this Section regarding release of property].

(3) **Forms of payment from an agency.** Acceptable forms of payment from an agency are:

(A) Agency purchase order. The purchase order shall be on a form adopted by the purchasing agency and signed by an agency employee authorized to do so.

(B) Agency check, claim, or warrant.

(g) **Terms of sale.**

(1) Surplus and forfeited property is sold "as is - where is" with no warranty implied or given by the Department.

(2) Surplus and forfeited property which has been purchased can not be returned to the Department.

(3) If requested, the Department will provide the successful bidder with invoice. The Department will provide the purchaser with a receipt upon payment. If the surplus or forfeited property purchased is or includes a vehicle, vessel, or motor, the Department will also provide the title to the vehicle, vessel, or motor. For an operable vehicle, the Department will provide a letter which will give authority for the purchaser to drive the vehicle from the Department to another location without a license plate [47 O.S. § 1132(B)]. No title will be provided until payment-in-full is confirmed. The purchaser is responsible for transfer of title of any vehicle, vessel, or motor purchased.

(4) All sales will be transacted in good faith. Payment-in-full on an agency's purchase order is due within forty-five (45) days of the sale. Failure to pay authorizes the Department to repossess any surplus or forfeited property for which the payment-in-full has not been received.

(5) Prior to sale, all identifying decals and insignias on a patrol vehicle will be removed by the Department~~and the vehicle will be repainted, as necessary, by the Department~~. No patrol vehicle shall be sold with the intent that the vehicle represent the Oklahoma Highway Patrol.

(6) Surplus or forfeited property paid for by personal or business check without an accompanying notarized letter of credit will not be released until the check has cleared the financial institution on which it is drawn. To obtain earlier release of the property, a personal or business check may be replaced with another form of payment, as described in (f)(2)(A) through (f)(2)~~(E)~~(D) of this Section, presented at the Finance Division of the Department during regular business hours (8am to 4:30pm) on the business day immediately following the auction.

(7) Sales tax will be charged, as applicable and required by law, and collected from the successful bidder on any surplus or forfeited property purchased.

(8) Any surplus or forfeited property purchased shall be picked up within forty-eight(48) hours after confirmation of payment unless other arrangements have been made with the Director. If the property is not picked up as required by this paragraph, the property may be impounded by the Department. The purchaser shall be responsible for any towing and/or storage fees associated with the impoundment of any vehicle or vessel.

(9) The Director will be the final authority in resolving any discrepancy, dispute, or financial arrangement.

(h) **Transportation of vessels and inoperable vehicles.** The purchaser shall be responsible for safe removal and transportation of any vessel or inoperable vehicle.

[OAR Docket #14-649; filed 7-3-14]

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

[OAR Docket #14-650]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 3. Driver License Renewal
595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
Part 7. Identification Cards
595:10-1-25. Procedure for obtaining an identification card [AMENDED]
Part 13. Motor License Agents
595:10-1-56. Renewal of driver license or identification cards [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification card
Part 3. Driver License Renewal
595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 156
Docket Number:
13-1254
Superseded rules:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification card
Part 7. Identification cards
595:10-1-25. Procedure for obtaining and identification card [AMENDED]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 158
Docket Number:
13-1255
Superseded rules:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification card
Part 13. Motor License Agents
595:10-1-56. Renewal of driver license or identification cards [AMENDED]

Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 158
Docket Number:
13-1257
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
595:10-1-10: Is amended to allow persons to use as a valid proof of identification, an expired Oklahoma driver license as long as the expiration period is one (1) year or less. The rule further clarifies if a license is expired for more than one (1) year and the issue date of the license was before 11/01/2007, the holder of the license must show proof of legal presence in this country.

595:10-1-25:The rule is of compelling public interest to protect public health, safety, and welfare of Oklahoma motorists and is necessary to comply with the provisions of Senate Bill 966 passed by the first session of the 54th Legislature and signed into law on April 22, 2013. The bill becomes effective November 1, 2013.

595:10-1-56:House Bill 1082 provides the use of an expired driver license or Oklahoma identification card as identification for renewal purposes provided the expiration is not later than one (1) year past the original expiration date of the card. This rule allows motor license agents to accept the expired identification for the purposes of renewal.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 3. DRIVER LICENSE RENEWAL

595:10-1-10. Procedure for obtaining a renewal driver license.

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Driver License ~~Examining~~Services Division of the Department of Public Safety for renewal of the driver license of the licensee. Failure to renew a driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her driver license under the provisions required by law and this Section if the person whishes to keep his or her driver license in force.

(b) **Required identification.**

(1) **Renewal with valid and unexpired driver license.** The valid and unexpired Class D license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(4).

(2) **Renewal with an expired driver license.** The expired Class D driver license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. The person shall provide primary identification as prescribed in OAC 595:10-1-3(b)(2), as appropriate. Any applicant with a license expired more than one (1) year past the expiration date and the original issue date was before 11/01/2007 must show proof of legal presence in this country. If the motor license agent's operator is not Birth Certificate certified the applicant must go to an agent who is certified or they must see a Driver License Examiner.

(3) **Renewal without driver license.** Any person who does not have the valid and unexpired driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Vision examination.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R. § 391.41.

(d) **Limitations to issuance of a renewal driver license.**

(1) A renewal driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation or denial and who complies with this Section.

(2) Any applicant who requests a renewal of his or her driver license when the license has been expired in excess of three (3) years is required to appear before a Driver License Examiner, pursuant to OAC 595:10-1-2.

(e) **Early renewal of a driver license.** Any licensee may renew his or her driver license no more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of driver license number.**

(1) Use of the licensee's Social Security number as the driver license number is prohibited. At the time of renewal, any licensee whose driver license number is his or her ~~social security~~ Social Security number shall inform the Department or the motor license agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses].

(g) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma Class D driver license ~~which~~that has been surrendered to another state in exchange for the other stat's license, may apply directly to a motor license agent for reactivation of the previous Oklahoma Class D license, upon establishing Oklahoma residence and following the applicable procedure for renewal. The agent shall call the Driver License Services Division and

request clearance to issue the license. Any applicant with a license expired more than one (1) year past the expiration date and the original issue date was before 11/01/2007 must show proof of legal presence in this country. If the motor license agent's operator is not Birth Certificate certified the applicant must go to an agent who is certified or they must see a Driver License Examiner. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license. If the out of state license has been lost or destroyed, the person shall provide to a motor license agent a notarized affidavit of that fact. In no case shall the out of state driver license be retained by the person when an Oklahoma license has been issued to the person. The agent shall retain the license and submit it to the Department with the agent's report. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld.

(h) **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The driver license shall be surrendered by the individual to the Department prior to issuance of the identification card. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

PART 7. IDENTIFICATION CARDS

595:10-1-25. Procedure for obtaining an identification card.

(a) A person wishing to obtain an identification card shall appear before a Driver License Examiner or, if the applicant has been issued a computerized format (digital) driver license for at least thirty (30) days, may appear before a motor license agent. The applicant shall be required to furnish the same acceptable means of identification as when applying for a driver license [see ~~OCA~~OAC 595:10-1-3(b) regarding identification documents required] and complete the application form unless the applicant has been previously issued an original Oklahoma driver license on or after November 1, 2007.

(b) If appearing before a driver License Examiner, the Examiner will complete and, if appropriate, will approve the identification card application. A DL-10 form will be processed for the applicant. The applicant shall take the DL-10 form, along with the identification presented to the Driver License Examiner at application time, to a motor license ~~agency~~ agent and pay the required fee. If applicant is under age eighteen (18) and has not been issued a computerized format (digital) driver license for at least thirty (30) days, may submit a notarized affidavit signed by a custodial legal parent or legal guardian in lieu of custodial legal parent or legal guardian appearing in person and signing application. [47 O.S. § 6-105.3(A)].

(c) When appearing before a motor license agent, the agent shall process the application for the applicant, collect the required fee from the applicant, and issue the identification card to the applicant.

(d) An identification card may be issued as prescribed in OAC 595:10-1-10(h) and 10-1-18(g).

(e) Identification card numbers will be assigned by computer. Use of the applicant's Social Security number is prohibited [47 O.S. §§ 6-105(H) and 6-106(B)].

(f) An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her identification card, in which case the Department shall issue by mail an identification card to the person. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

PART 13. MOTOR LICENSE AGENTS

595:10-1-56. Renewal of driver license or identification cards

(a) **Normal renewal procedure.** If an applicant presents proper identification [see OAC 595:10-1-51 regarding identification documents required], the agent may accept the required remittance for the class of driver license or the identification card being issued, make any changes necessary that have been authorized and issue the driver license or identification card. If the licensee presents an Oklahoma driver license or the card holder presents an Oklahoma identification card as a form of identification, the agent shall;

(1) for a Class D licensee or identification card holder, return the expired license or card, if requested by the licensee or holder and after first punching a hole through the identification number on the license or card, or if the licensee or holder does not wish to retain the expired license or card, return it with the agent's regular reports to the Driver License ~~Examining~~ Services Division of the Department, or

(2) for a Class A, B, or C commercial licensee, the license shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License ~~Examining~~Services Division of the Department.

(b) **Early renewal.** An individual may make application for the renewal of his or her license or card not more than one (1) year prior to the expiration date of the license or card. If the application for renewal occurs more than one (1) year prior to the expiration date, the agent shall notify the individual that the transaction must be treated as a replacement under the provisions of OAC 595:10-1-57. The agent shall;

(1) for a Class D licensee or identification card holder, return the expired license or card, if requested by the licensee or holder and after first punching a hole through the identification number on the license or card, or if the licensee or holder does not wish to retain the expired license or card, return it with the agent's regular reports to

the Driver License ~~Examining~~ Services Division of the Department, or

(2) for a Class A, B, or C commercial licensee, the license shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License ~~Examining~~Services Division of the Department.

(c) **Late renewal.** An individual who makes application for renewal but whose license or card has been expired in excess of three (3) years shall be referred by the agent to a Driver License Examiner.

(d) **Renewal of expired license.** The holder of an Oklahoma driver license or identification card which has expired more than ~~30 days~~one (1) year shall be required to show proof of lawful presence in the United States to the motor license agency in order to renew the license or card. Any motor license agent who has been certified by the Department to identify state certified birth certificates may renew an expired license or card by entering the certificate information in the computer. If the agent has not been certified by the Department, the agent shall refer the applicant to a Driver License Examiner to show proof of lawful presence in the United States.

(e) **Persons temporarily out of state.** The holder of an unexpired Oklahoma driver license or identification card who is temporarily out of the state of Oklahoma and who wishes to renew or replace the license or card by mail shall be referred to the Driver License ~~Examining~~Services Division of the Department of Public Safety or the Department of Public Safety website.

(f) **Previous Oklahoma licensees and card holders.** An individual who has previously held an Oklahoma Class D driver license which has been surrendered to another state in exchange for the other state's license or who has previously held an Oklahoma identification card which has expired, may apply directly to a motor license agent for reactivation of the previous Oklahoma license or identification card, upon establishing Oklahoma residence and following the applicable procedures for renewal. Before attempting to issue a driver license under this subsection, the agent shall call the Driver License ~~Examining~~Services Division and request clearance to issue the license. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license or card. If the out of state license has been lost or destroyed, the person shall provide to the motor license agent a notarized affidavit of that fact. The agent shall retain the license or affidavit, as applicable, and submit it to the Department with the agent's report. This procedure applies to a Class D driver license or identification card only.

(g) **Commercial driver license renewal.** The holder of a Class A, B, or C commercial driver license shall appear before a Driver License Examiner for renewal.

[OAR Docket #14-650; filed 7-3-14]

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

[OAR Docket #14-651]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 21. Identity Verification Unit
595:10-1-101. Identify fraud or theft [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amendment to this rule provides the victim of identity fraud or theft may request a detailed restriction code 8 be placed on the driving record. It further requires the victim to provide the Identity Verification Unit with a police report from his or her local law enforcement agency. The victim is currently required to sign an affidavit and this amendment further explains the affidavit grants the Department the authority to place the detailed restriction code 8 on the driving record. Finally, this amendment provides the process to release the identity fraud or theft administrative revocation for the suspect of the identity theft or fraud once he or she has met the requirements for reinstatement.
CONTACT PERSON:
Kimberly D. Dammen, DPS Legislative Services Manager, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.2757. E-mail: kdammen@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 21. IDENTITY VERIFICATION UNIT

595:10-1-101. ~~Identify~~Identity fraud or theft

(a) In the event it is determined identity fraud or theft has occurred in connection with an Oklahoma driver license or identification card, the victim may request the Identity Verification Unit to place a detailed restriction code 8 on the driving record. The victim shall be required by the Identify Verification Unit of the Department to provide a police report from their local law enforcement agency, unless the investigating agency is the Oklahoma Highway Patrol. He or she will also be required to sign an affidavit stating he or she believes their identity has been compromised or they are~~is~~ the victim of identity fraud or theft and by signing the affidavit they give the Identity Verification Unit the authority to place a detailed restriction code 8 on their driving record. The Identity Verification Unit shall then cancel the originally issued driver license or identification card and assign to the victim another driver license or identification card with a new number.

(b) A detailed restriction code 8 shall be added by the Identity Verification Unit to the master file record of the original, cancelled driver license or identification card. All driving history shall remain on the file for a cancelled driver license. The detailed restriction shall state "Fraudulent document. Seize and mail to IVU PO Box 11415 Oklahoma City, OK 73136.:"The detailed restriction code 8 may also include pertinent information regarding each specific case.

(c) The Identity Verification Unit shall issue~~d~~ to the identity fraud or theft victim a new driver license or identification card with the new number and with a detailed restriction code 8 stating, "Identity ~~Fraud~~Theft Victim, fraudulent document [number given] cancelled." Only the driving history proven to belong to the identification fraud or theft victim shall be added to the new driver license driving history.

(d) If the identity of the identity fraud or theft suspect can be determined, the Identity Verification Unit shall place ~~a~~an identity fraud or theft administrative revocation (W80) ~~suspension~~ on the ~~driver license or identification card~~driving privilege of the suspect. A stop shall be placed on the identification card privilege of the suspect. Placing stops on the driver license or identification card privilege will prevent original issuance, renewal or duplication until the identity theft or fraud administrative revocation (W80) has been lifted. When requirements by the suspect are met, Identity Verification unit Staff shall give administrative revocation (W80) release documentation to the suspect and/or to the Driver Compliance Division of the Department.

[OAR Docket #14-651; filed 7-3-14]

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

[OAR Docket #14-652]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Medical Aspects
Part 1. Medical Conditions
595:10-5-7. Vision Standards and problems [AMENDED]

AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014

COMMENT PERIOD:
February 3, 2014 through March 10, 2014

PUBLIC HEARING:
March 10, 2014

ADOPTION:
March 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014

APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 5. Medical Aspects
Part 1. Medical Conditions
595:10-5-7. Vision Standards and problems [AMENDED]

Gubernatorial approval:
October 15, 2013

Register publication:
31 Ok Reg 160

Docket Number:
13-1256

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Amendment to this chapter will provide individuals using a bioptic telescopic device an opportunity to test for the issuance of a restricted Oklahoma Driver License. The rule implements the provisions of Senate Bill 1354 (2012) regarding individuals using a bioptic telescopic device to aid the driver while operating a motor vehicle to test for an Oklahoma Driver License.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. MEDICAL ASPECTS

PART 1. MEDICAL CONDITIONS

595:10-5-7. Vision standards and problems

(a) **Acuity.**

(1) A person may be considered for a Class D driver license if the visual acuity is:

(A) Twenty/sixty (20/60) or better in both eyes, with or without corrective lenses.

(B) Twenty/fifty (20/50) or better in one eye, with or without corrective lenses.

(C) Any person not meeting the requirements in (A) or (B) of this paragraph may apply for a restricted driver license with such restrictions as speed limit, locale, and time, if the visual acuity is no worse than twenty/one hundred (20/100) in one eye or both eyes, with or without corrective lenses.

(2) A person may be considered for a Class A, B, or C intrastate commercial driver license if the visual acuity in one eye alone or with both eyes is ~~twenty-forty~~twenty/forty (20/40) or better, with or without corrective lenses.

(b) **Field of vision.**

(1) A person may be considered for a Class D driver license if the field of vision is at least seventy (70) degrees in the horizontal meridian in one eye alone or with both eyes. Any person not meeting the requirement in this paragraph may apply for a restricted driver license with such restrictions as speed limit, locale, and time, if the field of vision is not narrower than sixty (60) degrees in the horizontal Meridian in one eye alone.

(2) A person may be considered for a Class A, B, or C intrastate commercial driver license if the field of vision is at least seventy (70) degrees in the horizontal meridian in one eye alone.

(c) **Eye diseases.** A person with progressive eye disease such as cataract, glaucoma, nystagmus, iritis, iridocyclitis, retinitis pigmentosa, choroiditis, retinal detachments, macular degeneration, inflammatory vascular, eye ground diseases, optic atrophy, or other disease affecting vision or visual fields shall not be licensed unless they meet the visual standards set forth in (a) and (b) of this Section. If licensed, future periodic vision reports may be required to be submitted to the Department by an ophthalmologist or optometrist.

(d) ~~**Telescopic lenses.** A person wearing telescopic lenses shall not be licensed.~~ **Use of Bioptic Telescopic Device.**

(1) A person using a bioptic telescopic device shall be eligible for a restricted Class D driver license under section if the person meets the following:

(A) Demonstrates a visual acuity of at least twenty/sixty (20/60) in one eye alone or with both eyes measured separately with the corrective carrier lenses and a field of vision of seventy (70) degrees in the horizontal meridian with or without corrective carrier lenses, or if the person has vision in one eye only, the person demonstrates a visual acuity of twenty/fifty (20/50) as measured with monocular vision with the corrective carrier lenses, with a field of vision at least seventy-five (75) degrees in the horizontal meridian with or without the corrective carrier lenses.

(B) Any person not meeting the requirements in (A) of this paragraph may apply for a restricted driver license with such restrictions as speed limit, locale, and time, if the visual acuity is no worse than twenty/one hundred (20/100) in one eye or both eyes, with corrective lenses and *without* the use of field expanders. A bioptic telescopic device fitted and in use by the person cannot exceed a four times (4x) magnification. A visual acuity of at least twenty/sixty (20/60) or better in each eye alone or with both eyes with the use of the bioptic telescopic device is required for qualification for a restricted Class D driver license. If the best corrected visual acuity with the use of corrective carrier lenses is twenty/one hundred (20/100), the Department will require specific restrictions to be placed on the restricted Class D driver license limiting the maximum speed of operation to 45 miles per hour and daylight driving only on a permanent basis.

(C) The applicant will provide a vision screening report of examination by an ophthalmologist or optometrist on a form prescribed by the Department to document that the visual acuity and field of vision standards have been met. The vision screening report of examination, completed by the ophthalmologist or optometrist, must provide a favorable recommendation that the condition of the applicant is stable and the applicant fitted with the bioptic telescopic device is capable of safely operating a motor vehicle. Following the review of the visual screening report of examination by the Department, additional testing and training of the applicant using a bioptic telescopic device may be required prior to licensing, if such a recommendation is made by the Department.

(2) If the applicant using a bioptic telescopic device is an original applicant for a driver license, the applicant may be eligible for a limited learner permit or restricted Class D driver license. The learner permit or restricted Class D driver license shall have a detailed restriction 8 thereon requiring the use of the bioptic telescopic device to drive. Driving with the restriction 8 shall also limit driving to during daylight hours only, preclude operation of a motor vehicle upon the interstate highways, and limit the speed of the vehicle driven to a maximum of 45 miles per hour.

(3) The use of a bioptic telescopic device shall only be used as a reference while driving by persons issued a limited learner permit or a restricted Class D driver license. The following additional restrictions on the license will be applied to person using a bioptic telescopic device while driving:

(A) The licensee or permit holder shall not be eligible for any endorsements;

(B) The licensee or permit holder shall only be permitted driving during daylight hours;

(C) The licensee or permit holder shall not be allowed to operate a motor vehicle on the interstate highways; and

(D) The licensee or permit holder shall be restricted to the maximum speed of operation to 45 miles per hour or by a lower limit of speed according to the recommendation of the Department.

(4) Persons issued a restricted Class D driver license, after using a bioptic telescopic device for a period of thirty-six (36) months or more while driving, may apply

for the removal of one or more of the restrictions listed in (d)(3) above, if he or she:

(A) Has not been involved in any motor vehicle accident for a period of the preceding thirty-six months;

(B) Has provided to the Department a favorable recommendation from the ophthalmologist or optometrist that is most familiar with the visual correction and placement of the bioptic telescopic device; and

(C) Has not been cited for any moving traffic violations or a violation of the licensing restrictions.

(e) **Operation of a Commercial Motor Vehicle.** No person shall be considered for the operation of a commercial motor vehicle driver license (CDL) with the use of a bioptic telescopic device.

(f) **Required Notification of Department.** If any organic issues develop that decrease the abilities of the licensee to manage the safe operation of a motor vehicle, the licensee is responsible of notifying the Department of that development immediately.

(~~e~~g) **Required equipment.** Any person with visual acuity of twenty/one hundred (20/100)~~or worse~~ in the left eye shall be required to have a left outside rearview mirror (Restriction code2) [see 595:10-1-92 regarding driving restriction codes] on any vehicle the person operates.

[OAR Docket #14-652; filed 7-3-14]

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

[OAR Docket #14-653]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Provision Driver License Program
595:10-15-1. Purpose [NEW]
595:10-15-2. Definitions [NEW]
595:10-15-3. Eligibility Criteria [NEW]
595:10-15-4. Participants in the PDL Program [NEW]
595:10-15-5. Terms and conditions under which the participant licensee can drive [NEW]
595:10-15-6. Proof of Insurance [NEW]
595:10-15-7. Completion of required forms, payment of the initial minimum monthly payment, and payment of the provision license fee [NEW]
595:10-15-8. Ineligibility from future participation in the program [NEW]
595:10-15-9. Completion of the PDL program [NEW]
595:10-15-10. Construction [NEW]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 15. Provisional Driver License Program [NEW]
595:10-15-1. Purpose [NEW]
595:10-15-2. Definitions [NEW]
595:10-15-3. Eligibility criteria [NEW]
595:10-15-4. Participants in the PDL Program [NEW]
595:10-15-5. Terms and conditions under which the participant licensee can drive [NEW]
595:10-15-6. Proof of insurance [NEW]
595:10-15-7. Completion of required forms, payment of the initial minimum monthly payment, and payment of the provision license fee [NEW]
595:10-15-8. Ineligibility from future participation in the program [NEW]
595:10-15-9. Completion of the PDL program [NEW]
595:10-15-10. Construction [NEW]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 161
Docket Number:
13-1261
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Senate Bill 97 provides licensees whose driving privileges have been suspended or revoked for violations, other than those relating to drug and alcohol offenses, to enter into an agreement with the Department of Public Safety to make monthly payments of no less than twenty-five dollars ($25.00) towards the total reinstatement amount and to have restricted driving privileges until the amount owed is paid in full.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 15. PROVISIONAL DRIVER LICENSE PROGRAM

595:10-15-1. Purpose

The purpose of this subchapter is to implement the provisions of 47 O.S. § 6-212 regarding the Provisional Driver License (PDL) Program. This subchapter further provides information to the public regarding the eligibility requirements, terms and conditions of the program, and fees associated with the program.

595:10-15-2. Definitions

In addition to terms defined in 47 O.S. § 1-101 et seq., the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

"All outstanding driver license reinstatement fees" shall mean the total of all processing and reinstatement fees as shown by the driving record maintained by the Department of Public Safety.

"Applicant" is the person applying for admission into the Provisional Driver License Program (**"PDL Program"**)

"Method of Payment" is the manner of payment to the Department of Public Safety specifically authorized by these rules.

"Participant Licensee" is the person who has been admitted into the PDL Program and has been issued a Provisional Driver License.

"Payout Agreement" is the required written promise between the Participant Licensee and the Department of Public Safety which authorizes the terms and conditions upon which driving is permitted and specifies the amount of the minimum monthly payment.

"Provisional Driver License" ("PDL") is the limited license, specifying the terms and conditions under which driving is permitted, issued by the Department of Public Safety to the Participant Licensee while the individual is participating in the program.

"Untimely Payment" is a payment that is not received by the Finance Division of the Department of Public Safety by the last calendar day of the month in which the payment is due.

595:10-15-3. Eligibility Criteria

The Applicant for the Provisional Driver License Program:

(1) cannot be a Commercial Driver License holder;

(2) must renew and/or retest, if required, if the Applicant's driver license has expired (If a driver license has never been issued to the Applicant, the Applicant must complete all requirements for the initial issuance of an Oklahoma license.);

(3) will not qualify if any requirement for reinstatement of driving privileges, other than the payment of all outstanding driver license reinstatement fee(s) has not been satisfied and proof of the same provided to the Department of Public Safety;

(4) will not qualify if the Applicant cannot provide the Department of Public Safety with satisfactory proof of current liability insurance;

595:10-15-4. Participants in the PDL Program

(a) The Participant Licensee must enter into a written Payout Agreement with DPS which will stipulate if the Participant Licensee fails to remit the minimum statutory monthly payment or if the payment is an untimely payment, the licensee's participation in the PDL Program shall be immediately revoked by the Department of Public Safety, and the licensee shall be immediately returned to his or her previous license status.

(b) The Participant Licensee must further acknowledge that any violation of law by the Participant Licensee that would result in the suspension or revocation of a driver license shall result in the revocation of the Provisional Driver License and the Participant Licensee shall be ineligible for future participation in the PDL Program.

(c) Upon acceptance into the PDL Program and paying the Twenty-five dollar ($25.00) Provisional Driver License fee, the Participant Licensee will be issued a paper Provisional Driver License specifying the specific terms and conditions under which the Participant Licensee can lawfully operate a motor vehicle. The Provisional Driver License shall be carried by the Participant Licensee at all times while driving.

(d) The Provisional Driver License will be valid for a period of six (6) months. Before the expiration of that six (6) month time period, the Participant Licensee shall return to a Driver Compliance Hearing Officer to be recertified and provide proof they are eligible to continue in the PDL Program. If the Participant Licensee is eligible, another Provisional Driver License will be issued and will be valid for a period of six (6) months. Appearance before a Driver Compliance Hearing Officer and recertification will be required every six (6) months until all reinstatement fees are paid in full, or if the Participant Licensee is no longer eligible to participate in the PDL Program, or if the Participant Licensee is otherwise determined to not be eligible for the PDL Program.

595:10-15-5. Terms and conditions under which the Participant Licensee can drive

The Participant Licensee will only be allowed to operate a motor vehicle during the times and to and from the location(s) identified on the Provisional Driver License and under the same conditions and restrictions as shown on the driving record maintained by the Department of Public Safety.

595:10-15-6. Proof of insurance

Prior to being accepted into the PDL Program, the Applicant shall provide DPS satisfactory proof of current liability insurance. Upon acceptance into the PDL Program, the Participant Licensee shall maintain liability insurance. Failure to maintain liability insurance shall result in the revocation of the Provisional Driver License and the Participant Licensee shall be immediately returned to his or her previous license status. The Participant Licensee shall also be ineligible for future participation in the PDL Program.

595:10-15-7. Completion of Required forms, payment of the initial minimum monthly payment, and payment of the Provisional License fee

(a) The Applicant for the PDL Program will be required to complete all required forms for DPS, including but not limited to a written Payout Agreement, prior to being accepted into the PDL Program.

(b) The minimum monthly payment of at least twenty-five dollars ($25.00) per month toward the satisfaction of all outstanding driver license reinstatement fees will be agreed upon by the Participant Licensee and the Department of Public Safety. At no time will the Participant Licensee be allowed to pay less than the monthly statutory limit of twenty-five dollars ($25.00).

(c) The method of payment shall be paid in the manner prescribed by the Department of Public Safety.

(d) The first payment is due and must be received by DPS on or before the last calendar day of the month in which the Applicant is accepted into the PDL Program. All subsequent payments are due and must be received by DPS on or before the last calendar day of each month thereafter.

(e) Failure of the Participant Licensee to make the required monthly payments shall result in the removal of the Participant Licensee from the PDL Program, the revocation of the Provisional Driver License, and the return of the Participant Licensee to his or her former driver license status.

(f) The Participant Licensee shall pay a one-time Provisional Driver License fee to the Department of Public Safety in the amount of twenty-five dollars ($25.00) prior to the issuance of the initial Provisional Driver License. The Provisional Driver License fee shall be remitted to the State Treasurer to be credited to the Department of Public Safety Restricted Revolving Fund and are to be budgeted and expended solely for the purpose of administrating the provisions of the Provisional Driver License Program.

595:10-15-8. Ineligibility from future participation in the PDL Program

If a Participant Licensee has violated any of the provisions, requirements or terms of this program as determined by DPS, the Participant Licensee will be removed from the program and will be ineligible for future participation in the Provisional Driver License Program.

595:10-15-9. Completion of the PDL Program

Upon payment of all outstanding driver license reinstatement fees and completion of all other requirements for reinstatement, DPS shall reinstate the Participant Licensee to full driving privileges with conditions and restrictions as shown by the driving record maintained by the Department of Public Safety and allow the Participant Licensee to obtain a regular driver license upon the Participant Licensee's payment of the requisite fee(s) for such license.

595:10-15-10. Construction

Nothing in this section shall limit the authority of DPS to issue a modified driver license pursuant to 47 O.S. § 754.1, 47 O.S. § 755, or 47 O.S. § 6-211.

[OAR Docket #14-653; filed 7-3-14]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #14-654]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Examination
595:11-3-6. Written Examination [AMENDED]
595:11-3-8. Skills Examination [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Examination
595:11-3-6. Written Examination [AMENDED]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 164
Docket Number:
13-1258
Superseded rules:
Subchapter 3. Examination
595:11-3-8. Skills Examination [AMENDED]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 165
Docket Number:
13-1259
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

595:11-3-6: This rule is required to ensure the Department of Public Safety meets Federal Regulations regarding all CDL applicants and their ability to obtain a Commercial Learner Permit. The applicant will be required to maintain the Commercial Learner Permit for fourteen (14) days before being eligible to take the skills examination. Failure to implement this rule could deem the Oklahoma CDL program in noncompliance and, therefore, the State would no longer be able to issue any type of Commercial Driver License that would be recognized by other states.

595:11-3-8: This rule is required to ensure the Department of Public Safety meets Federal Regulations regarding all CDL applicants and their ability to obtain a Commercial Learner Permit. The applicant will be required to maintain the Commercial Learner Permit for fourteen (14) days before being eligible to take the skills examination. Failure to implement this rule could deem the Oklahoma CDL program in noncompliance and therefore the State could no longer issue any type of Commercial Driver License that would be recognized by other states.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. EXAMINATION

595:11-3-6. Written examination

(a) **General.** A written examination shall be administered by a driver examiner to each applicant for a commercial driver license to determine the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state; provided, the written examination may be waived as provided in OAC 595:11-1-13(a). The written examination, if not waived, and the vision screening shall be successfully passed by the applicant before the skills test is administered. The written examination includes, when applicable, any separate endorsement/restriction examinations as described in this Section. An applicant determined by an examiner to be cheating on any portion of an examination shall:

(1) immediately forfeit the examination,

(2) be given a failing score by the examiner, and

(3) be disqualified from retaking the examination for one week.

(b) **Examination content.**

(1) **Written examination.** The written examination administered for a commercial driver license shall consist of a minimum of fifty (50) multiple-choice questions. In addition, the combination vehicle test administered for a Class A commercial driver license shall consist of a minimum of twenty (20) multiple-choice questions. The minimum passing score for each written examination shall be eighty percent (80%).

(2) **Endorsement or restriction examination.** The minimum number of multiple-choice questions and the minimum passing score for each endorsement or restriction examination shall be as follows:

(A) P passenger endorsement - 20 questions - 80% score

(B) H hazardous material endorsement - 30 questions - 80% score

(C) N tank vehicle endorsement - 20 questions - 80% score

(D) M motorcycle endorsement - 20 questions - 75% score

(E) S school bus endorsement - 20 questions - 80% score

(F) T double or triple trailers endorsement - 20 questions - 80% score

(G) Airbrakes - 25 questions - 80% score. Failure to pass at least 80% of the 25 questions regarding air brakes will result in a restriction code "L" (Vehicle Without Air Brakes) being placed on the applicant's license upon issuance. The applicant shall be prohibited from taking the skill examination in a vehicle with air brakes.

(c) **Alternate method of examination.** The Department may provide an alternate method for the written examination for an applicant who cannot read or has a language barrier.

(d) **Retesting.** An applicant failing the written examination may be granted the opportunity to retest on the next regular business day.

(e) **Discretionary examination.** Any examination, as deemed necessary by the Department, may be administered by the Department as required for the establishment and authorization of a special endorsement or to permit the operation of commercial motor vehicles.

(f) ~~**Restricted Class A, B, or C commercial driver license**~~**Commercial learner permit.** Any person eighteen (18) years of age or older may apply for a ~~restricted Class A, B, or C~~ commercial learner permit, as provided in 47 O.S. §6-101(F), solely for the purpose of behind-the-wheel training in a commercial motor vehicle while accompanied by a licensed driver who is twenty-one (21) years of age or older and who holds a valid commercial driver license, including any and all required endorsements, for the class and type of commercial motor vehicle being driven.

(1) The ~~restricted~~ commercial ~~driver license~~learner permit shall be issued as provided for 47 O.S. § 6-101(F)(2). Any person may reapply for ~~another restricted~~one renewal of a commercial ~~driver license~~learner permit by complying with all requirements ~~for the class of restricted commercial driver license desired~~in 47 O.S. § 6-101 and § 6-115.

(2) The Department shall not place a hazardous materials (H) endorsement on a ~~restricted~~ commercial ~~driver license~~learner permit.

(3) A "No Passengers" restriction (restriction code W) shall be placed on any commercial learner permit issued with a (P) or (S) endorsement. The permit holder shall not operate a commercial motor vehicle which carries any passengers.

(4) An "Empty/Purge Tank" restriction (restriction code W) shall be placed on any commercial learner permit issued with an (N) endorsement. The tank vehicle shall be empty and shall be purged if the tank vehicle contained hazardous materials, and the permit holder shall not operate a commercial motor vehicle with a tank vehicle which is not empty or which has not been purged if the tank vehicle contained hazardous materials. A current and valid purge certificate shall be carried in the vehicle at all times when operated by a driver with a permit.

595:11-3-8. Skills examination

(a) **In general.** The skills examination shall be administered only after the applicant has successfully passed the written examination, or had it waived if eligible under OAC

595:11-1-13(a), and the vision screening. Whenever a skills examination is required, the following general conditions shall apply:

(1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a commercial motor vehicle. The applicant shall furnish for the skills examination the type of commercial motor vehicle required for the class of driver license requested. It is the responsibility of the applicant to furnish for the skills examination a commercial motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment. A vehicle not equipped with air brakes shall be required to have driving restriction code "L" (Vehicle Without Air Brakes) placed on the license of the applicant, upon approval of the issuance of the license.

(2) skills examination shall not be administered in a commercial motor vehicle which:

(A) is transporting hazardous materials or which is required to be placarded for hazardous materials,

(B) requires an oversize permit under the laws of this state or the rules of the Department of Public Safety,

(C) was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver,

(D) is not insured as required by 47 O.S. §7-600 et seq.,

(E) does not have a current license plate,

(F) is saddle mounted,

(G) is a wrecker vehicle towing another vehicle, or

(H) is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts.

(3) The applicant has been issued and held a commercial learner permit for a minimum of fourteen (14) days.

(b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor or improper driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each act of poor or improper driving. The applicant will be allowed ten (10) minutes per Basic Control Skills (BCS) maneuver to complete the maneuver. In the event the applicant is not able to complete the maneuver in the time allowed, the skills examination will be deemed an automatic failure.

(c) **Content of examination for commercial driver license.** The skills examination shall be conducted in conformance with 49 C.F.R., Section 383.

(d) **Retesting.**

(1) An applicant who fails the skills examination for a commercial driver license may be granted the opportunity to retest the following business day.

(2) ~~When an applicant fails to qualify for a commercial driver license after three (3) attempts to successfully pass the skills examination, he or she will be required to obtain a restricted commercial driver license, which shall restrict the individual to operating a commercial motor vehicle while accompanied by a qualified licensed driver in the front seat, before another skills examination will be administered.~~

~~(3)~~ The Department shall conduct the skills examination ~~for the holder of a restricted commercial driver license~~ not more than three (3) times, each time at least one (1) business day apart or as instructed by the examiner, beginning no sooner than ~~thirty (30)~~fourteen (14) days from the date of issuance of the ~~restricted license~~commercial learner permit. Should the ~~restricted~~ licensee fail the third examination, the licensee shall wait at least thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given at the request of the ~~restricted~~ licensee but not more than one (1) examination shall be given every thirty (30) days.

(~~4~~3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(e) ~~**Exceptions to thirty-day waiting period.** The holder of a restricted commercial driver license shall not be eligible to have a skills examination administered until after a minimum of thirty (30) days following the issuance of such license. However, the holder of a restricted commercial driver license, restricting the holder to being accompanied by a licensed driver twenty-one (21) years of age or older holding a valid license for the class of vehicle being driven, may have the thirty-day waiting time waived if the restricted licensee is currently receiving instruction or has successfully completed a commercial motor vehicle driver training program conducted by a commercial truck driver education school licensed by the Department, a school bus driver education course conducted by the State Department of Education, or a truck driver training course offered by the Oklahoma Department of Career and Technology Education. The restricted licensee shall submit to the Department evidence of successful course completion or evidence the licensee is currently receiving instruction. In computing the 30-day time period prescribed by this subsection, the day on which the restricted commercial driver license is issued shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.~~

~~(f)~~ **Substitute for skills examination.** A skills examination may be waived by the Department for an applicant when one of the following requirements is met:

(1) The applicant is the holder of a valid commercial driver license from one of the fifty (50) states, the District of Columbia, or a Canadian province.

(2) The applicant is a fireman or an active member of ~~a~~any branch of the military, Military Reserves or National Guard on active duty, including personnel on full-time or part-time National Guard training, National Guard Military Technicians (civilians who are required to wear a military uniform), and active duty personnel of the

U.S. Coast Guard; provided, the person for the two (2) years immediately preceding application for a commercial driver license 49 C.F.R. Parts 383 and 391];

(A) can show, with proper documentation, that he or she has operated a representative class commercial motor vehicle,

(B) certifies that he or she has not been licensed by more than one jurisdiction at the same time,

(C) certifies that he or she has not had any suspension, revocation, cancellation, denial, or disqualification of driving privileges in the two (2) years immediately preceding the application,

(D) has not been convicted of any major disqualifying offense, as defined in 47 O.S., § 6-205.2,

(E) has not been convicted more than once of a serious traffic offense, as defined in 47 O.S. § 6-205.2, regardless of the type or class of vehicle the offense occurred in, and

(F) certifies that he or she has not been involved in any collision in which he or she was recorded as being at fault.

[OAR Docket #14-654; filed 7-3-14]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #14-655]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Commercial Driver License Third-Party Examiners
595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 10, 2014
COMMENT PERIOD:
February 3, 2014 through March 10, 2014
PUBLIC HEARING:
March 10, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Commercial Driver License Third-Party Examiners
595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal [AMENDED]
Gubernatorial approval:
October 15, 2013
Register publication:
31 Ok Reg 167
Docket Number:
13-1260
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
595:11-5-5: Currently, an application for a third-party examiner must be accompanied by a certified criminal history report from the Oklahoma State Bureau of Investigation. This rule removes the OSBI report and replaces it with a nationwide criminal background check that has been certified within the immediately preceding thirty (30) days. This rule further states that certified third-party examiners will submit examination reports by electronic means immediately upon completion of the examination instead of allowing the submission of the examination reports by the tenth calendar day of the following month.
CONTACT PERSON:
Kimberly D. Dammen, DPS Legislative Services Manager, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.2757. E-mail: kdammen@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. COMMERCIAL DRIVER LICENSE THIRD-PARTY EXAMINERS

595:11-5-5. Requirements for certification as a third-party examiner, display of certificate, certification renewal

(a) **Requirements and application for certification.** A driver training instructor may apply for certification as a third-party examiner. The applicant shall meet the following requirements:

(1) Meet all the requirements for a Driver License Examiner of the Department [47 O.S., § 2-106(c) and (d)].

(2) Complete an application provided by the Department [see 595:11-5-13] and submit a ~~certified criminal history report from the Oklahoma State Bureau of Investigation~~nationwide criminal background check certified within the immediately preceding thirty (30) days and, if the applicant has not lived in Oklahoma for the immediately preceding five (5) years, a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence.

(3) Be employed by a certified school.

(4) Have and maintain throughout the time period to be covered by the certification:

(A) a valid Oklahoma commercial driver license for the class or classes of vehicle, including any endorsement or endorsements, for which the instructor desires to administer examinations; provided, the applicant shall not be required to have a hazardous materials endorsement (endorsement H),

(B) in order to administer school bus examinations, a valid School Bus Workshop Instructor Certificate issued by the State Board of Education, and

(C) in order to administer truck examinations, a valid certificate issued by the Oklahoma Board of Career and Technology Education showing the applicant has met the current requirements.

(5) Successfully complete a course of instruction prescribed by the Department [see 595:11-5-6].

(6) Meet the same vision standards as for Driver License Examiners of the Department [see OAC 595:10-5-7 and 49 C.F.R., § 391.41 regarding vision standards].

(7) Have full use of both upper and lower extremities.

(8) Agree to submit ~~monthly~~examination reports~~, by the tenth calendar day of the following month,~~ to the Department by electronic means immediately upon completion of each examination.~~detailing examining activity.~~

(b) **Ineligibility based upon driving record or criminal record.** A driver training instructor shall be deemed to be ineligible for certification as a third-party examiner upon evidence of a record of any of the following convictions:

(1) Two (2) or more convictions for a moving traffic offense within the twelve (12) months immediately preceding the application.

(2) Any alcohol- or drug-related conviction requiring the Department to revoke, suspend, or disqualify the instructor's driving privilege within the five (5) years immediately preceding the application.

(3) Any conviction for any offense which required or will require the Department to take any type of action against the instructor within the three (3) years immediately preceding the application, including, but not limited to:

(A) a warning letter, or

(B) a revocation, suspension, cancellation, denial or disqualification of the instructor's driving privileges.

(4) Any misdemeanor conviction, except for a misdemeanor conviction for a traffic offense, within the five (5) years immediately preceding the application.

(5) Any felony conviction in this state or any other state or country.

(c) **Certification.** Upon acceptance and approval by the Department of the application for certification from a driver training instructor, or upon acceptance and approval by the Department of the application for renewal of certification from a third-party examiner, and upon completion to the satisfaction of the Department by the instructor or third-party examiner of all other requirements for certification, the Department shall provide the third-party examiner with:

(1) a certificate evidencing approval by the Department as a third-party examiner, which shall be posted at the examination location at the certified school and in full view of the public. The certification will be valid for four (4) years.

(2) an identification card to be carried by the third-party examiner whenever the examiner is administering an examination.

(3) an official seal to be used by the third-party examiner to be used as provided in 595:11-5-14.

(d) **Renewal of certification.**

(1) A certified third-party examiner shall be eligible for renewal of certification if the examiner:

(A) submits an application for certification renewal upon a form provided by the Department no later than December 1 of each year [see 595:11-5-13],

(B) submits a ~~certified criminal history report from the Oklahoma State Bureau of Investigation~~nationwide criminal background check certified within the immediately preceding thirty (30) days ~~and, if the applicant has not lived in Oklahoma for the immediately preceding five (5), a criminal background check from the agency responsible for keeping criminal history in the state or states of previous residence~~,

(C) submits a current copy of the State Department of Education instructor certificate,

(D) is currently employed by a certified school,

(E) currently meets the requirements and standards of the Department as prescribed by this Subchapter,

(F) administered fifteen (15) or more examinations within the twelve (12) months immediately preceding the application for renewal of certification, and

(2) Any driver training instructor who was previously certified as a third-party examiner and whose previous certification has been expired for not more than one (1) year may make application for renewal of certification as provided in paragraph (1) of this section.

(3) Any third-party examiner who does not qualify for renewal of certification may apply, after a period of at least one (1) year from the date the examiner was notified he or she was not qualified for renewal of certification, for certification as a third-party examiner and shall meet all requirements as for an initial application for certification as a third-party examiner.

[OAR Docket #14-655; filed 7-3-14]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 15. FINANCIAL RESPONSIBILITY

[OAR Docket #14-656]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Oklahoma Temporary Motorist Liability Plan [NEW]
595:15-5-1. Purpose [NEW]
595:15-5-2. General procedure [NEW]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
February 18, 2014 through March 24, 2014
PUBLIC HEARING:
March 24, 2014
ADOPTION:
March 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Oklahoma Temporary Motorist Liability Plan [NEW]
595:15-5-1. Purpose [NEW]
595:15-5-2. General procedure [NEW]
Gubernatorial approval:
March 18, 2014
Register publication:
31 Ok Reg 547
Docket Number:
14-409
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules are designed to assist law enforcement officers apply the provisions of 47 O.S. § 7-621 uniformly across the state of Oklahoma. These rules give guidance to the officer on the seizure of the license plate of a motorist found to not be in compliance with the state's Compulsory Insurance Law and directs the officer in the step he must take during and after the seizure and instructs the driver on steps he or she must take to reclaim the license plate. The rules further explain the use of a temporary sticker or temporary license plate used to identify vehicles to other law enforcement officer that have had the permanent license plates seized under this statute.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. OKLAHOMA TEMPORARY MOTORIST LIABILITY PLAN

595:15-5-1. Purpose

The purpose of this subchapter is to provide guidance to law enforcement officers and their agencies throughout the State of Oklahoma with regards to the Oklahoma Temporary Motorist Liability Plan pursuant to 47 O.S. § 7-621.

595:15-5-2. General procedures

(a) **Seizure of license plates.** When the law enforcement officer determines the vehicle involved in the traffic stop is not in compliance with this state's Compulsory Insurance Law, the officer shall:

(1) seize the license plate from the vehicle;
(2) issue the driver a citation for noncompliance;
(3) provide the driver with the following information:
(A) the citation will act as a temporary license plate for ten (10) days from the date of the citation.
(B) the license plate will be delivered to the county Sheriff's office in the county in which the violation took place;
(C) to recover the license plate, the driver or owner of the vehicle shall:
(i) provide verification of compliance with the Compulsory Insurance Law;
(ii) Pay the administrative fee of one hundred twenty-five dollars ($125.00) to the county Sheriff's office;
(iii) Pay all fines and fees associated with the citation.
(4) Within three (3) days of the citation, the law enforcement officer shall deliver a copy of the citation along with the seized license plate to the sheriff's office in the county in which the violation occurred.

(b) **Temporary license plate or temporary sticker.** When a law enforcement officer seizes the license plate of an uninsured driver pursuant to 47 O.S. § 7-606(A)(1)(b), a temporary sticker or license plate shall be affixed to the vehicle.

(1) The Oklahoma Sheriffs Association shall annually develop and approve the temporary sticker or license plate with consultation from the Oklahoma Insurance Department.
(A) If the Oklahoma Sheriffs Association chooses to develop a temporary sticker, it shall be affixed to the lower left corner of the rear window of the vehicle.
(B) If the Oklahoma Sheriffs Association chooses to develop a temporary license plate, it shall be affixed to the location where the seized license plate was affixed.
(2) The temporary sticker or license plate shall include blank lines for the following information:
(A) The county in which the citation is issued,
(B) The date the citation is issued,
(C) The citation number,
(D) The year, make, and model of the vehicle, and
(E) The license plate number of the vehicle.
(3) The temporary sticker or license plate shall be an easily seen and identifiable color.
(4) All temporary stickers or license plates used in the Oklahoma Temporary Motorist Liability Plan shall be purchased from the Oklahoma Sheriffs Association.

[OAR Docket #14-656; filed 7-3-14]

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

[OAR Docket #14-657]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
595:25-1-2. Definitions [AMENDED]
595:25-1-3. General policies [AMENDED]

Subchapter 3. Wrecker License
595:25-3-1. General requirements [AMENDED]
595:25-3-2. Applications [AMENDED]
Subchapter 5. All Wrecker Operators
595:25-5-1. Physical requirements for storage facility [AMENDED]
595:25-5-3. Operation [AMENDED]
595:25-5-4. Insurance [AMENDED]
595:25-5-7. Tow request and authorization forms [AMENDED]
595:25-5-9. Inspections [AMENDED]
Subchapter 7. Class AA Operators
595:25-7-2. Release and holding of a vehicle ~~by Class AA wrecker operators~~ [AMENDED]
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements
595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]
595:25-9-2. Operator requirements [AMENDED]
Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators From Rotation Log of the Oklahoma Highway Patrol
595:25-11-3. Procedure [AMENDED]

AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 952(B)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014

COMMENT PERIOD:
February 18, 2014 through March 24, 2014

PUBLIC HEARING:
March 24, 2014

ADOPTION:
March 27, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014

APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed amendments to this chapter will clarify the definitions used in the regulation of wrecker and towing services and the requirements of operators. These proposed amendments address the ambiguities and compliance problems for wrecker services in Oklahoma and to provide for adequate protection for individuals whose vehicles have been towed.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

595:25-1-2. Definitions

Any reference to "this Act" means 47 O.S. § 951 et seq. unless otherwise specified. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Call" means each request for service of an operator resulting in an operator being able to receive compensation for these services.

"Commissioners Designee" The authorized individual such as a director or administrative officer of the division.

"Class AA wrecker operator" or "AA truck wrecker operator"means any wrecker operator who also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies. Class AA may also be used for private property towing and consent towing.

~~**"Class AA truck wrecker operator"** means any wrecker operator who also meets all the requirements of 47 O.S. § 925(D) for towing for law enforcement agencies.~~

"Class AA Wrecker Support Vehicle" or "Support Vehicle" means a general class wrecker capable of assisting and supporting the towing and recovery at the scene of an incident.

"Commission" means the Oklahoma Corporation Commission.

"Commissioner" means the Commissioner of Public Safety, as defined by 47 O.S. § 1-109 and as described in 47 O.S. § 2-102.

"Department" means the Department of Public Safety.

"DPS number" means a permanent number assigned to a wrecker operator, by the Department which is personal and unique to the wrecker service.

"GVWR" means gross vehicle weight rating.

"Inspection Officer" Individual that has been trained and certified by the Department to inspect wrecker vehicles and wrecker facilities.

"Junk vehicle" means a vehicle which is ten (10) years old or older and worth less than three hundred dollars ($300.00) [42 O.S. §91].

"Law enforcement tow" means a tow of a vehicle made by an operator when a law enforcement officer compels a vehicle be towed or makes a request for a tow using a law enforcement rotation log and to which the rates and fees as prescribed by the Corporation Commission shall apply.

"Nonconsensual tow" means *the transportation of a vehicle without the consent or knowledge of the vehicle's owner, possessor, agent, insurer, lien holder, or any other person in possession of or in charge of any vehicle and includes the transportation or towing of the vehicle under lawful circumstances or necessity for the public interest including removing from the roadway for public safety or public convenience, or accidents, by any law enforcement officer or property agent or removal from public or private property as a result of abandonment or unauthorized parking by the property owner, agent, possessor, or other legal entity for the property owner.* [47 O.S. § 951(10)]

"Officer" means any peace officer.

"Operator" means any person or legal entity owning or operating a licensed wrecker vehicle or a licensed wrecker or towing service and any employee thereof.

"Owner request tow" means a tow of a vehicle made by an operator at the request of the owner, or authorized agent

of the owner and which is not compelled or required by a law enforcement officer.

"Place of business" or "Business location" means a permanent structure, not mounted on wheels, occupied by the wrecker operator at the physical address of the wrecker service, as shown on the wrecker license, with phone service and functioning utilities including but not limited to electricity and water, where normal business is transacted and all wrecker records are maintained. Effective January 1, 2005, the place of business shall be located in Oklahoma.

"Private Property Tow" means a tow of a vehicle which is made from private property by an operator at the request of the owner, legal possessor, or authorized agent in control of the real property, which shall be towed under the provisions of 47 O.S. § 954A and to which the rates and fees as prescribed by the Corporation Commissioner shall apply.

"Rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose place of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Tow/Towing" *means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of: (a) attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or (b) loading the vehicle onto and transporting the vehicle upon the wrecker vehicle".* [47 O.S. § 951(3)]

"Traffic tie-up" means any situation in which any officer deems it necessary to control the orderly flow of traffic.

"Truck wreckers" means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers, buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma. The designation as a truck wrecker shall be used for Class AA-TL wrecker vehicles only.

"Truck wrecker rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose places of business are with in the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Wrecker dolly" means a wheeled device which is used to support one end of a motor vehicle for towing.

"Wrecker license" means the wrecker license as provided by 47 O.S. § 951, et seq.

"Wrecker operator" means any operator who is licensed under this chapter and the laws of this state and who meets all requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter.

"Wrecker or towing service", **"wrecker service"**, or **"towing service"***means engaging in the business of or performing the act of towing or offering to tow any vehicle, except: (a) where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE", (b) where the service is performed by a transporter as defined in [47 O.S.] section 1-181 of this title, (c) where service is performed in conjunction with the transportation of household goods and property, (d) where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or (e) where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, and the vehicle is being towed: (1) in either direction across the border between Oklahoma and a neighboring state, or (2) through Oklahoma in transit to another state; provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law.* [47 O.S. § 951(6)]

"Wrecker" or **"wrecker vehicle"**, as defined by 47 OS. § 951, et. seq., means any vehicle, other than a transport as defined in 47 O.S. §1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle incapable of self-propulsion. (Does not include a vehicle with a push bumper only.)

(A) Class AA - Any wrecker vehicle not less than nine thousand pounds (9,000 lbs.) GVWR and meeting minimum requirements as established for Class AA wreckers in this Chapter.

(B) Class AA-TM - Any wrecker vehicle not less than twenty-four thousand pounds (24,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TM Wreckers in this Chapter.

(C) Class AA-TL - Any wrecker vehicle not less than forty-four thousand pounds (44,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TL Wreckers in this Chapter.

(D) Class General - All other wrecker vehicles as defined by 47 O.S. § 951, et. seq., provided a Class General wrecker shall also be considered a wrecker support vehicle for the purposes of 47 O.S. § 12-218.1.

595:25-1-3. General policies

(a) All operators of wrecker or towing services shall conduct operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Department of Public Safety and rules and orders of the Corporation Commission.

(b) Each operator shall be knowledgeable of the laws of this state, as found in 47 O.S. § 951 et.seq., and the rules of this Chapter and the rules and orders of the Corporation Commission relating to wrecker and towing services and wrecker vehicles. Each operator shall maintain at least one (1) copy of said laws and rules on the premises of the place of business at the address specified on the license and shall require every employee to be knowledgeable of the laws and rules.

(c) All rules in this Chapter are subject to the Administrative Procedures Act 75 O.S. § 309, et. seq., and to 47 O.S. § 951 et. seq., which shall be incorporated herein by reference, as applicable to the Department and all parties governed by this Chapter.

(d) The Department shall be charged with the duty of enforcing the provisions of 47 O.S. §951 et seq. except for rates and fees charged by wrecker services, which shall be under the authority of the Corporation Commission. The duly appointed officers of the Department shall have authority to make arrests for violation of law and the provisions of the rules of this Chapter.

(e) Any Oklahoma statute now existent or duly enacted in the future shall supersede any conflicting provision of the rules of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(f) Any violation of the rules of this Chapter may result in license suspension, revocation and/or penalty provisions in accordance with 47 O.S. § 951, et. seq.

(g) Every operator shall cooperate with the Department should it become necessary to review, audit, examine, or investigate any records relating to the operation of the wrecker service. Any operator who fails to cooperate with any review, audit, investigation shall be subject to suspension, revocation or cancellation of his or her wrecker license in accordance with 47 O.S. § 951, et. seq.

(h) All wrecker operators must be able to communicate and understand the information related to the tow of a vehicle.

SUBCHAPTER 3. WRECKER LICENSE

595:25-3-1. General requirements.

The following are the requirements for obtaining a wrecker license:

(1) **License required.** No operator as defined by law, regardless of storage location, shall operate a wrecker vehicle upon any public street, road or highway of this state for the offering to tow vehicles ~~or to transport property~~ or the actual towing of vehicles ~~or transporting of property~~ without first obtaining from the Department a license as provided in this Chapter. Any wrecker vehicle being operated on any public street, road, highway or turnpike in violation of Oklahoma law or these rules may be removed from service by Oklahoma law enforcement officers.

(2) **Display and use.** An operator's wrecker service license shall be personal to the holder thereof and a wrecker vehicle license shall be unique to the vehicle. Each license shall be issued only to a person, a corporation or some definite legal entity. The licenses are non-transferable and any change in ownership, whether of a wrecker service or wrecker vehicle, shall cancel the applicable license. The wrecker service license shall be conspicuously displayed at the primary place of business. The license shall be valid only at the place of business as shown on the license. Additional or satellite places of business shall not be permitted or approved on the same license but shall require a separate application and license.

(3) **Reason for application.** No showing of public convenience or necessity need to be made in support of an application for a wrecker or towing license.

(4) **Issuance.** No license for operation of a wrecker or towing service shall be issued until:

(A) The wrecker operator has a minimum of one towing/wrecker vehicle,

(~~A~~B) Certificates of insurance as prescribed by the Department are on file with the Department, and

(~~B~~C) Each wrecker vehicle has been inspected by an officer of the Department to verify that equipment requirements of this Chapter have been met.

(5) **Carry license.** A copy of the wrecker vehicle license issued by the Department shall be carried at all times in the wrecker vehicle for which the license was issued.

(6) **Return license to Department.** Any wrecker operator that disposes of or deletes any wrecker vehicle from operation shall return the license and window decal issued for that particular vehicle and window decal to the Department of Public Safety. When an unlicensed wrecker vehicle is observed with decals identifying it as a licensed wrecker vehicle, law enforcement personal may remove the decals and seize the cab card license and return both to the Department. Any operator that cancels its last remaining wrecker vehicle from operation will have thirty (30) days to have another wrecker vehicle inspected, approved, and licensed or the wrecker license issued to that operator will be cancelled.

(7) **Additional wreckers.** Any wrecker operator that adds a wrecker vehicle shall:

(A) Register the wrecker vehicle with the Oklahoma Tax Commission, in the name of the operator or the name of the wrecker service, and properly display a current license plate. A leased wrecker vehicle shall show the owner information and the name of the lessee on the vehicle registration.

(B) Notify the Department of the make, model, GVWR and serial number of the vehicle.

(C) Send notification to the Department from the insurance carrier of the wrecker operator that the vehicle has been added to present insurance coverage.

(D) Have the vehicle inspected and approved by an employee of the Department.

(E) A wrecker license plate, or a proportional license plate, must be purchased and affixed to the wrecker vehicle after the vehicle has been inspected and approved and before the vehicle can be used by the operator to tow vehicles.

(8) Sticker required on each vehicle.Each wrecker vehicle which is used by an operator in pulling or towing a vehicle shall display in the lower right hand corner of the windshield a valid sticker furnished by the Department indicating the classification of wrecker service.

(9) **License number and business name.**

(A) The ~~wrecker license~~DPS number issued to the operator by the Department for the operation of a wrecker or towing service, along with the name of the wrecker service, shall be clearly visible at all times

and shall be conspicuously displayed and vertically centered on each side of every tow vehicle used by the operator in the wrecker or towing service.

(B) On wrecker vehicles in use on or before July 14, 2002, the wrecker license number shall be at least two inches (2") in height. On wrecker vehicles put into use on or after July 15, 2002, the number and business name shall be at least three inches (3") in height. The font shall not be a font which is highly decorative or difficult to read. The lettering shall be in a color that will contrast with the color of the tow vehicle in order to be readily noticed and legible.

(C) The signage required by this paragraph shall be permanent in nature and shall not contain any misleading or false information. The wrecker vehicle shall not have more than one wrecker service name on the vehicle.

(D) Magnetic signs are not approved; provided, if requested of and approved by the ~~Director,~~Commissioner's designee, a magnetic sign may be used for a period of thirty (30) days in an emergency situation.

(10) **Service of notice.** Any notice required by law or by the rules of the Department served upon any holder of a wrecker or towing license shall be served personally or mailed to the last known address of such a person as reflected by the records on file with the Department. It is the duty of every holder of a certificate or license to notify the Department of Public Safety, Wrecker Services Division, in writing as to any change in the address of such person or of the place of business.

(11) **License prohibited.**

(A) No person under eighteen (18) years of age shall be licensed or employed as a wrecker operator.

(B) ~~Any person who, within the previous five (5) years, has been released from incarceration under the custody of the Department of Corrections, or one of its contractors, or the equivalent state agency in another state or has been convicted in any court of law for larceny or any felony shall not be licensed, nor shall any operator employ any person. On or after July 15, 2007, any such person shall not be eligible for a license until five (5) years from the end of incarceration or supervised release, including parole. Effective July 15, 2007, any person who has been charged with any such crime and who has been convicted pursuant to a pleading of guilty or no contest to said charge, regardless of the sentence imposed, shall not own or be employed in any capacity by any licensed wrecker service in the state of Oklahoma.~~ No person shall be licensed as a wrecker/towing service who has been convicted of:

(i) a felony, larceny, theft or untruthfulness; or

(ii) any provision of Title 21 O.S. § 1029 while providing wrecker services; or

(C) No person shall be licensed as a wrecker/towing service or be employed by a wrecker/towing service until five (5) years after completion of the sentence for the conviction, including probation or supervised release. In cases of deferred judgment and sentence, the prohibition shall extend to five (5) years after the end of the deferred judgment and sentence. ~~who has been convicted of a felony shall be licensed as a wrecker/towing service or employed by a wrecker/towing service until five (5) years after completion of the sentence for the conviction, including probation or supervised release. In cases of deferred judgment and sentence, the prohibition shall extend to five (5) years after the end of the deferred judgment and sentence.~~

(D) Any person who is required to register as a sex offender, as required by 57 O.S. § 583, shall be prohibited from owning or working for a wrecker service for the period of time the person is or is required to be registered.

(12) **Itemized statement.** All wrecker operators shall develop and maintain for each vehicle towed or serviced an itemized statement [see OAC 595:25-5-5)b) regarding records] and shall furnish the owner, or the agent of the owner, of each vehicle with an itemized statement, and a bill or invoice of the towing and storage charges incurred, which shall include, but not be limited to, the beginning and ending times of service and the beginning and ending mileage of the wrecker vehicle or vehicles used for the service. The itemized statement may be listed on the bill or invoice or may be listed separately but shall, in any case, be provided to the owner or agent, upon request or within a reasonable length of time.

(13) **One Class AA license per place of business.** Wrecker operators shall be issued no more than one Class AA wrecker license for any one place of business.

(14) **One Class AA wrecker service on Oklahoma Highway Patrol's rotation log in same rotation area.** An operator shall be permitted to rotate no more than one Class AA wrecker service in the same Highway Patrol rotation area on the Highway Patrol's rotation log. For purposes of this paragraph, "Class A wrecker service" shall include those services with a Class AA-TL wrecker vehicle.

(15) **Business telephone number.** Each wrecker service shall have a local business telephone number published in the local telephone directory. The telephone number published shall be a number that is accessible to the public twenty-four hours a day. The operator shall provide in writing to the Department notice of any permanent business telephone number change prior to the new telephone number being placed in service.

(16) **Business sign.** Each AA Wrecker Service and each G Wrecker Service with storage shall have a business sign at the business location. The sign shall be at least 2 feet by 4 feet with letters at least 3 inches in height with contrasting background and shall display, at a minimum, the name of the ~~business,~~wrecker service as shown on the license and a telephone number accessible to the public twenty-four (24) hours a day.

(17) **Wrecker drivers.** Wrecker services shall notify the Wrecker Services Division within ten (10) days of hiring or termination of employment of any wrecker driver.

595:25-3-2. Applications

(a) Every applicant shall file with the Department a written application on a form prescribed by the Department and shall tender with the application a fee of One Hundred Dollars ($100.00) by check or money order. The application shall be completed using the applicant's legal name, and shall also include every alias and nickname by which the applicant is or has been known. Every applicant shall submit with the application a current original Oklahoma State Bureau of Investigation (O.S.B.I.) criminal record check for each individual, partner or corporate officer as shown on the application. If any owner, partner or officer has not lived in Oklahoma for the immediately preceding five (5) years, he or she shall submit a criminal record check from the agency responsible for keeping criminal history in the state or states of residence for the immediately preceding five (5) years. Upon the return of any dishonored check the application shall be canceled.

(b) Upon receipt and approval of the application, the Department shall assign to the operator a permanent identification number for all matters relating to the approved wrecker and towing service. The Department may issue a temporary 30-day permit, after inspection, which will authorize the wrecker service to operate while paperwork for the permanent license is being processed. The temporary 30-day permit may be presented by the operator to the Tax Commission or a motor license agent for the purpose of being issued a wrecker license plate pursuant to 47 O.S. § 1134.3. The temporary 30-day permit shall only be valid for use if a wrecker license plate is purchased and affixed to the wrecker vehicle.

(c) The filing of an application for a license does not authorize wrecker or towing service operations by the applicant. Operation may commence only after all requirements have been met and proper authorization has been issued by the Department.

(d) The application shall be an affidavit containing the following information together with any additional information the Department may require.

(1) The trade name (business name) of the wrecker service. If the business name is registered with the Oklahoma Secretary of State, such registered name shall be used. A copy of the Certificate of Limited Liability Company, a Certificate of Authority, a Certificate of Limited Partnership or a Certificate of Incorporation from the Secretary of State must be submitted with the application.

(2) The name of the individual (owner/applicant) or, in the event of a legal entity such as a corporation, limited liability company, partnership or limited partnership, the names of any of the following ~~officers~~:

(A) President

(B) Vice-President

(C) Another officer, such as the Secretary or the name of the person responsible for the day to day operation of the legal entity. The legal entity shall notify DPS immediately in the event any officer or the person responsible should change.

(3) A statement substantially as follows:"Under oath, I affirm the information submitted in this application is true and I further affirm that I have read the rules of the Department of Public Safety and hereby agree in good faith to abide by the applicable laws and rules governing the wrecker and towing services for which this application is made."

(4) Date of application.

(5) Notarized signature of the individual applicant or of each company officer, as named on the application.

(6) For each driver, the name, date of birth and driver license number.

(7) If *an officer of the Department of Public Safety or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service,* the wrecker service shall affirm that its *sole purpose and only business is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record* [47 O.S., § 956(C)]. If a determination is made that the wrecker service performs services other than repossessions, it shall be ground for revocation of the wrecker license.

(e) If , within ninety (90) days of receipt of an application, the Department is unable to verify all information as required by these rules, the application shall be denied. Such applicant may reapply any time.

(f) It is within the Department's discretion to disallow the licensing of a wrecker operator should it appear, by a preponderance of the evidence, that the identity of the business is substantially the same as that of one that is currently under suspension by the Department.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-1. Physical requirements for storage facility

(a) **General requirements.** All wrecker operators, who, in conjunction with or as part of a licensed wrecker operation, store, park or maintain possession of a towed vehicle, shall store such vehicle in a storage facility which shall meet the minimum physical requirements prescribed in this Section. No vehicle shall be stored in any facility or area which has not been inspected and approved by the Department except in case of exceptional circumstances such as natural disasters or at the direction of law enforcement officers at the scene of an incident.

(1) An operator shall not store vehicles:

(A) at their home,

(B) in another operator's storage lot; or

(C) any other location unknown to the Department.

(2) The entrance to the storage facility shall be separate from any other business entity.

(3) A vehicle accepted for storage may not be altered without consent of the vehicle owner or their authorized representative.

(4) No stored vehicle may be used for personal or business use without the prior written consent of the vehicle's owner.

(b) **Outdoor storage facilities.**

(1) Every outdoor storage facility:

(A) shall be designed to be adequate in size for the individual wrecker service's need for storing vehicles,

(B) shall be surrounded by a fence. Construction material for fences shall be of wood, ~~or~~ metal design, or chain link,~~or of no less quality wire than 14 1/2 gauge hog wire. The wood, metal, or hog wire portion of the fence shall be not less than five feet (5') in height and shall be topped with two (2) or more strands of barbed wire which bring the overall height of the fence to~~and be at least six feet (6') in height. ~~Barbed wire is notrequired if the existing fence, or any replacement fence, is of the material described above and is at least six feet (6') in height, and~~Outdoor storage facilities, effective July 1, 2014, shall meet new standards or if facilities previous of date, upon a failed inspection, if found the fence did not meet previous standards, new standards will be imposed.

(C) shall have at least one (1) gate of the same quality of material and height of ~~as~~ the fence~~.~~and must be locked if not attended.

(D) The storage lot area:

(i) shall be maintained, including but not limited to removal of tall weeds, overgrown vegetation and debris,

(ii) The lot surface shall be an all weather surface such as concrete, asphalt, black-top, gravel, or any materials equivalent

(iii) and cover the complete area of the storage lot that enables the safe and effective movement of stored vehicles upon all portions of the storage lot.

(2) If the construction requirements in paragraph (1) of this subsection are in violation of municipal zoning ordinances or other laws, regulations, or ordinances, the operator may file with the Department a petition for exemption and a proposed security plan in lieu of the requirements, which the Department may approve. The operator shall attach a copy of such zoning ordinance or other laws, regulations, or ordinances with the petition.

(c) **Facility location and number.**

(1) A minimum of one (1) primary storage facility shall be located within a two (2) mile radius of the place of business address as reflected on the wrecker license and, effective January 1, 2005, shall be located within Oklahoma. Secondary storage facilities may be located outside the two (2) mile radius.

(2) Each vehicle stored must be initially stored and held at the primary storage facility. After thirty (30) days from date of initial storage, vehicles may be moved to a secondary storage facility. The provisions of this paragraph shall not apply to junk vehicles.

(d) **Alternate primary storage facility.** In lieu of or in addition to the primary storage facility described in this Section, a wrecker operator that tows a vehicle pursuant to a contract with a municipality or county may store such vehicle in a facility meeting the requirements set forth in such contract; provided, that:

(1) A copy of the proposed contract is furnished to the Department, along with documentation that requirements specified in this Section will be or have been met.

(2) Only vehicles towed at the request of the municipality shall be stored in such facilities unless such facility meets all the requirements of this Section.

(3) The wrecker operator shall have assumed reasonable responsibility with respect to the owner of such towed vehicle for any damages or loss of contents occurring during such time as the towed vehicle is stored in the facility.

(4) If the storage facility is not owned by the operator, the owner of such storage facility shall also assume joint responsibility for damages or loss of contents to the vehicle secured during such time as the vehicle is stored at such facility.

(5) Such storage facility must meet or exceed the requirements of this Section.

(6) If such storage facility is not operated by the operator, the operator shall have made arrangements with the owner of such storage facility to enable the owner of the vehicle to make full payment for towing and storage costs at the storage facility location and thereby obtain full release of the vehicle.

(7) A wrecker operator may not store any vehicle in a facility which has not been inspected and approved by the Department.

~~(8) Except for vehicles stored at the request of the owner or at the request of a governmental entity, the wrecker operator shall within seventy two (72) hours of the time indicated on the storage form, request the Oklahoma Tax Commission or other appropriate motor license agent, to furnish the name and address of the current owner and any lien holders of such towed vehicle. The towing service shall, within seven (7) days from receipt of the requested information from the Oklahoma Tax Commission or motor license agent, notify the owner and lien holders of the location of the vehicle.~~

~~(9) Final approval under this provision shall be determined by the Commissioner.~~

(e) **Indoor storage facility.** An operator may also provide an indoor storage facility as either a primary or secondary storage facility. An indoor storage facility shall be a permanent structure that meets the following minimum physical requirements:

(1) A solid roof,

(2) A solid hard-surface floor, and

(3) Solid walls which fully enclose all sides, i.e. reach from corner to corner on each side and from the floor to the roof on all sides. The walls may be penetrated by windows and doors which must be fully operable so as to make the facility fully enclosed when the windows and doors are closed.

(f) **Each wrecker service is a separate entity.** Each wrecker service shall be licensed as a separate legal entity.

~~Each Class AA~~Any wrecker service with storage shall maintain a primary storage facility that is physically separated from any other entity's storage facility as determined by the Department, so that the responsibility and accountability of the operator relating to compliance with these rules is maintained.

(g) **Shared storage prohibited.** Shared use of any outdoor or indoor storage facility by two (2) or more wrecker services is not permitted, except as may be determined by the Commissioner.

(h) **Leased or rented storage.** Wrecker operators intending to lease or rent any storage facilities shall file such plan of lease or rent with the Department for approval. Such plan shall be of at least one year in duration and include specific terms therein delineating the responsibility of the operator relating to compliance with the rules of this Chapter and assurance that accountability is maintained.

(i) **Accessibility.** Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.

595:25-5-3. Operation

All operators using the public roads and highways within the State of Oklahoma shall comply with the following:

(1) All operators shall require each driver of a wrecker vehicle be proficient in the operation thereof, and be properly licensed for the type vehicle operated.

(2) No operator shall knowingly permit any operator of a wrecker vehicle to consume beer, wine, intoxicating beverages, drugs or other stimulants or depressants while subject to call nor knowingly permit any operator to come on duty after having inhaled or consumed any such beverage, drug or other stimulants or depressants.

~~(3) No operator shall, within the previous five (5) years: refer to, no operator shall violate the terms of 595:25-3-1 (11)~~

~~(A) have an unpardoned conviction for larceny or any felony nor knowingly employ any person with such record, or~~

~~(B) On or after July 15, 2007, any such person shall not be eligible for license until five (5) years from end of incarceration or supervised release, including parole.~~

(~~4~~3) No operator shall proceed to the scene of a collision or traffic tie-up without being requested to do so by a law enforcement agency or the owner or driver of a vehicle involved.

(~~5~~4) Any operator traveling on the roads and highways of the State of Oklahoma during the normal course of his business may, upon arriving at the scene of a collision or traffic tie-up, stop and assist in rendering emergency aid. However, the operator shall not solicit business directly or indirectly from the owner or drivers at the scene.

(~~6~~5) An operator at the scene of a collision or traffic tie-up is subject to the same traffic-control directions issued by an officer to the motoring public.

(~~7~~6) An operator shall not use the rotating or flashing light while traveling on the roadway en route to any location. The use of the flashing or rotating light is authorized only in the vicinity of hook-up or at the scene of ~~a collision~~ an incident to protect the scene and the vehicle involved. Only amber flashing lights may be used when leaving the scene of a wrecker service call for the purpose of warning the operators of other vehicles to exercise care in approaching, overtaking or passing. [47 O.S. §~~12-118.1~~ 12-218.1]

(~~8~~7) Each operator must be a person of good moral character and reputation in his community, as determined by the Commissioner of Public Safety, and conduct the operation of the storage facilities and towing service in a responsible manner so as not to endanger the public safety of persons or property of others in the custody of the operator.

(~~9~~8) No operator shall tow a vehicle when the combined weight of the wrecker vehicle and the wrecker supported weight of the towed vehicle exceeds the factory gross vehicle weight rating of the wrecker vehicle, regardless of the weight for which the wrecker vehicle is licensed.

(~~10~~9) No wrecker service shall suspend or abandon said service without prior written notice to this Department of such intent and returning of all wrecker licenses issued.

(~~11~~10) Wrecker services shall comply with 47 O.S. § 11-1110(C).

(~~12~~11) Upon payment of the reasonable cost of removal, and storage of a stored vehicle, whether stored at the request of law enforcement or a private property owner and recorded by the wrecker service as provided in OAC 595:25-5-5(b), the vehicle shall be released to:

(A) the owner, upon presentation of an Oklahoma driver license, Oklahoma identification card, other state driver license, other state identification card, or any federally issued identification, proof of valid insurance or affidavit of nonuse, and evidence of ownership which is satisfactory to the wrecker operator and required by 47 O.S., § 904, 955, such as a certificate of title, to show proof of purchase and ownership, or recent registration, or written verification from a local law enforcement agency as to the identity of the owner, or other documentation acceptable to the wrecker owner/operator. If unacceptable, the wrecker service shall explain why an ownership document is not acceptable;

(B) a person representing the owner, upon presentation of the certificate of title, a notarized letter from the owner permitting said person to act in behalf of the owner, and proper personal identification, such as a driver license, of the representative, or written verification from a local law enforcement agency as to the identity of the person representing the owner;

(C) an individual with possessory interest in the vehicle, upon presentation of an agreement with the owner of the vehicle giving that individual a present possessory interest in the vehicle;

(D) a ~~lienholder~~lien holder or a duly authorized agent of a ~~lienholder~~lienholder, upon presentation to the wrecker operator a recent repossession title receipt issued by the Oklahoma Tax Commission and a hold-harmless letter; or

(E) the insurer of or the representative of the insurer accepting liability for or purchasing a motor vehicle as provided in 47 O.S., Section 904, 953.1, or 953.2.

(~~13~~12) Personal property, which shall include everything in a stored vehicle except the vehicle and its attached or installed equipment, shall be released, upon request, to the owner or owner's representative, upon showing of proof as described in (~~12~~11) of this section~~, without the requirement that the owner or owner's representative pay towing and storage fees owing the wrecker service as a condition of release of the personal property. The owner or owner's representative shall be required to comply with any city or county regulation or ordinance requiring the payment of fees due to the city or county. The wrecker service may assess and collect lawful fees, such as after hours fees or subcontractor fees but other than~~ towing and storage fees, as a condition of release of personal property to ~~the owner or owner's representative~~. Wrecker operators shall allow the vehicle owner or owner's representative to have access to the vehicle for the sole purpose of retrieving ownership documentation, such as title or registration. [47 O.S. § 955]

(~~14~~13) Wrecker operators shall not call hazardous materials remediation companies unless at the direction of the vehicle owner or a governmental agency.

(~~15~~14) Each operator shall require each wrecker driver to maintain the appropriate driver license for the type vehicle being operated.

(~~16~~15) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(~~15~~16) Each operator shall secure vehicles on roll back wreckers with four (4) point tie down. Other wrecker vehicles shall secure vehicles in accordance with wrecker vehiclechassis recommendations.

(~~18~~17) A wrecker operator or driver responding to the scene of a motor vehicle collision in the capacity of a first responder, fireman, or volunteer fireman shall not respond to the scene in a wrecker vehicle.

(~~19~~18) Each wrecker operator or driver shall wear high-visibility safety apparel, in compliance with 23 C.F.R., Section 634, when working in any highway right-of-way.

595:25-5-4. Insurance

(a) **Liability for operator's negligent acts.** Each operator, from the time of movement of or otherwise making contact with any vehicle to be towed, may be liable for injury to persons, damage to property, fire or theft resulting from the operator's negligent acts.

(b) ~~**Insurance policy**~~**Certificate of insurance.** The Certificate of Insurance form must be obtained from and submitted by an insurance company authorized to do business in the State of Oklahoma.

(1) The operator is responsible for ensuring the submission of the Certificate of Insurance form when applying for an initial license, renewal of the insurance, changing a business name or changing the business address.

(2) The name and address of the applicant, the operator or business name shown on the Certificate of Insurance form must be the same as the name and address on the application and/or wrecker service license. The applicant or operator is responsible for ensuring that the insurance information on file with the Department reflects the correct name and address of the insured. The address for all storage facilities must be included on the form.

(3) Any time an operator changes insurance company during a policy period, a new Certificate of Insurance form shall be submitted by the new insurance provider showing at least the minimum coverage.

(4) The Certificate of Insurance form shall show the make, year, and vehicle identification number for each wrecker vehicle and wrecker support vehicle licensed by the Department.

(~~b~~c) **Insurance policy.** The insurance policy shall be issued for a period of at least six (6) months and shall protect the public against loss of life, bodily injury to person, and damage to property in the following amounts:

(1) **Class G General or Class AA.**

(A) Bodily Injury and Property Damage - Not less than One Hundred Thousand Dollars ($100,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than Fifty Thousand Dollars ($50,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars ($500.00), which must include comprehensive perils to the towed vehicle while being stored by the wrecker operator. Any General class wrecker service which does not have storage facilities shall be exempt from the provisions of this subparagraph.

(C) On-Hook or In-Tow - Not less than Fifty Thousand Dollars ($50,000.00) in On-Hook or In-Tow Coverage with a deductible no greater than Five Hundred Dollars ($500.00),which must include comprehensive perils and collision to the towed vehicle while it is being towed by the wrecker operator.

(2) **Class AA-TM.**

(A) Bodily Injury and Property Damage - Not less than Two Hundred Thousand Dollars ($200,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook

vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than One Hundred Thousand Dollars ($100,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars ($500.00), which must include comprehensive perils to the towed vehicle while being stored by the wrecker operator.

(C) On-Hook or In-Tow - Not less than One Hundred Thousand Dollars ($100,000.00) in On-Hook or In-Tow Coverage with a deductible no greater than Five Hundred Dollars ($500.00), which must include comprehensive perils and collision to the towed vehicle while it is being towed by the wrecker operator.

(3) **Class AA-TL.**

(A) Bodily Injury and Property Damage - Not less than Three Hundred Thousand Dollars ($300,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the wrecker vehicle and/or as a result of the on-hook vehicle causing the bodily injury and/or property damage.

(B) Garagekeeper's Legal Liability - Not less than One Hundred Fifty Thousand Dollars ($150,000.00) in Garagekeeper's Legal Liability with a deductible no greater than five hundred dollars ($500.00), which must include comprehensive perils to the towed vehicle while being stored by the wrecker operator.

(C) On-Hook or In-Tow - Not less than One Hundred Fifty Thousand Dollars ($150,000.00) in On-Hook or In-Tow Coverage with a deductible no greater than Five Hundred Dollars ($500.00), which must include comprehensive perils and collision to the towed vehicle while it is being towed by the wrecker operator.

(4) **All Wrecker Classes.** Bailee Coverage - Not less than Two Thousand Five Hundred Dollars ($2,500.00) for loss of contents of the vehicle with a deductible not greater than Five Hundred Dollars ($500.00).

(c) **Judgment.** Any final judgment rendered by a court of competent jurisdiction against a wrecker service or an owner or employee thereof, arising out of any services provided by the operator of or any employee of the wrecker service, including towing or storage of towed vehicles, must be satisfied within thirty (30) days. If such judgment is not timely satisfied, the wrecker license shall be revoked and such revocation shall remain in effect until the judgment is satisfied. Provided, however, a release or written agreement signed by the judgment creditor and approved by the Department shall reinstate eligibility. Provided, if judgment is covered by insurance up to the amount and to the extent required in the rules, this Subsection shall not apply.

(d) **Carrier certification.** The insurance company of each wrecker service shall certify to the Department on a form prescribed by the Department that the insurance company will notify the Department in writing at least ten (10) days before the date the company cancels such policy.

(e) **Insurance information.** An operator shall provide contact and other pertinent information regarding the insurance company and policy covering the wrecker service to any person who might be eligible to file a claim against the operator's insurance policy.

(f) A notice from the insurance company to the Department of insurance cancellation for non-payment of the premium shall be sufficient reason for suspension of the wrecker service license.

595:25-5-7. Tow request and authorization forms

(a) Only Class AA wreckers are authorized to remove abandoned vehicles from real property. [47 O.S. § 954A] Wrecker services shall complete the Tow Request and Authorization Form prior to removal of abandoned vehicles from real property.

(b) One copy of the Tow Request and Authorization Form shall be forwarded to the Department of Public Safety, Wrecker Services Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136, and the local law enforcement agency with jurisdiction over the area where the vehicle was removed, within seventy-two (72) hours from time of removal. A facsimile or email of the Tow *Request and Authorization Form shall be considered the original form if a printed or digital confirmation of the facsimile transmission is available.* [47 O.S. § 954A- F]

(c) The Tow Request and Authorization Form can be obtained from the Wrecker Services Division, Department of Public Safety, Oklahoma City, Oklahoma 73136. Disposition of copies are as follows:

(1) Original copy to the Department of Public Safety. Facsimile in lieu of the original will be accepted.

(2) One copy to the local law enforcement agency.

(3) One copy to be retained by the wrecker service.

(4) One copy to the real property owner, legal possessor or agent.

(d) Each wrecker operator shall be responsible for verifying the identity of the person signing the tow request and authorization form and shall put the driver license number or state-issued identification card number of that person on the tow request and authorization form.

(e) No licensed Class AA wrecker service or operator of a licensed Class AA wrecker service shall tow or cause to be towed a vehicle from the real property until this form has been appropriately completed by the parties.

(f) *The Tow request and authorization form shall be completed with the following information:*

(1) *A description of the vehicle, including the type of vehicle, year of manufacture, name of the manufacturer, vehicle color or colors, identification number and license tag number;*

(2) *The name, address and business telephone number of the licensed Class AA wrecker service;*

(3) *The name, address, telephone number and driver license number or state-issued identification card number of the real property owner, legal possessor or authorized agent;*

(4) *Inventory of personal property within the vehicle to be towed, if no inventory is completed, the reason shall be clearly stated on the form;*

(5) *Time and date the form is completed; and*

(6) *Signatures of the driver of the wrecker vehicle and of the owner, legal possessor or authorized agent of the real property. They shall jointly, and each in the presence of the other, inventory personal property found within or upon the vehicle.*

(g) *A copy of the completed Tow Request and Authorization Form shall be retained by the signatories and the licensed Class AA wrecker service shall maintain the wrecker vehicle driver's copy for not less than one (1) year.*

(h) *Upon completion of the tow the Class AA wrecker service shall perform the following:*

(1) *Within three (3) business days of the time indicated on the form, request the Oklahoma Tax Commission or other appropriate motor license agent to furnish the name and address of the current owner and/or lien holder of the vehicle.*

(2) *Within seven (7) days from receipt of the requested information from the Oklahoma Tax Commission or other motor license agent, send a notice of the location of the vehicle by certified mail, postage prepaid, at the addresses furnished, to the owner and any lien holder of the vehicle.*

(3) *If the licensed Class AA wrecker service has not complied with the notification procedures required in this section the owner or lien holder shall not be required to pay for storage of the vehicle per Title 47 § 954A (G).*

595:25-5-9. Inspections

(a) **Availability of Records.** The wrecker operator, manager, or their representative must make available to the inspection officer all records, notices and other documents required by these rules. Due to possible noncompliance or complaint, the inspection of the facility or tow trucks may be required. May include an inspection of any and all tow trucks and inspection of records, tow authorizations, thirty (30) day reports and facilities. Upon completion of the inspection, the operator, manager, or representative shall be given a contact report that will provide the results of the inspection. A date and Time will be provided to make corrective action and a follow up inspection will be performed to assure compliance.

(b) **Initial Inspection.** Will include inspection of all tow trucks and any or all storage facilities.

SUBCHAPTER 7. CLASS AA OPERATORS

595:25-7-2. Release and holding of vehicle. ~~by Class AA wrecker operators~~

(a) **Release.** The Class AA wrecker operator shall at all times have a capable person available to release impounded or stored vehicle within thirty (30) minutes. As per 47 O.S. § 955, any vehicle impounded by law enforcement shall not be released to the owner until that owner provides proof of valid insurance or an affidavit of nonuse on the roadway. In the event an insurer or a representative of the insurer who has accepted liability for the vehicle requests the release, no proof of valid insurance or affidavit of nonuse on the roadway shall be required.

(b) **Exceptions to release of impounded or stored vehicles.**

(1) Officers may have a legitimate need and reason to preserve the secured status of an impounded or stored vehicle, including but not limited to:

(A) Failure to pay taxes due the State;

(B) Forfeiture proceedings under the Controlled Dangerous Substances Act [63 O.S., § 2-506]; ~~or~~

(C) Evidentiary proceedings.

(D) Failure to provide proof of insurance

(E) The vehicle has been used in the commission of a felony offense. [47 O.S., § 955(A)(6)]

(2) In the event an officer determines a need exists to preserve the secured status of an impounded or stored vehicle, the officer may direct the operator to place a hold thereon, which the operator shall honor, subject to the following procedures.

(3) If the hold is because taxes due the State have not been paid, the operator shall not release the vehicle until the owner, or another person as described in OAC 595:25-5-3(13), has furnished proof from the Oklahoma Tax Commission or a motor license agent to the operator that the vehicle has been duly registered and the license fee has been paid before the vehicle may be released to the owner. Inquiry regarding this law may be made to the Oklahoma Tax Commission.

(4) If the stated reason for the hold is a forfeiture proceeding under the Uniform Controlled Dangerous Substance Act, the operator may not release the vehicle unless authorization is received either from the District Attorney's Office of the county from which the vehicle was impounded or from the impounding officer.

(A) If, after the expiration of seventy-two (72) hours from the time of impoundment (excluding Saturday, Sunday and legal holidays), the operator has not received either the court case number under which a forfeiture proceeding has been accepted and filed or a release of the hold from the impounding officer, the operator shall contact the law enforcement agency storing the vehicle, between 7:00 a.m. and 12:00 noon following such seventy-two (72) hours period, advising the ranking supervisor on duty or dispatcherof the following information:

(i) That the vehicle is being held for the filing of forfeiture proceedings;

(ii) That no court case number of forfeiture proceedings has been received;

(iii) Description of vehicle, including tag and vehicle identification number;

(iv) Vehicle owner, if known;

(vi) County from which the vehicle was impounded;

(vii) Name of impounding officer;

(viii) Name and telephone number of operator submitting the above information.

(B) The supervisor may direct the impounding officer to verify the decision of the District Attorney and to notify the operator:

(i) Of the forfeiture proceedings style and case number; or

(ii) That the hold is canceled because the District Attorney has declined forfeiture proceedings and therefore, the vehicle may then be released in accordance with (a) and (b) of this Section.

(C) Any vehicle seized or stored for forfeiture proceedings under the Uniform Controlled Dangerous Substance Act is considered to be in the custody of the District Attorney of the county where the property was seized [63 O.S., § 2-506 (K)] and therefore the operator may contact that office regarding any matter relating to such vehicle, in addition to the foregoing procedure.

(5) If the hold is for evidentiary proceedings or for any stated reason other than taxes or forfeiture described above, or if the officer fails to state a reason, then the hold shall expire forty-eight (48) hours from the time of impoundment (if not released earlier by the officer), and the operator shall not honor the hold beyond the forty-eight (48) hour period without express direction of the law enforcement agency storing said vehicle. The vehicle may then be released in accordance with the provisions of this Chapter.

(c) **Court orders regarding impounded or stored vehicles.** If any rule provided, herein conflicts with a court order served upon the operator relating to impoundments, release, storage or other matter relating to the wrecker service, the court order shall take precedence.

(d) **Release to another wrecker service.**

~~(1)~~ When a wrecker service is to lawfully obtain a vehicle from another wrecker service which originally towed the vehicle, the original wrecker service shall:

(1~~A~~) allow the other wrecker service to enter its premises and remove the vehicle, or

(2~~B~~) if the original wrecker service does not allow the other licensed wrecker services or registered owner or agent on its premises to make the tow, the original wrecker service shall properly tow the vehicle to a mutually agreeable site in order to transfer the vehicle to the requesting wrecker service.

~~(2) If a wrecker service denies access onto its premises by any wrecker service which is lawfully entitled to remove a vehicle or property, the original wrecker service shall not charge any fee to any other wrecker service for the performance of any service in relation to the transfer of a vehicle from one wrecker service to another. as prescribed by (1)~~

SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS

595:25-9-1. Oklahoma Highway Patrol Rotation Log

(a) **Official Rotation Log.** The Department of Public Safety maintains two (2) official Oklahoma Highway Patrol Rotation Logs, a Class AA wrecker log and a Class AA-TL wrecker log, each of which shall consist of licensed wrecker services *for the performance of services carried out pursuant to the request of or at the direction of any officer of the Department* [47 O.S. § 952(D)].

(b) **Request for placement on the Rotation Log.** A licensed Class AA wrecker service desiring to be placed on the Highway Patrol Rotation Log in the Highway Patrol Troop District in which the place of business and the primary storage facility of the wrecker service is located shall file a written request with the Department, pursuant to (e) of this Section. [47 O.S. § 952(D)]

(c) **Assignment to the Rotation Log.** If a request for placement on the Rotation Log is approved by the Department, the wrecker service shall be assigned by the Department to the Highway Patrol Troop District specified on the request. Both the Troop Commander of the Troop District and the wrecker service will be notified by the Department of the assignment of the wrecker service to the Rotation Log. [47 O.S. § 952(D)]

(d) **Geographical areas of rotation.** [47 O.S. § 955(B)]

(1) The ~~Director~~ Commissioner's designee for ~~of~~ the Wrecker Services Division shall be responsible for establishing geographical areas of rotation within the Troop District to which wrecker services on the District's Rotation Log will be assigned for operation when responding to calls for service from the Rotation Log. The ~~Director~~ Commissioner's designee shall notify each wrecker service of the geographical area of rotation to which it is assigned.

(2) The ~~Director~~ Commissioner's designee will establish each geographical area of rotation based upon a reasonable radius from the primary storage facility of each wrecker service operating within the geographical area. The reasonable radius will be determined by the ~~Director~~Commissioner's designee based upon:

(A) the estimated time it will take the wrecker service to respond to calls for service,

(B) the number of wrecker services available on the Rotation Log,

(C) conformity with 47 O.S. § 955(B),

(D) consideration of the economic impact of the wrecker services fees and charges [see 47 O.S. § 953.1 regarding maximum fees and charges for wrecker services] on the owner or ~~lienholder~~lien holder of the vehicle; and

(E) other factors within the Troop District as deemed appropriate by the ~~Director~~ Commissioner's designee.

(3) The ~~Director~~Commissioner's designee may overlap geographical areas of rotation whenever necessary to ensure adequate response to requests for wrecker services.

(4) The ~~Director~~ Commissioner's designee may modify geographical areas of rotation for the Troop District at any time and for just cause, but shall notify as soon as practicable each wrecker service affected of such modifications.

(5) The ~~Director~~Commissioner's designee may extend any geographical area of rotation by a reasonable radius beyond the boundaries of the Troop District to include on the rotation log of the District a wrecker service:

(A) which is located outside of but in proximity to the boundary of the District, and

(B) upon receiving notification from the Department of the approval of the wrecker service for placement on the rotation log for the District of the Commander.

(6) Nothing in this Section shall prohibit the Troop Commander from using the services of any licensed wrecker service:

(A) outside of its assigned geographical area of rotation, or

(B) which has not been assigned to the Rotation Log of the Troop District.

(e) **Forms.** A request for placement on any rotation log shall be filed by the wrecker service with the Department of Public Safety on a form prescribed and provided by the Department [47 O.S. § 952(D)]. When requesting placement on a rotation log, the wrecker service shall provide on the request one (1) telephone number to be used for request of services during the day and one (1) telephone number to be used for request of services during the night, specifying the time period of normal use; these numbers shall also be on file with the Wrecker Services Division. Any change in the telephone numbers shall be immediately transmitted to:

(1) the Troop Commander(s) of the Oklahoma Highway Patrol Troop District(s) on whose Rotation Log the wrecker service has been assigned, and

(2) the Wrecker Services Division of the Department of Public Safety.

(f) **Request for removal from the Rotation Log.** A licensed Class AA wrecker service desiring to be removed, whether temporarily or permanently, from the Highway Patrol Rotation Log on which it was placed, pursuant to this section, shall file a written request with the Department. The wrecker service shall not contact the Troop Commander(s) of the Troop District(s) for removal from the Rotation Log.

595:25-9-2. Operator requirements

Operators on the Rotation Log shall comply with the following:

(1) When more than one (1) vehicle is towed on one (1) call, each tow shall be counted as another call to that operator.

(2) When an operator receives a request for services from the Oklahoma Highway Patrol and no services are rendered for which the operator is able to receive compensation, the operator shall not lose position on the Rotation Log.

(3) If an operator has received a request for services, but does not respond to the scene within a reasonable length of time, including but not limited to such factors as distance from the scene, weather, and nature of the collision or traffic tie-up, the Oklahoma Highway Patrol may request the services of the next operator on the Rotation Log. Under these circumstances, the operator who receives the first request shall lose position on the Rotation Log.

(4) When an emergency condition exists, the Oklahoma Highway Patrol reserves the right to request the services of any appropriately equipped and licensed wrecker service best able to handle the emergency and can reach the scene in the shortest time, regardless of the operator's position on the Rotation Log. Said call shall count as a call on the Rotation Log.

(5) Only one (1) wrecker service shall be approved for Highway Patrol rotation at any one place of business and/or storage facility, unless otherwise approved by the Commissioner.

(6) Wrecker services shall respond to Highway Patrol requests only in a wrecker vehicle licensed to the requested wrecker service, unless otherwise approved by the Commissioner.

(7) Every wrecker service on the Highway Patrol Rotation Log shall maintain twenty-four (24) hour service.

(8) A wrecker service called from the Highway Patrol Rotation Log shall not accept a request for services unless the operator has a vehicle immediately available to perform the requested service.

(9) Each operator shall require each driver responding to a request to maintain the appropriate driver license for the type vehicle being operated.

(10) Each operator shall require each driver to obey in good faith the rules of the road.

(11) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(12) Every operator shall accept each Oklahoma Highway Patrol call unless there exists a valid reason for refusal.

(13) Each operator shall provide service for a minimum of seventy-five (75%) percent of the requests made by the Highway Patrol to be computed on a quarterly basis. Failure to meet this standard for any reason shall be grounds for removal from the Oklahoma Highway Patrol Rotation Log.

(14) Any Class AA wrecker operator who uses an answering service as a means of dispatch and who fails to properly respond in a timely manner, as determined by the ~~Director~~ Commissioner's designee of the Wrecker Services Division, to a rotation call request may have the Class AA license revoked for failure to properly respond to rotation call requests. The operator shall not be licensed as a Class AA wrecker service while utilizing the same answering service as a means of dispatch.

(15) Persons responding to calls must be able to speak and understand the English language.

(16) A wrecker operator shall respond to law enforcement agencies' wrecker service requests with a wrecker vehicle and operator capable of efficiently uprighting an overturned vehicle, pulling or winching a vehicle back

onto the roadway, lifting a vehicle off a victim, or assisting with opening a vehicle to extricate a victim. In addition, the wrecker vehicle shall be equipped to remove a disabled vehicle without inflicting further damage to the disabled vehicle.

(17) If two or more vehicles are involved in a collision and two or more wrecker services are called the following shall apply:

(A) The first wrecker service arriving at the scene will tow the vehicle causing the greatest traffic hazard, which shall be determined by the investigating officer.

(B) If a requested wrecker service is first on scene, said wrecker service will assist in removing the vehicle causing the traffic hazard from roadway, then will proceed to pick up the vehicle it has been requested to tow.

(18) Any wrecker service having a wrecker vehicle with major or critical mechanical failure or failing to meet equipment requirements, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker vehicle has been approved to return to service or a new wrecker vehicle of the same classification has been inspected, if necessary, and approved by the Department.

(19) A wrecker service shall become temporarily unavailable for rotation if there is no approved Certificate of Insurance (WA) filing on file with the Department for the wrecker service or wrecker vehicles approved for rotation.

(20) Any wrecker service with a wrecker vehicle displaying an expired tag, which does not have another wrecker vehicle of the same classification approved for rotation, shall become temporarily unavailable for rotation until the wrecker license plate has been renewed and is properly displayed on the wrecker vehicle.

SUBCHAPTER 11. DENIAL, SUSPENSION, REVOCATION OR CANCELLATION OF LICENSE; DENIAL OR REMOVAL OF CLASS AA OPERATORS FROM ROTATION LOG OF THE OKLAHOMA HIGHWAY PATROL

595:25-11-3. Procedure

In the event that the Department has determined that a license should be denied, suspended, revoked or canceled, or that an operator should be denied or removed from the Rotation Log for any reason, or both, the following procedures shall apply in accordance with the Administrative Procedures Act, 75 O.S. § 309, et seq.

(1) The Department shall send by first-class mail Notice of Department Action containing all information required by 75 O.S.§ 309, et seq., to the concerned applicant or operator at the last known address as reflected by the records of the Department. The Department shall follow up the mailed Notice with a documented telephone call to the telephone number on file with the Department for the wrecker service to ensure the wrecker service has received and understands the Notice.

(2) The notice shall provide that the Department action shall become effective fifteen (15) days after date of mailing to the applicant or operator, unless the applicant or operator timely files a written request for a hearing with the Department of Public Safety, Wrecker Services Division. Such request shall be timely when filed prior to the effective date of the Department Action.

(3) If a timely hearing is requested, the hearing shall be scheduled ~~not less than seven (7) days nor more than fifteen (15)~~within forty-five (45) days from the date the Department receives the request.

(4) The Department hearing officer shall be designated by the Commissioner, and each party shall be afforded an opportunity to be heard and to present evidence.

(5) The hearing officer shall render a decision based upon the law and the evidence presented and shall enter an appropriate final order regarding the matter. Each party shall be promptly notified either personally or by mail.

(6) Unless the hearing officer timely receives a written request for a rehearing, reopening or reconsideration of the decision as provided by the Administrative Procedures Act, the final order will become effective ten (10) days after the entry of the decision.

(7) If an applicant operator fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date prescribed in (2) of this Subsection, in lieu of the decision and final order as prescribed in (5) and (6) of this Subsection. Each party shall be promptly notified thereof either personally or by mail.

(8) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order of dismissal of the Department Actions. The order of dismissal shall be without prejudice if the basis for the action constitutes noncompliance or a continuing violation of these rules. Each party shall be promptly notified thereof either personally or by mail.

(9) Where a timely written request for a rehearing, reopening or reconsideration of the case is received, the Department Action shall be stayed until ten (10) days after an order is issued concerning the request for rehearing, reopening or reconsideration of the case.

(10) Notwithstanding (2) through (9) of this Subsection, Department Action shall become effective immediately where:

(A) An original application for a license or placement on the Rotation Log is denied for failure to qualify under this Chapter.

(B) The Department finds that the health, safety, or welfare of the public imperatively requires such action and finding to that effect is incorporated in its order, pursuant to the Administrative Procedures Act, 75 O.S. § 314(c).

(11) Where the Department has determined that a minor disqualification and/or violation exists which may be readily rectified by the applicant or operator, the Department of Public Safety may informally notify such party by mail or telephone of such minor disqualification or violation, with a request for compliance with a specified period of time. If such party fails to rectify the minor disqualification or violation, the Department may proceed according to other provisions of this Subchapter.

[OAR Docket #14-657; filed 7-3-14]

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

[OAR Docket #14-658]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Size and Weight Permit Load
595:30-3-2. A permit is a legal document; permit types [AMENDED]
595:30-3-3. Requesting, obtaining, and paying for a permit [AMENDED]
595:30-3-4. Conditions and restrictions [AMENDED]
595:30-3-8. Provisional permit book [AMENDED]
595:30-3-9. Suspension of permits obtained by provisional method [AMENDED]
595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]
595:30-3-17.1. Certification of operators of escort vehicles for hire [AMENDED]
595:30-3-18. Oversize vehicles and loads [AMENDED]
595:30-3-19. Manufactured homes and industrialized housing [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 6-101 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
February 18, 2014 through March 24, 2014
PUBLIC HEARING:
March 24, 2014
ADOPTION:
March 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNORS DECLARATION:
Approved by Governors declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the amendments to these rules is to update the existing rules an remove rules that are now obsolete due to advancement in technologies and processes. Furthermore, the amendments help to provide a standardized set of information and rules that will be clear and concise.
CONTACT PERSON:
Kimberly D. Dammen, DPS Legislative Services Manager, Department of Public Safety, 3600 N. Martin Luther King Ave., PO Box 11415, Oklahoma City, OK 73136-0415. Phone: 405.425.2757. E-mail: kdammen@dps.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §§ 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-2. A permit is a legal document; permit types

(a) Permit defined. A permit is a legal document authorizing the permittee to move a vehicle or load, which is oversize, overweight, or both, upon the roads and highways of this state when the route constitutes the safest practical routing. The document consists of:

(1) the information furnished by the applicant contained in the permit,

(2) the conditions and restrictions stated in the permit, and

(3) the applicable provisions of this Chapter, OAC 730:30-9, Oklahoma law, or any combination of provisions.

(b) **Annual permits.** Annual permits, as authorized by 47 O.S. §14-101 et seq. and by OAC 730:30-9, shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Annual permits shall comport to 23 U.S.C. §127 for interstate applications, to other state statutes relating to size and weight of vehicles and combinations of vehicles, and to OAC 730:30-9 for all roads and highways of this state. Annual permits shall be for a duration of one calendar year from the date of issuance. Annual permits for the movement of vehicles, loads, or both which exceed the size or weight provisions, or both, of 47 O.S. §14-101 et seq., but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits, shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. Annual permits shall not be restricted to nondivisible vehicles or loads and shall be specific to the towing vehicle of any vehicle operating as a combination of vehicles.

(1) Fees for annual permits shall be in accordance with the fee schedule contained in 47 O.S. §14-101 et seq.

(2) Annual permits shall be subject to suspension, revocation or cancellation by the Commissioner of Public Safety or an authorized representative upon due process, as outlined in this Subchapter.

(c) **Single trip permits.** Single trip permits, as authorized in OAC 730:30-9-6(2), shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Single trip permits shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. All single trip permits shall comport to OAC 730:30-9 and related state

statutes and shall be for a duration of up to, but not to exceed, five (5) consecutive business days. Single trip permits shall be issued for nondivisible vehicles or loads, as defined in 23 C.F.R. Part 658, which exceed the provision of state statutes but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits. Single trip permits may be revoked by any duly qualified law enforcement officer of the Department of Public Safety after having observed any violation of any of the provisions of the permit. The revocation shall be final and no further movement of the vehicle or load shall be authorized until the vehicle or load is authorized by a proper permit.

(d) **Provisional permits.** Provisional permits, as authorized in 47 O.S. §14-116, shall be made available to all authorized carriers who have established monthly billing accounts with the Department of Public Safety and appear on the monthly billing system [see 595:30-3-7 regarding monthly billing accounts]. Provisional permits shall be for a single trip, nondivisible load for the safest practical route and in accordance with all other applicable rules, federal regulations, and state statutes pertaining to permitted movements of vehicles or loads which are oversize, overweight, or both. The provisional permit shall be on a form prescribed by the Commissioner of Public Safety containing a numerical Department of Public Safety control number. ~~The provisional permit shall be valid only when the proper authorization number is clearly and legibly printed on the permit, and when all other information, including date of movement, general load description, estimated weight, oversize notation, route of travel, and truck and trailer license number is clearly and legibly printed on the permit. Authorization numbers shall be obtained from the Size and Weight Permit Division of the Department of Public Safety and shall be placed on the permit at the time the permit is approved by the Department, by the authorized carrier or the carrier's designated agent.~~

(e) **Multi-trip oversize permits.** A multi-trip oversize permit may be issued for a specific motor vehicle, which can be identified by a vehicle identification number or serial number, for movement as set forth in 730:30-9-9(a)(1) and (j).

(f) **Annual ~~envelop~~envelope vehicle permit.** An annual ~~envelop~~envelope vehicle permit shall be issued by the Department in conformity with 730:30-9-16. In addition to the requirements of 730:30-9-16:

(1) An annual ~~envelop~~envelope permit shall not be used in conjunction with any other permit.

(2) An annual ~~envelop~~envelope permit shall ~~not~~ be void if used for the movement of houses or modular or manufactured homes.

(3) An annual ~~envelop~~envelope permit shall ~~not~~ be void if laminated.

(4) Reasonable access to and from terminals for fuel, food, repairs and rest shall not exceed five (5) statute miles from the roadways authorized by the Oklahoma Department of Transportation.

(5) A vehicle being moved under an ~~envelop~~envelope permit shall not be moved on turnpikes except on non-interstate turnpikes. Non-interstate turnpikes are:

(A) Indian Nation

(B) Cimarron

(C) Cherokee

(D) Chickasaw

(E) Creek

(F) Muskogee

(G) Kilpatrick

(6) The operator of a vehicle in excess of ~~10 feet~~9 feet and 6inches in width which is moving under an ~~envelop~~envelope permit shall use a valid PikePass to travel on any turnpike listed in paragraph (5) and shall travel only in a PikePass lane when in the area of any tollbooth or turnpike entrance or exit.

(g) **Prima facie evidence.** Undertaking the movement of the vehicles and loads specified in the permit is deemed prima facie evidence of an unequivocal allegation that the permit is accepted by the permittee. Acceptance of the permit by the permittee will be deemed prima facie evidence of an unequivocal allegation by the permittee that:

(1) Permittee is in compliance with all operational requirements;

(2) All dimension and weight limitations specified in the permit will not be exceeded;

(3) All operation, registration, and license requirements have been met;

(4) All financial responsibility obligations and other legal requirements have been met. The permittee assumes all responsibility for injury to any person or for damage to public or private property, including the permittee's own, or to the load being transported, caused directly or indirectly by the transportation of vehicles and loads authorized under the permit.

(h) **Multiple trailer or semitrailer permits.** To obtain a permit for multiple trailers or semitrailors pursuant to 47 O.S. 14-116 (F) an affidavit must:

(1) be submitted to the Department of Public Size and Weight Permits Division containing:

(A) license plate number of each trailer or semitrailer;

(B) vehicle identification number of each trailer or semitrailer;

(C) US DOT Number of each trailer or semitrailer;

(D) Make and Model of trailer or semitrailer; and

(E) Width, length and axle spacing of each trailer or semitrailer.

(2) be submitted to the Department by email to sizeandweightpermits@dps.state.ok.us in an Excel spreadsheet (Version 2003 or later).

(3) be submitted a minimum of thirty (30) days prior to any permit for any trailer or semitrailer on the submitted list becoming valid.

(i) Any revisions to the original affidavit and list must be submitted to the Department in the same format as the original affidavit and list and must be done a minimum of thirty (30) days prior to any permit for any trailer or semitrailer on the revised list becoming valid.

(j) Annual verification of each list must be completed by 31 of May. No changes can be made from June 1-30 for validation

purpose. Failure to do so will result in all vehicles being removed from the Department of Public Safety Size and Weight Permits list of permissible vehicles under the specified permit.

(k) Any violation of any part of this section shall result in the permit being voided.

595:30-3-3. Requesting, obtaining, and paying for a permit

(a) **Requesting and obtaining a permit.** A permit shall be applied for and obtained from the Size and Weight Permit Division of the Department of Public Safety, by contacting a permit office either in person, by telephone, or from the Department website. A permit for movement of a manufactured home shall be applied for and obtained in accordance with 68 O.S. §2813 and 47 O.S. §14-103D. The permit office shall make a determination as to whether the permit can be issued based upon the size of load, weight of load, the route to be traveled, the clearance of overhead structures, weather conditions, and traffic conditions.

(b) **In-person permit application.** All permit offices are open Monday through Friday, except on state holidays. Location and office hours of permit offices are.

(1) Oklahoma City (main office), 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107. Office hours: 7:00 a.m. to ~~6:45~~ 5:30 p.m.

(2) Offices at Oklahoma Highway Patrol district headquarters:

(A) Enid, 5725 West Garriott Road. Office hours: 7:30 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 3:45 p.m.

(B) Tulsa, 9191 East Skelly Drive. Office hours: 8:00 a.m. to 4:15 p.m.

(3) Field Offices:

(A) Elk City, Merritt Road at the west junction of U.S. Highway 66 and State Highway 6. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:15 p.m.

(B) Woodward, 102 Temple Houston Drive. Office hours: 7:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 3:15 p.m.

(c) **Telephone permit application.** Telephone applications may be made by calling, toll free, (877) 425-2390, Monday through Friday, except on state holidays, between 7:00 a.m. and ~~6:45~~ 5:15 p.m.

(d) **Website permit application.** Website applications may be made through the Department's website ~~between 7:00 a.m. and 6:45 p.m.~~ at ~~http://www.dps.state.ok.us/swp/agreement.htm~~ https://permitmanager.okladot.state.ok.us/okiepros/

(e) **Payment for a permit.** Payment for a permit is to be made by one of the following methods:

(1) Cash (exact change is required). Please do not mail cash.

(2) Certified cashier's check. Make checks payable to "Oklahoma Department of Public Safety."

(3) Money order. Make money orders payable to "Oklahoma Department of Public Safety."

(4) Personal or company check. Make checks payable to "Oklahoma Department of Public Safety." If a personal or company check is not honored by the bank upon which it is drawn, the Department of Public Safety reserves the right to refuse all further checks from the person or company who issued the check.

(5) Credit card. Discover, MasterCard, American Express or Visa will be accepted for payment.

(6) Monthly billing account. [See 595:30-3-7 regarding monthly billing accounts.]

595:30-3-4. Conditions and restrictions

The following conditions and restrictions shall apply to the issuance of permits for the operation of oversize and overweight vehicles:

(1) **Travel time.** Movement shall be permitted in accordance with the dates and times provided in 47 O.S. §14-101 and in this Section.

(A) **Oklahoma County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Oklahoma County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday.

(B) **Tulsa County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Tulsa County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday.

(C) **Cleveland County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Cleveland County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday. The two (2) mile section of Interstate 35 between State Highway 9 East (Exit 108) and State Highway 9 West (Exit 106) shall be exempt from this restriction.

(2) **Required signs and flags.** All oversized equipment requires the regulation "Oversize Load" sign and flagging, as provided in 595:30-3-16.

(3) **Exceptions.** The restrictions in this paragraph shall not apply to special combination vehicles, longer combination vehicles, and vehicles which are overweight only.

(4) **Weather, traffic, road and atmospheric conditions.** Extreme caution in the operation of permitted vehicles and loads shall be exercised during hazardous conditions, including, but not limited to, snow, ice, sleet, fog, mist, rain, dust, smoke, excessive wind, or any weather, traffic, or road condition which would adversely affect traction or braking capabilities. When conditions become dangerous, the company or the operator shall discontinue operations, and operations shall not resume until the vehicle and load can be moved with reasonable safety. The state may restrict or prohibit operations during periods, when, in the state's ~~judgement~~judgment, weather, traffic, road, or other conditions exist which make such operations unsafe or inadvisable. [See OAC 730:30-9-12(c)(2) regarding driving conditions.]

(5) **Overweight load route review.** Requests for permits for overweight loads which require a load route

review shall be submitted to ensure they are received by the Oklahoma Department of Transportation Bridge Division a minimum of five (5) working days prior to the date of movement [730:30-9-7(k)].

(6) **Brakes, drawbars, and lighting requirements.** Equipment requirements for this Paragraph are found in 47 O.S. §§12-201 through 12-415, and in the Federal Motor Carriers Safety Regulations, Part 393, Subchapters B, C, B, and H.

(7) **Accuracy of information.** It is the responsibility of the applicant to ensure accuracy of information contained in the application and permit. Permits will not be revised to alter the load description or the vehicle or load dimensions. Multi-trip, annual permits, or provisional permits cannot be changed. Any other revisions shall be at the discretion of the permit office.

595:30-3-8. Provisional permit book

(a) **Ordering a provisional permit book.** Once a monthly billing account has been established, a provisional permit book may be ordered from the Size and Weight Permit Division, as authorized by 47 O.S. §14-116(C)(3). When ordering a provisional permit book, include:

(1) the monthly billing account number;

(2) a self-addressed, stamped 12-inch by 15-inch envelope; and

(3) a list of the permit numbers of permits remaining in any previously issued provisional permit books. Orders will not be filled if there are ample unused permits.

(b) **Using provisional permits.**

(1) Provisional permits must be used only by the company or individual who established the monthly billing account.

(2) Provisional permits must not be destroyed or discarded.

(3) The Oklahoma City office of the Size and Weight Permit Division must receive a copy of every provisional permit removed from the book.

(4) The provisional permit holder shall not use the provisional permit to obtain a permit for another company or individual.

(5) Permits obtained by the provisional permit method are for single trips only.

(6) Before calling a permit office~~ for authorization to use~~for a provisional permit, have all information necessary for completing the provisional permit. Do not fill out the provisional permit before calling a permit office.

(7) Give the information to the permit clerk and, at the same time, fill out the provisional permit exactly the way the information is given to the permit clerk. The permit clerk will provide the authorization number to be written on the line provided. The permit clerk will also advise of any other information which must be on the permit. All special instructions which are given by the permit clerk to add to the permit must be written on the provisional permit.

(8) Write the account number on the same line immediately following the company name.

(9) Mail the pink copy to the Size and Weight Permit Division in Oklahoma City on the day the provisional permit is ordered. If the pink copy is not received within three (3) days, further provisional permits will not be validated.

(10) The pink copy will be checked for the following items against the authorization:

(A) Accuracy;

(B) Completeness (all appropriate blanks filled in);

(C) All restrictions and escort requirements, if any, written on the permit;

(D) Current vehicle registration information.

(11) A provisional permit may be voided, at the discretion of the permit office, by calling (405) ~~522-9003~~522-9067. Both copies (yellow and pink) of the voided provisional permit must be sent to the Oklahoma City office the same day it is voided.

(12) Authorized motor carriers using provisional permits during weekends, holidays, and other approved times, must have the certification statement attached to the provisional permit when in use and when faxed to the Oklahoma City main office or e-mailed to swprovis@dps.state.ok.us. Prior to permitted movement, a duplicate of the prepared permit and certification statement shall be faxed to the Size and Weight Permit Division at (405) 522-9006 or e-mailed to swprovis@dps.state.ok.us. The certification statement shall be in lieu of the ~~authorization number~~permit number and certifies that all provisions for permitted movements have been met including, but not limited to, the required route study adherence as determined by the Oklahoma Department of Transportation. Certification statements shall be on a form prescribed by the Commissioner of Public Safety and shall be valid when signed by the motor carrier or an authorized agent of the carrier and filed with the Department of Public Safety.

(13) The provisions of 730:30-9-6, 730:30-9-7, and 730:30-9-9 relating to single trip movements shall apply to provisional permits, as provided by this Section, and shall be in accordance with the applicable provisions of this Section relating to single trip permits.

(c) **Information.** Information concerning provisional permits may be obtained by calling the Size and Weight Permit Division (405) 522-9067 Monday through Friday from 7:00 a.m. to 5:30 p.m., excluding state holidays. The provisional permit book remains the property of the Oklahoma Department of Public Safety. The Department may suspend or terminate the privilege to use the book at any time with cause. The book must be returned to the Size and Weight Permit Division upon request.

595:30-3-9. Suspension of permits obtained by provisional method

The following shall apply to suspension of size and weight permits obtained by the provisional method:

(1) **Review.** Provisional permit files are maintained in the Oklahoma City office of the Size and Weight Permit Division. If upon review, the Size and Weight Permit Division determines the permits are not being completed

according to the rules of this Subchapter, then the use of the provisional permits may be suspended or terminated.

(2) **Violations.** When the Department of Public Safety determines that violations exist which may be readily rectified by the applicant, holder or driver, the Department may notify the party by mail or telephone of the violation, with a request for compliance within a specified period of time. If the party fails to rectify the violations, the Department may proceed according to the provisions of the following:

(A) The Size and Weight Permit Division will notify the individual, company or corporation, in writing, which specific violations exist, and allow ten (10) days from the receipt of the notice to rectify the situation.

(B) If the problem is not alleviated and due cause is not given within the specified time, a notice of suspension of provisional permit privilege will be sent to the appropriate party. The period of suspension will be determined by the extent of the problem and the history of permit violations.

(3) **Termination.** If violations continue to occur, the privilege of using the provisional permit system will terminate.

(4) **Examples of violations.** The following are examples of violations:

(A) The applicant makes a false statement on the permit.

(B) The applicant fails to provide required, valid, or applicable information on the provisional permit, or the applicant alters or changes any information in any manner on the permit.

(C) The applicant fails to submit the applicable permit fee as required.

(D) The applicant fails to mail the pink copy in a timely manner [see 595:30-3-8(b)(9) regarding mailing of pink copies].

(E) The applicant fails to get proper approval from ODOT or ODOT Independent Consultant for loads that do not meet OL-1 qualifications and/or if the roadway traveled is restricted due to weight.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16(a), except that sign shall be at least ten (10) inches high, shall be mounted either on the front or the roof of front escort vehicles and on the rear or on the roof of the rear escort vehicle while escorting an oversize vehicle or load. The sign shall be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.

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

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

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

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

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

(9) **Traffic control sign.** Two (2) ~~standard twenty-four (24) inch~~ "STOP" and "SLOW" paddle signs at least 18" inches in diameter with letters at least 6" high with a

reflective surface which meets standards set by the Manual on Uniform Traffic Control Devices.

(10) **Safety clothing.** A hard hat and a jacket or vest, both of which meet standards set by the Manual on Uniform Traffic Control Devices, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.

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

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

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

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

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

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

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

(D) Impairs the performance of the escort vehicle.

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

(3) The operator of the escort vehicle shall not perform as a tillerman while performing escort operations. A passenger in the escort vehicle may act as a tillerman. For purposes of this paragraph, "tillerman" means a person who has a valid commercial driver license and who operates by remote control any axle of the escorted vehicle.

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

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

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

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

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

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

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

(2) **Escort vehicle operation.**

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

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

(C) The operator of an escort shall not:

(i) possess, use, or be under the influence of alcohol, or have any measureable alcohol concentration within four (4) hours before or at any time while operating or in actual physical control of any escort vehicle.

(i) use alcohol or be under the influence of alcohol within 4 hours before going on duty or while operating or having actual physical control of an escort vehicle; or

(ii) use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of an escort vehicle.

(iii) Operate an escort vehicle and be in possession of wine, beer, or distilled spirits.

(iv) be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(I) Any Title 63 O.S. §2-204 Schedule I substance;

(II) An amphetamine or any formulation thereof;

(III) A narcotic drug or any derivative thereof; or

(IV) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(f) **Insurance.**

(1) Each certified escort vehicle operator who operates in interstate commerce, and on and after August 1, 2012, each certified escort vehicle operator, shall maintain a valid insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma, and proof of insurance shall be carried in the escort vehicle at all times. The insurance policy shall protect the public against loss of life, bodily injury to persons, and damage to property, as evidenced by a current certificate of insurance, including any applicable endorsement, which indicates that the operator, or the operator's employer, has in full force and effect insurance coverage for bodily injury or property damage, or both, as a result of the operation of the escort vehicle or of the actions of escort vehicle operator, or of both, causing the bodily injury or property damage, or both, arising out of an act or omission by the escort vehicle operator relating to the escort duties required by this chapter. The insurance shall be no less than $1,000,000 combined single limit or $1,000,000 per occurrence, or both, of commercial liability coverage, as applicable, and must be maintained at all times during the term of the certification. ~~The insurance certificate must indicate on the face of the document that the policy is for the operation of an escort vehicle or vehicles and escort duties and responsibilities as required by this chapter.~~

(2) Until July 31, 2012, paragraph (1) of this subsection shall not apply to any operator who operates only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted and who applies for and is granted restricted certification as provided for in OAC 595:30-3-17.1(c)(3); provided, the operator shall meet all minimum requirements for compulsory liability insurance in this state, and proof of insurance shall be carried in the escort vehicle at all times.

(3) On and after August 1, 2012, paragraph (1) of this subsection shall apply to all certified escort vehicles. operators.

595:30-3-17.1. Certification of operators of escort vehicles for hire

(a) **Requirements.** Every person who drives an escort vehicle for hire to escort a permitted over-dimensional load or vehicle in this state must be certified by the Department of Public Safety. To be certified, the person must meet the following requirements:

(1) Be at least eighteen (18) years of age.

(2) Possess a valid driver license from the state or jurisdiction in which the person is a resident.

(3) Submit an application for certification to the Size and Weight Permit Division of the Department of Public Safety on the form provided by the Department. The application must contain all required information including a driving record issued within the immediately preceding thirty (30) days.

(4) Attend a course in escort vehicle certification, as prescribed by the Department, and successfully pass the escort vehicle certification examination.

(b) **Course and examination.** The course will be taught by the Oklahoma State University Center for Local Government Technology. Courses will be taught at locations throughout the state. Class size shall be determined by Oklahoma State University Center for Local Government Technology. Locations, times, and enrollment information are available by calling (405) 744-6049, or online at clgt.okstate.edu.

(c) **Certification.** The Department of Public Safety will grant a certification card to any person who completes an escort vehicle course prescribed by the Department, passes the escort vehicle certification examination with a score of seventy-five percent (75%) or higher, and satisfies all other requirements.

(1) The term of the certification shall be for a maximum period of five (5) years, subject to subsection (d), and shall expire automatically five (5) years after the date of issuance. Upon expiration of the certification, the operator must again comply with the requirements in (a)(1), (a)(2), (a)(3), and (a)(4) of this Section before the Department of Public Safety will issue a new certificate.

(2) Operators must notify the Department of Public Safety, Size and Weight Permit Division in writing within thirty (30) days of any change of address or name.

(3) Until July 31, 2012, operators who operate only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted may apply for a restricted certification. Such certification shall be exempt from the insurance requirements of OAC 595:30-3-17(f). On and after August 1, 2012, each operator shall meet the insurance requirements of OAC 595:30-3-17(f).

(d) **Denial or withdrawal of certification.** The following circumstances shall result in denial or withdrawal of certification:

(1) Failure to satisfy the requirements of or failure to give required or correct information on the application for certification as an escort vehicle operator, or the commission of any fraud in making the application.

(2) Violation of rules established by the certifying state.

(3) Suspension, revocation, cancellation, or denial of the driver license of the certified operator. The certified operator shall notify the Department of Public Safety, Size and Weight Permit Division, within five (5) days of any such suspension, revocation, cancellation, or denial, and shall provide the Division a copy of the Order of the Department.

~~(4) An accumulation of ten (10) points on the driving record of the certified operator.~~

(e) **Hearing.** Any party aggrieved by the denial or withdrawal of certification under this Section may request a hearing, in writing, with the Department pursuant to OAC 595:1-3.

(f) **Certification by other states.** An escort vehicle operator shall possess an Oklahoma certification, unless the escort vehicle operator is a resident of a state other than Oklahoma which has a reciprocal agreement with Oklahoma *recognizing escort vehicle operator certifications issued by* that state [47 O.S., §14-120.1(E)] and is in possession of a current escort vehicle operator certification issued by that state. Under all circumstances, an escort vehicle operator who is an Oklahoma resident shall have an Oklahoma certification.

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

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

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

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

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

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

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

(1) Loads greater than twelve (12) feet ~~or more~~ in width but not more than fourteen (14) feet in width are required to be accompanied by a front escort vehicle on two-lane highways and on super two-lane highways and by a rear escort on multi-lane highways with the required "Oversize Load" sign and flagging on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

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

(3) Loads with an overall height of fifteen (15) feet and nine (9) inches or more are required to be accompanied by two escort vehicles, one in the front and one in the rear. The required "Oversize Load" sign and flagging is required on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest. All public utilities and railroads along the route must be contacted in advance of the move by the permittee. Measuring Pole (Height Pole) shall be meet the requirements as provided by 595:30-3-17(8).

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

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

595:30-3-19. Manufactured homes and industrialized housing

(a) **General provisions for manufactured homes.** Permits for movement of manufactured homes and industrialized housing shall require the "Oversize Load" sign and flagging in accordance with 595:30-3-16, and the travel. Other requirements are:

(1) Oversize movement is subject to the provisions of 47 O.S. §14-101 and 595:30-3-4(1).

(2) The towing vehicle must be at least fourteen (14) feet from bumper to bumper, or have a wheel base of at least one hundred eighteen (118) inches to tow a manufactured home or industrialized housing at least twelve (12) feet but not more than sixteen (16) feet in width. All towing vehicles must have dual wheels on the drive axles. If the manufactured home is less than twelve (12) feet wide, the towing vehicle must be a truck of at least three-quarter (3/4) ton capacity. If the manufactured home is twelve (12) feet wide or more, the towing vehicle must be of at least two (2) ton capacity.

(3) Red flags and the "Oversize Load" sign are required as provided in 595:30-3-16.

~~(4) Any combination length over eighty (80) feet will require an escort except on multi-lane divided highways.~~

(b) **Manufactured homes not more than ten (10) feet wide.** Manufactured homes not more than ten (10) feet wide and with an overall length which exceeds seventy (70) feet are required to have an overlength permit. The towing vehicle must a truck with a rated capacity of three-quarter (3/4) ton or more. The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing vehicle and the rear of the manufactured home.

(c) **Manufactured homes at least twelve (12) feet wide but not more than fourteen (14) feet wide.** For manufactured homes at least twelve (12) feet wide but not more than fourteen (14) feet wide, the towing vehicle must be a truck of at least two (2) ton rated capacity, with dual rear wheels. A front escort is required on all two-lane and super two-lane roads and highways. A rear escort is required on all multi-lane highways. The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing unit and the rear of the manufactured home. The towing vehicle must maintain

a minimum speed of 40 mph on all multi-lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

(d) **Manufactured homes more than fourteen (14) feet wide but not more than sixteen (16) feet wide.** Manufactures homes more than fourteen (14) feet wide but not more than sixteen (16) feet wide will be issued permits in accordance with 47 O.S. §14-103A. The towing vehicle must be a truck of at least two (2) ton rated capacity, with dual rear wheels. Both front and rear escorts are required on all two-lane and super-two lane roads and highways. A rear escort is required on all multi-lane highways. The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing unit and the rear of the manufactured home. Manufactured homes of this width will not be permitted to travel on any turnpike but will be permitted on the Dwight D. Eisenhower System of Interstate and Defense Highways. The towing vehicle must maintain a minimum speed of 40 mph on all multi-lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

(e) **Manufactured homes more than sixteen (16) feet wide.** Manufactured homes more than sixteen (16) feet will be issued permits in accordance with 47 O.S. § 14-103A. Manufactured homes more than sixteen (16) feet shall not be permitted for movements on the Dwight D. Eisenhower System of interstate and defense highways. The towing vehicle must be a tandem-axle truck of not less than two hundred twenty (220) horsepower. Both front and rear escorts are required on all two-lane and super two-lane roads and highways. A rear escort is required on all multi-lane highways. The regulation "Oversize Load" sign and flagging are required on the front of the towing unit and the rear of the manufactured home. Manufactured homes of this width will not be permitted to travel on any turnpike. The towing vehicle must maintain a minimum speed of 40 mph on all multi-lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

[OAR Docket #14-658; filed 7-3-14]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

[OAR Docket #14-501]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:10-1-2. Definitions [AMENDED]
600:10-1-5. Qualifying education prerequisites [AMENDED]
600:10-1-16. Supervision of trainee appraisers [AMENDED]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 3, 2014 to March 5, 2014
PUBLIC HEARING:
March 20, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR LEGISLATURE:
March 20, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed amendments to Title 600, Chapter 10 at OAC 600:10-1-5 and OAC 600:10-1-16 will incorporate required language from the Appraiser Qualification Criteria effective January 1, 2015 (the "AQB Criteria") which modifies the criteria by which the Oklahoma Real Estate Appraiser Board determines, upon application, whether an appraiser's qualifying education is deemed acceptable under said AQB Criteria. Further, the changes will reflect a mandatory change from a two year period to a three year period in which an appraiser must be in good standing with the Board, not subject to any disciplinary action which affects their legal eligibility to engage in appraisal practice, should they wish to supervise a trainee appraiser. The modification at OAC 600:10-1-2 is a housekeeping item concerning the definition of "Uniform Standards." Under the current definition, there is an incorrect reference to the Appraisal Subcommittee. This amendment will refer to the correct promulgating authority of the Appraisal Standards Board of the Appraisal Foundation.
CONTACT PERSON:
Christine McEntire, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, Five Corporate Plaza, 3625 N.W. 56th Street, Suite 100, Oklahoma City, OK 73112 (405) 522-2475.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

600:10-1-2. Definitions

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

"Board" means the Oklahoma Real Estate Appraiser Board.

"Certificate of course completion" means a document acceptable to the Board which signifies satisfactory completion of the course and reflects the hours of credit earned.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Continuing education" means education that is creditable toward the education requirements that must be satisfied to renew licensure or certification as a Trainee, State Licensed Appraiser, State Certified Residential Appraiser, and State Certified General Appraiser.

"Instructor" means a person who meets the qualifications as set out at Section 10-1-8(a)(6).

"Provider" means a person, corporation, professional association or its local affiliates, or any other entity which is

approved by the Board and provides approved qualifying and continuing education to real estate appraisers.

"Qualifying education" means education that is creditable toward the education requirements for initial licensure or certification or upgrade of existing licensure or certification under one or more of the four real estate appraiser classifications (Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser, and State Certified General Appraiser).

"Standards of professional appraisal practice" as referred to in the Oklahoma Certified Real Estate Appraisers Act, 59 O.S. §§858-700 et seq. means the Uniform Standards of Professional Appraisal Practice.

"State Certified General Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"State Certified Residential Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"State Licensed Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"Trainee Appraiser" means a person who meets the requirements for certification pursuant to 59 O.S. § 858-710.

"Uniform standards" means the Uniform Standards of Professional Appraisal Practice, as authorized by the ~~Appraisal Subcommittee~~Appraisal Standards Board of the Appraisal Foundation pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which are the standards rules that meet the minimum requirements adopted by the Appraisal Foundation, and which are incorporated by reference.

600:10-1-5. Qualifying education prerequisites

(a) Classroom hours shall be approved by the Board pursuant to the guidelines set forth in the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation. Copies of official transcripts of college records or certificates of course completion will be considered as satisfactory evidence for qualifying education requirements.

(b) All qualifying education must be completed within the five-year period prior to the date of submission of an application.

600:10-1-16. Supervision of trainee appraisers

(a) Trainee Appraisers shall report to the Board, on a form prescribed by the Board, the identity of any supervisory appraiser. Trainee Appraisers may have more than one supervisory appraiser. When a Trainee Appraiser has more than one supervisory appraiser, each shall be reported to the Board as indicated above.

(1) The supervisor-trainee relationship shall become effective on the date of receipt of the original required form with original signatures in the administrative office of the Board.

(2) A supervisory appraiser shall notify the Board in writing immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(b) Trainee Appraisers shall maintain an appraisal log on a form prescribed by the Board. Separate appraisal logs shall be maintained for work performed with each supervisory appraiser. This appraisal log shall record the following information:

(1) Client name and date of report,

(2) Address or legal description of the real property appraised,

(3) Description of the work performed by the trainee appraiser and the scope of review and supervision of the supervisory appraiser,

(4) Number of actual hours worked,

(5) Type of property appraised,

(6) Form number or description of report rendered, and

(7) The signature and state certificate number of the supervisory appraiser.

(c) Experience credit for the purpose of upgrading will not be given unless:

(1) a properly completed trainee-supervisory report form is on file in the administrative office of the Board, and

(2) the Trainee Appraiser either signs the certification required by Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, or the supervisory appraiser gives credit to the Trainee Appraiser in the certification and complies with the requirements of Standards Rule 2-2(a)(vii), 2-2(b)(vii), or 2-2(c)(vii) as applicable.

(d) Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.

(e) A supervisory appraiser shall meet the following requirements:

(1) have been a State Licensed or Certified Appraiser for a period of at least three (3) years;

(2) be a State Certified General Appraiser, State Certified Residential Appraiser, or State Licensed under AQB Criteria Appraiser on a credential issued by the Oklahoma Real Estate Appraiser Board, provided however, that trainee-supervisor relationships between State Licensed under AQB Criteria Appraisers shall only be permissible until January 1, 2008;

(3) be in good standing with the Board and not subject to any disciplinary action within the last ~~two~~three years that affects the supervisor's legal eligibility to engage in appraisal practice; and

(4) accept responsibility for training, guidance, and direct supervision of the Trainee Appraiser by signing the form referenced in (a), above.

(f) A supervisory appraiser shall:

(1) accept responsibility for a Trainee Appraiser's appraisal reports by signing each report and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, and

(2) personally inspect each appraised property with the Trainee Appraiser until the supervisory appraiser determines that the Trainee Appraiser is competent, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice, for the property type.

(g) A supervisory appraiser shall notify the Board immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(h) Prior to assuming duties as a supervisory appraiser, an appraiser who has been disciplined by the Board must receive approval from the Board.

(i) A supervisory appraiser may assume responsibility for more than three Trainee Appraisers under the following terms and conditions:

(1) The supervisor must apply for authority to supervise more than three Trainee Appraisers with the Board on forms approved by the Board for this purpose. This approval shall extend to the supervisor or supervisors, the facility and the training plan. Any approval issued hereunder shall specify a maximum number of trainees authorized.

(2) The supervisor must specify the location of the facility to be used for this purpose, which may not be a residence. The facility must have posted hours, approved by the Board, during which the facility will be open and a qualified supervisor present. During the operating hours, the facility and all records specified herein shall be subject to unannounced compliance inspection by a representative of the Board.

(3) The supervisor must prepare a training plan, based on the Core Curriculum and the Real Property Appraiser Body of Knowledge promulgated by the Appraiser Qualification Board of The Appraisal Foundation, appropriate to the level of licensure to which the trainee aspires and for which the supervisor is qualified. This training plan should, as a minimum, include learning objectives for the experience to be gained, a planned time line for further qualifying and continuing education required to bring the trainee to a fully qualified status, and a checklist for monitoring progress by the trainee toward meeting these objectives.

(4) Records maintained in the training facility must include the training plan, an appraisal log, a workfile for each appraisal assignment, and a progress checklist, each maintained on a contemporaneous basis, for each Trainee Appraiser. In addition, appropriate reference materials should be on hand, which must include the current edition of the USPAP.

(5) Approval of any supervisor or supervisors under this paragraph may be conditioned upon an interview of such supervisors by a representative of the Board.

(j) Trainee appraisers must successfully complete a Board-sponsored course for trainees and supervisors; provided, however, that trainee appraisers credentialed as of the effective date of this rule must successfully complete this course within one (1) year following the effective date of this rule.

[OAR Docket #14-501; filed 6-24-14]

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

[OAR Docket #14-529]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
605:10-1-4 [AMENDED]
Subchapter 3. Education and Examination Requirements
605:10-3-3 [AMENDED]
605:10-3-6 [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1.1 [AMENDED]
605:10-5-2 [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2 [AMENDED]
605:10-7-9 [AMENDED]
605:10-7-10 [AMENDED]
Appendix B. Residential Property Condition Disclosure Statement Form [REVOKED]
Appendix B. Residential Property Condition Disclosure Statement Form [NEW]
AUTHORITY:
Title 59, Oklahoma Statutes, Section 858-208; Oklahoma Real Estate Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 29, 2014
COMMENT PERIOD:
February 18, 2014 through March 20, 2014
PUBLIC HEARING:
March 20, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

605:10-1-4. Returned Checks - Disposition - Amending the requirement that a dishonored check shall be prima facie evidence of a code and rules violation, changing the word "shall" to "may", allowing the Commission greater discretion when resolving these cases.

605:10-3-3. Proceedings upon application for a license - Adding language that specifies approved applications are valid for ninety (90) days.

605:10-3-6. Continuing Education Requirements - Changing number of required subject matter continuing education from twelve (12) required hours to six (6) required hours, requiring licensees to take at least one (1) hour each in Broker Relationships Act, Fair Housing, Professional Conduct, Contract and Forms, Code and Rules and Current Issues. The remaining fifteen (15) required hours could be elective courses. Brokers would complete at least six (6) hours of required subject matter in addition to the Broker in Charge course.

605.10-5-1.1. Approval of a post-license course - Allowing entities seven (7) days from the completion of an offering to submit the list of licensees who successfully completed the entity.

605:10-5-2. Approval of a continuing education course - Changing language that disallows recruitment on an facility or premise used for education, to disallowing recruitment in the classroom only. Allowing entities seven (7) days from the completion of an offering to submit the list of licensees who successfully completed the offering.

605:10-7-2. License terms and fees; renewals; reinstatements - Adding language that clarifies what an entity should do to reinstate license. Clarifying the time frame for a licensee whose fingerprint card is rejected.

605:10-7-9. Nonresident licensing - Specifying that no out-of-state licensee applying for an Oklahoma license shall be issued an Oklahoma license higher than that of the one in their current state. Requiring nonresident applicants to take Oklahoma-specific courses or their equivalent prior to licensure, including Broker Relationships Act, Code and Rules, and Contract and Forms.

605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions - Adding language that such approved applications shall be valid for ninety (90) days. Specifying that no resident applicant currently or previously licensed in another jurisdiction shall be issued an Oklahoma license without taking Oklahoma-specific courses or their equivalent prior to licensure, including Broker Relationships Act, Code and Rules, and Contract and Forms. Specifying that no such license shall be renewed with an active status without taking Oklahoma-specific courses or their equivalent prior to renewal, including Broker Relationships Act, Code and Rules, and Contract and Forms.

APPENDIX B. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT FORM - Updating Oklahoma Real Estate Commission contact information on bottom of form.

CONTACT PERSON:

Charla J. Slabotsky, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(B), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

605:10-1-4. Returned checks - disposition

(a) All fees are received subject to collection. Payment of a fee to the Commission with a dishonored check ~~shall~~may be prima facie evidence of a violation of Title 59, Section 858-312.

(b) If the Commission receives a check that is dishonored upon presentation to the bank on which the check is drawn, a returned check fee of Thirty-five Dollars ($35.00) will be charged. If such payment is for fees, or other amounts due the Commission, and the check is not replaced within the specified time frame as determined by the Commission, such request shall be deemed incomplete and the transaction null and void.

(c) Other services may be delayed or denied if a check is dishonored upon presentation to the bank on which the check is drawn.

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-3. Proceedings upon application for a license

(a) **Qualified application.**

(1) **Approved application.** If the Commission is of the opinion that an applicant for license is qualified, the application shall be approved. An approved application shall be valid for ninety (90) days.

(2) **Denial of application.** If, from the application filed, or from answers to inquiries, or from complaints or information received, or from investigation, it shall appear to the Commission the applicant is not qualified at any time before the initial license is issued, the Commission shall refuse to approve the application and shall give notice of that fact to the applicant within fifteen (15) days after its ruling, order or decision.

(b) **Appeal of denial of application.** Upon written request from the applicant, filed within thirty (30) days after receipt of such notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of the applicant's request.

(c) **Applicant hearing.** The hearing shall be at the time and place as prescribed by the Commission. At least ten (10) days prior to the date set for hearing the Commission shall notify the applicant and other persons protesting, and shall set forth in a notice the reason or reasons why the Commission refused to accept or approve the application. The written notice of the hearing may be served by personal delivery to the applicant and protesters, or by mailing the same by registered or certified mail to the last known address of the applicant and/or protesters.

(d) **Hearing procedures.** The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

605:10-3-6. Continuing education requirements

(a) **Definition.** Continuing education shall be defined as any real estate oriented education course or equivalent, hereinafter called offering(s) intended:

(1) To improve the knowledge of licensees.

(2) To keep licensees abreast of changing real estate practices and laws.

(3) To help licensees meet the statutory requirements for license renewal.

(b) **Purpose.** The purpose of continuing education is to provide an educational program through which real estate licensees can continually become more competent and remain qualified to engage in real estate activities for which they are licensed. Such activities involve facts and concepts about which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(c) **Goals.** The goals of continuing education are:

(1) To provide licensees with opportunity for obtaining necessary current information and knowledge which will enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that the licensees are provided with current information regarding new and/or changing laws and regulations which affect the real estate business.

(3) To ensure that the consumers interest is protected from unknowledgeable licensees.

(d) **Objectives.** The objectives of continued education are as follows:

(1) For licensees to expand and enhance their knowledge and expertise so as to be continually effective, competent, and ethical as they practice real estate.

(2) For licensees to review and update their knowledge of federal, state and local laws and regulations which affect real estate practices.

(e) **Entities allowed to seek approval.** The Commission may approve and/or accept any offering provided by an entity which meets the purposes, goals, and objectives of the continuing education requirement. The Commission may accept the following offerings as proof of meeting the continuing education requirement:

(1) Any offering which is approved and presented by those entities enumerated in paragraph B, of 858- 307.2 of the "Code".

(2) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.

(3) Any offering in real estate, or directly related area, not accepted in paragraphs (1) or (2) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.

(4) Completion of an approved ninety (90) hour prelicense broker course or an approved forty-five (45) hour provisional sales associate postlicense course, or its respective equivalent as determined by the Commission shall suffice for 21-hours of continuing education credit for a licensee. An individual segment of an approved prelicense broker course or an approved provisional sales associate postlicense course shall suffice for continuing education credit provided such individual segment has also been separately approved for continuing education credit.

(f) **Ineligible courses.**

(1) The following offerings will not be considered by the Commission to meet continuing education requirements:

(A) General training or education not directly related to real estate or real estate practices.

(B) Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, and personal motivation that is not directly related to real estate.

(C) Sales promotion or other meetings held in conjunction with the general real estate brokerage business.

(D) Meetings which are a normal part of in-house training.

(E) That portion of any offering devoted to breakfast, luncheon, dinner, or other refreshments.

(F) Prelicense general training and education to obtain a provisional sales associate or sales associate license or license examination refresher courses for provisional sales associate/sales associate or broker.

(2) The list in (1) of this subsection does not limit the Commission's authority to disapprove any offering which fails to meet the adopted purposes, goals and objectives.

(g) **List of approved entities.** The Commission shall maintain a list of approved entities.

(h) **Licensee responsible for notification to Commission.** Each licensee shall be ultimately responsible to the Commission to furnish evidence of having successfully completed the continuing education requirements for license renewal, activation, or reinstatement, as set forth elsewhere in this Chapter. Each licensee shall present to the Commission evidence of completion of a minimum of twenty-one (21) clock hours of continuing education offerings acceptable by the Commission. As evidence of having completed the requirement each licensee shall present:

(1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or

(2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(i) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements.

(j) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

(k) **Course limitations.**

(1) A particular course offering may not be taken for continuing education credit more than once from the same entity and/or instructor during a renewal period.

(2) Educational courses taken for disciplinary reasons shall not count towards the normal continuing education requirements for licensees.

(l) **Required number of continuing education hours.** The required number of continuing education hours for a licensee shall be as follows:

(1) As a condition of a license activation or active reinstatement, each license with an expiration date of June 30, ~~2005~~2014 and thereafter, with the exception of those exempt as set out in Title 59, 858-307.2, shall provide evidence of completion of twenty-one (21) clock hours of Commission approved subject matter, or its equivalent, as determined by the Commission. Such hours shall have been taken in the same license term for which the license is to be issued, with the exception of a licensee whose hours were not used in the preceding license term. In that case, the hours taken in the preceding license term shall count towards an applicable license activation or active reinstatement.

(2) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education ~~twelve (12)~~six (6) clock hours of required subject matter as directed by the Commission.

(3) The required subject matter, or its equivalent, as determined by the Commission, shall consist of at least one (1) clock hour in all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, Contracts and Forms, Code and Rule Updates and Current Issues ~~including Code and Rule Updates~~. The remaining ~~nine (9)~~fifteen (15) clock hours may consist of elective subject matter as approved by the Commission.

(4) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(5) Any Broker who holds or has held a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission~~, each license term beginning with those licenses that expire on June 30, 2012~~. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the ~~four (4)~~ six (6) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (3) of this subsection.

(6) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation ~~after June 30, 2012~~ and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the ~~four (4)~~six (6) required subject matter ~~totaling~~ equal to at least six (6) hours prior to their license being reinstated active or reactivating.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1.1. Approval of a post-license course

(a) **Course approval.** In accordance with Section 858-302 of the License Code, the Commission shall determine and approve the education content of the forty-five (45) clock hour post-license course content or its equivalent. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, with the name, author and publisher of the primary textbook.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission although such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may be considered for approval as an instructor upon receipt of an application and evidence of education and/or experience. Each application must be accompanied by a One Hundred Dollar ($100.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience in a field related to that in which the person is to instruct, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this section.

(f) **Instructor renewal requirements**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course, or its equivalent, every twenty-four (24) months. An exception to this rule may be given

by the Commission if such instructor is licensed or certified through another regulatory body.

(B) Instructors approved solely for distance education courses must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(g) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(h) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours completed by each student for a period of seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Course notification to Commission.** An entity conducting an approved post-license education offering shall, within ~~five (5)~~seven (7) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed said offering. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(5) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(6) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(7) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(i) **Facility requirements.** The offering entity shall ensure that all classroom facilities have adequate lighting, seating space and technology to meet the needs of the student. The classroom area shall be free of distractions and noise.

(j) **Disciplinary action.** An approved course of study, director, and/or instructor may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

605:10-5-2. Approval of a continuing education course

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education course shall make application for the approval or renewal of each course. Such approval or renewal shall expire at the end of the thirty-sixth (36) month including the month of issuance.

(b) **Application form.** Entities seeking approval of a course or group of courses totaling thirty-six (36) hours or less shall submit an application on a form prescribed by the Commission along with a nonrefundable fee of seventy dollars ($70.00). Each application is limited to thirty-six (36) hours and shall be submitted on a separate application and accompanied by a non-refundable fee of seventy dollars ($70.00). Such application shall be made on a form prescribed by the Commission. Each application shall include, but is not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the course.

(2) The title(s) of the course or courses.

(3) The number of hours in each course.

(4) A copy of each course's curriculum, including comprehensive course objectives, a detailed outline of the course subject matter and instructor(s) for each course.

(5) The method the entity will use to evaluate the course offering.

(6) The procedure the entity will use to monitor attendance.

(7) A personal resume indicating name(s) and qualifications of the instructor(s).

(8) Any other relevant information useful in determining that the entity is presenting a course which will meet the definition, purposes, goals and objectives adopted by the Commission.

(9) A statement attesting to the fact that in accepting approval as a continuing education entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the course has been approved, denied, or whether additional information is needed to determine the acceptability of the course.

(d) **Course renewal requirements.** Upon expiration of the time period, as stated in sub-paragraph (a) of this rule, an application for renewal of any course or group of courses by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollars ($70.00) for a thirty-six (36) month period. Renewal applications shall be subject to the same requirements as original applications; however, the renewal application shall be submitted prior to expiration of the course(s).

(e) **Change of information notice requirement.** Whenever there is any change in a course, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising a course as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit." No entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission. Further, no entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission.

(g) **Course requirements and limitations.**

(1) A course will not be approved by the Commission if its duration is less than one (1) clock hour or its equivalent as determined by the Commission.

(2) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(3) An entity conducting an approved continuing education course shall, within ~~five (5)~~ seven (7) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed the course. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(4) Each licensee successfully completing a course shall be furnished a completion certificate, prescribed or approved by the Commission.

(5) Each course shall be presented in a facility necessary to safely and properly present the course.

(6) An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved in-class course offering which is delivered to the licensees by way of electronic means to receiving sites other than where the instructor is presenting, the Commission may require that each receiving entity site have an in-class person monitoring the class in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the ~~premises or the facilities~~ classroom to be used by anyone to advertise and/or recruit new affiliates for any firm. The coordinator/director shall cause the following statement to be posted ~~at the premises or the facilities~~in the classroom in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class~~ or on the premises~~. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate firm, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements:** An individual may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an instructor for a three (3) year period including the month of approval. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission is of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after its decision. Upon written request from the denied party, filed within thirty (30) days after receipt of the notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of the request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.
(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.
(3) Falsification of records and/or applications filed with the Commission.
(4) False and/or misleading advertising.
(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.
(6) Failure to maintain proper classroom order and decorum.
(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.
(8) Failure to comply with any portion of the Code or rules of this Chapter.
(9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

(l) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours completed by each student for seven (7) years.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**
(1) A licensee who is the instructor of an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.
(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.
(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

(o) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. Fees are non-refundable and are as follows:
(1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars ($210.00).
(2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars ($125.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars ($130.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
(3) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars ($150.00).
(4) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars ($95.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars ($100.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
(5) For an original provisional sales associate license that is non-renewable the fee shall be Seventy Dollars ($70.00).
(6) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars ($125.00).
(7) For each duplicate license or pocket card, where the original is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents ($7.50) shall be charged.
(8) The Fifteen Dollar ($15.00) Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and for each subsequent license renewal. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars ($5.00) for their twelve (12) month license term; and, 2) a branch office shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date for all renewals except electronic online renewal wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars ($10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such a case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

(1) **Lapsed less than one year.** In the case of a license lapsed less than one year:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) Documents as required by the Commission.

(2) **Lapsed more than one year but less than three years.** In the case of a license lapsed more than one year but less than three years:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) National criminal history check.

(D) A completed reinstatement application.

(E) Successful completion of the appropriate licensing examination.

(F) A statement that the applicant has read a current License Code and Rules booklet.

(G) Documents as required by the Commission.

(3) **Lapsed more than three years.** If an application is submitted more than three (3) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.

(g) **Reinstatement of a provisional sales associate license wherein post-license education was completed prior to license expiration date.** An applicant who successfully completed the post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (3).

(h) **Reinstatement of a provisional sales associate license wherein post-license education was not completed prior to license expiration date.** An applicant who has not successfully completed the post-license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (f) of this section. In addition, reinstatement will not be granted until all outstanding amounts due the Commission have been paid in full.

(k) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled license applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled license applicant whose license term is still current:

(A) Applicable reinstatement fee equal to the current examination fee.

(B) Re-issuance fee equal to the transfer of license fee.

(C) Documents as required by the Commission.

(D) Criminal history background check.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled license applicant whose license term has expired shall be required to comply with the requirements of (f) of this section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

(A) If a provisional sales associate completed the post-license requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through ~~(3)~~(2).

(B) If a provisional sales associate did not complete the post-license requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(l) **Continuing education requirement.** Each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that they have completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. An applicant seeking active reinstatement of a lapsed license must submit evidence that all continuing education requirements have been completed for each term in which an active license is requested.

(m) **Sales to broker license fee prorated.** If a real estate sales associate or provisional sales associate qualifies for a license as a real estate broker, the unused license fee shall be credited to the broker license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(n) **License expires after effective date of national criminal history check.**

(1) Any licensee who allows their license to expire shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If, the Commission does not receive a completed Part A of the application and completed finger print card and fee within thirty (30) days from the date of request by the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in these rules, have been received by the Commission. However, if the finger print card is rejected for the purposes of a national criminal history check, the Commission will provide written notice to the licensee and the licensee must submit a new and unique fingerprint card to the Commission within thirty (30) days of receipt of such notice or the license will be placed on inactive status.

(2) A provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew the license shall be eligible to apply under the requirement under the preceding paragraph. However, after a period of three (3) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(o) **Issuance of license from provisional sales associate to sales associate.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour post-license course requirement and submitted all required form(s) and fee(s) as required by the Commission.

(p) **Active sales associate to inactive broker license - no remaining credit to be given.** In the event an active sales associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not credit the difference in the license fees.

(q) **Licensee on active duty as a member of the Armed Forces of the United States.**

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act while a license holder is on active duty the license may be renewed without payment of the license and education and recovery fund fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Commission prior to license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Commission evidence of successful completion of the continuing education requirement for the current license renewal term.

(2) If a licensee on active duty does not request such a waiver in writing and the license expires, the applicant may, by written request provide the Commission documentation as required in subparagraph (1) of this subsection; however, no later than one (1) year after discharge from active duty.

(3) In the event a license expires during the events as noted herein, the Commission shall waive the criminal history background check and license examination.

(4) **Member of the National Guard or reserve component of the armed forces.** In accordance with Title 72, Chapter 1, Section 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Commission receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all licensee fee and continuing education shall be waived for this time period as well as the criminal history background check and license examination.

(r) **Reinstatement for corporation, association or partnership.**

(1) A corporation, association or partnership that has lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission.

(C) If the corporation or association has been lapsed for more than sixty (60) days, a current "Certification of Good Standing."

(2) Any corporation, association or partnership that has lapsed for than three (3) years must submit an original application to be considered for licensure.

(s) **Reinstatement for branch offices.**

(1) A branch office that is lapsed for less than three (3) years that wishes to reinstate must submit:

(A) License fee and late penalty fees.

(B) Reinstatement forms and documents as required by the Commission.

(2) Any branch office that has lapsed for more than three (3) years must submit an original application as a new branch office.

605:10-7-9. Nonresident licensing

(a) **Nonresident licensed in another jurisdiction.** A nonresident applicant may apply to the Commission for a license to operate as a nonresident by submitting all appropriate documents as required by the Commission and furnish evidence that the applicant possesses a current active license in the applicant's resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. No license shall be issued to any nonresident applicant at a higher level than the highest license of any current active license in the applicant's resident jurisdiction or another jurisdiction in which the applicant has qualified for a license. All nonresidents shall be required to complete the appropriate examination as required by the Commission~~. If, in the opinion of the Commission, there is question as to the competence of the nonresident applicant, such individual shall be required to successfully complete additional educational courses.~~ No inactive license experience may be credited to qualify under this section. The Commission~~, at its discretion,~~ may issue a nonresident license if~~, in the opinion of the Commission,~~ such nonresident has qualified and maintains a license in another jurisdiction and meets the following qualifications:

(1) A nonresident applicant who has been actively licensed as a sales associate or broker respectively for a minimum of two (2) years out of the previous five (5) years.

(A) A nonresident applicant that applies under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License certification(s) from the jurisdiction in which the applicant has held and/or currently holds a license.

(iii) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the state portion of the examination.

(v) Consent for service of jurisdiction form.

(vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

(i) appropriate license application form(s) along with license and education and recovery fund fees.

(2) A nonresident applicant who has been actively licensed less than two (2) years as a sales associate or broker respectively out of the previous five (5) years must successfully complete the appropriate examination.

(A) A nonresident applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License certification(s) from jurisdiction(s) in which the applicant has held and/or currently holds a license.

(iii) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the entire appropriate examination.

(v) Consent for service of jurisdiction form.

(vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit the following:

(i) Appropriate license application form(s) along with license and education and recovery fund fees.

(b) **Nonresident agreement.** The Commission may enter into a nonresident agreement with another jurisdiction and thereby qualify actively licensed nonresident applicants for licensing in this jurisdiction provided the Commission determines that the educational and experience requirements of the other jurisdiction are equivalent or equal to this jurisdiction; however, the applicant shall be required to comply with paragraph (a)(1)(A) and (B) of this section.

(c) **Nonresident applicant that is inactive ~~or unlicensed~~ in another jurisdiction.** A nonresident applicant who holds an inactive license in another jurisdiction and is unable to meet the requirement under paragraph (a) of this section~~ or an applicant who is unlicensed in another jurisdiction~~ may apply to the Commission for a license to operate as a nonresident provisional sales associate or broker by submitting all appropriate documents and successfully completing all requirements as required by the Commission.

(1) The nonresident applicant must complete and submit the following:

(A) Appropriate application(s).

(B) Criminal history background application, fingerprint card and fee.

(C) Qualify as an original applicant by submitting proof of appropriate required education.

(D) Examination fee and successful completion of the entire appropriate examination.

(E) ~~If applicable, license~~License certification(s) from the jurisdiction(s) in which the applicant holds or has held a license.

(F) Consent for service of jurisdiction form.

(G) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(2) Upon the Commission granting approval to the nonresident applicant for licensure in this jurisdiction, the applicant must complete and submit appropriate license

application form(s) along with license and education and recovery fund fees.

(d) **Consent for service of jurisdiction.** Prior to the issuance of a license to a nonresident, such nonresident shall file with the Commission a designation in writing that appoints the Secretary-Treasurer of the Commission to act as the licensed agent, upon whom all judicial and other process or legal notices directed to such nonresident licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the Secretary-Treasurer of the Commission, shall be deemed sufficient evidence thereof and shall be admitted into evidence with the same force and effect as the original thereof. In such written designation, the licensee shall agree and stipulate that any notice or instrument which is served upon such agent shall be of the same legal force and validity as if served upon the licensee, and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice the Secretary-Treasurer shall forthwith mail a copy of the same, by certified mail, to the last known business address of the licensee.

(e) **License history and application requirements.** Prior to the approval of the application, the nonresident must file with the Commission a certification of licensure from the real estate licensing jurisdiction of the licensee's resident jurisdiction and/or other jurisdictions in which the applicant has held or currently holds a license. The applicant shall pay the Commission the same examination fee and license fee as provided in the "Rules" for the obtaining of a resident sales associate or broker license in this jurisdiction. The certification of licensure shall be valid for sixty (60) days from date of issuance.

(f) **Approved application valid for ninety (90) days.** An approved application shall be valid for ninety (90) days.

(g) **Stipulations.** Nonresident licenses granted under the provisions of this section shall remain in force, only as long as such nonresident remains licensed in good standing in this jurisdiction or any other jurisdiction in which the nonresident is or has been licensed.

(h) **Co-brokerage arrangements.** A broker of this jurisdiction may participate in a cooperative brokerage arrangement with a broker of another jurisdiction provided that each broker conducts real estate activities only in the jurisdiction in which they are licensed.

(i) **Request for license transfer.** In the event a nonresident Oklahoma licensee desires to transfer the license and obtain a resident Oklahoma license or desires to transfer the license to another jurisdiction, the nonresident licensee shall be required to meet all applicable requirements and pay the appropriate change of address fee and submit all appropriate documents as required by the Commission. In the event a resident Oklahoma licensee desires to transfer the license and obtain a nonresident Oklahoma license, the licensee shall be required to pay the appropriate change of address fee and complete and submit all appropriate documents as required by the Commission.

(j) **Continuing education.** If a nonresident licensee completes the continuing education requirement of another jurisdiction for license renewal, the Commission will ~~exempt the nonresident licensee from the continuing education requirement in this jurisdiction~~require proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects for license renewal: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates. If a nonresident licensee is exempt from meeting a continuing education requirement in another jurisdiction then the licensee must meet the Oklahoma continuing education requirement as follow:

(1) Each licensee shall have completed of said twenty-one (21) clock hours of continuing education ~~twelve (12)~~six (6) clock hours of required subject matter as directed by the Commission

(2) The required subject matter, or its equivalent, as determined by the Commission, shall consist of all following subjects each license term: Professional Conduct, Broker Relationships Act, Fair Housing, Contracts and Forms, Code and Rules Updates and Current Issues~~ including Code and Rule Updates~~. The remaining ~~nine (9)~~fifteen (15) clock hours may consist of elective subject matter as approved by the Commission

(3) Any licensee may complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours in lieu of the required subject matter.

(4) Any Broker who holds or has held a license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) during any portion of their current license term shall be required to successfully complete the Broker in Charge course as approved by the Commission consisting of fifteen (15) clock hours, or its equivalent, as approved by the Commission~~, each license term beginning with those licenses that expire on June 30, 2012~~. In addition, to complete the continuing education requirement of twenty-one (21) clock hours such broker shall complete at least two (2) of the ~~four (4)~~ six (6) required subject matter, equal to at least six (6) clock hours, as referenced in paragraph (2) of this subsection.

(5) Any broker that lapsed or renewed inactive in their previous license term or current license term who applies for reinstatement or activation ~~after June 30, 2012~~ and held in their previous or current license term the license type of Broker Manager (BM), Proprietor Broker (BP), or Branch Broker (BB) must complete the Broker in Charge course and two (2) of the ~~four (4)~~six (6) required subject matter totaling six (6) hours prior to their license being reinstated active or reactivating.

605:10-7-10. Resident applicants currently or previously licensed in other jurisdictions

(a) **Requirements.** In order to qualify under previously licensed procedures, an applicant must complete and submit all appropriate documents as required by the Commission and furnish evidence that the applicant possesses or has possessed a license in good standing in another jurisdiction. Applications approved for resident applicants currently or previously licensed in other jurisdictions shall be valid for ninety (90) days. The Commission~~, at its discretion,~~ may issue the applicant a license if such previously licensed applicant meets all of

the requirements of either paragraphs (1), (2), (3) or (4) of this subsection:

(1) If a nonresident agreement exists between Oklahoma and the jurisdiction in which the applicant qualified for a license, the Commission shall qualify the licensed applicant through the nonresident agreement. In order to qualify under this paragraph an individual must furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the state portion of the examination.

(vi) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for ~~a~~ licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(2) If a nonresident agreement does not exist, the applicant shall be required to furnish evidence of two (2) years of active experience respectively as a sales associate or broker out of the previous five (5) years. In order to qualify under this paragraph an individual must furnish evidence that the license from the former jurisdiction has not been inactive more than six (6) months prior to application to this jurisdiction.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the state portion of the examination.

(v) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a sales associate, broker associate or broker license.

(3) An applicant who does not possess the required two (2) years active experience out of the previous five (5) years respectively as a sales associate or broker, or an applicant who does not meet all of the requirements of either paragraphs (1) or (2) of this subsection, shall be required to apply as an original applicant.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Qualify as an original applicant by submitting appropriate required education and application.

(ii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.

(iii) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the entire appropriate examination.

(v) Proof of completion of at least one (1) continuing education clock hour in each of the following Oklahoma-specific subjects: Broker Relationships Act, Contracts and Forms, and Code and Rule Updates.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate, broker associate or broker license.

(4) In accordance with Title 59, O.S., Section 4100.4 of the Post-Military Service Occupation, Education and Credentialing Act, the Commission shall, upon satisfactory evidence of equivalent education, training and experience by an applicant for licensure, accept the education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any jurisdiction, the Military Reserves of any jurisdiction, or the Naval Militias of any jurisdiction, and apply it in the manner most favorable toward satisfying the applicant's qualifications for examination and license issuance.

(A) An applicant applying under this paragraph must complete and submit the following:

(i) Appropriate application(s).

(ii) Satisfactory evidence of education, training and experience obtained by the applicant as a member of the military Armed Forces or Reserves of the United States.

(iii) License certification(s) from the jurisdiction(s) in which the applicant has held or currently holds a license.

(iv) Criminal history background application, fingerprint card and fee.

(iv) Examination fee and successful completion of the entire appropriate examination.

(B) Upon the Commission granting approval to the applicant for licensure in this jurisdiction, the applicant must complete and submit the appropriate license application form(s) along with license and education and recovery fund fees.

(C) An applicant qualifying under this paragraph will be issued either a provisional sales associate, broker associate or broker license.

(b) **May be required to meet additional requirements.** If, in the opinion of the Commission, there is question as to the competence of the previously licensed applicant, the individual may be required to meet additional educational courses and/or successfully complete the Oklahoma examination.

(c) Military spouse applicant - 120 day temporary permit. In accordance with Title 59, O.S., Section 4100.5 the Commission shall expedite the issuance of a 120 day permit to an applicant:

(1) Who is actively licensed in real estate in another jurisdiction;

(2) Whose spouse is an active-duty member of the Armed Forces or Reserves of the United States;

(3) Whose spouse is subject to military transfer to this state; and

(4) Who left employment in another state to accompany their spouse to this state.

(d) Expedite licensure means to issue the applicant a temporary permit to perform licensed activities for a period of 120 days to allow the person to successfully complete all application requirements as required by the Commission and any specific requirements in this state that were not required in the jurisdiction in which the person was licensed, i.e., criminal history background check and successful passage of the Oklahoma portion of the examination. An extension of the 120 days may be granted up to an additional 60 days if written justification is submitted by the applicant to the commission and the delay of license issuance was not the fault of the applicant.

APPENDIX B. RESIDENTIAL PROPERTY CONDITION DISCLAIMER STATEMENT FORM [REVOKED]

APPENDIX B. RESIDENTIAL PROPERTY CONDITION DISCLAIMER STATEMENT FORM [NEW]

Seller instructions: Oklahoma Law (the "Residential Property Condition Disclosure Act," 60, O.S. Section 831 et. seq., effective July 1, 1995) **requires a seller** of 1 and 2 residential dwelling units **to deliver, or cause to be delivered, a disclaimer statement to a purchaser as soon as practicable, but in any event before acceptance of an offer to purchase if you, the seller: 1) have never occupied the property and make no disclosures** concerning the condition of the property; and **2) have no actual knowledge of any defect** concerning the property.

If, however, you occupied the property or **know of a defect in regard to the property,** you must complete and deliver, or cause to be delivered, a "Residential Property Condition Disclosure Statement" to the purchaser.

Also, if you become aware of a defect after delivery of this disclaimer statement to a purchaser, but before you accept an offer to purchase, you must complete and deliver, or cause to be delivered, a "Residential Property Condition Disclosure Statement" to a purchaser.

Completion of this form by you **may not be more than 180 days prior to the date this form is received by a purchaser.**

Note: If this disclaimer statement **is delivered to a purchaser after an offer to purchase has been made by the purchaser,** the offer to purchase **shall be accepted by you only after** a purchaser has acknowledged receipt of this statement and confirmed the offer to purchase.

Defect means a condition, malfunction, or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property.

(For more information on the requirements of the law, please refer to the Residential Property Condition Disclosure Information Pamphlet.)

Seller's Disclaimer Statement

The undersigned seller states that seller has never occupied the property located at _____ _____, Oklahoma; makes no disclosures concerning the condition of the property; AND has no actual knowledge of any defect.

Seller's Signature	**Date**	**Seller's Signature**	**Date**

Purchaser's Acknowledgment

The purchaser shall sign and date this acknowledgment. The purchaser is urged to carefully inspect the subject property and, if desired, to have the property inspected by an expert. The purchaser acknowledges that purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase you make on the property identified above.

Purchaser's Signature	**Date**	**Purchaser's Signature**	**Date**

Note to seller and purchaser: **A real estate licensee has no duty to the seller or purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclaimer statement.**

The disclosure and disclaimer statement forms and the Residential Property Condition Disclosure Information Pamphlet are made available by the Oklahoma Real Estate Commission, 1915 North Stiles Avenue, Suite 200 (Denver N. Davison Building), Oklahoma City, Oklahoma 73105-4919. Visit the Commission's web site: www.orec.ok.gov

OREC (07-2014)

[OAR Docket #14-529; filed 6-26-14]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 15. EDUCATIONAL OUTREACH

[OAR Docket #14-729]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Robert S. Kerr Conference Center [REVOKED]
610:15-3-1. Purpose [REVOKED]
610:15-3-2. Utilization policy [REVOKED]
610:15-3-3. Administration and management of Center [REVOKED]
610:15-3-4. Operating Budget [REVOKED]
610:15-3-5. Financial and program reports [REVOKED]
610:15-3-6. Internal controls and accounting procedures [REVOKED]
610:15-3-7. Changes in policy and procedures [REVOKED]
AUTHORITY:
70 O.S. §2601 et seq.; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 8, 2013
COMMENT PERIOD:
November 1, 2013 through December 2, 2013
PUBLIC HEARING:
None held or requested
ADOPTION:
December 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 12, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule changes address the following issues:
The Robert S. Kerr Conference Center (Center) is no longer being used by Carl Albert State College (College). For the last several years maintenance and operation of the Center have become a financial burden for the College. Its Board of Regents has rejected an offer from the State of Oklahoma to take title to the property. All museum artifacts have been retrieved by the local historical society. All catering equipment, paintings and artwork have been secured and stored in appropriate locations at the College.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. ROBERT S. KERR CONFERENCE CENTER [REVOKED]

610:15-3-1. Purpose [REVOKED]

~~(a) On February 27, 1978, the Kerr Foundation, Inc. presented a deed conveying the title to the Robert S. Kerr home and approximately 40 acres of real estate situated in Poteau, LeFlore County, Oklahoma, to the state. The Declaration of Gift stated the intent of the Foundation as being that said property would be used by the Oklahoma State Regents for Higher Education for education purposes conferences, symposiums, retreats, seminars, meetings, museums, and other educational and cultural activities.~~

~~(b) The Robert S. Kerr home has been completely renovated with the specific purpose of adapting it for use as a conference center and museum. A secondary purpose of the renovation was to make the facility more energy efficient.~~

~~(c) The facility and property is to be designated as the Kerr Conference Center.~~

610:15-3-2. Utilization policy [REVOKED]

~~The following policy is provided for the efficient operation of the Kerr Conference Center:~~

~~(1) The staff of the Oklahoma State Regents for Higher Education in conjunction with Carl Albert State College will provide leadership for the planning of programs and services that are conducted at the Kerr Conference Center.~~

~~(2) Although the primary purpose is to use the Kerr Conference Center for educational purposes, such as conferences, symposiums, retreats, seminars and meetings, another important usage will be for cultural activities and special events which promote and call attention to the history of the Kerr Conference Center. For these purposes, the Kerr Conference Center may be used by local and state government, civic groups, church organizations, business organizations and individuals.~~

~~(3) Carl Albert State College will be permitted to utilize the Kerr Conference Center in conjunction with operation of their academic program dealing with hotel, tourism and restaurant management.~~

~~(4) It is the express intent of the Oklahoma State Regents for Higher Education that all policies and procedures for administration of the Kerr Conference Center be stated in a manner to encourage cooperation with all lodging and restaurant services in the area surrounding Poteau, Oklahoma.~~

610:15-3-3. Administration and management of Center [REVOKED]

~~The State Regents for Higher Education and Carl Albert State College will enter into an agreement, renewed annually, whereby Carl Albert State College will be responsible for the day-to-day operations of the Kerr Conference Center. Responsibilities for administration and management of the Center are as follows:~~

~~(1) **Management.** A full-time manager will continuously be employed to manage and oversee all aspects of the Kerr Conference Center and to assure that the Kerr Conference Center is appropriately marketed. Unless specifically approved by the State Regents, the manager~~

~~will not have responsibility for Carl Albert State College's academic program dealing with hotel and restaurant management nor shall the director of the academic program have any responsibility for management of the Kerr Conference Center.~~

~~(2) **Security.** The safety and well-being of the participants utilizing the Kerr Conference Center and the property belonging to the State of Oklahoma will be the responsibility of Carl Albert State College, Poteau, Oklahoma, by assignment from the Oklahoma State Regents for Higher Education. It is the intent of the State Regents that Carl Albert State College provide an individual on-site, either security guard or management personnel, 24 hours a day, 7 days a week.~~

~~(3) **Janitorial service, maintenance, and grounds keeping.** The responsibilities for maintaining the Center grounds are as follows:~~

~~(A) The cleanliness and upkeep of the buildings, including the museum space and grounds, will be the responsibility of Carl Albert State College, Poteau, Oklahoma. All janitorial services, including the necessary materials, supplies, and equipment will be provided by Carl Albert State College. This service will include cleaning and providing clean linens for all bedrooms, cleaning conference rooms, hallways, entry vestibules, and all other space by the terms of the annual agreement.~~

~~(B) The parking lots and all of the land area surrounding the Robert S. Kerr Conference Center will be kept clean and clear of trash and debris by the terms of the annual agreement. All grass will be kept mowed, and shrubs and trees will receive proper care.~~

~~(C) In addition, the swimming pool and the area surrounding the swimming pool will be the responsibility of Carl Albert State College and will be maintained and inspected according to standards required by the Oklahoma State Department of Health.~~

~~(4) **Utilities.** All utilities, including gas, electricity, water, and garbage, will be the financial responsibility of Carl Albert State College.~~

~~(5) **Food services/dining area.** It will be the responsibility of Carl Albert State College to manage and provide food services at the Kerr Conference Center and to obtain the necessary permits and Oklahoma State Health Department licensure to operate a restaurant~~

~~(6) **Hotel services.** Sleeping accommodations are available at the Kerr Conference Center for approximately 20 individuals in 10 large bedrooms and 4 rooms in the guest house. The administration and use of these hotel accommodations will be the responsibility of Carl Albert State College. Reservations and the renting of these rooms, as well as maid service, will be provided by personnel employed by Carl Albert State College. Any permits or licensure requirements for the operations of a hotel will be the responsibility of Carl Albert State College.~~

~~(7) **Conference scheduling and coordination of services.** Administration and use of the Kerr Conference Center will be the responsibility of Carl Albert State College. Scheduling and coordination of center facilities will be provided by personnel of Carl Albert State College.~~

~~(8) **Museum space.** Approximately 2,500 square feet have been specifically designed for use as a museum. This space will be leased to the Eastern Oklahoma Historical Society on an annual basis with the total cost to be negotiated effective July 1 of each fiscal year. The negotiated price will include the use of the approximately 2,500 square feet, all utilities, janitorial services, maintenance, and security. The occupants of the museum space will be provided privacy for this space and will be responsible for housing furniture and equipment in the space within the museum that is known as the Robert S. Kerr Senatorial Office.~~

610:15-3-4. Operating budget [REVOKED]

~~A detailed annual operating budget will be developed for the Kerr Conference Center and will be utilized for management purposes in addition to providing the basis for contracting with Carl Albert State College for services. The annual operating budget will be developed by Carl Albert State College officials in conjunction with the Executive Vice Chancellor. The annual operating budget will be approved by the State Regents for Higher Education.~~

610:15-3-5. Financial and program reports [REVOKED]

~~The Executive Vice Chancellor will work with officials at Carl Albert State College to develop a financial reporting format for the Kerr Conference Center which will include a monthly statement of income and expense, reflecting cost of sales. Other reports will be developed as deemed necessary. The external audit firm engaged by the State Regents will on an annual basis perform audit tests and procedures as defined in the scope of the audit.~~

610:15-3-6. Internal control and accounting procedures [REVOKED]

~~An effective system of internal accounting controls for the Kerr Conference Center must be maintained to guard against irregularities. The following policies must be periodically reviewed with center personnel to assure the efficiency and effectiveness of center operations:~~

~~(1) **Cash receipts.** Cash receipts recorded by the Kerr Conference Center, Carl Albert State College, and the Oklahoma State Regents for Higher Education should be reconciled periodically to enable errors to be detected and corrected and to improve the accuracy of financial information. When the State Regents deposit money to the center's account, a copy of the deposit slip will be promptly mailed to the center to facilitate cash reconciliation between the center and the State Regents' staff.~~

~~(2) **Meal tickets/guest account sheets.** Source documents, specifically guest account sheets and meal tickets, must be controlled by numerical sequence throughout the year. Kerr Conference Center personnel must review all~~

~~account sheets and meal tickets to ensure all necessary information is included for billing purposes. All services provided at the Kerr Conference Center must be accounted for by the Kerr Conference Center manager.~~

~~(3) **Cash disbursements.** Reconciliation of cash disbursements reflected in the records of Carl Albert State College and the State Regents must be prepared monthly for the purpose of accuracy.~~

~~(4) **Inventories.** The Kerr Conference Center must maintain an inventory system which includes all furniture, equipment, and supplies. Inventory records must be updated monthly for purchases, changes, and disposals. An actual physical inventory must be conducted at the end of the fiscal year.~~

~~(5) **Accounts receivable aging schedule.** The accounts receivable aging schedule must include not only the guest name and total amount of charges, aged according to number of days past due, but also include the source of guest charges, the date charges were incurred, and progress made in collection procedures. Kerr Conference Center personnel will monitor the accounts receivable and be responsible for collections and any required follow-up.~~

~~(6) **Food inventory and cost control.** In order to prevent the unauthorized use and waste of food products, a regular inventory procedure will be established and maintained to track both purchases and use of food products.~~

~~(7) **Payroll records.** Payroll records for Carl Albert State College personnel that are assigned to the Kerr Conference Center will be maintained in accordance with State Regents' policies and procedures. This includes approval of employee's time sheets by a supervisor before including in a payroll.~~

610:15-3-7. Changes in policy and procedures [REVOKED]

~~No changes in the Policy and Procedures for Administration of the Kerr Conference Center will be made without express written consent of the Oklahoma State Regents for Higher Education. All requests for such changes should be presented to the Chancellor, 500 Education Building, State Capitol Complex, Oklahoma City, Oklahoma 73105-4503.~~

[OAR Docket #14-729; filed 7-16-14]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #14-728]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Academic Scholars Program
610:25-1-5. Criteria for Annual Renewal [AMENDED]
610:25-1-7. Fiscal Aspects of Program [AMENDED]

AUTHORITY:
Oklahoma State Regents for Higher Education; 70 O.S. §2401 et seq.; 70 O.S. §3206 (i).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 8, 2013
COMMENT PERIOD:
November 1, 2013 through December 2, 2013
PUBLIC HEARING:
None held or requested
ADOPTION:
December 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 12, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule changes address the following issues:

Summer Awards: The revisions clarify that students may receive a full-semester award during the summer if the student enrolls full-time in at least 12 semester credit hours. The summer award will count toward the student's overall scholarship limit of eight full-time semester awards, so no additional fiscal impact to the program is expected. The change will accommodate those students capable of completing their undergraduate degree in less than four calendar years. The change also recognizes alternate semester structures such as the trimester system at the University of Science and Arts of Oklahoma (USAO) which provides three equal trimesters each academic year allowing students to earn 36 credit hours or more per year.

Clarification of Institution Tuition Waiver Award: State system colleges and universities are required to provide program participants a tuition waiver award in addition to the cash award paid by the program. The revision clarifies that the combined amount of the program award and the institution tuition waiver may not exceed the average costs of tuition and fees, room and board, and required textbooks or materials.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. ACADEMIC SCHOLARS PROGRAM

610:25-1-5. Criteria for Annual Renewal

(a) Participants awarded a scholarship under the Academic Scholars Program shall maintain a 3.25 cumulative or retention grade-point average. The cumulative grade point average will include all courses attempted in high school for college credit. For the purpose of this policy, a fiscal year begins in the fall semester and continues through the summer term. The cumulative grade-point average will be determined between the summer and fall term.

(b) Participants awarded a scholarship under the Academic Scholars Program must enroll full-time each semester (as defined by the State Regents) for continuation in the program. In this context, "full-time" means a minimum of 12 hours per semester. A total of 24 hours must be earned for the program year to retain eligibility for the next program year. Students who, due to extraordinary circumstances during the semester, drop below the minimum of 12 hours of initial enrollment, must earn 24 credit hours for the program year to retain eligibility for the next program year. Students will ~~not~~ be eligible for summer support if they have ~~not~~ earned 24 semester credit hours in the preceding two regular semesters. ~~Students who receive support for the summer semester must earn six hours of credit in order to be eligible for support in the fall semester.~~Students who receive part-time awards for summer must enroll in at least 6 credit hours and must complete a total of at least 30 credit hours during the full academic year (fall, spring, summer). Students who receive full-time awards for summer must enroll in at least 12 credit hours and must complete a total of at least 36 credit hours during the full academic year (fall, spring, summer). Hours ~~The six hours~~ of enrollment required for summer support may consist of a combination of summer and intersession enrollment. ~~Awards~~Part-time awards, for enrollment of 6 to 11 credit hours, made for the summer term will count as one-half of a semester used in the program and will be in the amount of one-half of a semester award. Full time awards, for enrollment of 12 or more credit hours, made for the summer term will count as a full semester used in the program and will be in the amount of one semester award.

(c) In order to receive a payment for enrollment in a summer term, the student must submit the summer term application to the State Regents' office by the specified deadline.

(d) Credit by examination, the practice of granting students credit for passing tests based on the subject matter of college courses in which they have not enrolled, audited courses and correspondence courses will not be considered toward meeting the full-time enrollment requirement or the requirement to earn 24 hours for the program year.

(e) A student beginning in the program for the first time in the summer must have achieved a 3.25 cumulative grade-point average at the end of the one year and the summer. The student is not required to meet the 3.25 grade-point average at the end of the first summer.

610:25-1-7. Fiscal aspects of program

(a) **Award limits.** Academic Scholarship awards to qualified nonresident students attending Oklahoma institutions shall not exceed 25 percent of the greater of the number of awards of the preceding year or the amount of the previous year's funding for certified awards for the program.

(b) **Additional aid.** Students receiving this scholarship may also receive additional state-supported financial aid, but not in excess of the student's cost of attendance as determined by the institution consistent with regulations for federal financial aid. Likewise, a student may enhance the Academic Scholars award by accepting grants and scholarships from private sources.

(c) **Funding priorities.** The Oklahoma State Regents will, as soon as fiscally feasible, set aside in the Oklahoma State Regents' Academic Trust funds for the full scholarship commitment. Funding priority will be given first to prior years' recipients, and secondly, to any students applying for the scholarship for the first-time. For first-time students, priority will be given to Individual Applicant Qualified Students, Presidential Scholars, National Merit Scholars, and National Merit Finalists, and secondly, to Institutional Nominees.

(d) **Amount of Scholarship.** The program shall provide participants a scholarship in an amount not to exceed the average costs of tuition and other fees, room and board, and required textbooks or materials for undergraduate and graduate study for students attending regionally accredited public institutions of higher education in Oklahoma.

(1) The institution shall provide the student a tuition waiver that, when combined with the scholarship award, will ~~meet~~not exceed the costs described in paragraph (d) above.

(2) Students who do not meet the continuing eligibility requirements for the scholarship may be eligible for the tuition waiver if they meet the standard tuition waiver criteria determined by the institution.

(3) Transfer students are eligible for the same level of tuition waiver as all other Academic Scholars.

(4) Institutions may elect to award nonresident students a resident and/or nonresident tuition waiver.

(e) **Payment of funds.** Funds made available to students as part of the Oklahoma State Regents Academic Scholars Program shall be paid directly to the institution in which the student is enrolled, in trust for the student, and on the student's behalf and shall contain appropriate restrictions and conditions that such monies are expended only for the purposes authorized by the State Statute authorizing this program.

(f) **Private institutions.** For students attending private Oklahoma institutions, the award amount will be the same as the student attending a similar type of public institution as defined by the State Regents.

[OAR Docket #14-728; filed 7-16-14]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #14-730]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-4. Program requirements [AMENDED]
610:25-23-5. Securing Program Benefits [AMENDED]
610:25-23-6. Retaining eligibility in postsecondary education [AMENDED]

AUTHORITY:
Oklahoma State Regents for Higher Education; 70 O.S. §2601 et seq.; 70 O.S. §3206 (i).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
n/a
COMMENT PERIOD:
March 1, 2013 through April 1, 2013
PUBLIC HEARING:
None
ADOPTION:
April 18, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
April 23, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule changes address the following issues:

Grade Point Average (GPA) Standards: The amendments extend the numerical value of the program's minimum GPA requirements from one decimal point to two decimal points (e.g. from 2.5 to 2.50). In statute (70 O.S. §2603), the program GPA requirements are written out to the first decimal place. However, high school and college GPA's are near universally calculated out to the second decimal point. The change provides clear guidance to students, parents and school officials about the minimum GPA cut-off points and will clarify that rounding of the student's GPA to the first decimal point will not be permitted.

Three-Year Period after High School to Begin Using the Program Award: The statutes (70 O.S. §2603) creating the program state that, to begin using the program award after high school, an Oklahoma's Promise student must "have graduated within the previous three (3) years." The change clarifies that the period is three ***calendar*** years. The change will help reduce any confusion about when the three-year period ends. For example, an Oklahoma's Promise student graduating in 2012 would be required to begin college no later than the end of 2015.

The remaining non-substantive changes simply update references to the State Regents policy on Institutional Admission and Retention.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

610:25-23-4. Program requirements

(a) Students shall agree to abide by the following provisions:

(1) Attend school regularly and to do homework regularly;

(2) Refrain from substance abuse;

(3) Refrain from commission of crimes or delinquent acts;

(4) Have school work and school records reviewed by mentors designated pursuant to the program;

(5) Provide information requested by the Oklahoma State Regents for Higher Education [OSRHE] or the State Board of Education; and

(6) Participate in program activities. [70 O.S. § 2605]

(b) The student's parent(s), custodial parent(s), or guardian(s) shall witness the student's agreement and further agree to:

(1) Assist the student in achieving compliance with the agreements;

(2) Confer, when requested to do so, with the school contact person, other school personnel, and program mentors;

(3) Provide information requested by the OSRHE or the State Board of Education; and

(4) Assist the student in completing forms and reports required for program participation, making application to institutions and schools of higher learning, and filing applications for student grants and scholarships. [70 O.S. § 2605]

(c) Students in the program graduating high school in 2010 and thereafter must complete the following 17-unit core curriculum with a minimum 2.50 grade-point-average (GPA) on a 4.00 grading scale, by the time they graduate from high school. For the purpose of calculating the required core curriculum GPA, core courses in English, lab science, mathematics, history and citizenship skills, foreign or non-English language, computer technology, or "additional" subject areas must be transcripted with a letter grade that has a corresponding numerical value. If the school district assigns a course a grade of "pass" without a numerical value, the OSRHE will assign a letter grade of "D" or the lowest passing grade that the high school assigns to courses. If the required one unit, year, or set of competencies in fine arts (music, art, or drama) or speech is fulfilled on a pass/fail or competency basis, the course(s) will be accepted and excluded from the required core curriculum GPA calculation.

(1) Four units, or years, of English (grammar, composition, literature; should include an integrated writing component);

(2) Three units, or years, of lab science (biology, chemistry, physics, or any lab science certified by the school district; general science with or without a lab may not be used to meet this requirement);

(3) Three units, or years, of mathematics (Algebra I, Algebra II, geometry, trigonometry, math analysis, pre-calculus [must have completed geometry and Algebra II], calculus, Advanced Placement Statistics);

(4) Three units, or years of history and citizenship skills (1 unit of American history and 2 units from the subjects of history, economics, geography, government and/or non-Western culture):

(5) Two units, or years, of a foreign or non-English language (both units, or years, of the same language), or Two units, or years, of computer technology (courses in programming, hardware, and business computer applications such as word processing, databases, spreadsheets and graphics will qualify; keyboarding and typing classes do not qualify);

(6) One additional unit, or year, of subjects listed above, or any Advanced Placement course except AP courses in applied fine arts (art history and music theory will count; studio art courses will not count);

(7) One unit, year, or set of competencies of fine arts (music, art, or drama) or speech.

(d) The program curricular requirements for English, science, mathematics, history and citizenship skills are identical with the curricular requirements for college admission set by the OSRHE. Any change by the OSRHE to the curricular requirements for college admission shall also apply to the program curricular requirements.

(e) Advanced students who complete core courses in earlier grades will not be required to take additional courses for purposes of the requirements of this program.

(f) Strict parameters regulate the substitution of applied courses (OSRHE ~~Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System~~ policy on Institutional Admission and Retention).

(g) Exceptions to the required core curriculum will be considered according to the following:

(1) Students attending schools, or homeschool students participating in other educational programs, which do not offer all the core curriculum courses will be allowed to satisfy the requirements subject to the following provisions:

(A) Core curriculum requirements which are also required for regular college admission (OSRHE policy on Institutional Admission and Retention) will be subject to the OSRHE Policy on Remediation and Removal of High School Curricular Deficiencies.

(B) Any other core curriculum requirements must be satisfied during the first twenty-four (24) hours of college coursework. Any exceptions to the twenty-four (24) hour limitation must be requested in writing and shall be subject to approval by the Chancellor.

(2) Students who have documented proficiency in a non-English language equivalent to at least two (2) units of high school study may be exempted from the requirement of two (2) units of a foreign or non-English language.

(3) Any other requests for exceptions to the core curriculum requirement must be submitted in writing to the Chancellor. Upon approval of the exception, the student may be eligible for program benefits; provided, such approval may require the satisfaction of any core curriculum requirements omitted in high school or other educational program.

(h) Students must attain a minimum 2.50 cumulative GPA on a 4.00 grading scale for all work attempted in grades nine through twelve.

(i) Homeschool students and students graduating from a high school not accredited by the State Board of Education must achieve a composite score of 22 or higher on the ACT test or the equivalent SAT test score. Only ACT and SAT test scores from tests administered on national test dates prior to the student's high school graduation will be considered.

610:25-23-5. Securing Program benefits

(a) To qualify for the program benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

(1) Be a resident of this state both at the time of application to the program and at the time the student graduates from high school, or have been enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.

(2) Have graduated within the previous three (3) calendar years from a high school or other educational program if homeschooled. The Oklahoma State Regents for Higher Education (OSRHE) may award benefits for a student's first semester or other academic unit of postsecondary enrollment taken more than three (3) calendar years after the student graduates from high school, or other educational program if homeschooled, if the student is a member of the Armed Forces of the United States, the Reserve Corps of the Armed Forces of the United States, or the Oklahoma National Guard, and is ordered to active duty or active duty for special work or training and due to the duty commitment the student is unable to enroll prior to the end of the three-year period. Such three-year period shall be extended by the length of the term of duty.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the OSRHE for first-time-entering students for the appropriate type of institution (OSRHE ~~Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System~~policy on Institutional Admission and Retention) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in the program shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(6) Be a United States citizen or lawfully present in the United States. This provision shall not apply to any

student that was enrolled in the program prior to the end of 2006-07 school year.

(b) For students receiving the program benefit award for the first time in 2012-13 and thereafter, at the time the student begins postsecondary education and prior to receiving any program benefit award, the federal adjusted gross income of the student's parent(s) shall not exceed $100,000 per year. The determination of financial qualification as set forth in this paragraph shall be based on the income of the student, not the income of the parent(s), if the student:

(1) is determined to be independent of the student's parents for federal financial aid purposes,

(2) was in the permanent custody of the Department of Human Services at the time the student enrolled it the program, or

(3) was in the court-ordered custody of a federally-recognized Indian tribe, as defined by the federal Indian Child Welfare Act, at the time the student enrolled in the program.

(c) A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall be subject to the following financial qualification at the time the student begins postsecondary education and prior to receiving any program benefit award:

(1) For a student adopted between birth and twelve (12) years of age, the federal adjusted gross income of the student's parent(s) may not exceed $150,000 per year.

(2) For a student adopted between thirteen (13) and seventeen (17) years of age, the federal adjusted gross income of the student's parent(s) may not exceed $200,000 per year.

(3) If the student is determined to be independent of the student's parents for federal financial aid purposes, the determination of financial qualification shall be based on the income of the student, not the income of the parent(s).

(d) Award recipients shall apply for financial aid at the institution in which they enroll.

(e) All students eligible to receive the program benefit award for the first time in 2012-13 and thereafter must complete an application for federal student financial aid (Free Application for Federal Student Aid or FAFSA) or its equivalent. Students not eligible to complete the FAFSA will be provided an alternate method by the OSRHE. Income information submitted through the FAFSA, or an alternate method if necessary, shall be used to determine compliance with the income limits described in sections (b) and (c) above.

(f) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive program benefits.

610:25-23-6. Retaining eligibility in postsecondary education

(a) To retain eligibility for program benefits while pursuing a program of higher learning in an institution of The Oklahoma State System of Higher Education, the student shall maintain good academic standing and satisfactory academic progress according to standards of the Oklahoma State Regents for Higher Education (OSRHE). Students attending an eligible private institution shall maintain good academic standing and satisfactory academic progress according to the standards of the institution in which they are enrolled. [70 O.S. § 2603; OSRHE ~~Policy II-2-46.3~~ policy on Institutional Admission and Retention]

(b) Effective January 1, 2008, any student receiving the program benefit award that is expelled or suspended for more than one semester from an institution of higher education for conduct reasons shall permanently lose eligibility for program benefits.

(c) For students receiving the program benefit award for the first time in 2012-13 and thereafter, the student must achieve a minimum cumulative grade point average of 2.00 on a 4.00 scale or its equivalent for courses taken through the student's sophomore year and achieve a minimum grade point average of 2.50 on a 4.00 scale or its equivalent for courses taken during the student's junior year and thereafter.

(1) Any Oklahoma's Promise student with a cumulative grade point average of less than 2.00 upon the completion of sixty (60) earned semester credit hours, or its equivalent, shall permanently lose eligibility for program benefits. The cumulative grade point average at the end of the enrollment period during which the student completes their sixtieth (60th) earned semester credit hour, or its equivalent, shall be calculated by the institution in which the student is enrolled to determine compliance with this provision. The institution shall notify the OSRHE if the student fails to meet this requirement.

(2) To remain eligible for the award, an Oklahoma's Promise student must also achieve a 2.50 cumulative grade point average for courses taken after the completion of sixty (60) earned semester credit hours, or its equivalent. The first check of this grade point average requirement will be conducted by the institution in which the student is enrolled at the end of the enrollment period during which the student completes their ninetieth (90th) earned semester credit hour, or its equivalent. The grade point average calculation shall include all earned semester credit hours, or their equivalent, starting with the enrollment period immediately following the enrollment period during which the student completed their sixtieth (60th) earned semester credit hour, or its equivalent. Thereafter, the institution in which the student is enrolled shall check the cumulative grade point average for courses taken after the completion of sixty (60) earned semester credit hours, or its equivalent, at the end of each enrollment period. Any student whose cumulative grade point average at the required check points is below 2.50, shall be ineligible for program benefits until the cumulative grade point average for courses taken after the completion of sixty (60) earned semester credit hours or its equivalent is raised to 2.50 or above. Any period of ineligibility for failure to meet the requirements of this provision shall count against the student's maximum time period of award eligibility.

(3) For institutions within the Oklahoma State System of Higher Education, the student's grade point average shall be calculated using the methodology defined as "Cumulative Grade Point Average" in the OSRHE policy on grading.

(d) Beginning in 2012-13, all Oklahoma's Promise students receiving the award in college will be required to meet federal satisfactory academic progress (SAP) standards as defined by the institution in which they are enrolled. This requirement is in addition to the statutory GPA requirement described in section (c) above and will apply to all Oklahoma's Promise award recipients whether or not they are receiving federal student financial aid. Any Oklahoma's Promise student that is ineligible to receive federal financial aid due to failure to meet SAP standards will also be ineligible to receive the Oklahoma's Promise award.

[OAR Docket #14-730; filed 7-16-14]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #14-731]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 33. Regional University Baccalaureate Scholarship Program
610:25-33-2. Definitions [AMENDED]
610:25-33-3. General Provisions [AMENDED]
610:25-33-5. Criteria for Continued Eligibility [AMENDED]
AUTHORITY:
Oklahoma State Regents for Higher Education; 70 O.S. §3206 (i).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
October 8, 2013
COMMENT PERIOD:
November 1, 2013 through December 2, 2013
PUBLIC HEARING:
None held or requested
ADOPTION:
December 5, 2013
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
December 12, 2013
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule changes address the following issues:

Summer Awards: The revisions clarify that students may receive a summer award for part-time or full-time enrollment. The summer award will count toward the student's overall scholarship limit of eight full-time semester awards, so no additional fiscal impact to the program is expected. The change will accommodate those students capable of completing their undergraduate degree in less than four calendar years. The change also recognizes alternate semester structures such as the trimester system at the University of Science and Arts of Oklahoma (USAO) which provides three equal trimesters each academic year allowing students to earn 36 credit hours or more per year.

Disability Accommodation: The revisions provide for the accommodation of students with disabilities for eligibility and retention requirements. The disability provisions are based on similar existing rules for the Academic Scholars Program.

Updates of Citations to State Regents' Policy: The revisions also provide clerical updates to references to State Regents' policy.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 33. REGIONAL UNIVERSITY BACCALAUREATE SCHOLARSHIP PROGRAM

610:25-33-2. Definitions

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

"Public Regional ~~Institution~~ University" as defined by the State Regents' policy in Section 3.2.4~~II-2-24 under Regional and Special Purpose universities~~.

610:25-33-3. General Provisions

(a) Each regional university will receive an annual allocation to support scholarships to be awarded to students who meet the eligibility criteria in 610:25-33-4, and continuing students who meet the criteria in 610:25-33-5. The university may establish additional eligibility criteria. The scholarship award may be used only at the university making the award; it is not portable.

(b) Funding for the awards shall be made in a special allocation of state appropriated monies to the regional universities. The regional universities shall make tuition waiver scholarships available to each student~~, as provided in State Regents' policy (IV.A.2.g)~~. The allocation, tuition waiver, and any other state or federal financial aid for which the student qualifies shall comprise a scholarship amount not to exceed the costs of tuition and fees, room and board, and books and supplies required for courses.

(c) Provisions contained in this section are consistent with 70 O.S. 1991, Section 2403, as amended, and federal legislation affecting disabled persons. If a person identifies himself or herself as a student with a disability and requests consideration for a scholarship under the Regional University Baccalaureate Scholarship Program by means other than standard testing procedures, the State Regents shall permit the student to be examined under the special testing arrangements provided by either ACT or The College Board provided that he or she meets the qualifications specified by ACT and The College Board, respectively, to be examined. Performance requirements for participation in the Regional University Baccalaureate Scholarship Program remain the same as for other students. Students

taking such tests and receiving Regional University Baccalaureate Scholarship awards will be expected to meet the same retention standards as other students. Special provisions may be considered in determining full-time enrollment for students in this category.

610:25-33-5. Criteria for Continued Eligibility

(a) Participants awarded a scholarship must maintain a cumulative 3.25 grade-point-average. A program year is defined as beginning in the fall semester and continuing through the summer term. The cumulative grade-point-average will be determined at the end of the program year, i.e., between the summer and fall terms.

(b) Scholarship recipients must maintain full-time enrollment each semester. Full-time enrollment shall mean a minimum of 12 hours per semester and 24 hours in the two regular semesters. Students who, due to extraordinary circumstances during the semester, drop below the minimum of 12 hours of initial enrollment, must earn 24 credit hours for the two regular semesters to retain eligibility for the next program year. Students will be eligible for summer awards if they have earned 24 semester credit hours in the preceding two regular semesters. Students who receive part-time awards for summer must enroll in at least 6 credit hours and must complete a total of at least 30 credit hours during the full academic year (fall, spring, summer). Students who receive full-time awards for summer must enroll in at least 12 credit hours and must complete a total of at least 36 credit hours during the full academic year (fall, spring, summer). Hours of enrollment required for summer awards may consist of a combination of summer and intersession enrollment. Part-time awards, for enrollment of 6 to 11 credit hours, made for the summer term will count as one-half of a semester used in the program and will be in the amount of one-half of a semester award. Full time awards, for enrollment of 12 or more credit hours, made for the summer term will count as a full semester used in the program and will be in the amount of one semester award.

(c) A student who fails to meet the continued eligibility requirements will be removed from the program without academic scholarship assistance the following semester. Any semester during which the student does not receive an award due to failure to meet the continuing eligibility requirements is counted as a semester used in the program and is deducted from the eight semesters allotted for the program. A student may be reinstated to the program:

(1) If the student achieves a 3.25 cumulative grade-point average at the end of the following fall or spring semester or summer term;

(2) If the student in the following fall or spring semester remedies the credit-hour deficiency by earning twelve credit hours in addition to the number of hours by which the student is deficient; or if the student earns the deficient credits in the following summer term.

(d) In summary, a student may be reinstated only one time and has one year to remedy the grade-point average or credit-hour deficiency. Maintaining eligibility and familiarity with State Regents' and institutional policy is the responsibility of the student.

(e) Participants may take a leave of absence from the program by petition to the Oklahoma State Regents for Higher Education. Leaves of absence may not be used to remedy grade-point average or credit-hour deficiency.

[OAR Docket #14-731; filed 7-16-14]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-614]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Relationships with Department Established by Law
612:1-7-2. Relationships with appointed state officials [AMENDED]
Subchapter 15. Department Manual, Rules, and Declaratory Rulings
612:1-15-2. Availability of manual [AMENDED]
AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, sections 701 through 791; Oklahoma Statute Title 74, Section 166.1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013
COMMENT PERIOD:
November 12, 2013 through February 5, 2014
PUBLIC HEARING:
February 3, 2014
ADOPTION:
March 10, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed changes to Chapter 1 involve updating language, updating name changes associated with the related integration of other agencies into OMES, updating policy to reflect electronic manual procedures and removing outdated procedures.
CONTACT PERSON:
Tina Calloway, Administrative Assistant, Policy Development, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3552

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. RELATIONSHIPS WITH DEPARTMENT ESTABLISHED BY LAW

612:1-7-2. Relationships with appointed state officials

(a) ~~**Department of Central Services**~~ **Division of Capital Assets Management.** The Director of the ~~Department of Central Services~~ Division of Capital Assets Management is responsible for the award of State contracts for supplies, materials, and equipment. The ~~Department of Central Services~~ Division of Capital Assets Management is also the contracting body for leases covering State real property and is responsible for disposing of any real or personal property of the State which an agency determines is surplus to its needs.

(b) **Oklahoma Employment Security Commission.** The Oklahoma Employment Security Commission is charged with the responsibility of promoting employment security by increasing opportunities for job placement, through its operation of public employment offices and by paying compensation to eligible workers who become unemployed. In addition, the Employment Security Commission assists the Department in the verification of employment for applicants and recipients of Department services.

(c) **Merit System of Personnel Administration.** The Merit Act of 1959 established the Merit System of Personnel Administration and created and defined the structure and duties of the first administrative body of that system. Later, the Oklahoma Personnel Act abolished the State Personnel Board and created and transferred the powers, duties, and responsibilities to the Office of Personnel Management and the Ethics Commission and Merit Protection Commission.

(1) **Office of ~~Personnel Management~~Human Capital Management (HCM).** The Office of ~~Personnel Management~~Human Capital Management is responsible for: the development of an efficient and effective system of personnel administration that meets the management needs of the various state agencies; maintaining and revising a classified system of employment which protects state employees from arbitrary dismissal or unfair treatment; maintaining an equitable system for the classified service; helping recruit and select qualified people; conducting a management training program; and assuring equal employment opportunity.

(2) **Ethics Commission and Merit Protection Commission.** The Ethics Commission and Merit Protection Commission is responsible for assuring that the rights of employees and agencies under the Merit System of Personnel Administration are not abridged.

(d) **The Director of ~~State Finance~~Office of Management and Enterprise Services.** The Director of Office of Management and Enterprise Services~~State Finance~~ maintains in his office records showing the debits and credits of each separate fund or appropriation for each State agency. He or she also pre-audits the claims of the Department's general administrative funds and any special construction funds. An annual budget estimate is prepared by the Department and filed with the Director of ~~State Finance~~ the Office of Management and Enterprise Services, who serves as the senior budget officer of the State.

(e) **State Fire Marshal.** The State Fire Marshal is involved in reviewing fire protection and safety features of facilities operated and funded by the Department.

(f) **Secretary of the State Election Board.** Among other duties, the Secretary of the State Election Board is to promote and encourage voter registration and voter participation in elections. The State Department of Rehabilitation Services will cooperate with the Secretary of the State Election Board in compliance with the National Voter Registration Act of 1993.

SUBCHAPTER 15. DEPARTMENT MANUAL, RULES, AND DECLARATORY RULINGS

612:1-15-2. Availability of manual

The Department's manual and other policy issuances which affect the public are available in the State Office and in each local and district office for examination on regular workdays during regular office hours by individuals, upon request for review, study or reproduction by the individual. ~~A current copy of such material is made available without charge to public custodians who: request the manual for use by the public; are centrally located and publicly accessible to a substantial number of the recipient population they serve; and agree to accept responsibility for filing all amendments and changes forwarded by the Department. Such custodians include public and university libraries, the local or district offices of the Bureau of Indian Affairs, and welfare or legal service offices or organizations.~~ Upon request, the specific policy materials necessary for an applicant or recipient, or his representative, to determine whether a hearing should be requested or to prepare for a hearing, are available without charge.

[OAR Docket #14-614; filed 7-2-14]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 3. MANAGEMENT SERVICES DIVISION

[OAR Docket #14-615]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
612:3-1-2. Definitions [AMENDED]
Subchapter 3. Human Resources Unit
Part 3. Human Resources Management Section-Personnel Programs
612:3-3-20. Department of Rehabilitation Services recruitment and selection plan [AMENDED]
Subchapter 5. Policy Development and Program Standards
Part 3. Policy Development
612:3-5-12. Policy Development [AMENDED]
612:3-5-13. Drafting of new or revised policy [AMENDED]
612:3-5-14. Adoption of new or revised policy [AMENDED]
612:3-5-15. When new or revised policy becomes effective [AMENDED]
612:3-5-19. DRS staff responsibility [AMENDED]

AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013
COMMENT PERIOD:
November 12, 2013 through February 5, 2014
PUBLIC HEARING:
February 3, 2014
ADOPTION:
March 10, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Changes to Chapter 3 involve updating policy to reflect electronic manual procedures and removing outdated procedures.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

612:3-1-2. Definitions

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

"Certification as a person with a severe disability under 74 O.S. 840-4.12" means certification of a person as having a severe physical or mental disability which seriously limits one or more functional capacities in terms of an employment outcome; and for whom State agencies have the option of waiving entrance examinations and modifying other hiring practices under the provisions of 74 O.S. 840-4.12.

"Classified" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration.

"DHCGRP" means the Discrimination and Harassment Complaint and Grievance Resolution Procedure.

"DRS" means the State Department of Rehabilitation Services.

"FEPA" means the Oklahoma Fair Employment Practices Act, Section 840-4.12(I) of the Oklahoma Personnel Act.

"FLSA" means the Fair Labor Standards Act.

"FLSA Exempt" means employees performing work which is considered to be exempt from the overtime payment provisions of the FLSA.

"FLSA Non-exempt" means employees performing work which is considered to be under the overtime payment provisions of the FLSA.

"Hiring official" means the Director of the Department of Rehabilitation Services, or designee who is responsible for making the final decision to fill a vacant position.

"IAGRP" means the Internal Agency Grievance Resolution Procedures pursuant to Title 74, Subsection 840-6.2 (841.9) and Subchapter 19 of the Oklahoma Merit Protection Commission Merit Rules.

"Interagency transfer" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state.

"Intra-agency transfer" means moving an employee from one position to another position with the same agency either with or without reclassification.

"Lateral transfer" means the reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee was classified prior to the lateral transfer.

"Merit Rules" means the Merit System of Personnel Administration Rules which includes rules adopted by the Administrator of ~~the Office of Personnel~~ Human Capital Management or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act.

"MPC" means the Merit Protection Commission.

"Noncompetitive" means an unskilled or semiskilled job designated by ~~the Office of Personnel~~ Human Capital Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles.

~~**"OPM"**~~ **"HCM"** means the State ~~Office of Personnel~~Human Capital Management.

"~~OPM~~HCM Certificate" means a list of eligible applicants for a particular position who have applied through ~~the Office of Personnel~~ Human Capital Management.

"Open Competitive" means an application process through the State ~~Office of Personnel~~ Human Capital Management which permits the competition of all persons who meet the announced requirements for the class, and is not restricted to persons currently employed in the classified service.

"Permanent" means a classified employee who has acquired permanent status in conformity with the Merit Rules.

"Probationary" means a classified employee who has not acquired permanent status with the agency in accordance with the Merit Rules.

"Reinstatement" means the reappointment of a former permanent classified employee as provided in the Merit Rules.

"Selecting official" means the staff person directly responsible for the process of recommending a selection. Unless otherwise designated, this will usually be the immediate supervisor for the position being announced.

"Trial work period" means a working test period after promotion or intra-agency lateral transfer during which a classified employee is required to demonstrate satisfactory performance in the job family level to which promoted or laterally transferred before acquiring permanent status in that job family level.

"Unclassified" means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration. Such employees and positions are subject to specified provisions of the Oklahoma Personnel Act and the Merit Rules.

SUBCHAPTER 3. HUMAN RESOURCES UNIT

PART 3. HUMAN RESOURCES MANAGEMENT SECTION - PERSONNEL PROGRAMS

612:3-3-20. Department of Rehabilitation Services recruitment and selection plan

(a) **Method of application.** All applicants who are permanent classified employees, or former permanent classified state employees eligible for reinstatement to the classified service, shall submit a completed OPM Personal Data Summary Sheet form for the position to the DRS Human Resources Unit or other designated location no later than the closing date and time stated in the posted notice. DRS does not carry over completed Personal Data Summary Sheets from one posting to the next unless specified on the posting. All other applicants for classified positions must apply by means of the method indicated on the vacancy notice. The DRS Human Resources Unit notifies applicants who did not meet minimum education and experience requirements for the position. Applicants may submit additional information to the DRS Human Resources Unit which reflects they meet the minimum qualifications for the position. The Human Resources Unit will submit the additional information to ~~the Office of Personnel~~Human Capital Management for review. If ~~the Office of Personnel~~Human Capital Management determines that minimum qualification for the position are met, the applicant log may be amended and the applicant given consideration for the position if a final selection has not been made by the selecting official.

(b) **Optional Program for Hiring Applicants with Disabilities.** Applicants that have been certified as "a person with a severe disability" by ~~the Office of Personnel~~ Human Capital Management will be included on the Special Appointment/Free Names list through OPM and may be considered along with other qualified internal and external applicants.

(c) **Eligibility for consideration.** The agency may consider external applicants concurrently with internal applicants following closing of the announcement. To be eligible for consideration, applicants must meet the requirements set forth in Paragraphs (1) or (2) of this Subsection.

(1) A permanent classified employee or a former state employee who is eligible for reinstatement must:

(A) submit a completed OPM Personal Data Summary Sheet form for the position to the DRS Human Resources Unit or other designated location no later than the closing date and time specified on the posting notice; and

(B) be certified by the OPM Applicant Services Division as meeting the minimum qualifications for the posted Level(s) of the Job Family. However, career progression promotions shall be exempt from this requirement provided that an employee has been in a lower level of the job family for an amount of time equal to the difference in the lengths of the experience requirements of the two levels. This exception shall not apply in any case to entry into a job family or where the next higher level is a supervisory position.

(2) All other applicants for employment may be eligible for consideration through:

(A) an open competitive certificate from OPM;

(B) Certification as a person with a severe disability under 74 O.S. 840-4.12; and/or

(C) Special Disabled Veterans Certification.

(d) **Factors for consideration.** Paragraphs (1) through (5) establish factors for consideration.

(1) In filling vacancies, the agency will consider factors such as performance appraisals, education, experience, and other qualifications related to the expected ability of an individual to perform the work successfully.

(2) The agency may also post and consider special additional factors such as limiting consideration to permanent classified employees of the DRS, special working conditions that an applicant must be willing to accept and selective qualifications required for a position.

(3) A qualified permanent classified DRS employee will be given preference when the merit, ability, and capacity of that employee is relatively equal to that of applicants from outside DRS as determined by the selection process.

(4) A qualified permanent classified DRS employee with the greatest seniority based upon the last date of continuous DRS employment will be given preference when the merit, ability, and capacity of that employee is relatively equal to other applicants as determined by the selection process.

(5) Consideration may be given to redress underutilization of targeted minority groups. To meet affirmative action goals, all available applicants may be considered.

(e) **Methods for consideration.** Paragraphs (1) through (3) establish methods for consideration.

(1) The methods for consideration may include review of personnel records, applications, ratings, work histories, attendance records, test results, references, and other documents and information relating to a person's eligibility or qualifications.

(2) Applicants may be required to participate in interviews and in other selection procedures.

(3) A personal background investigation, including any civilian and military court records may be conducted.

(f) **Entrance salary.** The entrance salary for any position in the classified service shall be governed by the Merit Rules.

(g) **Probationary period (classified service).** Individuals newly hired into the classified service will serve a probationary period. The probationary period gives the new employee an opportunity to demonstrate the ability to perform the assigned duties of the position. The initial probationary period lasts for one year, except that the Director or Chief of Staff may waive the remainder of the probationary period at any time after a

probationary employee has served six months by notifying the employee and ~~the Office of Personnel~~ Human Capital Management in writing as to the waiver and the reasons for it. The probationary period may not be extended. However, if a probationary employee is granted leave without pay that exceeds 5 working days, the date of the final working day of the probationary period shall be adjusted by the number of working days the probationary employee was on leave without pay in excess of 5 working days. Notification of such leave to ~~the Office of Personnel~~ Human Capital Management and the employee shall include the scheduled date of the final working day of the adjusted probationary period. The appointment of an employee on probationary status may be terminated whenever the performance is determined to be unsatisfactory. The probationary employee does not have the right of appeal to the Merit Protection Commission when terminated during the probationary period [530:10-11-32]. The employee's immediate supervisor is responsible for carefully observing and evaluating performance. The performance evaluation of a probationary employee must be completed no later than thirty days prior to the end of the probationary period.

(h) **Related employees (classified/unclassified service).** The Department reserves the right to make placements and work assignments of personnel as necessary to eliminate and/or prevent situations in which a position is occupied by a relative of the senior administrator of the relevant division, facility, or office. The Director may waive the prohibitions in this Subsection. The Department prohibits the employment of any person in a position which would result in:

(1) immediate supervision by a relative. Relative is defined to include wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any of the above with whom the employee shares a foster relationship; or

(2) two or more relatives reporting to the same immediate supervisor.

(i) **Other employment, prohibition against use of position for personal gain and avoidance of conflict of interest.** Oklahoma Ethics Commission rules [OAC Title 257] are applicable regarding prohibition against use of position for personal use.

(1) Each employee must, during office hours, devote full time, attention, and effort to the Department's business. The employee may not use office hours for private gain.

(2) An employee may accept other employment outside the employee's assigned hours of duty as long as such other employment does not interfere with the employee's work with the Department. If an employee engages in other employment while an employee of the Department, such employment or changes in the employment, as it occurs shall be reported by use of the Report of Other Employment form. Such notification shall be given to the employee's immediate supervisor.

(j) **Final selection.** While others may recruit, screen, consider and make recommendations, the decision on all appointments and changes in classification is tentative until it has the approval of the Director or designee. No offer of employment may be made until notification of final approval is received from the Personnel Office of the DRS Human Resources Unit.

SUBCHAPTER 5. POLICY DEVELOPMENT AND PROGRAM STANDARDS

PART 3. POLICY DEVELOPMENT

612:3-5-12. Policy Development

(a) Policy Development is charged with assuring that the Department complies with the Administrative Procedures Act. This responsibility includes:

(1) Ensuring that all Department statements of general applicability and future effect that implement, interpret, or prescribe law or policy, or describe the procedures or practice requirements of the Department are promulgated in accordance with the APA.

(2) That the public receives proper notice of the Department's intent to adopt, amend, or revoke rules so that opportunity is provided for public and consumer input during the rulemaking process.

(3) Management of the promulgation process for the Department in an efficient and effective manner that complies with the APA.

(b) The Administrator of the Policy Development and Program Standards Unit, or designee, serves as the Department's liaison to the Office of Administrative Rules in the Office of the Secretary of State. This administrator, or designee also serves as the attestation officer, as delegated by the Oklahoma Commission for Rehabilitation Services, for purposes of 75 O.S., Section 254. An Administrative Officer within Policy Development will be designated as the back-up attestation officer for the Department.

(c) Once a Division or the Executive Office has developed proposed policy and supporting documentation, Policy Development staff will format and prepare the resulting documents for submission to the Commission for action. From that point, Policy Development staff will be responsible for the promulgation process from initial notices through distribution of the adopted policy.

(d) Policy Development staff is responsible for review of Departmental publications to assure consistency with existing policy, and conformance with the APA.

~~(e) Policy Development staff will manage and maintain Departmental regulations and Rehabilitation Services Administration memoranda and regulations. Copies of State statutes and relevant Federal statutes will also be managed and maintained as directed.~~

612:3-5-13. Drafting of new or revised policy

(a) The administrators in each division, at each school, and in the executive offices are responsible for keeping informed of the statutes and regulations which govern the operation of

programs under their authority. These administrators are also in the best position to know the needs of his or her programs' consumers, staff, and service partners. Each Division Administrator, Unit Administrator, and School Superintendent is therefore responsible for ensuring that Departmental policies for his or her program conform to the requirements of applicable statutes and regulations, and are effective in achieving their program's mission. Whenever possible, drafting of new or revised policies should begin at least twelve months in advance of their intended effective date.

(b) When an administrator, or the Director, decides there is a need to draft new policy, or to amend existing policy, the Unit Administrator, Division Administrator, Superintendent, Chief of Staff or Director will assure that sufficient opportunity for input on the needed changes will be given to individuals and groups as designated by the administrator or Director. The appropriate program administrator will provide the Policy Development staff the reasons for changing policy as well as any budget impact these changes may incur and is to consult with Policy Development staff about the need to arrange for, announce, and hold any public forums. Public comments and responses to them must be submitted to the Policy Development Section for inclusion in the rulemaking record. Policy Development staff assistance in developing a summary of comments and responses is available.

(c) The appropriate program administrator will initiate drafting of policy content through whatever method deemed most effective by the administrator. Policy Development Section staff will provide assistance as requested. The Policy Development Section will be responsible for drafting Departmental policy pages using the content drafts provided by the appropriate program administrator. Once this first draft is completed, Policy Development staff will consult with the appropriate administrator concerning any needed revisions. When these are completed, the draft policy will be distributed to Executive Team members for review and response. Administrators will consider comments and revise drafts as appropriate, providing final draft versions to the Policy Development Section. The appropriate program administrator will determine when the draft policy is ready for distribution to Departmental staff for comment. Staff comment will be obtained as follows:

(1) ~~A memo~~ An email will be addressed to all Departmental staff advising them that the draft policy is ~~being distributed~~available for comment, and will include:

(A) identification and summary of the draft policy ~~being distributed~~;

(B) general instructions on where the draft policy can be accessed;

(C) how to submit comments, and the due date for submission of comments; and

(D) where to direct questions about the draft policy.

~~(2) Policy as drafted by the Policy Development Section will be distributed to each office of the Department (including alternative formats). The Bulletin Board memo will provide instructions for providing comments and where to direct questions about the draft policy. Alternative formats are also to be made readily available.~~

(~~3~~2) Comments will be ~~returned~~sent to the Policy Development Section where they will be collated, and a summary of them developed. The summary and collated comments will be provided to the appropriate program administrator. The appropriate program administrator will decide on what policy changes to make in response to the submitted comments, if any. The appropriate program administrator will draft responses to the comments, which will at a minimum explain any instance in which staff recommendations were not adopted and will send the response to the Policy unit so it can be forwarded to the respective commentator~~ as well as the Policy unit~~.

(~~4~~3) Policy Development staff will work with the appropriate program administrator to finalize draft policy. This step will include a final check for consistency with existing policies, regulations, and applicable statutes. Policy Development staff will obtain authorization from the appropriate program administrator to proceed with promulgation of the draft policy.

(d) When the draft policy pages are submitted to the Policy Development Section for promulgation, the draft policy is then referred to as proposed policy. Policy Development staff will submit the proposed policy and/or notice, including executive summary and resolution, to the Director for review prior to submission to the Commission for discussion or action.

612:3-5-14. Adoption of new or revised policy

(a) Policy Development gives proposed policy to the Director for review and~~. Upon approval, the Director gives proposed policy~~ to the Administrative Assistant for the Commission by the established deadline for inclusion in the Commission meeting packet. The originating administrator, with the assistance of the PDPS Administrator, will be responsible for the presentation of proposed policy at the Commission meeting.

(b) Upon adoption of the proposed policy by the Commission, Policy Development staff will manage the promulgation process.

(1) Internal management policies will be formatted for the DRS Policy Manual and ~~DRS Form Guide, and arrangements made for distribution. The projected~~the effective date will be the date the commission approves the policy~~ confirmed at this time~~.

(2) Permanent or emergency rules will be managed through the Governor's and Legislature's offices. Formatting and ~~printing~~publishing in the Department's policy manual ~~and form guide~~ will be done after gubernatorial and legislative approval have been obtained.

(c) Once proposed policies are presented to the Commission for approval their content will not be changed unless so ordered by the Commission. Once proposed rules are adopted by the Commission, a vote of the Commission will be required to withdraw proposed rules from the rulemaking process. Once the Governor and Legislature have approved the rules, they may not be withdrawn from the rulemaking process, and can only be revoked through the rulemaking process.

612:3-5-15. When new or revised policy becomes effective

(a) ~~Possible effective dates for policies will be determined by the type of adoption process used. Once policy has gone through the promulgation process, time will be needed to reformat, print, and distribute the new or revised policy. Originating program staff should allow for these factors when projecting a desired effective date.~~ The effective date will be ~~printed~~noted on each page of the adopted policy. Whether internal management policies or administrative code, policies can only be applied prospectively from their effective date.

(b) Internal management policies that do not fall under the APA become effective after adoption by the Commission. ~~The originating Division Administrator, Superintendent, or Director will be consulted about setting the effective date.~~

(c) Permanent rules become effective ten days after they are published in the Oklahoma Register pursuant to the APA. DRS permanent rules will usually be published ~~between April and June each year; that is, at the end of, or~~ following the legislative session. If a later date is specified in statute, or in the rules, the later date will become the effective date.

(d) Emergency rules become effective immediately or at a stated date after certification by the Governor. The Governor has forty-five calendar days from the date rules are submitted to review them.

(e) Policy Development staff will notify the appropriate Division Administrator, Superintendent, and the Director of approvals.

612:3-5-19. DRS staff responsibility

(a) The DRS Policy Manual ~~and Form Guide communicate~~communicates the expected standards for staff conduct and ~~provide~~provides the necessary ~~forms and~~ direction for carrying out the mission of this agency. The official rules of the Department are maintained as part of the Oklahoma Administrative Code by the Office of Administrative Rules, in the Secretary of State's office.

(b) Staff are expected to use professional judgement in conducting the agency's business. The policies of this agency are to inform and guide the professional judgement and conduct of staff. When a staff person needs guidance in making a decision, the first step is to consult agency policy.

(c) DRS staff are expected to be thoroughly familiar with agency policies pertaining to their conduct and program. Supervisors and managers are responsible for ensuring that staff under their supervision ~~receive~~are familiar with all policy and updates, and that their staff receive training on policy and updates. ~~Staff having a manual and/or form guide are expected to keep them updated in accordance with policy transmittals.~~

~~(d) DRS policy manuals and form guides are the agency's property. They are distributed to office locations, and are to be used and maintained in the same manner as any other office equipment.~~

[OAR Docket #14-615; filed 7-2-14]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 5. FINANCIAL SERVICES DIVISION

[OAR Docket #14-616]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:5-1-1. Purpose for Financial Policy [AMENDED]
AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013
COMMENT PERIOD:
November 12, 2013 through February 5, 2014
PUBLIC HEARING:
February 3, 2014
ADOPTION:
March 10, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Changes to Chapter 5 involve name changes associated with the Office of State Finance (OSF) becoming Office of Management and Enterprise Services (OMES) and the related integration of other agencies into OMES.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

612:5-1-1. Purpose for Financial Policy

The purpose is to set forth the policies and procedures governing the Financial Services Division of the Department of Rehabilitation Services (the agency). Authority for the policies contained herein derive from enabling legislation for the agency, Title 74 O.S. §166.1, et seq., and legislation governing public finance, Oklahoma Statutes Title 62. This is also based upon rules published by the Office of ~~State Finance~~ Management and Enterprise Services, Oklahoma Administrative Code Title 260. In good faith, these policies reproduce

Office of ~~State Finance~~ Management and Enterprise Services Requirements.

[OAR Docket #14-616; filed 7-2-14]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #14-617]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
612:10-1-8. Vendor contracts [AMENDED]
612:10-1-10. CARF - Vendors [REVOKED]
Subchapter 7. Vocational Rehabilitation and Visual Services
Part 9. Actions Requiring Review and Approval
612:10-7-87. Actions requiring supervisor's approval [AMENDED]
Part 15. Training
612:10-7-152. Payment of tuition and fees at colleges and universities [AMENDED]
Part 21. Purchase of Equipment, Occupational Licenses and Certificates
612:10-7-216. Tools, occupational equipment, initial stocks and supplies [AMENDED]
612:10-7-220. Vehicle modification services [AMENDED]
612:10-7-221. Housing Modification [AMENDED]
Part 23. Self-Employment Programs and Other Services
612:10-7-233. Special consideration in state government employment for persons with severe disabilities [AMENDED]
Subchapter 13. Special Services for the Deaf and Hard of Hearing
Part 1. Service Programs
612:10-13-1. Mission of the program [AMENDED]
Part 3. Certification of Interpreters
612:10-13-14. Legal basis [AMENDED]
612:10-13-16. Evaluation [AMENDED]
612:10-13-21. Ethical standards [AMENDED]
612:10-13-22. Grievance procedures [AMENDED]
612:10-13-23. Formal Hearing [AMENDED]
612:10-13-24. ~~QAST Advisory Committee~~Interpreter certification program advisory committee [AMENDED]
AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013
COMMENT PERIOD:
November 12, 2013 through February 5, 2014
PUBLIC HEARING:
February 3, 2014
ADOPTION:
March 10, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The Majority of changes throughout involve the name changes associated with the Office of State Finance (OSF) becoming Office of Management and Enterprise Services (OMES) and the related integration of other agencies into OMES. Changes to Chapter 10 are to demonstrate that some determinations by DRS are not subject to the Fair Hearing Process and updating procedures for Special Services for the Deaf and Hard of Hearing.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or DVS staff, in accordance with (g) and (h) of this Section, approves the claim, then forwards it to the DRS Financial Services Division. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration.

The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS. When DVR and DVS funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing $500 or more purchased with DVR and DVS funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

(1) identifying the requirement for the purchase;

(2) placing the order; and

(3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the ~~DCS~~DCAM authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than the ~~DCS~~ DCAM authority order limit, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

(1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.

(2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.

(3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of $5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and 612:10-11-38. The AT Specialist will complete the

"Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Financial Services Division.

(7) Upon delivery of any goods costing $500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(8) Itemized documentation will be in the case record on all orders costing less than $500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.

(j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

612:10-1-8. Vendor contracts

(a) **Nonmedical vendor contracts.** A post-secondary school (private or public) must have a prior written purchasing agreement with DRS before services can be authorized to that vendor, unless the school is participating in a direct payment program. Other nonmedical services to be purchased from a vendor will not require a prior written purchasing agreement unless stated otherwise in the DRS manual section(s) for that service, or in accordance with 612:10-1-7. Services requiring a prior written agreement cannot be authorized until a prior written agreement has been completed. Prior to the initiation of the Individualized Plan for Employment (IPE), the counselor must determine if:

(1) a vendor agreement is needed;

(2) there is an established rate or fee schedule; and

(3) client's participation in cost of services is required.

(b) **Training facility agreements.** Training services are purchased from a specific vendor when an active agreement has been approved by the Department of Central Services and placed on file in the Office of Management and Enterprise Services ~~State Finance~~.

(c) **Out-of-state vendor agreements.** By state law, an agreement cannot be issued for more than 12 months. If an agreement should lapse, vendor's claims for clients' training will be denied by the Department under state law. The client will be provided an opportunity to attend the training facility of choice provided the facility has an active agreement with the Department.

(d) **Medical vendor agreements.** Medical services or supplies may be purchased only from medical vendors having active purchasing agreements with the Department.

612:10-1-10. CARF - Vendors [REVOKED]

~~Each Employment vendor who is required contractually by the Department of Rehabilitation Services to be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) will achieve at least a successful accreditation outcome by June 30, 2011.~~

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

Actions requiring supervisory approval include:

(1) All actions of a newly employed counselor/teacher.

(2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed $25,000.

(3) All case closures in which an IPE was developed and services initiated.

(4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit (signed by the supervisor of the sending counselor or teacher).

(5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.

(6) Small Business plans with a cost to the agency in excess of $10,000.00.

(7) Vehicle or home modifications over the ~~DCS~~DCAM authority order limit and housing modifications involving structural modifications.

(8) Vehicle repairs that exceed $1,000.00 for the life of a case.

(9) Dental services with a projected cost over $5,000.00.

PART 15. TRAINING

612:10-7-152. Payment of tuition and fees at colleges and universities

(a) **Public institutions of higher learning.** Tuition and fees for DVR and DVS clients attending public colleges and universities will be paid at the rate set for resident students by the Oklahoma Regents for Higher Education and within limits prescribed by the Legislature. DVR and DVS will pay those fees charged to all students and special fees associated with required courses in the student's major field of study. ~~No authorization will be issued for tuition and fees until the client submits the applicable grade report, enrollment and award letter.~~

(b) **Private institutions of higher learning.** Tuition and fees for students in attendance at accredited private or denominational schools will be paid at the same rate as that paid at state-supported colleges or universities of equal rank.

(c) **Federal/State aid.** Pell Grant and all other Federal/State aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to the consideration of the expenditure of DRS funds regardless of whether the student is attending a public or private institution of higher education.

(d) **Cost documentation.** Each client is responsible for providing the counselor a copy of the college or university's current semester costs before the designated "Drop and Add" date.

PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATES

612:10-7-216. Tools, occupational equipment, initial stocks and supplies

(a) Tools, occupational equipment and supplies will be provided to eligible clients to the extent necessary to achieve their vocational goal providing the client has adequate resources available for the proper maintenance and upkeep of such tools and equipment. The client, or client's family or authorized representative as appropriate, is responsible for maintaining tools, occupational equipment, initial stocks, and supplies in good working order. DVR and VSD will not pay for repairs to tools, occupational equipment, initial stocks and supplies purchased with DVR and DVS funds once title has been released to the client. DVR and DVS will not pay for repairs before title is released when there is clear evidence that the damage resulted from abuse or neglect.

(b) The client will retain possession and control of articles while engaging in the job or occupation for which articles were provided, or when title is released to client. Occupational tools, occupational equipment, and initial stocks and supplies are defined as follows:

(1) Occupational tools are considered to be those minimum tools required for a designated trade, necessary to the employment of the individual, and not furnished by the employer. DRS will NOT purchase operable firearms even if required for employment. Counselor will assist consumer in finding resources to help in this purchase if necessary.

(2) Occupational equipment is equipment required to meet the minimum needs of an individual in starting and conducting a business of his or her own.

(3) Initial stocks and supplies are those materials and merchandise necessary for the client to become operational in a business.

(c) Purchase of occupational tools, equipment and initial stocks and supplies will be made in accordance with 612:10-1-7. If the client is required to participate in cost of services, the payment will be made to the nonmedical vendor. When the equipment is received and/or installed, the appropriate rehabilitation professional completes the Receipt for Equipment and Title Agreement~~,~~. ~~if~~If the purchase total is ~~$500~~$5,000 or more, the rehabilitation professional then signs the vendor's invoice and routes it to DRS state office.

(d) Used tools or equipment may be purchased when it is evident considerable savings may be affected. Used equipment or tools are to be appraised piece-by-piece by at least three shop owners or managers in the same type of work, and who are not acquainted with the vendor.

(e) If the counselor, after a thorough check of the tools or equipment, finds they are not being used for the purpose for which they were purchased, the counselor is to repossess the tools or equipment by executing the Release or Receipt of Equipment form.

612:10-7-220. Vehicle modification services

(a) Vehicle modification services may be provided as needed to enable a Vocational Rehabilitation client to prepare for, enter or retain employment. Vehicle modifications include the range of modifications and special equipment needed by a person with an impairment to drive or be a passenger in a vehicle.

(b) Vehicle modification services provided to an individual in the Vocational Rehabilitation program may include:

(1) purchase and installation of adaptations or devices in a vehicle;

(2) assistance with payment of the portion of the cost attributable to modifications pre-installed in a new or used vehicle purchased from a dealer;

(3) evaluation of an individual's ability to operate a motor vehicle;

(4) prescription of required devices specific to both the individual's needs and the vehicle; and

(5) training in the operation of the vehicle.

(c) Vehicle modifications which are projected to cost the amount of the ~~DCS~~DCAM authority order limit or less will be made in accordance with 612:10-1-7. Vehicle modifications projected to cost more than the ~~DCS~~ DCAM authority order limit will require additional processing by DRS Central/Departmental Services after the process is completed by the counselor as outlined in Categories A through C below. Clients purchasing new vehicles shall apply for any mobility equipment rebate available from the vehicle manufacturer and the amount of any such rebate shall be assigned to DRS.

(1) Category A: New or used vehicle with structural modifications: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications.

(2) Category B: New or used vehicle with structural modifications and accessibility modifications additions: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications and the accessibility modification additions. DRS will participate in this method only if the client obtains warranty from the mobility aids vendor. A copy of the warranty agreement will be obtained by the counselor and maintained in the case file.

(3) Category C: Any modifications to a new or used vehicle not purchased as part of the vehicle package with a cost greater than the ~~DCS~~DCAM authority order limit will require additional processing by C/DS after the bid process is completed by the counselor in accordance with 612:10-1-7.

(d) The qualifications in (1) - (9) of this Subsection apply to all vehicle modifications.

(1) The client or individual providing the transportation must have a current, valid driver's license. If the client will be driving the vehicle and does not yet have a driver's license, he/she must be legally permitted to drive or participate as a driving student.

(2) The name of the client must appear on the title to the vehicle and current vehicle registration. The client may be listed as a co-owner on these documents.

(3) The client must agree to maintain the vehicle for the predictable life of the equipment and is responsible for maintaining special equipment in good working order. DRS may pay for repairs to such equipment during the life of the case unless there is clear evidence that the special equipment has been damaged due to client abuse or neglect as determined by the dealer, vendor or Assistive Technology Specialist.

(4) The client must maintain both collision and comprehensive insurance on the vehicle, including the equipment.

(5) The vehicle must be evaluated by an Assistive Technology Specialist or person with equivalent qualifications (Driver Rehabilitation Instructor, Occupational Therapist, Rehab Engineer, etc.) for identification of the appropriate adaptive equipment and assessment of the compatibility of the vehicle with recommended adaptive equipment.

(6) A used vehicle must be inspected by an ASE or manufacturer certified mechanic to assure it is mechanically and structurally sound before equipment can be installed. This inspection may be authorized by the counselor if necessary. If the ASE or manufacturer certified mechanic recommends it, a separate inspection related to structural soundness will be completed. This inspection may be authorized by the counselor.

(7) Existing modifications on a new or used vehicle shall be inspected for the appropriateness of the adaptive equipment for the consumer's needs by the Assistive Technology Specialist or other qualified person. DRS also requires documentation that existing modifications on a used vehicle have been inspected by the mobility equipment dealer/vendor to determine efficiency, quality and fair market value of the modification or adaptive equipment. This documentation may be obtained directly from the mobility equipment dealer/vendor or from the lender when such documentation has been required for loan approval.

(8) DRS will not pay the expense of replacing the equipment unless the equipment no longer meets the needs of the client as determined through review of current medical reports and assistive technology evaluation indicating replacement is required to meet the IPE goals.

(9) Certain types of vehicle modification equipment are considered "transferable" by design: i.e., hand controls, left foot accelerator, and hitch lift systems for wheelchairs/scooters. DRS may assist with the cost of transferring this type of equipment to meet the IPE goals. These modifications are categorized as non-structural modifications.

(10) When vehicle modifications are completed, installation is to be inspected by an Assistive Technology Specialist or person with equivalent qualifications, to determine if the authorized equipment conforms to prescribed standards, is properly installed and meets the functional needs of the client. The counselor must obtain a statement of satisfaction from the client.

612:10-7-221. Housing Modification

(a) Modification of a residence may include installation of ramps, widening of doors, installation of grab bars and other accessibility modifications when such modifications are necessary to support the consumer in achievement of an employment outcome. Major structural modifications such as room additions or major wall removal will not be provided by DRS without supervisor approval. Housing modifications that will cost more than the ~~DCS~~DCAM authority order limit require supervisor approval.

(b) In all situations where housing modification is to be done, the owner of the house must sign a written release form. In those situations where the consumer is a renter, the renter/consumer is responsible for obtaining the written release from the owner. The counselor must make a referral to the Assistive Technology (AT) Specialist who will make the evaluation of the residence and recommend the modifications needed to make the residence accessible and usable for the consumer. After modifications have been completed the counselor will contact the AT Specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the consumers accessibility needs. The AT Specialist will provide a report to the counselor and the counselor must get a statement of satisfaction from the consumer.

PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

612:10-7-233. Special consideration in state government employment for persons with severe disabilities

~~(a) Oklahoma statute [74 O.S. 840-4.12] establishes provisions to promote the employment of persons with severe disabilities in state government. The law waives written entrance examinations and certain other hiring procedures administered by the Office of Personnel Management (OPM)~~ Human Capital Management (HCM) for persons who are certified as having a severe disability based on standards and criteria established by the Administrator of ~~OPM~~HCM. Such applicants must be legal residents of Oklahoma and must meet minimum qualifications specified in applicable job specifications. Rules implementing the provisions of 74 O.S. 840-4.12 are found at OAC 530:10-9-100. ~~OPM~~HCM rules refer to these provisions as the Optional Program for Hiring Applicants with Disabilities.

(b) For purposes of the Optional Program for Hiring Applicants with Disabilities, the Department of Rehabilitation Services (DRS) shall certify that an applicant has a severe disability according to the definition of "individual with a severe disability" in OAC 612:10-1-2, which the ~~OPM~~HCM Administrator has established as the standard for disability certification. DRS shall provide electronic or written verification of an applicant's severe disability to the applicant and to ~~the Office of Personnel Management~~ Human Capital Management.

(c) Counselors will document the severity of the disability using existing DRS case information for current or former clients. Individuals who have not been DRS clients will provide the counselor with documentation necessary for determining that the individual has a severe physical or mental impairment which seriously limits one or more functional capacities. Medical examinations may not be purchased solely to certify eligibility under 74 O.S. 840-4.12.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 1. SERVICE PROGRAMS

612:10-13-1. Mission of the program

(a) **Purpose.** This Subchapter describes the special services available from the Department of Rehabilitation Services specifically targeted to the needs of individuals who are Deaf, hard of hearing and/or have other communicative disorders. These services are provided to meet the unique needs of this population and include but are not limited to:

(1) vocational rehabilitation counseling and services provided by specialists with knowledge of the medical, functional, communicative, cultural and employment issues experienced by individuals who are Deaf, hard of hearing, late deafened and deaf-blind;

(2) specialized client services including cultural mediation, information and referral for services related to hearing loss, client self-advocacy training, assistive technology devices and services for communication access, and instruction in specialized skills for independence, socialization and work adjustment;

(3) facilitation of effective communication between persons with hearing loss and providers of planned VR services;

(4) community outreach to educate consumers and the hearing population regarding hearing loss, communications accessibility, and rehabilitation and employment opportunities for persons with hearing loss;

(5) sign language interpreter certification for the State of Oklahoma;

(6) provision and coordination of interpreter services for DRS purposes including client communications; and

(7) providing a conduit for communication between Oklahomans with hearing loss and the Department, advising the agency on current issues, needs and concerns of Oklahomans with hearing loss.

(b) **Acronyms.** The following acronyms, when used in this subchapter, stand for the following:

(1) **"CDI"** Certified Deaf Interpreter

(2) **"CI"** Certificate of Interpretation

(3) **"CSC"** Comprehensive Skills Certification

(4) **"CT"** Certificate of Transliteration

(5) **"NAD"** National Association of the Deaf

~~(6) "QAST" Quality Assurance Screening Test~~

(~~7~~6) **"RCD"** Rehabilitation Counselors for the Deaf and Hard of Hearing

(~~8~~7) **"RID"** Registry of Interpreters

(~~9~~8) **"SDHH"** Services to the Deaf and Hard of Hearing

PART 3. CERTIFICATION OF INTERPRETERS

612:10-13-14. Legal basis

Title 56, Section 199.2 of Oklahoma statute ~~assigns responsibility to~~ directs the Department of Rehabilitation Services to establish policy and procedures for the evaluation and certification of interpreters for the deaf in Oklahoma, and authorizes the Department to charge a fee to recoup costs incurred in testing and certifying interpreters. ~~The Department has selected the Quality Assurance Screening Test (QAST) as the method to be used in establishing the proficiency of each person requesting Oklahoma certification as an interpreter for the deaf.~~

612:10-13-16. Evaluation

(a) **Evaluation components and conditions.** To be certified as an interpreter, an individual must pass an evaluation. The evaluation ~~(QAST)~~ for certification consists of a written examination and a performance evaluation. The evaluation will include items on the Oklahoma Quality Assurances Code of Ethics. Candidates can take the evaluations for Levels I/II/III and Level IV/V on the same testing date, provided the candidate submits separate applications and pays the current fee for both tests. The candidate forfeits the fee for Level IV/V

testing if he or she fails to achieve Level III certification. Interpreters who hold Level III certification in either Interpreting or Transliterating may go on to test for Level IV/V.

(b) **Written examination.** The written examination consists of questions designed to measure knowledge of interpreting and situational ethics. Applicants must make a passing score, as established by ~~QAST~~ the program, before being allowed to take the performance evaluation. ~~The written exam consists of questions designed to measure knowledge of interpreting and situational ethics.~~ Retesting may be taken only after a six month waiting period.

(c) **Performance Evaluation.** The performance evaluation consists of a personal interview conducted by the evaluation team and a proficiency test. This will test both the applicants' ability to interpret and transliterate. Individuals may request testing for levels I, II, III or levels IV/V. If a failing score is obtained the candidate must wait six months before retesting in the same category. The six month waiting period is waived for individuals who achieve Level III and apply to test for Level IV/V. In this case, application will be accepted for the next available testing date. Different tests will be used for each category. Certification will be granted to an individual whose total score falls within the acceptable range for that level.

(d) **Conflict of interest.** Interpreter certification program staff who select, manage or coordinate the certification process or select evaluators are not eligible to test for Oklahoma interpreter certification through this process.

612:10-13-21. Code of ethics

The interpreter/transliterator shall agree to abide by the Oklahoma Quality Assurances Ethical Standards. Federal, state or other laws or regulations may supersede the Ethical Standards if a conflict is present between existing law or regulations and the Ethical Standards. The interpreter/transliterator will abide by the rule of the law.

(1) The interpreter/transliterator shall be dedicated to providing competent interpreting services in a manner befitting a professional.

(A) The interpreter/transliterator shall conduct him/herself in a manner which will reflect high standards of professionalism. This requires proper behavior suitable to the circumstances of the interpreting assignment.

(B) The interpreter/transliterator will dress appropriately to the circumstances of the interpreting assignment. Dress will be as unobtrusive as possible, and care will be taken to avoid cloth patterns or accessories which would interfere with clear perception of the consumer(s) through distraction or poor foreground/background contrast.

(C) The interpreter/transliterator will, to the maximum extent possible, choose positioning of themselves to avoid distracting backgrounds or inadequate lighting, and within comfortable visual/audible range of the consumer(s).

(D) The interpreter/transliterator will request compensation for services in a professional and judicious manner. The interpreter/transliterator will be knowledgeable of fees commensurate with their level of skill, level of certification, length of experience, and nature of the interpreting assignment, as well as fees customary to the geographic region.

(E) The interpreter/transliterator duty is to function fully as the support team interpreter/transliterator when engaged in a team assignment environment to assure the accuracy of the message is rendered.

(2) The interpreter/transliterator uses discretion in accepting assignments based upon language competency with regard to the setting and/or consumers involved and according to the ~~QA~~Oklahoma interpreter certification Level of Limitations.

(A) The interpreter/transliterator will base acceptance of assignments upon his/her qualifications to handle the English language characteristically utilized in any given situation. If an interpreter/transliterator cannot understand the English language used, nor express it in sign language, or cannot maintain an acceptable pace, the interpreter/transliterator should not accept the assignment.

(B) The best practice for a professional interpreter/transliterator will be to make every reasonable effort to assess the language skills of the consumer(s) involved to determine his/her ability to understand and be understood in the given assignment by asking appropriate questions of the requestor of services, without asking the identity of the consumer. If this assessment prior to acceptance is not possible, the interpreter/transliterator should arrive at the assignment early to assess the language skills taking care that the communication exchange is not assignment related. At this time, the interpreter/transliterator may decide to proceed with the assignment, or decline the assignment. If the assignment is declined prior to the assignment, or later during the assignment, assistance may be required in securing a more qualified interpreter to take the assignment at that time, or at a later scheduled time.

(C) A certification level is a guideline to what levels may be able to perform in various situations. If a Deaf individual deems an interpreter/transliterator as "qualified" they should be permitted to function as such, as long as it does not violate established ~~QAST~~Oklahoma interpreter certification Level of Limitations, regulations or laws.

(D) The interpreter/transliterator should be familiar with statutory requirements regarding interpreter qualifications in a state before accepting an assignment in that state which might require a higher level of certification.

(E) The interpreter/transliterator may decline or discontinue assignments if working conditions are not safe, healthy, or conducive to interpreting.

(F) The interpreter/transliterator may render pro bono services providing it is a fair and reasonable manner.

(3) The interpreter/transliterator uses discretion in accepting assignments based upon the capacity to maintain impartiality with regard to the setting and/or consumers involved.

(A) The interpreter/transliterator should accept assignments only when the interpreter/transliterator feels comfortable dealing with the content of the communication in an impartial manner. If the personal feelings or beliefs of the interpreter/transliterator would interfere with rendering the message accurately, the interpreter/transliterator should withdraw from the assignment.

(B) Interpreters/transliterators should refrain from providing interpreter services in situations where family members, or close personal or professional relationships may affect impartiality.

(C) Interpreters/transliterators should strive for complete neutrality between consumers in the interpreting assignment. This neutrality can be compromised for various reasons. Whenever neutrality is compromised, it is the obligation of the interpreter/transliterator to assure that all affected consumers are duly advised and given the option of declining the interpreter/transliterator assignment.

(D) The interpreter/transliterator should avoid performing dual or conflicting roles while in the role as the interpreter/transliterator during the interpreting assignment.

(4) The interpreter/transliterator shall judiciously safeguard assignment-related information because it is confidential. Exceptions to confidentially include federal and/or state laws that mandate reporting a known crime or planning to commit a crime, fraud, or physical injury to the deaf person or another individual.

(A) A full-time interpreter/transliterator may provide information to his/her employer or other appropriate staff for purposes of record keeping, program management, or supervision without breaching confidentiality.

(B) The right to privacy is inalienable for all citizens. The interpreter/transliterator has a fundamental obligation to safeguard any confidential information acquired from any source during an interpreter assignment. Injudicious disclosures of confidential information could adversely affect the consumer's reputation, and expose the interpreter/transliterator to liability.

(C) The interpreter/transliterator should consult legal counsel when in doubt concerning disclosure in a court of law, and professional rights and responsibilities.

(D) The interpreter/transliterator should inform consumers when federal or state mandates require disclosure of confidential information.

(5) The interpreter/transliterator shall provide information when necessary, to the consumers involved as to the role and appropriate use of the interpreter/transliterator. Assuring the education of consumers as to the proper use of an interpreter is a basic responsibility of the interpreter/transliterator. The experienced consumer may also provide such education. Consumer education should be succinct, and is best presented prior to an assignment to ensure a smooth communication exchange.

(6) The interpreter/transliterator conveys the content and affect of the communication transmitted using the language most easily understood by the persons involved in the communication/transaction.

(A) The interpreter/transliterator must transmit all communication in the exact way it is presented, conveying the speaker's intention. The interpreter/transliterator is not responsible for what is said or how it is said; only for conveying the message accurately and with the intended affect. The interpreter/transliterator shall withdraw from an assignment when his/her personal feelings interfere with rendering the message accurately with the intended affect.

(B) The interpreter/transliterator shall communicate in the manner most easily understood or preferred by the consumer(s), such as American Sign Language, Manually Coded English, finger spelling, gesturing, drawing, or writing.

(7) The interpreter/transliterator should not counsel nor interject personal opinion, but may exercise professional judgment in assessing whether or not communication is being understood and may also inform the consumers involved of available resources as appropriate.

(A) The interpreter/transliterator shall not step out of the role of communication facilitator by offering counsel or interjecting personal opinion. Exercising professional judgment and offering a professional opinion in assessing whether communication is being understood is not a breach of ethics.

(B) Recommending known and available resources to the consumer is considered within the professional role of the interpreter/transliterator. The interpreter's responsibility in this regard is only to inform in a courteous and helpful manner. It is the consumer's decision whether they wish to follow through with any recommendation.

(8) The interpreter/transliterator should pursue further knowledge and maintain competency in interpreting or transliterating skills. The interpreter/transliterator should strive to further knowledge and skills through active participation in workshops, professional meetings, interaction with professional colleagues, and reading of literature in the field.

(9) The interpreter/transliterator has a responsibility to be aware of and comply with all federal or state laws regulating specialized interpreting fields (educational, legal, mental health).

612:10-13-22. Grievance procedures

(a) Individuals who are dissatisfied with certification testing procedures or performance of a certified interpreter may file a written complaint with the ~~QAST Administrators~~designated

Oklahoma interpreter certification program official, Department of Rehabilitation Services, within thirty (30) days of the grieved incident.

(b) The Department will accept jurisdiction only for those incidents directly related to the evaluation and certification of interpreters for the deaf in Oklahoma and those incidents involving the performance of State Certified Interpreters that allege a specific violation of interpreting standards or ethical behavior.

(c) Each complaint must be in writing and must set forth:

(1) The date of the incident;

(2) The names of the person(s) involved;

(3) The location of the incident;

(4) A description of the specific action or actions in question; and

(5) The specific policy or procedure in question.

(d) Upon receipt of a properly executed complaint, the Department will review the complaint and within thirty (30) days notify the respondent that a complaint has been filed. The respondent will have thirty (30) days from the date he or she receives the notification to respond.

~~(e) Upon the receipt of a written response, the QAST Administrators~~ designated Oklahoma interpreter certification program official will review the information presented and make an initial decision regarding the merit of the complaint. The ~~QAST Administrator~~designated Oklahoma interpreter certification program official has thirty (30) days from the submittal of the grievance to make the decision. All parties concerned will be notified of the decision in writing.

(f) If it is determined that a violation of either rules governing interpreter evaluations or standards and ethical behavior for interpreters may have occurred, the complaint will be referred to the grievance board.

(g) If it is determined that no violation of rules related to evaluation and certification of Interpreters for the deaf or violation of interpreting standards and ethical behavior has occurred, the involved parties will be notified and the complaint will be dismissed. If the complaint is dismissed the complainant may request a formal hearing within thirty (30) days of receiving the notification. The request for formal hearing must be in writing~~,~~ and~~ is~~ addressed to the ~~QAST Administrators, Department of Rehabilitation Services, 3535 N.W. 58th Street, Suite 500, Oklahoma City, Oklahoma, 73112~~designated Oklahoma interpreter certification program official at the Department of Rehabilitation Services.

612:10-13-23. Formal hearing

(a) A formal hearing may be requested by the complainant by contacting the ~~QAST Administrators, Department of Rehabilitation Services, 3535 N.W. 58th Street, Suite 500, Oklahoma City, Oklahoma, 73112~~ designated Oklahoma interpreter certification program official. The hearing will be scheduled at a time and place convenient to all parties concerned. All parties will receive two weeks notice of the hearing date.

(b) The complainant and/or respondent may invite a representative (including legal) to assist during the proceedings. Either party may present witnesses, affidavits or other written documentation related to any relevant aspect of the charge or defense.

(c) The hearing will be conducted by a grievance board selected by the ~~QAST~~Oklahoma interpreter certification program Advisory Committee and the Department. At least one member must be deaf or hard of hearing and must be either a former or current Oklahoma ~~Assurance Test Evaluator~~ interpreter certification test evaluator; one member must be an interpreter holding national or Oklahoma State Level V certification; one member will be selected at the discretion of DRS and may be from a profession other than interpreting for the deaf, but must be knowledgeable of interpreter skills. The grievance board will review information presented and make a determination of the facts. Based upon this determination, the grievance board will recommend the appropriate action the ~~QAST Administrators~~Oklahoma interpreter certification program should take. Possible actions are set forth in (1) through (8) of this Subsection.

(1) The complaint be dismissed;

(2) A written warning be issued;

(3) A written reprimand be issued indicating unsatisfactory performance;

(4) Probation a trial period for a specific length of time during which the interpreter is required to fulfill a set of conditions to improve work performance or work behavior;

(5) Supervision - removal of the individual from the list of certified interpreters for a specified period of time, not to exceed six (6) months;

(6) Revocation - removal of the individual from the list of certified interpreters for an extended period or permanently;

(7) The complainant may be retested using a different evaluation team at no cost to the individual; and

(8) A change in policy or procedures in the interpreter evaluation process.

(d) The decision of the ~~QAST~~Oklahoma interpreter certification program grievance board will be reviewed by the ~~QAST Administrators~~designated interpreter certification program official who will notify all parties involved in writing of the decision within thirty (30) days. If a party is dissatisfied with the outcome of a formal hearing, an appeal may be made to the Director of the Department of Rehabilitation Services. The Director shall have forty-five (45) days to render a decision. The Director's decision shall be final.

612:10-13-24. ~~QAST Advisory Committee~~ Interpreter certification program advisory committee

(a) ~~A QAST Advisory Committee~~An Oklahoma interpreter certification program advisory committee shall serve in an advisory capacity to provide expert assistance in maintaining the integrity of the ~~QAST~~ Oklahoma interpreter certification system. The committee will communicate the needs and concerns of the interpreting community ~~as applies to QAST~~in regard to interpreter certification as well as convey current industry standards. The ~~QAST Advisory Committee~~ Oklahoma interpreter

certification program advisory committee shall also participate in selecting grievance board members.

(b) The ~~QAST Advisory Committee~~Oklahoma interpreter certification program advisory committee shall consist of those individuals as defined by 612:10-13-17.

(c) ~~QAST Advisory Committee~~Oklahoma interpreter certification program advisory committee members will be chosen from a pool of qualified applicants by the Department of Rehabilitation Services. Members serve terms of two years, and may serve consecutive terms. Meetings will be held at least once annually, or as needed.

[OAR Docket #14-617; filed 7-2-14]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #14-618]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
Part 1. Organization and General Operation Standards
612:25-4-4. Management services provided by the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
612:25-4-16. Training for Business Enterprise Program staff [REVOKED]
Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
612:25-4-27. Initial inventory and supplies [AMENDED]
Part 9. Assignment and Transfer of Licensed Managers
612:25-4-54. Business enterprise vacancy announcement [AMENDED]
612:25-4-55. Qualifications [AMENDED]
612:25-4-56. Applications [AMENDED]
612:25-4-57. Applicant Selection Committee [AMENDED]
612:25-4-58. Annual ~~Evaluation~~ and Performance Evaluations [AMENDED]
612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
612:25-4-60. Ninety day replacement [AMENDED]
612:25-4-61. Satellite/remote business enterprise locations [AMENDED]
612:25-4-62. Vending machine income [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process [AMENDED]
612:25-4-72. Audits [AMENDED]
612:25-4-73. Due Process [AMENDED]
Subchapter 6. Licensed Managers and Business Enterprise Operation
Part 1. Licensed Managers [AMENDED]
612:25-6-1. Licensing requirements for managing a business enterprise [AMENDED]
612:25-6-2. Standards for licensed managers [AMENDED]
612:25-6-2.1. Probation [AMENDED]
612:25-6-4. Use of ~~dog guides~~ service animals [AMENDED]
612:25-6-5. Motor vehicle operation [AMENDED]
Part 3. Business Enterprises
612:25-6-15. Setting aside of funds [AMENDED]
612:25-6-18. Establishing new licensed managers in business enterprises [AMENDED]
612:25-6-20. Closing a business enterprise [AMENDED]
612:25-6-22. Monthly reports [AMENDED]
612:25-6-32. The Elected Committee of Licensed Managers [AMENDED]

AUTHORITY:
Commission for Rehabilitation Services; 74 O.S. § 166.2, 20 U.S.C. 107 et seq.; 29 U.S.C. 701 through 791; 7 O.S. § 71 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 2, 2013
COMMENT PERIOD:
November 12, 2013 through February 5, 2014
PUBLIC HEARING:
February 3, 2014
ADOPTION:
March 10, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Due to state and federal audits, minor changes to the Business Enterprise policies must be made as well as updating language.
CONTACT PERSON:
Tina Calloway, Administrative Assistant, Policy Development, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3552

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"Annual Evaluation" means an evaluation conducted on a yearly basis of a manager. This evaluation will be performed at the end of each calendar year.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Operations Coordinator" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business ~~consultant~~ Consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers ~~in the area~~ of the State to which the consultant is assigned.

"Business ~~enterprise~~ Enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or **"Executive Director"** means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed ~~manager~~Manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Performance Evaluation" means an evaluation conducted to determine if a manager is eligible to apply for a facility or to be awarded a permanent BEP license.

"Permanent BEP License" means a license issued on a permanent basis to a BEP manager who has successfully completed all probationary requirements.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Probationary BEP License" means a license issued to an individual on their first day as manager of an Oklahoma BEP facility.

"Probationary Licensee" means a person who has received a certificate of completion of the Business Enterprise Program training and has not completed their six (6) month probationary period.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business ~~enterprise whether owned by the State Licensing Agency or the licensed manager~~.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager ~~as a revision to the BEP handbook~~.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise without a permanently assigned licensed manager which is being managed by a licensed manager who is also managing his/her regularly assigned business enterprise.

"Satisfactory site" means an area determined by the BEP Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS

612:25-4-4. Management services provided by the State Licensing Agency

(a) **Overview of management services.** Management services provided by the State Licensing Agency (SLA) include but are not limited to inspections, quality control, consultation and technical assistance for licensed managers, accounting, regulating, training, including in-service training, equipment procurement and other services provided to support and improve business enterprises.

(b) **Consultation and technical assistance.** The SLA provides licensed managers with consultation and technical assistance services that may include:

(1) Recommendations for optimizing the profitability of the business enterprise;

(2) Recommendations and feedback on business enterprise operations including quality, service, and cleanliness;

(3) Possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the grantor;

(4) Explanation of the SLA's procedures, policies, and standards;

(5) Information on compliance with applicable laws and regulations;

(6) Instruction on compliance with all conditions in the manager's ~~license~~agreement;

(7) Information and inspection to help the licensed manager assure that merchandise is sold in accordance with the grantor's agreement;

(8) Instructions for maintenance of sanitation and safety standards;

(9) Instructions for proper maintenance of equipment;

(10) Recommendations for building effective communications and working relationships between the licensed manager and customers, purveyors, employees, grantor, the SLA and the general public; and

(11) Instruction on SLA and other agency requirements for record keeping and reporting.

(c) **On-site location reviews.** On-site location reviews will be made as often as necessary, but not less than once each month to ensure the continued success of the business enterprise. Each on-site location review of a business enterprise will be documented using such forms or methods as are prescribed by the BEP. The report will contain at a minimum the following information to the extent relevant:

(1) Status of compliance with the licensed manager's agreement.

(2) Violations (if any) of State or Federal Laws and the SLA's policies and procedures.

(3) Observation that proper insurance, permits and license are current and posted.

(d) **SLA provision of training.** The SLA shall ensure that effective programs of training shall be provided to licensed manager trainees, current licensed managers and BEP staff, as appropriate. ~~Such programs~~Programs for ~~trainee~~ trainees and current licensed managers shall include, as appropriate, on-the-job training in all aspects of business enterprise operations ~~for licensed managers,~~ and upward mobility training that includes~~includingfurther education and additional training or retraining for~~ improved work opportunities for all licensed managers.

PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) **Overview of Licensed Manager Training.** The Business Enterprise Program (BEP) provides individuals who are blind with training that leads to potential employment as a Licensed Manager of a vending facility or related business in the Business Enterprise Program. The training program includes but is not limited to training in laws and regulations affecting the Business Enterprise Program ~~and the operation of food service facilities~~, state and federal tax reporting, food service operations, sanitation, inventory control, money management, staffing of personnel, safety procedures, business management

principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers~~ and training facilities~~, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with the DRS Division of Visual Services and DRS Division of Vocational Rehabilitation.

(b) **Application process.** Applications for BEP training shall include the following information which ~~may~~shall be obtained from the individual's counselor:

(1) current eye examination, documenting blindness;

(2) documentation for United States citizenship~~ and residency in the State of Oklahoma~~;

(3) documentation the client is at least 18 years of age;

(4) rehabilitation training prerequisites established by the BEP in consultation with the ECM to better optimize the successful employment outcome;

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's DVS/DVR counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record.** Before entering training, BEP applicants will be informed that a criminal ~~history~~ background investigation will be performed and may prevent ~~an individual from~~ their being licensed to manage some BEP facilities.

(e) **Duration of training.** To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator determines an exception is justifiable.

(f) **Completion of training.** Each trainee who completes the BEP manager training program is issued a certificate certifying that the trainee has met all the training criteria to be a licensed manager in the Business Enterprise Program. ~~The individual is granted a license upon actual entry into the program.~~Upon assuming management of their first facility, a certified graduate shall be issued a temporary license and begin a six (6) month probationary period. During this period, the probationary manager will receive benefits afforded all other managers, along with accruing seniority. Upon completion of their probationary period, the BEP Operations Coordinator will review their progress and if determined appropriate will issue their permanent BEP Manager License.

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the ~~appropriate training official and~~ BEP operations coordinator will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the ~~trainee's~~ trainee and their DVS or DVR counselor of any BEP decision to terminate training.

(h) **Post-training interview.** Upon completion of ~~training,~~a new manager's probationary period, ~~each trainee is~~they will be interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program to provide to the BEP Operations Coordinator.

(i) **Acceptance of out-of-state licenses.** The BEP ~~administrative staff person in charge of training~~ Operations Coordinator will evaluate the skills and knowledge of BEP applicants who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program.~~ Special training will be given the applicant in preparation for the Oklahoma Health Department's Certified Food Handler's test.~~ After qualifications are met, the applicant is issued a training completion certificate.

(j) **~~Longevity~~Seniority.** ~~Longevity~~Seniority in the Oklahoma Business Enterprise Program will ~~start the first work day upon entering into the program after training. Only time actually worked in the~~ only accrue when managing an Oklahoma BEP ~~may be counted~~facility.

612:25-4-16. Training for Business Enterprise Program staff [REVOKED]

~~The State Licensing Agency is responsible for the development and provision of training for Business Enterprise Program (BEP) staff who provide consultation and technical assistance to licensed managers. BEP consultant training will be based on a curriculum that is developed and periodically reviewed through consultation with appropriate business representatives, instructors and training facilities, BEP staff, vending facility managers and the Elected Committee of Licensed Managers.~~

PART 5. STATE LICENSING AGENCY RESPONSIBILITY FOR BUSINESS ENTERPRISE OPERATIONS

612:25-4-27. Initial inventory and supplies

(a) **Initial inventory.** A licensed manager may acquire initial merchandise for resale by purchasing it with his/her own funds, utilizing self-employment assistance that may be available from DRS or other public and private sources, or use of a merchandise loan provided by the State Licensing Agency (SLA).

(b) **Merchandise loan.** When necessary to enable a licensed manager to acquire initial merchandise inventory, the SLA may extend a merchandise loan subject to the following terms:

(1) The amount of the loan will be determined by the SLA in consultation with the licensed manager and based on an assessment of merchandise necessary to initiate sales.

(2) The total amount of the loan will not exceed the average of the prior year's inventories without approval from the BEP operations coordinator.

(3) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA. The SLA will not make multiple purchases from any purveyor.

(4) The incoming licensed manager, BEP business consultant and BEP operations coordinator will determine what may be purchased from the existing stock of the outgoing facility manager. Only salable merchandise may be purchased. The BEP business consultant and Operations Coordinator will also assist the out-going manager in selling any remaining salable merchandise and its interim storage.

(5) A merchandise loan must be repaid to the SLA by a licensed manager in monthly installments equaling two percent (2%) of monthly gross sales. A licensed manager shall not allow the facility inventory level to fall below that of the balance of the merchandise loan. Managers receiving loans will sign a merchandise security agreement that will be retained on file by DRS and released to the manager when loan repayment is complete.

(6) When a merchandise loan is secured by stock, a licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.

(7) When a licensed manager leaves a business enterprise, any remaining merchandise loan balance (and other unmet obligations to the SLA) will be subtracted from ending inventory in determining the manager's equity in ending stock.

(c) **Failure of licensed manager to repay loan.**

(1) If a licensed manager's merchandise loan payment is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation and is not eligible to make application into the selection process.

(2) If a licensed manager's merchandise loan payment remains delinquent through the succeeding month and is not received in the BEP office within five days after the succeeding month's due date, the BEP operations coordinator will recommend suspension or termination of the operator's agreement by the SLA director unless an alternate repayment schedule has been approved by the SLA. The SLA will initiate action to collect a remaining merchandise loan balance when a loan payment is two months overdue.

(3) When a licensed manager leaves the program for any reason, the merchandise loan is due in full unless arrangements are made with the SLA to divide the balance into twelve (12) equal payments that will be due on the first day of each month.

(d) **Second merchandise loan.**

(1) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan may receive a second merchandise loan for the same facility when it has been determined that the loan is necessary to allow the licensed manager to remain in his/her facility.

(2) If a licensed manager requires a second merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will be placed on probation until one of the loans is paid in full.

(3) Second merchandise loans for the purpose of facility expansion will be limited to 50% of the cost of additional salable merchandise needed.

(e) If a licensed manager wishes to provide his or her own merchandise and will not require a merchandise loan, he or she must sign a statement to that effect.

PART 9. ASSIGNMENT AND TRANSFER OF LICENSED MANAGERS

612:25-4-54. Business enterprise vacancy announcement

(a) The procedure for announcing business enterprise openings is a mail out to all licensed managers, licensed employees, and licensees on the mailing list.

(b) The announcement period will be ten working days.

(c) If available, ~~The~~the information in (1) through (9) of this Subsection will be contained on each announcement.

(1) type of business enterprise;

(2) estimated number of employees in the building and/or traffic flow unless security considerations prohibit release of such information;

(3) location of the business enterprise;

(4) classification;

(5) average gross sales as reported on monthly report for the previous 12 months;

(6) for a new business enterprise, estimates of monthly ~~net~~gross sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales;

(7) application due date;

(8) name and telephone number of the BEP business consultant; and

(9) name and ~~work phone~~telephone number of the current manager.

612:25-4-55. Qualifications

(a) In order to apply for manager placement ~~as a licensed manager~~ in a Classification "A" or "B" facility in the Business Enterprise Program (BEP), an individual must hold a ~~current~~**permanent** license issued by the State Licensing Agency (SLA). In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" and "B" classification business enterprises. Certified graduates of the BEP Training Program are only eligible to apply for Classification "C" and "D" facilities. A ~~new~~ location new to the BEP program is to be classified "C" for the initial 90 days of operation. The BEP Operations Coordinator, in consultation with the ECM Chairperson, will determine the need for any experience requirements.

(b) Applicants who qualify for the next lower classification will be considered for interview when no qualified applicants apply for a classification "A" or "B facility announcement when it is deemed appropriate to do so by the BEP Operations Coordinator in consultation with the ECM Chairperson.

(c) Experience requirements for each classification are:

(1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total

experience in an Oklahoma business enterprise including a minimum of one (1) year of management experience.

(2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma business enterprise, including a minimum of six (6) months of management experience, or two (2) years additional employment in a business enterprise may be substituted for the management experience.

(3) Classification C. No experience required, except on new locations as ~~determined by the Selection Committee~~deemed appropriate by the BEP Operations Coordinator inconsultation with the ECM Chairperson.

(4) Classification D. No experience required.

(~~b~~d) The ~~Selection Committee~~ BEP Operations Coordinator, in consultation with the ECM Chairperson, may require ~~prior business enterprise~~ additional BEP experience on applications for any facility ~~including new locations~~. Verified BEP experience ~~in a business enterprise in~~from another state may be considered ~~by the selection committee~~.

(~~c~~e) A displaced licensed manager will have "15" points added in the selection process for ~~a~~the first comparable business enterprise~~,~~ announced; including type, gross sales,~~size~~ and geographical location~~,~~; for one year from the date of displacement.

(~~d~~f) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:

(1) The licensed manager is on probation or the SLA has initiated suspension/termination proceedings against the licensed manager.

(2) The applicant is not current with their merchandise loan payments.

(3) The applicant is not current with his/her set-aside owed to the SLA.

(4) The applicant has not scored at least an 80 on the annual evaluation.

(5) Conditions 1-4 will not apply to new BEP training graduates.

(~~e~~g) Applicants must be eligible to obtain an Oklahoma Tax Permit. Along with each application, the applicant is to provide a signed OTC form A 100 to determine their standing in relation to Sales Tax and Employee Withholding. The OTC form A 100 will be used on a one-time basis for a tax inquiry in relation to that announcement application only.

612:25-4-56. Applications

(a) Applications must be received in the BEP Headquarters by the deadline date and time in order to be considered. The applications may be mailed, ~~facsimiled~~emailed, faxed, or hand delivered.

(b) Applications received ~~before~~by the announcement expiration date and time are reviewed to determine if the applicant meets the basic qualifications.

(c) All eligible applicants will be scheduled for an interview with the Selection Committee. Applicants who do not meet the basic qualifications will be notified in writing.

(d) Included with each application on OTC form A-100, Disclosure of Tax Information Authorization, will be completed and submitted. This form will be used to accomplish a one-time inquiry as to their sales tax and tax permit status. This form will be issued with the facility announcement.

612:25-4-57. Applicant Selection Committee

The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment and transfer. The Selection Committee shall make recommendation(s) to the ~~SLA~~ BEP Operations Coordinator or designee.

~~(1)~~ The BEP selection committee is chaired by the BEP Operations Coordinator or designee. Members include two members of the SLA staff, the area member of the ECM or alternate and the chairperson of the ECM or alternate (vice-chair or secretary or another member of the ECM, in order). If no member of the ECM can serve in either capacity the BEP Operations Coordinator shall poll from the ECM chairs outside of State of Oklahoma to complete the committee. No person can serve on the selection committee who has a conflict or interest or is related to an applicant.

~~(2) In the event the area member of the ECM or the alternate cannot attend or serve, or is related to an applicant, another ECM member or alternate may be called as a substitute member to be determined by the Chairman of ECM. In the event that no member of the ECM can serve the SLA shall poll from the ECM chairs outside of the State of Oklahoma to complete the committee.~~

612:25-4-58. Annual ~~Evaluation~~ and Performance Evaluations

(a) The BEP will conduct an annual evaluation of each ~~business enterprise~~licensed manager at the end of each calendar year. Performance evaluations will be conducted when a manager applies for a facility or when a probationary period ends. All evaluations will be based on data collected from the manager's primary assigned facility and will consist of the previous twelve (12) months information. The Licensed Manager will be advised of the results of any evaluation in writing. The manager will be evaluated in the following areas:

(1) Tasks/responsibilities

(A) Timely submission and accuracy of all required monthly reports and payments.

(B) Accurately calculated gross profit percentage reported on monthly reports.

(C) Accurately calculated net profit percentage reported on monthly reports.

(D) Maintenance of an acceptable level of merchandise inventory.

(E) Attendance at Agency and other certified training.

(2) Work Habits

(A) Provides preventive maintenance and appropriate cleaning/sanitation.

(B) Merchandise displayed, rotated and stocked sufficiently.

(C) Maintains required insurances.

(D) Maintains agreed upon hours of operation.

(E) Maintains professional relationships with customers and grantors.

(b) ~~Any business enterprise manager not receiving at least 80points of the available 100 points on an annual evaluation will not be eligible to apply for a business enterprise facility during the current evaluation year~~When a Licensed Manager applies for a facility a performance evaluation will be conducted to determine their eligibility to apply. To be eligible the manager must score at least 80 of the available 100 points. Any score above 80 will accrue to the benefit of the licensed manager in that selection process by adding it to their total score. If there is a second interview conducted, these points will not be added to the total points of the second interview.

~~(c) Any score above 80 obtained by the licensed manager will accrue to the benefit of the licensed manager in any selection process during the current evaluation year.~~

612:25-4-59. Interview, Selection Process and Scoring

(a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview.

(b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection Committee members, unless they are advised by legal counsel to release information.

(c) An applicant not present at the appointed time for ~~the~~their interview will have his/her name removed from consideration for this location unless, due to reasonable extenuating circumstances, they are unable to appear and a majority vote of the selection committee agrees to allow a change of the interview time.

(d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked.

(e) Any candidate not scoring a minimum of 50 percent of the available points, not ~~considering~~ including seniority or displaced manager~~the~~ points ~~given for number of years in the program~~, will be ~~considered~~deemed not qualified to manage the facility being considered.

(f) The ~~BEP Operations Coordinator/~~Chairperson of the Selection ~~Committee~~Committee's~~or designee's~~ score will not be added into the ranking unless it is a tie.

(g) Any agreement made to the Selection Committee by a selected candidate will be transferred to an addendum in the manager's agreement ~~if the candidate is selected to manage the facility~~ by the BEP Operations Coordinator.

(h) After all applicants' scores from the initial interview have been tabulated, any applicant whose total score is within 5 points of the applicant receiving the highest score will be awarded a second interview. The SLA will have the responsibility of convening the same Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.

(i) ~~After the second interview has been completed the combined scores of the first and second interviews of each applicant will be added together and divided by two (2) to determine the final rankings of the applicants~~To determine the final rankings of the applicants, combine the personal interview points from the second interview to the combined point total of the first interview.

(j) The scoring shall be based on the following factors:

(1) Personal interview;

(2) ~~Management~~Business Plan;

(3) ~~Monthly location reviews and annual evaluation~~Performance evaluation points accrued over 80; ~~and~~

(4) Seniority~~.~~; and

(5) Displaced manager points, if applicable.

(k) Once a selection is made, all individual applicants who received a personal interview will be immediately notified of their result. This notification will be in writing with an attempt to be contacted by phone.

612:25-4-60. Ninety day replacement

If the licensed manager defaults on the Manager's Agreement for any reason (i.e. resignation, removal by the SLA or death) during the first 90 days from the date of selection, the BEP Operations Coordinator will, following such default and completion of any resulting due process action, offer the business enterprise to the second of the two candidates submitted by the Selection Committee during the previous selection process. If the second person decides to remove his/her name ~~for~~ from consideration, it will be offered to the next applicant with the highest accumulated points. In the event of a tie, the BEP Operations Coordinator and Chairperson of the Elected Committee of Licensed Managers will review the applications and make the final selection. This procedure will be exercised until a qualified licensed manager accepts the business enterprise. If all the applicants have removed their names from consideration, a determination will be made by the BEP Operations Coordinator, in consultation with the ECM Chairperson, to remove, re-announce, or satellite the business enterprise.

612:25-4-61. Satellite/remote business enterprise locations

(a) A business enterprise or vending machine facility will be assigned to a licensed manager on a temporary basis when the regular selection process does not produce a permanent licensed manager, when a licensed manager has been removed by the SLA, or when a business enterprise is vacated on short notice by a licensed manager and the time element to follow the regular selection process will cause the grantor to terminate the permit/contract with the SLA.

(b) The BEP Operations Coordinator, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite/remote business enterprise on a temporary basis. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager

to manage the vacant business enterprise, but not less than ~~90~~180 days, unless a shorter period is agreed upon by the satellite manager. At the SLA's discretion, in consultation with the ECM Chair, in order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a location and a satellite will not be eligible for an additional satellite unless there are no other applicants.

(c) After the temporary assignment of a licensed manager by the BEP Operations Coordinator, a temporary agreement will be issued for a maximum of one year, at which time the satellite business enterprise will be advertised and a permanent licensed manager selected through the normal selection process. At the end of one year, if a permanent licensed manager is not produced through the selection process, the temporary location will be reassessed by the BP Operations Coordinator, in consultation with the ECM Chairperson, for possible ~~may be closed~~closure, added permanently to another business enterprise ~~through the selection process~~in part or in whole, or again be placed on a temporary agreement for a period of no less than 90 days to a maximum of one year.

(d) The temporary agreement for a satellite business enterprise may be canceled only for cause shown.

(e) The licensed manager may resign the satellite agreement with 30 days written notice.

(f) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition.

612:25-4-62. Vending machine income

(a) Collection, distribution and use of income from vending machines on Federal property shall be governed by applicable Federal rules.

(b) Unassigned income from non-Federal property is used to develop and enhance the BEP. Use will be determined with consultation of the ECM.

PART 11. BUSINESS ENTERPRISE PROGRAM AUDITING AND DUE PROCESS

612:25-4-72. Audits

The SLA reserves the right to develop audit procedures with active participation of the ECM.The SLA reserves the right to ~~and~~ conduct audits, including the use of third party auditors.

612:25-4-73. Due process

(a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.

(b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

(1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(2) The informal administrative review is to be completed within ~~45~~30 calendar days of receipt of the complaint to the appropriate SLA staff person.

(3) The results of the informal administrative review are to be reported in writing within 15 calendar days to the BEP Operations Coordinator, with a copy going to the licensed manager affected.

(c) **Full evidentiary hearings.** Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.

(1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP Operations Coordinator in writing within 30 calendar days from the date the licensed manager receives the notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail. Upon receipt, the BEP Operations Coordinator will immediately forward the request to the Visual Services Division Administrator and the DRS Hearing Coordinator. The Licensed Manager submitting the request for full evidentiary hearing will be notified of the date it was forwarded.

(2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

(3) Reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

(4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

(5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing

officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

(7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP Operations Coordinator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

(8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP Operations Coordinator and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.

(9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

SUBCHAPTER 6. LICENSED MANAGERS AND BUSINESS ENTERPRISE OPERATION

PART 1. LICENSED MANAGERS

612:25-6-1. Licensing requirements for managing a business enterprise

(a) **Definition of license.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property.

(b) **Issuance and conditions of a license.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. This license will be issued upon successful completion of the SLA training program. The license shall be prominently displayed in the licensed manager's business enterprise. Licensed Managers whose facility consists of only vending machines, must carry their BEP license with them. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. Requirements for the issuance of a BEP license are that the individual:

(1) must be blind as verified by documentation;

(2) must be a U.S. citizen ~~residing in the State of Oklahoma~~. Applicable documentation must be submitted with application;

(3) be at least 18 years of age or older;

(4) have successfully completed the BEP manager training program or been granted a modification of this requirement by the BEP operations coordinator.

(c) **Termination of agreement or removal from a business enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

(d) **Reinstatement of license.** Reinstatement of a BEP license for an individual can be accomplished by formally requesting the SLA reinstate the BEP License within a two year period ~~of the retirement date~~.

(e) **Termination of license.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his or her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with State and Federal regulations.

612:25-6-2. Standards for licensed managers

(a) The licensed manager will agree to the terms of the licensed manager's agreement, rules and regulations governing the Business Enterprise Program, and the permit or contract governing the specific business enterprise.

(b) The licensed manager will operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other federal, state, county, and municipality laws and regulations applicable to the business enterprise.

(c) The licensed manager will work cooperatively with authorized representatives of the SLA in connection with their official responsibilities~~, and maintain courteous and professional communications with SLA personnel~~.

(d) The licensed manager will take proper care of the equipment and fixtures to minimize repair and replacement costs. The licensed manager will be responsible for repair or replacement costs when caused by the negligence of the licensed manager or his or her employees, when repair cost is below $25.00, or when repairs are not authorized by the BEP. In the event of withdrawal from the business enterprise for any reason, the licensed manager will leave all SLA-owned equipment to the disposal of the SLA.

(e) The licensed manager will collect and pay sales tax as required.

(f) The licensed manager will be responsible for substitute operation.

(g) The licensed manager will not take action inconsistent with the paramount right, title, and interest of the SLA to business enterprise equipment.

(h) The licensed manager will accept the agreement and any modifications subject to the policies, rules, and regulations of the SLA as they exist or are modified.

(i) The licensed manager will keep daily records of gross sales, merchandise purchased, and other financial transactions for the business enterprise.

(j) The licensed manager will complete and submit all necessary Federal and State reports and payments as required for each individual business enterprise.

(k) The licensed manager will convey a positive public image.

(l) The licensed manager will maintain appropriate professional relationships with purveyors, customers, and building officials as in (1) through (3) of this Subsection.

(1) **Relationships with purveyor.** The licensed manager is free to choose the purveyor from whom he/she is to make purchases, provided, however, that such purveyor is established and reputable.

(2) **Relationships with customers.** To serve the best interest of the public, the licensed manager and his/her employees ~~must~~will provide prompt, cheerful and courteous service to all customers.

(3) **Relationships with building officials.** The licensed manager ~~must~~will comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein. If differences should arise between the licensed manager and the grantor, the licensed manager shall bring the matter to the immediate attention of the BEP business consultant for appropriate action.

(m) The licensed manager will supervise employees in a manner that promotes quality customer service.

(n) The licensed manager will maintain and display current licenses and permits, including BEP license, in the business enterprise or in the case of a facility of only vending machines, carried with the Licensed Manager.

(o) The licensed manager will comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs.

(p) When a licensed manager starts or buys a similar business, the licensed manager must make assurances to the SLA that the two businesses will not intermingle in any manner and the merchandise of the two businesses will be in separate locations. At no time will state owned equipment be used in the private business.

612:25-6-2.1. Probation

(a) **Scope.** A licensed manager who is not meeting all of the requirements or qualifications set forth in the BEP rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary ladder. If proper results are not achieved, suspension or revocation of the BEP License may be necessary.

(b) **Initiation of probation procedure.** The BEP Operations Coordinator will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, one copy returned to the BEP Operations Coordinator, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.

(c) **Probationary letter.** The probationary letter will specify the cause(s) for placing the manager on probation and rules that have been violated ~~(if any)~~. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the charges, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.

(d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Operations Coordinator, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.

(e) **Consequences.** The Licensed Manager or the business consultant may ~~recommend~~ submit a request to the BEP Operations Coordinator that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Operations Coordinator may recommend that:

(1) the SLA Director transfer the licensed manager to a more suitable business enterprise;

(2) the probationary period be extended; and/or

(3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

612:25-6-4. Use of ~~dog guide~~ service animals

(a) A licensed manager, licensed employee, or trainee may house a ~~dog guide~~ service animal in designated areas other than food preparation and food serving areas. Each business enterprise will be surveyed and a ~~dog guide~~ service animal area designated as needed.

(b) The ~~dog guide~~ service animal will be kept in a suitable kennel provided by SLA and screened from customers' view to provide maximum security for the ~~dog guide~~ service animal.

(c) It is the ~~dog guide~~ service animal owner's responsibility to keep the ~~dog guide~~ service animal, kennel and kennel area neat, clean and odor free at all times.

(d) After leaving the kennel area, any licensed manager, licensed employee or trainee must immediately wash his/her hands before returning to work.

(e) This Section will not in any way prohibit blind customers with ~~dog guide~~service animals from access to business enterprises.

612:25-6-5. Motor vehicle operation

No individual who obtains or possesses a valid driver's license or who lawfully or unlawfully operates a motor vehicle on any public street or highway shall be eligible to participate in the Business Enterprise Program as a licensed manager, licensed employee or trainee. If it is determined that a licensed manager, licensed employee or trainee of a business enterprise has violated this provision, his/her licensed manager's agreement and/or BEP license will be subject to ~~revocation,~~ suspension or termination.

PART 3. BUSINESS ENTERPRISES

612:25-6-15. Setting aside of funds

(a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA and the Elected Committee of Licensed Managers. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.

(b) Funds will be set aside only for the purpose of:

(1) maintenance and replacement of equipment;

(2) the purchase of new equipment;

(3) management services;

(4) assuring a fair minimum of return to licensed managers; or

(5) the establishment and maintenance of retirement or pension funds and health insurance contributions.

(c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).

(1) Class A - 12% of net proceeds, $60,000 and above.

(2) Class B - 10% of net proceeds, $$25,000 to $59,999.

(3) Class C - 6% of net proceeds, $10,000 to $24,999.

(4) Class D - 0% of net proceeds, $9,999 and below.

(d) A licensed manager will submit his/her set-aside payment to the BEP office~~by~~ on or before the 25th of the current calendar month. If the 25th falls on a weekend, the payment is due in the BEP office no later than the close of business on the last business day prior to the 25th. If the set-aside payment is late the SLA shall notify the manager by phone on the next business day following the due date. If the set-aside payment is not received in the BEP office within five calendar days after the due date, the licensed manager will be placed on probation and assessed a $50 late charge. If the licensed manager's overdue set aside payment is not received in the BEP office within five calendar days after the due date in the succeeding month (i.e. is over one month and five calendar days late), the manager is assessed another $50 late fee. If the first and second payments are not received by the time the third report is due, the licensed manager's agreement will be cancelled and the BEP licenses will be suspended, unless an alternate payment schedule has been approved in advance by the SLA. Failure to pay monthly set-aside in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second report due following notification.

(f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-18. Establishing new licensed managers in business enterprises

Business Enterprise Program (BEP) staff will provide consultation and assistance to accomplish installation of licensed managers in business enterprises. Steps in the installation process will include the following:

(1) BEP staff will orient the new licensed manager to the business enterprise as needed.

(2) An inventory of the outgoing manager's merchandise that will be transferred to the incoming manager will be performed by the outgoing and incoming licensed managers with assistance from the BEP. The outgoing licensed manager, incoming licensed manager or designee, and a representative from the BEP must be present when merchandise is counted. The completed merchandise inventory is signed by both outgoing and incoming licensed managers, accepting the count of merchandise. All items not being transferred to the incoming manager must be removed from the facility prior to the incoming manager taking responsibility for the facility.

(3) The BEP will assist the incoming licensed manager in procuring initial merchandise for sale and will arrange for the licensed manager to obtain a merchandise loan as necessary and in accordance with agency policy.

(4) An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.

(5) The BEP will assist the incoming licensed manager in filling out any insurance or retirement enrollment or change forms as necessary.

(6) The BEP will verify that workers compensation,and~~general and product~~ liability insurance on the business enterprise are in effect. The business enterprise will not be opened by the new licensed manager until this is verified.

(7) The BEP will provide the incoming licensed manager with a copy of the permit/contract in effect for the business enterprise.

(8) The BEP will provide the incoming licensed manager with a supply of the forms required by the SLA relative to the business enterprise operation.

(9) The incoming licensed manager must read and sign a licensed manager's agreement before assuming the operation of any business enterprise. If needed, BEP staff will read the agreement to the manager and/or provide the agreement in the accessible format required by the manager.

612:25-6-20. Closing a business enterprise

(a) A business enterprise may be closed immediately by the SLA, the grantor, any government agency or the licensed manager when a life threatening situation, health or safety hazard exists. Notice of the closing should be made as soon as possible to the SLA and the grantor.

(b) The business enterprise will also be closed immediately for failure to have proper insurance verification for ~~product and general~~ liability and workers' compensation insurance.

(c) The business enterprise may be closed for short periods of time with prior written approval from the SLA and the grantor.

(d) The SLA's policy is to operate business enterprises that have the potential to produce net profit returns for licensed managers which will enable them to live self sufficiently and with dignity within their communities. Additional consideration is given to the amount of return on investment as related to expenditures for capital outlay, management services overhead, and other expenses of operation. Anytime a licensed manager vacates a business enterprise, the business consultant will re-evaluate the business enterprise if it generates revenue below the program net profit objective. A business enterprise that lacks the potential to meet the SLA's net profit objective will be closed or added to another location.

612:25-6-22. Monthly reports

(a) **Content and when due.** Licensed managers must submit monthly business enterprise financial reports to the SLA. Reports will contain data on gross sales, merchandise purchases, payroll expense, business expense and other information determined necessary to reflect business financial status and calculate licensed manager set-aside, retirement and/or merchandise loan payments. The monthly reports shall be for one of the two following time periods: 1) the sixteenth (16th) day of the previous calendar month to the fifteenth (15th) day of the current calendar month; or 2) the twenty-first (21st) day of the previous calendar month to the twentieth (20th) day of the current calendar month. The licensed manager may choose either period, but must notify the business consultant which option is chosen by September 30th of each year. The licensed manager shall use the same option throughout the federal fiscal year. Monthly reports are due in the BEP office on or before the 25th of the current calendar month. If the 25th falls on a weekend, the monthly report is due in the BEP office no later than the close of business on the last business day prior to the 25th. The BEP shall notify the manager by phone on the first business day following the 25th if the report is not received. The BEP will review each monthly report for mathematical errors, correct loan payment, correct set-aside payment, approved business expenses, and other factors that will affect the accuracy of the report. The business consultant will sign the report indicating that the report is correct, correct payments are attached, and all items in question have been discussed with the licensed manager.

(b) **Failure to file in a timely manner.** If the monthly report is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation~~ and assessed a $50 late fee. If the licensed manager's monthly report is not received in the BEP office within five days after the due date in the succeeding month (i.e. is over one month and five days late), the manager is assessed another $50 late fee~~. If the 1st and second reports are not received by the time the 3rd report is due~~ (25th)~~, the licensed manager's agreement will be canceled and the BEP licenses will be suspended. Failure to file monthly reports in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(c) **Fee for reports.** The Agency maintains records for its use and may charge a reasonable fee to supply copies of records to individuals. The agency will supply copies of lost reports or other documents at 25 cents per page.

PART 5. THE ELECTED COMMITTEE OF LICENSED MANAGERS

612:25-6-32. The Elected Committee of Licensed Managers

(a) Authority for Establishing an Elected Committee of Licensed Managers (ECM) is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

(b) Paragraphs (1) and (2) of this Subsection provide guidance in approaching the degree of participation by the ECM.

(1) Active participation means a process of good faith negotiations involving the ECM and the SLA. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

(2) The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

(c) Functions of the Elected Committee of Licensed Managers include:

(1) Actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprise Program.

(2) To receive and transmit to the SLA grievances at the request of licensed managers and serve as advocates for such managers in connection with such grievances.

(3) To actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers.

(4) To participate with the SLA in the developing training and retraining programs for licensed managers.

(5) To sponsor, with the assistance of the SLA, meeting and instructional conferences for licensed managers.

(6) To participate in setting out the method of determining the charge for each of the purposes listed in (A) through ~~(E)~~(D) of this Paragraph.

(A) Maintenance and replacement of equipment;

(B) The purchase of new equipment;

(C) Management services;

(D) The establishment and maintenance of retirement or pension funds, health insurance contributions, if it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant to such proposed purposes. [34 CFR 395.9(b) and (c)]

(d) The ECM will be composed of licensed managers and licensed employees. There will be an executive committee with their duties and terms of office specified in the bylaws of the ECM.

(e) The SLA shall provide for the election of an Elected Committee of Licensed Managers which shall be fully representative of all licensed managers in the BEP. [34 CFR 395.14]

[OAR Docket #14-618; filed 7-2-14]

TITLE 645. OKLAHOMA SCHOOL OF SCIENCE AND MATHEMATICS
CHAPTER 10. USE OF THE OKLAHOMA SCHOOL OF SCIENCE AND MATHEMATICS BY NONRESIDENT STUDENTS AND EXTERNAL PARTIES

[OAR Docket #14-714]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
645:10-1-1. Enrollment of students who reside outside of Oklahoma
645:10-1-2. Renting of facilities
645:10-1-3. Establish tees/tuition for summer programs and workshops
AUTHORITY:
Oklahoma School of Science and Mathematics Board of Trustees, 70 O.S. § 1210.403;70 O.S. § 1210.405
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 12, 2014
COMMENT PERIOD:
February 18, 2014 - March 20, 2014
PUBLIC HEARING:
March 20, 2014
ADOPTION:
March 20, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 25, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
SB 1131;70 O.S. § 1210.405. The rules of this new Chapter implement the new section of law codified in the Oklahoma Statutes as Section 1210.405 of Title 70. The permanent rules set out policies and procedures 1) that provide for the acceptance of students residing outside of Oklahoma and outside the U.S. for course enrollment offered by OSSM in an amount not to exceed 10 percent (10%) of the otal student enrollment of OSSM; and 2) to offer for rent OSSM facilities located on the school's main campus in Oklahoma City; and 3) to develop educational programs and professional development workshops offered during summer periods for which tuition, room and board, and fee rates may be established.
CONTACT PERSON:
Dr. Frank Wang, President, OSSM, 1141 North Lincoln Blvd., Oklahoma City, OK 73104, 405-522-7822, frank.wang@ossm.edu

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

645:10-1-1. Enrollment of students who reside outside of Oklahoma

(a) The purpose of this rule is to implement Section 1210.405 of Title 70 of the laws of Oklahoma relating to the use of unused capacity within the Oklahoma School of Science and Mathematics (OSSM) through the acceptance of students residing outside of Oklahoma and outside of the United States for enrollment in courses offered by OSSM.

(b) The admissions process for students who reside outside of Oklahoma and outside of the United States shall be separate from the admissions process for students who are residents of the State of Oklahoma.

(c) Admission qualifications for students who reside outside of Oklahoma and outside of the United States shall equal or exceed qualification requirements for students who reside in the State of Oklahoma.

(d) OSSM may accept students who reside outside of Oklahoma and outside of the United States for enrollment only if there is unused capacity in the Dan Little Residence Hall on the school's campus, and only if all qualified Oklahoma students have been accepted or will be accepted for enrollment as funding permits. Residents of the State of Oklahoma seeking acceptance to OSSM shall be given priority for enrollment over students who are not residents of this state, if all other qualifications are equal.

(e) Only students residing in Oklahoma will be accepted for enrollment if there are no empty rooms available in the Dan Little Residence Hall.

(f) A student residing outside of the United States may attend OSSM for the maximum time allowed by the U.S. Department of Homeland Security Student and Exchange Visitor Program (SEVP), which is currently twelve (12) months. A student residing in another state within the United States may attend the entire two-year program offered by OSSM.

(g) All data pertaining to students enrolled pursuant to this rule shall be cataloged, stored and updated in OSSM's secure,

internal electronic record-keeping system. Said data shall include personal information, grade reports, tuition payments, fee schedules, class and faculty schedules, residential life reports, and other documents required pursuant to the SEVP.
(h) OSSM shall charge rates for nonresident tuition and room and board calculated on the basis of the rate the market will bear, but the rate shall not be less than the average cost per student where the average cost per student is defined to be the total school expenditures for the residential school campus divided by the total number of students. The OSSM Board of Trustees shall approve the rates of nonresident tuition and room and board for nonresident students prior to each academic year. (i) Students enrolled pursuant to this rule shall comply with all applicable policies and rules of OSSM including but not limited to the academic standards and rules set forth in the OSSM Student Handbook.

645:10-1-2. Renting of facilities
(a) **Renting of space.** OSSM may offer for rent dormitory rooms, space in the Dan Little Residence Hall, classrooms, laboratories, gymnasium, library and other OSSM facilities located in Oklahoma City on the school's campus.
(b) **Fees.** OSSM shall establish reasonable fees for the rental of its facilities based on the fair market value of similar space in the Oklahoma City region provided that fees shall cover costs incurred by OSSM including but not limited to the cost of cleaning, maintenance and security.
(c) **Preference to education institutions.** The Administration of OSSM **shall in its sole discretion** determine whether an applicant may rent OSSM facilities subject to applicable laws. Preference shall be given to educational entities and those renters whose mission supports the mission and purpose of OSSM.
(d) **Compliance with applicable laws required.** The activity undertaken by the renters shall be in compliance with and shall not violate local, state or federal law.
(e) **Room Scheduling.** OSSM will use its electronic room scheduling system to book groups on the school's grounds. Priority for facility use shall be given to students and faculty first, and then offered to other state agencies, then to entities where education is a primary focus, and finally to the general public.
(f) **Reporting to the Board of Trustees.** The Administration of OSSM shall annually report to the OSSM Board of Trustees on the renting of facilities.

645:10-1-3. Establish fees/tuition for summer programs and workshops
(a) OSSM may establish educational programs and conduct professional development workshops and charge applicable tuition, fees and room and board.
(b) The Administration of OSSM shall annually report to the OSSM Board of Trustees on offered educational programs and professional development workshops.

[OAR Docket #14-714; filed 7-11-14]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 10. LICENSURE REQUIREMENTS

[OAR Docket #14-733]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
675:10-1-5. Titles of licenses [AMENDED]
675:10-1-6. Continuing education [AMENDED]
AUTHORITY:
Oklahoma State Board of Licensed Social Workers, 59 O.S. § 1256.1(A)(10).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
January 17 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 23, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to Rule 675: 10-1-5 (c) (d) modifies language for the Licensed Social Worker and Licensed Social Worker-Adm licensure levels, making the language consistent with how the other levels of licensure are defined in the agency rules. The proposed amendments to Rule 675:10-1-6 deletes (a) (3) as continuing education for military personnel and their spouses will be incorporated as part of proposed new Chapter 25 which implements Senate Bill 1863, the Post-Military Service Occupation, Education and Credentialing Act.
CONTACT PERSON:
James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 4545 N. Lincoln Blvd. STE 162, Oklahoma City, OK 73105, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

675:10-1-5. Titles of licenses
(a) **Licensed Clinical Social Worker.**
(1) **Definition.** Clinical social work is defined as set out in Section 1250.1 of Title 59 of the laws of Oklahoma.
(2) **Setting.** Clinical social work is practiced within a private office or under the auspices of public, voluntary, or proprietary agencies and institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of clinical social work practice.** Within the practice setting, the problem is identified, and a plan of intervention is designed and implemented with the client. The plan is supported by securing historical facts and clues to the latent forces within the individual that shape personality. Individual strengths in conjunction with community resources are activated and utilized to implement the client plan. Social workers using standardized assessment tools shall observe all requirements associated with the tool prior to administering the instrument.

(b) **Licensed Master's Social Worker.**

(1) **Definition.** Licensed Master's Social Worker (LMSW) is defined as set out in Section 1250.1 of Title 59 of the laws of Oklahoma.

(2) **Setting.** A licensed master's level social worker may practice under the auspices of public, voluntary, or proprietary agencies and institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of practice.** Within the practice setting, the social worker may be involved in community organization, program planning and development, administration of community services or programs, assessment of client needs for community programs or services, coordination and/or evaluation of service delivery, advocacy on behalf of persons or groups with unmet needs, social welfare policy, organizational analysis, and, provision of training about community needs and/or problems. Social workers using standardized assessment tools shall observe all requirements associated with the tool prior to administrating the instrument.

(4) The LMSW shall not engage in the private practice of clinical social work or practice independently.

(c) **Licensed Social Worker.**

(1) **Definition.** Licensed Social Worker (LSW) is defined as set out in Section 1250.1 of Title 59 of the laws of Oklahoma.

(2) ~~**Setting.** The Licensed Social Worker (LSW) shall be able to perform the following functions:~~

~~(A) provide counseling to individuals, couples, families and groups directed toward specific goals;~~

~~(B) assist in helping individuals or groups with difficult day-to-day problems, such as finding employment, locating sources of assistance, or organizing community groups to work on a specific problem;~~

~~(C) consult with other agencies on problems and cases served in common and coordinate services among agencies helping multi-problem families;~~

~~(D) conduct basic data gathering on social problems;~~

~~(E) serve as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency;~~

~~(F) assess, evaluate and formulate a plan of action based on client need;~~

~~(G) provide training to community groups, agencies and other professionals about health care issues and community problems; and~~

~~(H) maintain familiarity with professional and self-help systems in the community and will assist the client in using those services when necessary.~~**Setting.** Social work is practiced within a private setting or under the auspices of public, voluntary or proprietary agencies or institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of practice.** Within the practice setting, provides counseling to individuals couples, families and groups directed toward specific goals.; Assists in helping individuals or groups with difficult day to day problems, such as finding employment, locating sources of assistance, or organizing community groups to work on a specific problem; Consults with other agencies on problems and cases served in common and coordinate services among agencies helping multi-problem families; conduct basic data gathering on social problems; Serves as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency; Assesses, evaluates and formulate a plan of action based on client need; Provides training to community groups, agencies and other professionals about health care issues and community problems; and Maintains familiarity with professional and self-help systems in the community and will assist the client in using those services when necessary .

(4) The LSW shall not engage in the private practice of clinical social work.

(d) **Licensed Social Worker-Adm.**

(1) **Definition.** ~~Social work administration is defined as practice which focuses primarily on directing the development and/or management of social service delivery systems. Such practice is based on knowl edge of organization theory, policy development, program management, personnel management, fiscal management, and public relations. Such practice is based on skills necessary for organizing, directing, supervising, staffing, program planning and program evaluating.~~Licensed Social Worker-Adm (LSW-ADM) is defined as set out in Section 1250.1 of Title 59 of the laws of Oklahoma.

(2) **Setting.** Social work administration is practiced within a private setting or under the auspices of public, voluntary or proprietary agencies or institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of social work administration practice.** Within the practice setting, supervises program directors and program staff to insure that personnel, program and/or licensing standards are met and maintained and that staff members grow in skill and efficiency; develops program goals and insures that all program activities and procedures comply with regulations; interprets the services and promotes the image of the programs through regular communication with appropriate groups and individuals in order to maintain a broad base of support; manages budgets to insure a balanced and fiscally sound program is maintained.

(4) The LSW-Adm shall not engage in the private practice of clinical social work.

(e) **Licensed Social Worker Associate.**

(1) **Definition.** Licensed Social Work Associate is defined as set out in Section 1250.1 of Title 59 of the laws of Oklahoma.

(2) **Setting.** The practice of a Licensed Social Worker Associate (LSWA) means the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. LSWA basic generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, counseling, consultation, education, advocacy, community organization, and the development, implementation, and administration of policies, programs and activities practices within a private setting or under the auspices of public, voluntary or proprietary agencies or institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of practice.** In the practice setting, the LSWA may work with individuals, families, communities, groups and organizations. LSWA's may conduct psychosocial assessments and may take social histories and/or conduct home studies. The LSWA utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level, developing a plan of care, then assuming the roles enumerated above, implements the plan and conducts follow-up.

(4) The LSWA shall not engage in the private practice of clinical social work or practice independently.

675:10-1-6. Continuing education

(a) **Continuing education.**

(1) As a requirement for license renewal, sixteen (16) clock hours of continuing education units shall be required for each license held.These hours must have been obtained during the previous renewal period (January through December) and approved by the Board. At least 3 hours must be categorized as ethics training as defined by the Board.

(2) Approval of continuing education shall be at the discretion of the Oklahoma State Board of Licensed Social Workers and shall be in accordance with standards acceptable to the profession of social work.

~~(3) A licensee called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) consecutive days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.~~

(~~4~~3) A licensee experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(~~5~~4) Continuing education requirements for licensees will be waived during the calendar year in which they passed their licensure exam.

(b) **Audit/Verification.**

(1) Each applicant for renewal of license shall certify that he/she has completed the requisite hours of continuing education.

(2) The Board staff may, each year, randomly or for cause select licensees to be audited for verification that continuing education requirements have been met.

(3) Licensees selected for audit must submit verification of meeting the continuing education requirement with the renewal application.

(4) Failure to submit such records shall constitute an incomplete application and shall result in the application being returned to the licensee and the licensee being unable to practice.

(5) A license renewed through misrepresentation shall result in Board action.

[OAR Docket #14-733; filed 7-17-14]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR CONTINUING EDUCATION

[OAR Docket #14-734]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
675:15-1-2. Introduction [AMENDED]
675:15-1-5. Information to providers of continuing education [AMENDED]
AUTHORITY:
Oklahoma State Board of Licensed Social Workers, 59 O.S. § 1256.1(A)(10).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
January 17 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 23, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This permanent rule addresses amendments to the Social Workers Licensing Act, 59 O.S. § 1250, et seq. The proposed rules are added as Chapter 25 to implement Senate Bill 1863, the Post-Military Service Occupation, Education and Credentialing Act. Proposed Rule 675:25-1-1 addresses

licensure requirements respective to education, training and experience for current, active members of the Armed Forces. Proposed Rule 675:25-1-2 addresses continuing education requirements for active military members who wish to have their license placed on inactive status during active-duty military service, and the requirements for active-duty military members who wish to maintain current licensure. Proposed Rule 675:25-1-3 establishes procedures to expedite endorsement of licensure for spouses of active-duty members of the military.

CONTACT PERSON:

James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 4545 N. Lincoln Blvd. STE 162, Oklahoma City, OK 73105, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

675:15-1-2. Introduction

The Oklahoma State Board of Licensed Social Workers will recognize all continuing education activities provided by ASWB-ACE, National Association of Social Workers (NASW-CE), state and local providers who have been approved by the Oklahoma State Board of Licensed Social Workers, and continuing education offered by any NASW State chapter. ~~Continuing education offered through the military for military personnel or spouses of military personnel must be submitted to the Board for approval. The fees associated with the submission of an application for a military training event will be waived.~~

675:15-1-5. Information to providers of continuing education

(a) When planning a continuing education activity (face-to-face or distance education) for social workers, the provider needs to consider six essential program elements. The guidelines that follow delineate those elements and establish respective professional expectations of providers. The licensed social worker, in turn, can use these guidelines as the basis for inquiry about a provider's qualifications, leading to better decisions about which offerings to pursue.

(1) **Program development.** Adequate and responsive continuing education program development requires interaction among sponsoring administrators, the instructor or educational leader, and potential social work consumers. The provider needs to involve social workers in the identification of learning needs, in the selection and development of educational events to meet those needs, and in the establishment of appropriate evaluation mechanisms. Involvement of social workers with content expertise and an understanding of the educational objectives are recommended as well.

(2) **Program content.** Continuing education events for social workers should clearly relate to social work practice, theory, and methodology; to the level of social work education; to social policy; or to administration, planning, and research related to human services. As a guide for participation, learning objectives and content designed to meet those objectives should be specified for each event. The way in which the content will meet the learning needs of social workers also should be made clear. Such information should be provided on promotional materials or upon request.

(3) **Participants.** Selection of participants for continuing education events must not discriminate by reason of gender, age, race, ethnic background, sexual orientation, physical abilities, or other characteristics. Promotional materials should state clearly the educational level of the social worker for whom the event is geared but not limited to, as well as any prerequisites.

(4) **Program format and instructional methodology.** The provider should be able to demonstrate that the format and methods selected for continuing education were influenced by contemporary adult learning theory; the identified learning needs of the participants; and the learning objectives, the educational content, and the size and composition of the participant group. Methodologies need to be diverse and encourage the active participation of the learner in the educational process. A variety of teaching techniques should be considered; any assignments, such as readings or structured exercises, should be related to the conceptual content, and any audio-visual resources should be used in a planned manner.

(5) **Qualified instruction.** The sponsor of a continuing education event must make sure that the instructor, speaker, or educational leader is qualified. Individual providers have responsibility for offering only those events for which they are qualified. Specific qualifications include:

(A) competence in the subject matter as determined by a combination of two of the following:

(i) license, registration or certificate in an area related to the course subject matter;

(ii) master's or higher degree in an area related to the course subject matter; (iii) training, certification or teaching experience in subject matter related
to the course subject matter;

(iv) at least two years' experience in an area related to the course subject matter.

(B) ability to transmit the educational content to the participants' understanding of continuing education objectives

(C) knowledge and skill in instructional methodology, learning processes, and the use of emotionally laden material

(D) capacity for self-evaluation and modification of future offerings in response to evaluations conducted by self, sponsor, and participants

(E) maintenance of an appropriate certification, credential, or license for subject matter.

(6) **Program evaluation.** Formal evaluation of each continuing education event is essential for maintaining or improving the quality and effectiveness of future events. Measures of evaluation need to be established during the planning phase and linked directly with the event's

learning objectives. Two distinct but related measures of evaluation may be appropriate. The first is the instructor's, sponsor's, and participants' assessment of the event with respect to content, format, methodology, instruction, and facilities. The second is assessment of the knowledge acquired by participants and is based on:

(A) demonstration of a taught skill
(B) an oral or written test
(C) a project or report
(D) a self-assessment checklist
(E) another instrument designed to collect data on changes in participant knowledge or performance attributed to the educational experience. The instructor and sponsor together should review the evaluation outcome and revise subsequent events accordingly.

(b) The form to verify continuing education activity must contain the following information:

(1) Program name or title
(2) Instructor(s) or Presenter(s)
(3) Date
(4) Number of clock hours of program

(c) The Oklahoma State Board of Licensed Social Workers recognizes the Association of Social Work Boards (ASWB-ACE), National Association of Social Workers (NASW-CE) and NASW state chapters as approved continuing education providers. The Board will offer other continuing education providers the opportunity to become approved providers in continuing education for social workers. All providers shall submit the most current application form(s) provided by the Board along with the fee as set forth in 675:1-1-9. The Board may audit approved providers at any time.

(d) Upon notice of approval of your continuing education provider status you may designate this status on your brochure along with the provider number issued by the Board.

(e) A licensee may request approval of a program or event by submitting the most current application form(s) provided by the Board along with the fee as set forth in 675:1-1-9. Approval will be restricted to the individual licensee making application.

[OAR Docket #14-734; filed 7-17-14]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 20. CODE OF PROFESSIONAL CONDUCT

[OAR Docket #14-735]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
675:20-1-1. Purpose [AMENDED]
AUTHORITY:
Oklahoma State Board of Licensed Social Workers, 59 O.S. § 1256.1(A)(10).
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
January 17 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 23, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 675: 20-1-1 changes language to reflect correct statute citation.
CONTACT PERSON:
James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 4545 N. Lincoln Blvd. STE 162, Oklahoma City, OK 73105, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

675:20-1-1. Purpose

The rules of this chapter are intended to define unprofessional conduct in the context of the rendering of social work services within the meaning of 59 O.S. ~~1981~~, Section ~~1266(4)~~1266.1 (A)(1) and to establish norms of professional conduct for social workers.

[OAR Docket #14-735; filed 7-17-14]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 25. POST-MILITARY SERVICE OCCUPATION, EDUCATION AND CREDENTIALING RULES

[OAR Docket #14-736]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
675:25-1-1. Education, training and experience completed as member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4 (A) [NEW]
675:25-1-2. Automatic extension of license, payment of fees and continuing education for active-duty military service members [NEW]
675:25-1-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States [NEW]
AUTHORITY:
Oklahoma State Board of Licensed Social Workers, 59 O.S. § 1256.1(A)(10).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 23, 2014
COMMENT PERIOD:
January 17 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 23, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
November 1, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
This permanent rule addresses amendments to the Social Workers Licensing Act, 59 O.S. § 1250, et seq. The proposed rules are added as Chapter 25 to implement Senate Bill 1863, the Post-Military Service Occupation, Education and Credentialing Act. Proposed Rule 675:25-1-1 addresses licensure requirements respective to education, training and experience for current, active members of the Armed Forces. Proposed Rule 675:25-1-2 addresses continuing education requirements for active military members who wish to have their license placed on inactive status during active-duty military service, and the requirements for active-duty military members who wish to maintain current licensure. Proposed Rule 675:25-1-3 establishes procedures to expedite endorsement of licensure for spouses of active-duty members of the military.
CONTACT PERSON:
James Marks, Executive Director, Oklahoma State Board of Licensed Social Workers, 4545 N. Lincoln Blvd. STE 162, Oklahoma City, OK 73105, 405-521-3712.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2014:

675:25-1-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A)

If an applicant otherwise qualifies for licensure, the Board shall issue an appropriate license to applicants who present satisfactory evidence of equivalent education, training and experience completed by the applicant as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state.

675:25-1-2. Automatic extension of license, payment of fees and continuing education for active-duty military service members

(a) **Automatic extension pursuant to 59 O.S. § 4100.6(A).** The license of active-duty military service members shall be automatically extended and placed on inactive licensure status during active-duty military service and for one (1) year after active-duty military service, unless the licensee seeks to maintain said license in good-standing.

(b) **Payment of fees and continuing education pursuant to 59 O.S. § 4100.6(B), (C) and (D).** Active-duty military service members seeking to maintain his or her license in good-standing may have his or her license renewed during active-duty, and for a period of one (1) year after discharge from active-duty, without:

(1) payment of fees; and

(2) obtaining continuing education credits when:

(A) circumstances associated with military duty prevent obtaining training and a waiver request has been submitted to the Board;

(B) the licensee performs social work as an occupation as part of his or her military duties as shown in Defense Department Form DD 214 (DD Form 214); or

(C) performing any other act typically required for the renewal of the license.

675:25-1-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States

The procedure to expedite endorsement of licensure pursuant to Section 4100.5 of Title 59 of the laws of the State of Oklahoma for applicants who are licensed in another state and who are the spouse of an active-duty member of the Armed Forces of the United States is as follows:

(1) A license shall be issued to the applicant if the requirements for licensure of the other state are substantially equivalent to those require by this state;

(2) If specific licensure requirements in this state were not required in the state in which the Applicant was licensed, a temporary license for a set period of time shall be issued to Applicants to allow the person to work as a social worker while completing those requirements.

[OAR Docket #14-736; filed 7-17-14]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-726]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
690:1-1-5. Application of the Act and Rules of the Board [AMENDED]
AUTHORITY:
59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 2, 2014

PUBLIC HEARING:
February 7, 2014
ADOPTION:
February 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
NA
INCORPORATIONS BY REFERENCE:
NA
ANALYSIS:
Deleted incorrect language "licensed language speech pathologist and audiologist"; replaced with "licensee" to clarify that it encompasses assistants.
CONTACT PERSON:
Amy Hall, Executive Secretary, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250. 3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISONS

690:1-1-5. Application of the Act and Rules of the Board

The provisions of the Speech-Language Pathology and Audiology Licensing Act (59 O.S. 1601. et. seq., as amended) and the rules of this Title apply:

(1) to all individuals representing themselves as speech-language pathologists or audiologists or using related titles as set forth in Section 1603 of the Act or who provide speech-language pathology or audiology services and who are not specifically exempted under Section 1604 of the Act;

(2) to persons exempted from licensure under Section 1604 when those persons provide speech-language pathology or audiology services in circumstances other than those listed in Section 1604;

(3) to OBESPA ~~licensed language speech pathologists and audiologists~~licensees regardless of whether they practice under circumstances exempt from licensure under Section 1604;

(4) to all speech-language pathology applicants who are in the process of fulfilling the post-graduate supervised clinical work experience requirement and

(5) to all individuals representing themselves as speech-language pathology or audiology assistants or who assist with the provision of speech-language pathology and audiology services and are not exempt from licensure pursuant to Section 1604.

[OAR Docket #14-726; filed 7-16-14]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 5. RULES OF PRACTICE

[OAR Docket #14-726A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Procedures in Individual Proceedings
690:5-7-5. Setting of hearing and hearing continuance [AMENDED]
Subchapter 9. Proceedings for Adoption, Amendment and Repeal of Rules
690:5-9-6. Submission of evidence and argument on proposed rules [AMENDED]
AUTHORITY:
59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 2, 2014
PUBLIC HEARING:
February 7, 2014
ADOPTION:
February 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
NA
INCORPORATIOINS BY REFERENCE:
NA
ANALYSIS:
Subchapter 7. Corrected conflicting language of "fifteen" (15) thirty (30) calendar days"
Subchapter 9. Corrected rule heading that is missing words: "Submission of evidence and argument on proposed"
CONTACT PERSON:
Amy Hall, Executive Secretary, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250. 3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. PROCEDURES IN INDIVIDUAL PROCEEDINGS

690:5-7-5. Setting of hearing and hearing continuance

The time set for a hearing as specified in the notice shall ordinarily not be less than ~~fifteen (15)~~ thirty (30) calendar days after service of notice. A motion for an extension of time or for a continuance of the hearing to another date or time shall be in writing and shall be filed with the Board or its designated hearing officer. Any such motion for an extension or continuance shall state the reason(s) for the request and specify the additional time requested. The Board or its designated hearing officer shall act promptly upon such motion and shall grant or deny such request in the exercise of sound discretion. If the motion is denied, a party may renew his request orally or at a hearing.

SUBCHAPTER 9. PROCEEDINGS FOR ADOPTION, AMENDMENT, AND REPEAL OF RULES

690:5-9-6. Submission of evidence and argument on proposed rules

Prior to the adoption, amendment, or repeal of a rule the Board shall afford an interested person a reasonable opportunity to submit data, views, and arguments, either oral or written, concerning such proposed action. If the rule under consideration is one which affects the substantive right of any person, the Board upon written request shall grant any person or association a reasonable opportunity to submit data, views, and arguments, either oral or written, concerning such proposed action. Oral argument on such rule shall also be granted when requested by a subdivision or an agency of government. If no substantive rights of the person, association, or governmental entity are affected by or involved in the rule to be considered, the Board may, at its discretion, refuse to hear oral argument and require such matters to be submitted in writing. The Board, in the exercise of its sound discretion shall determine whether the proposed action affects any such substantive rights.

[OAR Docket #14-726A; filed 7-16-14]

TITLE 690. BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
CHAPTER 10. LICENSURE AND FEES

[OAR Docket #14-726B]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensure of Speech-Language Pathologists and Audiologists
690:10-3-3. Criteria considered for licensure [AMENDED]
690:10-3-7. Examination requirement and exceptions [AMENDED]
690:10-3-8. Continuing education for speech-language pathologists, audiologists, and speech-language pathology assistants [AMENDED]
Subchapter7. Licensure of speech-language pathology assistants and audiology assistants
690:10-7-1. ~~License to practice~~Practice as an assistant [AMENDED]
690:10-7-3. Supervision required [AMENDED]
690:10-7-4. Representation of assistant ~~Licensure~~as Independent Practitioner [AMENDED]
690:10-7-5. Application for Speech-Language Pathology Assistant License or Audiology Assistant Authorization [AMENDED]
690:10-7-6. Period of Licensure and Authorization [AMENDED]
690:10-7-8. Recusal of Board members [AMENDED]
690:10-7-9. Academic requirements [AMENDED]
690:10-7-10. Roles and responsibilities of Speech-Language Pathology Assistants and Audiology Assistants [AMENDED]
690:10-7-11. Continuing education for speech-language pathology assistants [AMENDED]
Subchapter 9. Fees
690:10-9-2. License renewal fee [AMENDED]
690:10-9-7. Inactive status fee [AMENDED]
SUMMARY:
Subchapter 3 add language to existing rules to implement SB1863, the Post Military Service Occupation, Education and Credentialing Act, The proposed amendments to Subchapter 7 change the licensure of audiology assistants back to the authorization of audiology assistants, and correct conflicting terms describing supervision of speech-language pathology assistants. The rules regarding the roles and responsibilities of speech-language pathology assistants and audiology assistants are amended to require assistants to comply with the ethical rules of practice in Chapter 15. The proposed amendments to Subchapter 9 waive the renewal fee for active duty members of the military. The rule regarding inactive status is also amended to add certain requirements to reactivate a license that has been on inactive status for 5 years or more, and limit to ten years the length of time a license may be maintained in inactive status.
AUTHORITY:
59 O.S., 2011 § 1613; Board of Examiners for Speech-Language Pathology and Audiology.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 4, 2013
COMMENT PERIOD:
January 2, 2014 through February 2, 2014
PUBLIC HEARING:
February 7, 2014
ADOPTION:
February 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
NA
INCORPORATIOINS BY REFERENCE:
NA
ANALYSIS:
In Subchapter 3, added language to existing rules to implement SB1863, the Post Military Service Occupation, Education and Credentialing Act, The proposed amendments to Subchapter 7 change the licensure of audiology assistants back to the authorization of audiology assistants, and correct conflicting terms describing supervision of speech-language pathology assistants. The rules regarding the roles and responsibilities of speech-language pathology assistants and audiology assistants are amended to require assistants to comply with the ethical rules of practice in Chapter 15. The proposed amendments to Subchapter 9 waive the renewal fee for active duty members of the military. The rule regarding inactive status is also amended to add certain requirements to reactivate a license that has been on inactive status for 5 years or more, and limit to ten years the length of time a license may be maintained in inactive status.
CONTACT PERSON:
Amy Hall, Executive Secretary, 3700 N Classen Blvd. Ste. 248, Oklahoma City, OK 73118, 405-524-4955, amy.hall@obespa.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250. 3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

690:10-3-3. Criteria considered for licensure

(a) The Board shall consider on an individual basis the request of each applicant for licensure under Section 1605 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1605, as amended, using the criteria contained in the following Sections of these rules. Written notification from the chair or program director of an academic institution accredited by the Council on Academic Accreditation, or equivalent accrediting agency as determined by the Board, verifying that applicant attended the academic institution and completed the academic course work requirement and clinical practicum requirement, shall serve as presumptive proof of completion of the requirements. The Board retains the power to determine whether applicant has completed all requirements.

(b) Licensing of Military Service Members and Spouses

(1) The Board shall consider the equivalent education, training and experience completed by an applicant while the applicant was a member of the United States Armed Forces or Reserves, National Guard of any state, the Military Reserves of any state, or the Naval militias of any state, and apply it in the manner most favorable toward satisfying the qualifications for licensure.

(2) To determine whether education, training and experience completed by an applicant while the applicant was a member of the military as described in the preceding paragraph, the Board may consider, but is not limited to, determinations made by institutions of higher education based on the Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education.

690:10-3-7. Examination requirement and exceptions

(a) **Examination.** All applicants for licensure as a speech-language pathologist and/or audiologist must present evidence of successful completion of the examination approved by the Board. The examination must be passed within two (2) years after board approval of the applicant's first application for licensure. Failure to pass the examination within this time period shall result in revocation of authorization to practice under supervision as defined in Subchapter 7 of this Chapter.

(1) The Board designates the Area Examination in Speech-Language Pathology or the Area Examination in Audiology offered as part of the National Teachers Examinations (NTE), Education Testing Service, Princeton, New Jersey, as the State Licensure Examination for speech-language pathologists and audiologists, respectively. It shall be the responsibility of the applicant to assure that his score on the appropriate Area Examination is forwarded by NTE to the Board.

(2) An applicant who fails his examination may be re-examined at subsequent examinations upon payment of another examination fee to NTE. Re-examination of applicants who fail the examination is possible only at regular administrations of the National Teacher Examinations. Arrangements and fees are the responsibility of the applicant.

(3) Exceptions to the two year requirement may be granted by the Board under extenuating circumstances.

(b) **Waiver of examination.** The Board shall waive the examination and grant a license to any applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association or its current equivalent in the area for which he is applying for licensure, provided that the current requirements for such certification are equivalent to or greater than those for licensure under the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1601, et. seq., as amended. The current requirements for the Certificate of Clinical Competence of the American Speech-Language-Hearing Association are deemed the equivalent of those for licensure under the Act. Evidence of such certification shall be received by the Board directly from the American Speech-Language-Hearing Association. All fees associated with obtaining such evidence shall be borne by the applicant.

(c) **Reciprocity.** An applicant for licensure ~~in speech language pathology~~ under the reciprocity provisions of Subsection ~~B~~ A of Section 1606 of the Speech-Language Pathology and Audiology Licensing Act, 59 O.S. 1606. as amended, may be so licensed if he possesses a current license or certificate ~~in speech language pathology~~ granted by a legally constituted board (a board established by legislation) and which was granted only on the basis of qualifications which were not less than those of the Act at the time the license was issued. Evidence of equivalence shall be provided by the applicant.

(d) The Board shall expedite the process of licensure by reciprocity for applicants whose spouse is an active duty member of the armed forces of the United States if:

(1) the military service member is on active duty within Oklahoma or claims permanent residency within Oklahoma for the six (6) months prior to assignment to active duty or during the period of active duty and

(2) the applicant left employment in another state to accompany the military service member spouse to Oklahoma.

690:10-3-8. Continuing education (CE) for speech-language pathologists, audiologists, and speech - language pathology assistants

(a) **Purpose.** The purpose of continuing education requirements for speech-language pathologists and audiologists is to assure that licensees update and advance their skills

such that the public shall benefit from the most current and effective standards of professional practice. To further the goal of public benefit, all speech-language pathologists and audiologists are encouraged to fulfill a portion of their ~~continuing~~Continuing~~education~~Education requirements in the area of ethics, professional conduct, and related legal issues.

(b) **Clock hours required for license renewal.** A minimum of twenty (20) clock hours of acceptable ~~continuing~~Continuing~~education~~Education will be required for renewal of a license to practice speech-language pathology or audiology in a ~~two - year~~two-year period. The ~~continuing~~ Continuing~~education~~Education period begins in January of every odd-numbered year. A speech-language pathologist or audiologist obtaining initial licensure during a ~~two - year~~two-year period shall have his or her ~~continuing~~Continuing~~education~~Education requirement prorated to 2.5 clock hours per full quarter remaining in that period.

(c) **Approval of continuing education activities required.** Continuing ~~education~~Education hours may be granted for acceptable educational activities which are approved by the Board, or by a committee appointed by the Board. No hours will be granted for any activities or categories of activities that have not been approved. A provider of educational activities may apply to the Board for pre-approval of an activity. The provider shall be responsible for compliance with the standards for approval of the activity, verification of participation, and for the provision of the necessary verification of attendance forms to all participants. This verification of attendance form shall include: The participant's name, the presenter's name and credentials, the presentation topic, the program sponsor or agency, the location of the presentation, the dates of presentation, and the total number of clock hours attended. A list of preapproved activities is available on the website or by contacting the board office. Any activity not included on this list will require approval by the Board for credit.

(d) **Exceptions to the requirements.** Exceptions to the pre-approval requirement may be granted at the discretion of the Board for programs presented by recognized sponsors whose programs have been pre-approved by the Board. The university academic semester hour is equivalent to fifteen (15) clock hours, and shall be verified by the presentation of an official academic transcript showing course or audit credits. The licensee is ultimately responsible for providing all information necessary for the Board to make a final determination concerning the acceptability of any requested continuing education hours.

(e) **Fee for approval.** Providers of continuing education programs may be charged a fee for approval of their program. This fee shall be set by the Board.

(f) **Kinds of educational activities for which credit may be received.** Continuing ~~education~~ Education hours may be earned through formal organized learning experiences, scientific publications, attendance at regularly scheduled meetings of international, national, regional, or state professional associations, or through presentations to appropriate groups not related to the speech-language pathologist's or audiologist's regular employment.

(g) **Hours allowed.** Continuing ~~education~~Education activities, whether received or presented by the speech-language pathologist or audiologist, must be targeted toward a professional audience. In those instances when the speech-language pathologist or audiologist is teaching in programs such as institutes, university or college courses, seminars, workshops, and conferences which have been granted approval by the Board, three (3) clock hours will be given for each one (1) hour that is taught, provided that such teaching is not part of the speech-language pathologists or audiologists regular employment. Publication in a professionally- related format approved by the Board shall be equal to up to twenty (20) clock hours. Completion of select job-required activities such as CPR training, etc. can be counted once in the two-year period for a maximum of 20% of the total required hours. Other activities may be credited as authorized and disseminated separately by the Board.

(h) **Petition for extension.** A speech-language pathologist or audiologist who fails to comply with the required twenty (20) hours of ~~continuing~~Continuing~~education~~Education in the two year ~~continuing~~Continuing~~education~~Education period ending December 31 may, by submitting an individual review fee of fifty ($50.00), petition the Board for a ninety (90) day extension. Failure to meet this deadline may result in disciplinary action. The petition for extension shall be filed prior to the expiration of the ~~continuing~~Continuing~~education~~Education period.

(i) **Petition for hardship relief.** A speech-language pathologist or audiologist may petition the Board for partial or complete relief of the ~~continuing~~Continuing~~education~~Education requirements upon the showing of incapacitation or serious illness of licensee or licensee's immediate family member, licensee's absence from the United States for a period of at least eighteen (18) months during the ~~continuing~~Continuing~~education~~Education~~period,~~period, or the licensee is a member of the armed forces on full-time active duty during the Continuing Education period. The petition for hardship relief should be filed prior to the expiration of the ~~continuing~~Continuing~~education~~ Education period, and will be accepted no later than February 1st of the year following the audit period.

(1) Individuals with medical disabilities must provide evidence that documents the inability to work in the professions, such as a letter from a doctor or a Social Security Administration determination letter. Individuals with medical disabilities will be required to sign an affidavit confirming that they are not providing or supervising the provision of clinical services. In addition, individuals with temporary medical disabilities will be required to affirm every two years that they continue to be classified as medically disabled.

(2) Members of the armed forces on full-time active duty will be required to provide a copy of their deployment orders and a signed affidavit stating they will not practice during their deployment. They will be assigned a new 2-year maintenance interval that will start on January 1 of the year following their return. If licensees are deployed for the purpose of providing clinical services or

supervising the provision of clinical services, an exemption will be considered on a case-by-case basis.

(j) **Audits of ~~continuing~~Continuing~~education~~Education.** The Board will conduct audits every two years (every even year) of licensee compliance with continuing education requirements.

(1) A minimum of 3% of licensees will be audited.

(2) Those audited will be required to submit ~~a listing of~~verification of completion for ~~all~~ each~~continuing~~Continuing~~education~~Education~~activities~~activity completed within the audited ~~period,~~period. The verification shall be signed by the course provider and shall ~~including~~include the title of the activity, the course description, the number of contact hours and a contact for verification of participation. An official ASHA Continuing Education transcript is acceptable verification. The verification must be submitted within thirty (30) days of receipt of notification of selection for audit. Failure to submit verification as required shall be considered non-compliance with the Continuing Education requirements, and the licensee shall be subject to the provisions of paragraph (4) of this subsection.

(3) Licensees will maintain all original documentation of attendance, course agendas and/or other supporting documentation. The Board may request copies of such documentation as is necessary to determine if an activity will be accepted for ~~continuing~~Continuing~~education~~ Education credit. The Board will destroy all such copies following the audit.

(4) Licensees found to be non-compliant with the ~~continuing~~Continuing~~education~~Education requirement shall have ninety (90) calendar days from receipt of notification of continuing education deficiency to ~~provide evidence of~~complete the following:

(A) obtain ~~continuing~~Continuing~~education~~Education hours sufficient to meet this requirement;

(B) submit verifications of completion to the Board;

(C) ~~AND must~~ pay a penalty fee equal to half of the licensure renewal fee. This fee is in addition to any fees for late license renewal. Such hours may not be counted toward fulfillment of future ~~continuing~~Continuing~~education~~Education requirements. Failure to ~~provide evidence of continuing education hours~~comply with the provisions of this paragraph within the ninety (90) calendar day period may result in disciplinary action.

SUBCHAPTER 7. LICENSURE OF SPEECH-LANGUAGE PATHOLOGY ASSISTANTS AND AUDIOLOGY ASSISTANTS

690:10-7-1. ~~License to practice~~ Practice as an assistant

(a) Any person not eligible for licensure as a speech-language pathologist ~~practitioner~~ or clinical experience intern, who assists in the practice of speech-language pathology ~~or audiology~~, unless exempt pursuant to Section 1604 of this Act, must be licensed by the Board as a speech-language pathology ~~or audiology~~ assistant. Licensure to practice as a speech-language pathology ~~or audiology~~ assistant may be granted ~~under the provisions of Sections 690:10-7-1 through 690:10-7-10 of these~~to applicants who meet the qualifications set forth in the law and rules of the Board. Nothing in this section shall be construed to prevent a practitioner from employing any individual in non-clinical capacities.

(b) The Board shall consider on an individual basis the request of each applicant for ~~an~~a speech-language pathology assistant license. Before granting a license the Board will consider the applicant's academic training and clinical experience, specific duties and responsibilities, and amount and nature of the applicant's supervision. The Board retains the power to determine whether or not an applicant ~~has completed all~~meets the requirements.

(c) Beginning January 1, 2015, any person not eligible for licensure as an audiologist, who assists a licensed audiologist in the practice of audiology, unless exempt pursuant to Section 1604 of this Act, must be authorized by the Board as an audiology assistant. To be eligible for authorization, applicants must meet the qualifications set forth in the law and rules of the Board. Before granting an authorization, the Board will consider the applicant's specific duties and responsibilities, and amount and nature of the applicant's supervision. The Board retains the power to determine whether or not an applicant meets the qualifications for authorization.

690:10-7-3. Supervision required

(a) The speech-language pathology assistant must be supervised by a speech-language pathologist who has been fully licensed for two years. ~~The audiology assistant must be supervised by an audiologist who has been fully licensed for two years~~. Each supervisor shall accept no more than two assistants. Each practitioner licensed in both speech-language pathology and audiology is likewise restricted to two assistants in aggregate. Further, the total number of assistants and interns (licensed under Subchapter 3 of these rules) supervised by a single supervisor shall not exceed two.

~~(b) Speech language pathology assistants who hold only a high school degree or its equivalent must practice under the full time supervision of a licensed speech language pathologist. Effective June 1, 2013 speech language pathology assistants with only a high school degree or its equivalent will no longer be eligible for licensure.~~

(~~c~~b) A speech-language pathology assistant ~~who has completed academic and clinical practicum requirements as set forth in Section 690:10-7-9 (a) may~~shall practice under a minimum of 30% ~~direct and indirect~~ supervision ~~weekly~~ weekly, of which 20% is direct and 10% is indirect for the first 90 ~~days~~workdays.~~with a minimum of 20% actual patient/client contact time weekly.~~ After successful completion of the first 90~~ days~~workdays, a minimum of 10% of direct~~,onsite~~ supervision is required with 20% indirect supervision. The supervising ~~Speech Language Pathologist~~speech-language pathologist must be available by electronic means at all times

when the ~~Speech-Language Pathology Assistant~~speech-language pathology assistant is performing clinical activities. ~~Appropriate documentation must be maintained~~. The supervision must be documented in the client/patient record and on a supervision log. Records of supervision aresubject to inspection by the Board.~~The direct supervision will be in such a manner that all clients/patients are directly supervised by the supervisor~~

(1) Direct supervision: in-view observation and guidance by a speech-language pathologist while ~~an assigned~~ the speech-language pathology assistantis providing an assigned clinical service to a patient. ~~activityis performed bysupport personnel~~. While directly supervising, the speech-language pathologist may not perform any clinical services unrelated to the client/patient receiving services from the speech-language pathology assistant.

(2) ~~Indirect supervision is defined as those activities (other than direct observation and guidance) conducted by a speech language pathologist that may include methods such as audio and/or videotape recordings, telephone communications, conferences, and review of numerical data.~~ Indirect supervision means the supervising speech-language pathologist is not at the same facility or in close proximity to the speech-language pathology assistant, but is available to provide supervision by electronic means. Indirect supervision activities performed by the supervising speech-language pathologist may include but are not limited to, demonstration, record review, review and evaluation of audio or videotaped sessions, and interactive television and supervising conferences that may be conducted by telephone, email or live webcam.

(c) The supervising speech-language pathologist is responsible for exercising his or her professional judgment to determine the appropriate level of supervision at or above the required minimum necessary to ensure that each client/patient receives competent services. The supervising speech-language pathologist should consider:

(1) the individual speech-language pathology assistant's knowledge, experience and competence;

(2) the treatment setting;

(3) the client/patient's diagnosis/prognosis; and

(4) the nature of the assigned clinical service.

(d) For ~~Audiology Assistants~~audiology assistants, direct supervision is required when the assistant is performing activities involving direct patient care. Direct supervision requires the supervising audiologist to be present on-site for supervision and guidance of the assistant. Indirect supervision of the audiology assistant is permissible when the audiology assistant is performing duties or activities that do not involve direct patient care. Indirect supervision requires the supervising audiologist to be available for instruction or guidance but does not require the supervising audiologist to be present on-site. The audiology assistant must be supervised by an audiologist who has been fully licensed for two years. Each supervisor shall accept no more than two assistants.

690:10-7-4. Representation of Assistant ~~Licensure~~as Independent Practitioner

The assistant is not authorized to represent himself or herself as an independent practitioner of speech-language pathology or audiology. Preparation or distribution of announcements of practice, independent telephone listings, or other such notices shall be in violation of the ~~license as aSpeech LanguagePathologyAssistant~~ speech-languagepathology assistant license~~or~~and the ~~Audiology Assistant~~audiology assistant authorization and will lead to automatic revocation of ~~such~~the license or authorization.

690:10-7-5. Application for speech-language pathology assistant license or Audiology assistant authorization

Application for licensure as a ~~Speech Language Pathology~~speech-language pathology~~or AudiologyAssistant~~assistant or authorization as an audiology assistant shall be made by submitting to the Board ~~the~~an ~~Application~~application ~~for Licensureas afor Speech Language Pathology or Audiology Assistantas available from~~ approved by the Board, signed by both the applicant and proposed supervisor, and notarized. The application must indicate that the supervisor agrees to supervise the assistant's practice and that the supervisor accepts full and complete responsibility for that practice.

690:10-7-6. Period of Licensure and authorization

~~Licensure as a~~The Speech-Language Pathology Assistant license ~~or~~and the Audiology Assistant authorization ~~as an Audiology Assistant~~ shall ~~be~~expire~~for a period of one (1) calendar year from January 1 to~~on December 31st~~.~~ of ~~that~~each year, and must be renewed annually in accordance with the rules and statutes of the Board.

690:10-7-8. Recusal of Board members

A Board member shall recuse himself or herself from evaluating and voting on the licensure of speech-language pathology assistants and the authorization of audiology assistants who will assist in the board member's practice.

690:10-7-9. Academic requirements

(a) Academic requirements for ~~Speech LanguagePathologyAssistants~~ speech-languagepathology assistants

~~(1) Until, June 1, 2013, each speech Speech Language Pathology Assistant speech language pathology assistant applicant shall hold not less than a high school degree diploma or its equivalent. Effective June 1, 2013 speech-language pathology assistants with only a high school degree diploma or its equivalent will no longer be eligible for licensure.~~

~~(2) After June 1, 2013, eachSpeech LanguagePathologyAssistant~~

(1) Each speech-languagepathology assistant applicant shall hold not less than an associate's degree, or its equivalent, with a major emphasis in speech-language pathology from an accredited academic institution.

(~~3~~2) Each ~~Speech-LanguagePathologyAssistant~~ speech-languagepathology assistant applicant shall submit a bona fide official transcript(s) and verification of academic preparation and clinical experience reflecting a minimum of eighteen (18) semester credit hours in general education, a minimum of twenty (20) semester credit hours in technical content, a minimum of twenty five (25) hours of observation which precede a minimum of 100 clock hours of supervised clinical experience.

(A) **General ~~Education~~education.** Applicants must earn at least eighteen (18) semester credit hours in oral and written communication, mathematics, computer applications, social sciences and natural sciences.

(B) **Technical ~~Content~~content.** Applicants must earn a minimum of twenty (20) semester credit hours in the following areas:

(i) Normal processes of communication.

(ii) Overview of communication disorders.

(iii) Instruction in assistant-level service delivery practices.

(iv) Instruction in work-place behaviors.

(v) Cultural and linguistic factors in communication.

(vi) Observation experiences include direct on-site observation of a fully licensed ~~Speech-LanguagePathologist~~speech-languagepathologist. Additional observation experiences may include on-site, video or digital observation of a fully licensed ~~Speech-LanguagePathologist~~speech-languagepathologist.

(C) ~~Assistant~~ **Clinical ~~Experience~~experience.** Applicants must complete 100 clock hours of clinical experience supervised by a ~~Speech-LanguagePathologist~~speech-languagepathologist who has been fully licensed for a minimum of two years.

(i) The student must be supervised a minimum of 50% of the time when engaged in patient/client contact.

(ii) The supervising speech-language pathologist will supervise no more than two assistant students at any one time.

(iii) The clinical experience requirement must be completed through an accredited academic institution with a Board approved degree program.

(b) Academic requirements for ~~Audiology Assistants~~audiology assistants. Each audiology assistant applicant shall hold not less than a high school ~~degree~~diploma or its equivalent.

690:10-7-10. Roles and responsibilities of Speech-Language Pathology Assistants and Audiology Assistants

(a) Allowed activities as delegated by the supervising ~~Speech-Language Pathologist.~~ speech-language pathologist:

(1) Assist the ~~Speech-LanguagePathologist~~speech-languagepathologist with speech-language and hearing screenings.

(2) Assist with informal documentation as directed by the ~~Speech-LanguagePathologist~~ speech-languagepathologist.

(3) Follow documented treatment plans or protocols developed by the supervising ~~Speech-LanguagePathologist~~speech-languagepathologist.

(4) Document patient/client performance.

(5) Assist the ~~Speech-LanguagePathologist~~speech-languagepathologist with assessment of patient/clients.

(6) Assist with clerical duties.

(7) Perform checks and maintenance of equipment.

(8) Support the ~~Speech-LanguagePathologist~~speech-languagepathologist in research projects, in service training, and public relations programs.

(9) Collect data for monitoring quality improvement.

(10) ~~Exhibit compliance~~Comply with regulations, reimbursement requirements and speech language pathology assistant's job responsibilities.

(b) Non-allowed activities of the ~~Speech-LanguagePathologyAssistant~~ speech-languagepathology assistant

(1) May not perform diagnostic tests, formal or informal evaluations or interpret test results.

(2) May not evaluate or diagnose patients/clients for feeding/swallowing disorders.

(3) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence or prior approval of the supervising Speech -Language Pathologist.

(4) May not write, develop, or modify a patients/client's individualized treatment plan in any way without the prior approval of the licensed speech-language pathologist.

(5) May not assist with patients/clients without following the individualized treatment plan approved by the ~~Speech-LanguagePathologist~~speech-languagepathologist or without access to supervision.

(6) May not sign any formal documents not drafted and/or approved by the ~~Speech-LanguagePathologist~~speech-languagepathologist prior to dissemination of the document.

(c) Allowed activities of the ~~Audiology Assistant~~audiology assistant as delegated by the supervising ~~Audiologist~~audiologist.

(1) Assist the audiologist with screenings of auditory function.

(2) Assist with informal documentation as directed by the audiologist.

(3) Follow documented treatment plans or protocols developed by the supervising audiologist.

(4) Document patient/client performance.

(5) Assist the audiologist with assessment of patient/clients.

(6) Assist with clerical duties.

(7) Perform checks and maintenance of diagnostic equipment as well as hearing aids, amplification systems, and other assistive devices.

(8) Support the audiologist in research projects, in service training, and public relations programs.

(9) Collect data for monitoring quality improvement.

(10) Exhibit compliance with regulations, reimbursement requirements and audiology assistant's job responsibilities.

(11) Provide explanations of the proper care of amplification and assistive listening devices.

(d) Non-allowed activities of the ~~Audiology Assistant~~audiology assistant.

(1) May not perform diagnostic tests, formal or informal evaluations or interpret diagnostic test results.

(2) May not evaluate or diagnose patients/clients for auditory or auditory related disorders.

(3) May not participate in patient counseling without the presence or prior approval of the supervising audiologist.

(4) May not write, develop, or modify a patients/client's treatment plan in any way.

(5) May not assist with patients/clients without following the treatment plan prepared by the audiologist or without access to supervision.

(6) May not sign any formal documents not drafted and/or specifically approved by the audiologist prior to dissemination of the document.

(e) Speech-language pathology assistants and audiology assistants must comply with the ethical Rules of Practice in Chapter 15 of Title 690.

690:10-7-11. Continuing education for ~~speech-language pathology~~ assistants

The rules regarding continuing education requirements ~~for speech-language pathology and audiology~~ in section 10-3-8 of Title 690 shall also apply to speech-language pathology assistants. Audiology assistants are exempt from the continuing education hours requirements.

SUBCHAPTER 9. FEES

690:10-9-2. License renewal fee

(a) The license renewal fee shall be eighty-five dollars ($85.00) each calendar ~~year~~year.~~to renew licenses in either or both areas of specialization~~. The renewal fee is due on or before December 31st of each year. Failure of any licensed person to pay the renewal fee before the first day of January does not deprive the licensee of the right to renew the license, but the fee paid for renewal postmarked after December 31st shall be increased by 50% for each month or fraction thereof that the payment is delayed, up to a maximum of three times the renewal fee ($255.00). Failure to pay the renewal fee by January 1st, however, shall render the license invalid until renewed. Renewal of an invalid license within the first year will result in an automatic audit of that licensee's ~~continuing~~ Continuing~~education~~Education activities for the preceding continuing education two-year reporting period. Failure to renew a license within the twelve month period following expiration, without otherwise placing the license(s) in question on inactive status (see 690:10-9-6), will render the license permanently invalid, requiring reapplication for licensure based on meeting all current requirements for licensure in the applicant's area of ~~specialization.~~specialization, including completion of another clinical experience year and retaking the exam. The applicant may petition the Board to waive the clinical experience requirement and/or the examination requirement. If the license has been expired for a period of five (5) years or more, the licensee shall be required to demonstrate competence to practice by completion of one of the following requirements within the last two (2) years prior to submission of the application for relicensing:

(1) retake and pass the exam required for licensure:

(2) show proof of licensure and at least 520 hours of practice in another state:

(3) show proof of at least 520 hours of practice in a setting exempt from licensure pursuant to 59 O.S. § 1604;

(4) show proof of completion of an additional twenty hours of Continuing Education.

(b) Any licensee whose license is active and in good standing; is a member of the Armed Forces of the United States; and is on active duty at the time of renewal is exempt from payment of the renewal fee. Upon receipt of notice of assignment to active duty from the licensee, the Board shall automatically renew the license without fee each year thereafter of active duty military service, and for up to one year after the date of discharge from active duty.

690:10-9-7. Inactive status fee

(a) A ~~one-time~~ one-time fee of twenty five dollars ($25.00) shall be charged a licensed speech-language pathologist, ~~audiologist,~~audiologist or speech-language pathology assistant ~~or audiology assistant~~ to place the license on inactive status, provided that, prior to expiration of the license, the licensee makes written application to the Board for such status. Thereafter, the licensee may reactivate the license upon payment of a reactivation fee equal to one and one-half (1 1/2) times the current license renewal fee. A licensee must ~~maintain~~be in compliance with ~~continuing~~Continuing ~~education~~Education requirements ~~in order~~ to be placed on ~~and continue in an~~ inactive status, and must maintain compliance while inactive. During the period of time the license is on inactive status, the licensee shall not engage in the practice of speech-language pathology or audiology in the State of Oklahoma, unless the licensee is exempt from licensure pursuant to 59 O.S. § 1604. A license may be maintained in inactive status for no longer than ten years.

(b) To reactivate a license on inactive status, the licensee must make written application to the Board, pay a reactivation fee equal to one and one-half (1 1/2) times the current license renewal fee, and provide proof of compliance with ~~continuing~~Continuing~~education~~Education requirements during the time the license was inactive.

(c) In addition to the requirements in subsection (b) of this rule, if the license has been on inactive status for a period of five (5) years or more, the licensee shall be required to demonstrate competence to practice by completion of one of the following requirements within the last two (2) years prior to submission of the application for reactivation:

(1) retake and pass the exam required for licensure;

(2) show proof of licensure and at least 520 hours of practice in another state;
(3) show proof of at least 520 hours of practice in a setting exempt from licensure pursuant to 59 O.S. § 1604;
(4) show proof of completion of an additional twenty hours of ~~continuing~~Continuing ~~education~~Education

[OAR Docket #14-726B; filed 7-16-14]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES AND LOW-POINT BEER

[OAR Docket #14-452]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Mixed Beverages
710:20-5-4 [AMENDED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203; 37 O.S. § 586
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 4, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:20-5-4has been amended to conform with the provisions of Section 1 of Senate Bill 321 [2013] which amended the definition of total gross receipts contained in Section 576 of Title 37 of the Oklahoma Statutes relating to the imposition of mixed beverage gross receipts tax.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-4. Calculation of gross receipts tax for mixed beverage transactions

(a) **Advertised price; admission charge.** The advertised price of a Mixed Beverage ~~shall~~may be the sum of the total retail sale price and the Gross Receipts Tax levied thereon. Admission charges to a Mixed Beverage establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages are subject to the Gross Receipts Tax.

(b) **Records.** ~~On and after June 29, 1987,~~ Mixed Beverage Permittees shall maintain records of the total retail prices of all drinks and the Gross Receipts Tax shall be calculated on the individual total retail price of each drink and may be added thereto to form the advertised price.

(c) **Calculation of tax.**

(1) A mixed beverage tax permit holder shall report the following:

(A) The total amount received for mixed beverages sold, prepared or served at the total retail price;

(B) The total retail value, computed at the total retail price, of all mixed beverages sold, prepared or served either upon a discounted or complimentary basis;

(C) The total amount received for ice or nonalcoholic beverages sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation, or service of mixed beverages occurs; and

(D) The total gross amount received as admission charges which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages.

(2) The sum of the four amounts in (1) of this subsection, multiplied by the 13.5% tax rate, shall constitute the amount of the Gross Receipts Tax.

(d) **Example.** ~~If~~Assuming the total retail sales price for a mixed drink is $3.00, each drink sold, and each drink served as a "complimentary drink" incurs a Forty-one Cent Gross Receipts Tax ~~which shall be added to the total retail price to form an advertised price of $3.41~~. Sales tax shall be calculated on the total retail price of $3.00. [**See:** 37 O.S. §576]

[OAR Docket #14-452; filed 6-20-14]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 40. FRANCHISE TAX

[OAR Docket #14-453]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:40-1-6 [AMENDED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013

COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 27, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 4, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:40-1-6 has been amended due to the expiration of the moratorium on the franchise tax for July 1, 2010 through July 1, 2013, pursuant to the provisions of SJR 61 (2010). **[68:1212.1]**
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

710:40-1-6. Accounting and reporting; suspension and reinstatement

~~(a) **Due date.** Effective September 1, 1998, and for all subsequent franchise tax years, taxpayers have an option to select their next Income Tax year end as the due date for payment and filing of their Franchise Tax Return. If this optional due date is not selected in writing, at the time the 1998-99 Franchise Tax Return is filed, it will be assumed that the option is not being exercised, and the due date for filing the annual Franchise Tax Return will remain July 1, of 1999. An optional due date may be selected for subsequent years if done so in writing at the time of filing of the taxpayer's Franchise Tax Return, due on July 1.~~

~~(b) **No short period return generally required.** A corporation which has exercised its option to select its Income Tax year end date as the due date for payment and filing of its Franchise Tax Return shall not be required to file a Franchise Tax Return for the first year after the option is exercised on a date earlier than the Franchise Tax Return would have been due, had the option not been exercised.~~

~~(c) **Examples.**~~

~~(1) A calendar year taxpayer, Corporation A, uses its Income Tax year end date of December 31, for franchise tax purposes. Corporation A files and pays its franchise tax on July 1, 1998. Taxpayer's next Franchise Tax Return would be due on December 31, 1999.~~

~~(2) Corporation B uses its Income Tax year end date of May 31, for franchise tax purposes. Corporation B files and pays franchise tax on July 1, 1998. Corporation B's next Franchise Tax Return would be due on May 31, 2000.~~

~~(d) **When short period return is required.** When a corporation has exercised the option to select its income tax year ending date as the due date for the payment and filing of its Franchise Tax Return, and subsequently requests to revert back to the July 1 due date, a Short Period Return will be required. The Short Period Return will be for the period from the ending date of its income tax year through the following June 30.~~

~~(e) **Examples of use of Short Period Returns.**~~

~~(1) Corporation A used its income tax year ending date of December 31, 2001, for Franchise Tax purposes and filed and paid its Franchise Tax on March 15, 2002. Corporation A later requested reversion to the July 1 due date. Corporation A's **Short Period Return**, for the period January 1, 2003 through June 30, 2003, will be due on March 15, 2003. Beginning July 1, 2003, Corporation A will file its Franchise Tax Returns on July 1.~~

~~(2) Corporation B used its income tax year ending date of March 31, 2002, for Franchise Tax purposes and filed and paid its Franchise Tax on June 15, 2002. Corporation B later requested reversion to the July 1 due date. Corporation B's **Short Period Return**, for the period April 1, 2003 through June 30, 2003, will be due on June 15, 2003. Beginning July 1, 2003, Corporation B will file its Franchise Tax Returns on July 1.~~

(a) **Filing.** On or before July 1, 2014, each corporation, regardless of its prior filing status, must file either a franchise tax return or an election to use the corporation's income tax return due date as the due date for payment and filing of the corporation's franchise tax return.

(b) **Franchise tax returns due July 1, 2014.** A corporation filing its franchise tax return on July 1, 2014 shall use the corporation's 2013 income tax year balance sheet in preparing the return, regardless of whether the corporation is a calendar year filer or has an income tax year end other than December 31.

(c) **Franchise tax returns due on income tax year end.** A corporation who elects on July 1, 2014 to use its income tax return due date for payment and filing of the corporation's franchise tax return shall use the corporation's 2013 income tax year balance sheet in preparing the return. The franchise tax return is due the fifteenth (15th) day of the third month following the close of the corporation's 2013 tax year; however, if the due date for the filing of the corporation's 2013 income tax return is prior to July 1, 2014, the due date for the filing of its franchise tax return shall be July 1, 2014.

(d) **Franchise tax returns due in subsequent years.** Franchise tax returns due July 1, 2015 or, pursuant to an election to use the corporation's income tax year end in 2015 shall use the corporation's 2014 income tax year balance sheet in preparing the corporation's franchise tax return.

(~~f~~e) **Good standing certificates.** A corporation shall be issued a good standing certificate (required for filings with the Secretary of State) during the period following the date on which the corporation's ~~Franchise Tax Return~~franchise tax return is due until the date the corporation's ~~Franchise Tax Return~~franchise tax return is delinquent.

(~~g~~f) **Delinquency date.** The date on which the annual ~~Franchise Tax Return~~franchise tax return and payment is considered to be delinquent is:

(1) For franchise tax ~~years beginning before July 1, 1999, the Franchise Tax Return and payment~~returns due July 1, the return is delinquent if not filed and paid on or before the next ~~August 31~~ September 1.

(2) ~~For franchise tax years beginning on or after July 1, 1999, for those taxpayers who have not elected to file franchise tax returns and pay franchise tax on their corporate income tax due date, the franchise tax return and payment is delinquent if not filed and paid on or before the next August 31.~~

~~(3) For franchise tax years beginning on or after July 1, 1999, for taxpayers who have elected to file and pay franchise tax on their next corporate income tax year due date, the franchise tax will be delinquent if not paid by~~Except as provided in (c) of this Section, corporations who have elected to file franchise tax returns and pay franchise tax on their corporate income tax due date, the return is delinquent if not filed and paid on or before the fifteenth (15th) day of the third month following the close of the corporate income tax year. However, if the corporate income tax return due date has been extended, the ~~Franchise Tax Due Date~~franchise tax due date shall also be extended. This extension of the due date for filing the return will not serve to extend the date on which the payment of the tax is due.

(~~h~~g) **Suspension and reinstatement.** [**See:** 68 O.S. § 1212] The Order issued by the Tax Commission reinstating or reviving the charter or other instrument of organization of a previously suspended organization shall state the effective date of the reinstatement or revival. The effective date shall be the date on or by which, as determined by the Commission, the corporation, association, or organization met all requirements for reinstatement, including:

(1) Payment of tax;

(2) Filing of returns;

(3) Filing of officer lists, and

(4) Meeting other requirements as determined by the Commission under applicable law.

(~~i~~h) **Parent-subsidiary corporate relationships.** In the case of parent-subsidiary corporate relationships, both the parent corporation and any subsidiary corporations shall use the same accounting method as was employed for the last Oklahoma ~~Income Tax Return~~income tax return.

(~~j~~i) **Consolidated Oklahoma ~~Income Tax Returns~~income tax returns.** When a ~~Consolidated~~ consolidated Oklahoma ~~Income Tax Return~~income tax return has been filed for the parent/subsidiary corporate group, all subsidiary corporations shall file Oklahoma ~~Franchise Tax Returns~~franchise tax returns based upon the method of accounting used by each subsidiary, provided that any undistributed income which is reported on the subsidiary corporation's Oklahoma ~~Franchise Tax Return~~franchise tax return may be eliminated from the computation on the parent's Oklahoma ~~Franchise Tax Returns~~franchise tax returns.

[OAR Docket #14-453; filed 6-20-14]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #14-454]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:50-1-5 [AMENDED]
Subchapter 3. Returns and Reports
Part 1. General Information
710:50-3-6 [AMENDED]
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-46 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 3. Exemptions
710:50-15-30 [AMENDED]
Part 7. Credits against Tax
710:50-15-75 [AMENDED]
710:50-15-76 [AMENDED]
710:50-15-80 [REVOKED]
710:50-15-81 [AMENDED]
710:50-15-91 [AMENDED]
710:50-15-97 [AMENDED]
710:50-15-99 [AMENDED]
710:50-15-105 [AMENDED]
710:50-15-112 [AMENDED]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51 [AMENDED]
AUTHORITY:
68 O.S. §§ 203; 2357.11; 2357.22; 2368; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

Section 710:50-1-5 has been amended to remove language providing for the copying and distribution of taxpayer lists. **[68:205(D)]**

Section 710:50-3-6 has been amended to reflect a change in policy. For tax years 2013 and subsequent tax years, if a resident taxpayer is required or elects to amend an individual Oklahoma income tax return, OTC Form 511 must be used and the appropriate box indicating that the return is an amended return must be marked.

Section 710:50-3-46 has been amended to reflect legislative changes made in 2010 (House bill 3166, Second Regular Session of the 52nd Legislature). **[68:2385]**

Section 710:50-15-30 has been amended to update a statutory citation. **[68:2358(E)(1)(c)]**

Section 710:50-15-75 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for investments in equipment used for recycling, reuse, or source reduction of hazardous waste, effective January 1, 2014. **[27A:2-11-303]**

Section 710:50-15-76 has been amended to implement the provisions of Senate Bill 343, amending the Oklahoma coal credits. **[68:2357.11]**

Section 710:50-15-80 has been revoked to implement the provisions of House Bill 2308, which repealed the income tax credit for wind or photovoltaic systems, effective January 1, 2014. **[68:2357.32]**

Section 710:50-15-81 has been amended to reflect the provisions of House Bill 2005, which amended the Qualified Clean-Burning Motor Vehicle Fuel Property Credit by removing obsolete language regarding qualified electric motor vehicle property and extending the sunset date to December 31, 2019. **[68:2357.22]**

Section 710:50-15-91 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for employers providing child care services, effective January 1, 2014. **[68:2357.26]**

Section 710:50-15-97 has been amended to reflect the provisions of House Bill 1248, which repealed the income tax credit for breeders of specially trained canines. **[68:2357.203]**

Section 710:50-15-99 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for cost of purchase of a dry fire hydrant, effective January 1, 2014. **[68:2357.102]**

Section 710:50-15-105 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for research and development, effective January 1, 2014. **[68:54006]**

Section 710:50-15-112 has been amended to reflect the provisions of House Bill 2308 which repealed the credit for electric motor vehicle manufacturers, effective January 1, 2014. **[68:2357.402]**

Section 710:50-17-51 has been amended to reflect the provisions of Senate Bill 166 which reinstated the net income limiter for the allowance of percentage depletion in computing Oklahoma taxable income for major oil companies effective for tax year 2014. **[68:2353]**

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

710:50-1-5. Public records

The annual list of persons making and filing an Income Tax Return shall be made available for public inspection in the Taxpayer Assistance Division during the normal working hours of the Tax Commission. ~~Mechanically reproduced copies of specific information contained in this listing may be obtained from the Taxpayer Assistance Division at a cost to be determined by the Commission, and posted therein. Complete copies of microfiche are available from the Management Information Systems Division of the Tax Commission. That Division should be contacted for details and costs.~~ [**See:** 68 O.S. §§~~205(d)~~205(D), 2385.20]

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-6. Amended returns for individuals

(a) If a resident taxpayer is required or elects to file an ~~Individual~~ ~~**Amended**~~individual amended Oklahoma ~~Income Tax Return~~income tax return for tax years prior to 2013, OTC Form 511X must be submitted. For tax years 2013 and subsequent, if a resident taxpayer is required or elects to amend an individual Oklahoma income tax return, OTC Form 511 must be used and the appropriate box indicating that the return is an amended return must be marked.~~Items listed in (1) through (3) of this subsection, should be attached or an explanation if the item is not applicable:~~

(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate the return is an amended return by marking the appropriate box.

(c) Whenever an individual Oklahoma income tax return is amended, items listed in (1) through (3) of this subsection should be attached or an explanation if the item is not applicable:

(1) A copy of the ~~Amended Federal Income Tax Return~~amended federal income tax return, or a copy of the Federal Form 1040X, or Federal Form 1045,

(2) Proof that Internal Revenue Service has accepted the claim, such as a copy of the statement of adjustment, any correspondence from Internal Revenue Service, or a copy of the deposit slip of the ~~Federal~~federal refund,

(3) Supporting documents for any adjustments to ~~Federal Adjusted Gross Income~~federal adjusted gross income~~(OTC Form 511X Line 1)~~ to support each **final** adjusted amount.

~~(b) Part-year residents and nonresidents must use OTC Form 511NR and indicate that the return is an amended return by marking the appropriate box.~~

(~~c~~d) When an individual taxpayer wishes to file or is required to file amended returns for more than one year, an amended return must be completed for each year an amendment is made. No amended return may encompass more than one single year. [**See:** 68 O.S. 2368]

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-46. Electronic filing requirement for tax return preparers

~~(a) **Definitions.** For purposes of this Section, *"tax return preparer" means any person who prepares, for compensation, any return of tax imposed under Title 68 of the Oklahoma statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The term "tax return preparer" also includes any person who employs one or more persons to prepare, for compensation, any return of tax imposed under Title 68 of the Oklahoma Statutes, including any*~~

~~*claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes.*~~All individual income tax returns, prepared by a specified tax return preparer and filed after December 31, 2010, shall be filed electronically. The term "specified tax return preparer" has the same meaning as provided in Section 6011 of the Internal Revenue Code of 1986, as amended. *The preparation of a substantial part of a return or a claim for refund is deemed to be the preparation of the entire return or claim for refund.*

~~(b) **General provisions.** *Any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year must file* Oklahoma income tax *returns prepared for the current year by electronic means.* The requirement to file returns electronically applies only to those income tax returns for which the Tax Commission is set up to accept by electronic means, and *does not apply to any return on which the taxpayer has indicated a desire that the return* **not** *be filed electronically.*~~

~~(c) **Check-off box.** Oklahoma Income Tax Returns will have a check-off box for use by those taxpayers who wish to designate that their income tax return **not** be electronically filed.~~ [68 O.S.~~Supp.2003,~~ § 2385]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-30. Additional exemption for 65 or older

(a) There shall be allowed an additional exemption on the Oklahoma Income Tax Return of One Thousand Dollars ($1,000.00) for each taxpayer or spouse who is sixty-five (65) years of age or older at the close of the tax year, based upon the filing status and federal adjusted gross income of the taxpayer. Taxpayers with the following status may claim this exemption if the federal adjusted gross income does not exceed:

(1) Twenty-five Thousand Dollars ($25,000.00) if married and filing jointly;

(2) Twelve Thousand Five Hundred Dollars ($12,500.00) if married and filing separately;

(3) Fifteen Thousand Dollars ($15,000.00) if single; and

(4) Nineteen Thousand Dollars ($19,000.00) if a qualifying head of household. [**See:** 68 O.S. § 2358~~(D)(2)~~(E)(1)(c)]

(b) For taxable years beginning after December 31, 1999, amounts included in the calculation of federal adjusted gross income pursuant to the conversion of a traditional Individual Retirement Account to a Roth Individual Retirement Account shall be excluded from federal adjusted gross income for purposes of the income thresholds set out in paragraphs (a)(1) through (a)(4) of this Section.

PART 7. CREDITS AGAINST TAX

710:50-15-75. Recycling, reuse and source reduction incentives

(a) On or before December 31, 2013, there is allowed an~~An~~ Oklahoma ~~Income Tax~~income tax credit of 20% of the net investment costs of equipment and installation of facilities for the recycling, reuse, or source reduction of controlled industrial waste or deleterious substances ~~is allowed~~.

(b) The Oklahoma Tax Commission will receive certifications from the Department of Environmental Quality. Allowed credits will be based on these certifications. The taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return. The credit must be taken within three (3) years of installation or actual use.

(c) The credit cannot exceed the amounts certified by the Department of Environmental Quality or Fifty Thousand Dollars ($50,000.00), whichever is greater, and may be reduced on audit to actual costs.

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

(e) The Oklahoma Tax Commission will provide certification assistance when requested. [**See:** 27A O.S.§§ 2-11-301, 2-11-302 and 2-11-304 through 2-11-307]

710:50-15-76. Oklahoma coal credits

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

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars ($2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, ~~2014~~2021, the credit shall be Two Dollars and eighty-five cents ($2.85) per ton of Oklahoma-mined coal purchased.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, ~~2014~~ 2021, the credit shall be Two Dollars and fifteen cents ($2.15) per ton of Oklahoma-mined coal

purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008.

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

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2021, there ~~There~~ shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars ($68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents ($0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Five Dollars ($5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state.

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

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

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

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

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

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

(4) **Limitation of transferability.** Credits earned after December 31, 2013, shall not be transferable.

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

(e) **Carryover provisions.** Any coal credit earned prior to January 1, 2014, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability for credits earned prior to January 1, 2014.

(f) **Refund of tax credits.** Credits earned on or after January 1, 2014, but not used, shall be refunded to the taxpayer at eighty-five percent (85%) of the face amount of the credits. If the taxpayer is a pass-through entity and does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity. The total amount of credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled.

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

710:50-15-80. Credit for wind or photovoltaic energy systems [REVOKED]

~~(a) For purposes of this Section, the term **"photovoltaic"** means utilizing, or relating to the generation of an electromagnetic force when radiant energy (as light) falls on the boundary between certain dissimilar substances in close contact.~~

~~(b) For purposes of this Section, a **"photovoltaic cell"** means a cell having a photovoltaic element mounted for exposure to light and provided with terminals for connection with a sensitive motor.~~

~~(c) For purposes of this Section, **"renewable energy resource"** means photovoltaic or wind energy systems.~~

~~(d) For tax years 1993 through 1995 a tax credit for wind and photovoltaic (solar) energy equipment installed on residential or business property will be allowed. The credit must be certified to national standards and carry at least a three-year warranty.~~

~~(e) A credit is allowed on total costs directly related to the energy system itself. These costs include the purchase, installation, and construction of the system, less rebates and remunerations of any type resulting from the installations.~~

~~(f) Upon filing a claim, taxpayer must submit an itemized accounting of costs directly related to the energy system and an affidavit to be provided to the taxpayer by the energy equipment supplier. A diagram of the energy system should also be furnished.~~

~~(g) For residential systems, total costs, for purposes of computing the credit, shall not exceed $25,000.00. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:~~

~~(1) For tax year 1993, up to forty percent (40%);~~

~~(2) For tax year 1994, up to forty percent (40%); and~~

~~(3) For tax year 1995, up to thirty percent (30%).~~

~~(h) For non-residential systems, total cost, for purposes of computing the credit, shall not exceed $150,000.00. An affidavit is required to attest that more than 50% of the energy produced from the energy system was actually utilized on the premises of the installation. The credit allowed is based on a percentage of expenditures (costs) incurred in the following tax years:~~

~~(1) For tax year 1993, up to thirty percent (30%);~~

~~(2) For tax year 1994, up to thirty percent (30%); and~~

~~(3) For tax year 1995, up to twenty percent (20%).~~

~~(i) The unused portion of any credit described in this Section may be carried forward as a credit against subsequent Oklahoma Income Tax liability for a period not to exceed five (5) years.~~

~~(j) Renewable energy resource assessment equipment also qualifies for this credit if used solely for the purpose of determining the feasibility of installing renewable energy systems.~~

~~(k) The seller (supplier) of the energy system must provide the following items to the purchaser:~~

~~(1) An itemized accounting of the costs attributable to the energy system; and~~

~~(2) An affidavit attesting to the costs itemized in (1) of this subsection.~~

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

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

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

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

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

(~~e~~d) **Sunset date.** This credit will only be available through tax years beginning before January 1, ~~2015~~ 2020.

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

(a) **General Provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 2355 for employers~~, as defined by 68 O.S. § 2357.26(B)(2),~~ incurring eligible expenses in the connection with providing child care services for children of their employees. The credit is based on the amount of eligible expenses incurred prior to January 1, 2014, and shall be twenty percent (20%) of the eligible expense subject to limits based on the type of expense. The credit is effective for tax years beginning after December 31, 2001.

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

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

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

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

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

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

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

(a) **General provisions.** An Oklahoma ~~Income Tax~~income tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed, for expenditures made before November 1, 2013. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

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

(1) **"Nonqualified operating expenditures"** means labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity~~[68 O.S. § 2357.203(A)(1)]~~;

(2) **"Qualified direct costs"** means expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility~~[68 O.S. § 2357.203(A)(2)]~~;and

(3) **"Specially trained canines"** means dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture. ~~[68 O.S. § 2357.203(A)(3)]~~

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

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

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

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the business enterprise.

(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.

(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.

(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for expenditures occurring on or after July 1, 2012 for qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines

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

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma, purchased before January 1, 2014.

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

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

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

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

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

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

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

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

(g) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for purchases on or after July 1, 2012 of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

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

(a) **General provisions.** For taxable years beginning after December 31, 1992, and before January 1, 2003, and for taxable years beginning after December 31, 2005, there is an income tax credit for a net increase in the number of full-time-equivalent employees of a qualifying computer services, data processing or research and development entity occurring before January 1, 2014.

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

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

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

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

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

710:50-15-112. Credit for electric motor vehicle manufacturers

(a) **General provisions.** Electric motor vehicle manufacturers may claim a one-time income tax credit for electric motor vehicles, medium-speed electric motor vehicles and low-speed electric motor vehicles manufactured after June 30, 2010, and before January 1, 2014.

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

(1) **"Electric motor vehicle"** means a new motor vehicle originally equipped to be propelled only by electricity and that may be legally operated on both interstate highways and turnpikes in this state and that is eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act. The term does not include medium-speed electric motor vehicles, or low-speed electric motor vehicles;

(2) **"Electric motor vehicle manufacturer"** means an entity that has received a manufacturer exemption permit pursuant to the provisions of 68 O.S. § 1359.2. Adding modifications to existing electric motor vehicles, existing medium-speed electric motor vehicles or existing

low-speed electric motor vehicles shall not be considered manufacturing for purposes of this section;

(3) **"Low-speed electric motor vehicle"** means a new four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act; and

(4) **"Medium-speed electric motor vehicle"** means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour and, other than the speed requirement, is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act.

(c) **Computation of credit.**

(1) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Two Thousand Dollars ($2,000.00) for an electric motor vehicle;

(2) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of One Thousand Dollars ($1,000.00) for a medium-speed electric motor vehicle; and

(3) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Five Hundred Dollars ($500.00) for a low-speed electric motor vehicle.

(d) **Limitations.** The credit shall not be claimed with respect to any one vehicle based upon multiple definitions as set out in this Section even if such vehicle would otherwise qualify for tax credits based upon qualification pursuant to more than one definition.

(e) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all

loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For ~~tax years beginning January 1, 1997, and prior to December 31, 1999, and for~~ tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011,and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. **[See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and

all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars ($175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

[OAR Docket #14-454; filed 6-20-14]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #14-455]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-22 [AMENDED]
710:60-3-23 [AMENDED]
Part 5. Dealers
710:60-3-57 [NEW]
Part 9. Commercial Vehicles
710:60-3-97 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-53 [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-3 [AMENDED]
710:60-7-5 [AMENDED]
710:60-7-8 [AMENDED]

AUTHORITY:

47 O.S. §§ 1140, 1149 and 1151; 68 O.S. § 203; Oklahoma Tax Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 19, 2013

COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 19, 2014
ADOPTION:
March 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:60-3-22 has been amended to clarify policy regarding certain charitable organizations which are exempt from registering with the Secretary of State's office and their entitlement to accept and assign ownership of donated vehicles. [**47:1107, 1115; 18:552.3**]

Section 710:60-3-23 has been amended to reflect the provisions of Senate Bill 330 which provides a credit towards the Oklahoma registration fee of a vehicle which is a replacement for a properly registered vehicle destroyed by a tornado in 2013 for which a Presidential Major Disaster Declaration was issued. [**47:1132.3**]

New Section 710:60-3-57 has been added to reflect the provisions of Senate Bill 925 regarding licensing of powersports vehicle dealers. [**47:562, 564**]

Section 710:60-3-97 has been amended to reflect the provisions of Senate Bill 924 which adds the definition of "construction machinery" to the Oklahoma Vehicle License and Registration Act, and requires construction machinery to be registered. [**47:1102, 1133**]

Section 710:60-5-53 has been amended to assist insurance companies in establishing a procedure for recording their ownership of an unrecovered theft vehicle for which the Oklahoma title has previously been placed on hold pending completion of a serial inspection.

Section 710:60-7-3 has been amended to reflect the provisions of Senate Bill 678 which provides for an excise tax exemption for a repossessed vehicle which is transferred back to the former owner. [**68:2105**]

Section 710:60-7-5 has been amended to correct a scrivener's error.

Section 710:60-7-8 has been amended to reflect the provisions of Senate Bill 330 which provides a credit with respect to the excise tax due on a vehicle which is a replacement for a vehicle destroyed by a tornado in 2013 for which a Presidential Major Disaster Declaration was issued and on whish excise tax had been paid on or after January 1, 2012. [**68:2103.1**]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-22. Charitable organization vehicle registration

(a) Vehicles donated to a charitable organization licensed through the Oklahoma Secretary of State's Office are exempt from delinquent registration fees, excise tax, and penalties. The charitable organization is responsible only for a title fee, when applicable.

(b) Should ownership of a vehicle on which delinquent taxes are due be assigned to a licensed charitable organization and subsequently reassigned back to the donor, all delinquent taxes and fees again become due.

(c) Organizations entitled to a specific exemption from the Secretary of State charitable organization registration requirements pursuant to 18 OS § 552.4 may, upon confirmation of that exemption by the Motor Vehicle Division of the Oklahoma Tax Commission, receive and assign ownership of donated vehicles in the same manner as registered charitable organizations.

710:60-3-23. Tornado registration fee credit

Credit will be allowed towards the Oklahoma registration fee of a vehicle which is a replacement for a properly registered vehicle destroyed by a tornado on October 9, 2001, or May 8 or 9, 2003, or destroyed by a tornado in 2013 for which a Presidential Major Disaster Declaration was issued. The credit will be prorated to an amount equal to the fee for the number of months remaining on the registration for the destroyed vehicle, as of the date of loss. No excess credit may be refunded.

PART 5. DEALERS

710:60-3-57. New powersports vehicle dealer

Following confirmation of dealer licensing approval by the Motor Vehicle Commission, the Dealer License Section of the Oklahoma Tax Commission will assign an appropriate powersports dealer license number upon receipt of a properly completed application.

PART 9. COMMERCIAL VEHICLES

710:60-3-97. Other commercial vehicles

(a) **Ambulances and hearses.** Ambulances and hearses are registered as commercial vehicles pursuant to 47 O.S. §1133.1 when used commercially and properly identified as a commercial vehicle as provided by 47 O.S. §1102.

(b) **Definition and treatment of funeral hearse. "Funeral Hearse"** is a vehicle having a platform in place of seats modified to carry the remains of a deceased person or persons. They may be registered as commercial vehicles if they meet all requirements.

(c) **Forest products vehicles.** For each motor vehicle used primarily for the purpose of transporting unfinished and unprocessed forest products, logs, ties, stave bolts and posts, originating and produced in this state from the point of production or harvesting to the point at which they shall first

undergo any processing, preparation for processing, conversion or transformation from their raw or natural state, an annual license fee shall be collected plus an insurance verification fee for each power unit.

(1) Such license plates shall be permanent in nature and shall be designed in such manner as to remain with the vehicle for the duration of the vehicle's life span or until the title is transferred or the vehicle is no longer used for the purposes specified in this Subsection.

(2) For purposes of this Subsection, the term **"motor vehicle"** means a truck or truck-tractor or the combination of a truck or truck-tractor pulling a trailer or semitrailer. When a truck or truck-tractor pulling a trailer or semitrailer is licensed pursuant to the provisions of this Subsection, a separate license plate shall be issued for each truck or truck-tractor and for each trailer or semitrailer for the fee prescribed in this Subsection.

(3) Before a person shall be allowed to license a vehicle pursuant to the provisions of this Subsection, the person shall sign an affidavit (OTC Form 754-2) attesting to the fact that he is familiar with the purposes for which vehicles may be used and that he will not use such vehicle for any other purpose. Any person who signs such an affidavit when such person does not believe that the information in the affidavit is true or knows it is not true, upon conviction, shall be guilty of perjury and shall be punished as provided for by law. A violation of the provisions of this Subsection shall also be grounds for revocation of driver's license.

(4) The penalty on forest power plates shall be charged, as provided in 710:60-3-35(a). Excise tax on forest power vehicles is based upon the TDP of the power unit or trailer.

(d) **Wrecker/towing service registration and license plate.** A distinctive license plate is issued to all wrecker/towing vehicles operated by licensed wrecker/towing services, with the exception of apportioned wrecker/towing vehicles, which display apportioned plates. Wrecker/towing services are licensed annually by the Oklahoma Department of Public Safety. A copy of the current Department of Public Safety individual vehicle permit, listing the vehicle identification number of the vehicle being registered, is required to be presented at the time of each original and renewal registration. The registered laden weight of a wrecker or tow vehicle is the gross weight of the wrecker or tow vehicle alone, without any inclusion of weight for a vehicle towed by the wrecker or tow vehicle. Standard commercial vehicle registration fees apply.

(e) **Cotton module transporter truck and license plate.** A motor vehicle used for the purpose of transporting cotton modules from the point of production to the first point of delivery or cotton gin, shall be registered as a cotton module transporter, at the statutorily designated registration fee. A distinctive license plate shall be issued. Any person registering a cotton module transporter must also complete and submit a "Declaration of Gross Vehicle Weight for a Cotton Module Transporter" (OTC Form 786 CMT). If a laden weight of 55,000 pounds or more is indicated, the owner must verify compliance with federal heavy highway vehicle use tax guidelines.

(f) **Construction machinery registration and license plate.** Construction machinery is defined as machines or devices drawn as trailers which are designed and used for construction, tree trimming and waste maintenance projects, which derive no revenue from the transportation of persons or property, whose use of the highway is only incidental and which are not mounted or affixed to another vehicle; provided, construction machinery shall not include implements of husbandry as defined in Section 47 OS § 1-125. Construction machinery is issued a distinctive license plate, but is otherwise registered in the same manner as nonexpiring commercial trailers. Motor vehicle excise tax of 3 $\frac{1}{4}$% still applies.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-53. Salvage titles

(a) **Salvage vehicle defined.** A salvage vehicle is a vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value at the time of loss.

(b) **Determining classification as a salvage vehicle.** To determine the 10 year model age limit for this purpose, subtract 9 from the current latest manufacturer's model on sale. July 1 is the generally accepted date that new model vehicles go on sale. For example, prior to July 1, 2006, the latest manufacturer's model on sale were 2006 models. Therefore, during the one (1) year period ending June 30, 2006 (7/1/05 through 6/30/06), a ten year old vehicle would have been a 1997 (2006-9) model. During that period, 1996 and older models were exempt from the salvage requirements. Beginning July 1, 2006, 2007 model vehicles officially (per this guideline) went on sale, resulting in 1997 models becoming exempt from the salvage requirements. This formula for determining the age of a model year will apply to all such determinations regarding salvage and rebuilt vehicles.

(c) **Change of classification.** Vehicles over 10 model years old may go in to, or come out of, salvage at any time. No inspection is required to bring such vehicles out of salvage.

(d) **Out-of-state salvage titles.** Vehicles over 10 model years old entering Oklahoma with an out-of-state salvage title may receive either a salvage title or standard (green) title with a salvage date listed.

(e) **Notification by insurance companies.** An insurance company paying a loss on a vehicle where the cost of repairing the vehicle for safe operation on the highway exceeds 60% of its market value, or pays a claim for a flood-damaged vehicle as defined in 47 O.S. § 1105, is required to notify the vehicle owner to surrender the title to the Oklahoma Tax Commission or a motor license agent so that it may be replaced by a salvage title. The Motor Vehicle Division will also be notified by the insurance company. The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway.

(f) **Transfer title to insurance company on payment of total loss due to theft; removal of salvage notation.** The ownership of any unrecovered vehicle which has been declared a total loss by an insurer because of theft shall be transferred to the insurer by an unrecovered-theft vehicle title; provided, the ownership of any such vehicle which has been declared a total loss by an insurer licensed by the Oklahoma Insurance Department and maintaining a multi-state motor vehicle salvage processing center in this state shall be transferred to the insurer by a salvage or an unrecovered-theft title without the requirement of a visual inspection of the vehicle identification number by the insurer. Should a vehicle for which the Oklahoma certificate of title has been placed on serial inspection hold be stolen and a total loss paid to the owner by an insurer pursuant to the process outlined in this paragraph, an unrecovered theft salvage transfer title may be issued in the name of the insurer, but placed on serial inspection hold pending recovery of the vehicle and confirmation of the vehicle identification number. Upon recovery of the vehicle, the ownership shall be transferred by an original title, salvage title, or junked title, as may be appropriate based upon an estimate of the amount of loss submitted by the insurer.

(g) **License plate not affected by salvage classification; current registration generally required.** The license plate from a vehicle entering salvage status need not be surrendered. However, registration must be current on a vehicle entering salvage status, unless it is being titled by a salvage dealer.

(h) **Flood damaged brand.** A salvage or rebuilt vehicle which was damaged by flooding, or a vehicle which was submerged at a level to or above the dashboard of the vehicle and on which an amount of loss was paid by the insurer, shall have the notation "Flood Damaged" listed on the face of the Oklahoma title.

(i) **Multi-state motor vehicle salvage processing centers.** Insurance companies licensed by the Oklahoma Insurance Department and which maintain a multi-state motor vehicle salvage processing center in this state may be issued an Oklahoma original salvage title on an unrecovered stolen vehicle without a visual inspection of the vehicle identification number (VIN) or odometer. For a vehicle to qualify, the following conditions must be met:

(1) The vehicle has been stolen and not yet recovered;

(2) An out-of-state title, assigned to the qualifying insurance company, must be submitted. An Oklahoma title may not be issued if an existing Oklahoma title record is on file reflecting a VIN inspection "hold"; and,

(3) One of the following documents, verifying the theft of the vehicle, must be submitted:

(A) Stolen vehicle report;

(B) Insurer's proof of loss; or,

(C) A statement from the insurer verifying that the vehicle was stolen and has not yet been recovered.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-3. Excise tax levy and exemptions

(a) **General levy on transfer of legal ownership.** Excise Tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies.

(b) **Exemptions.** Following is information on some of the more frequently encountered exempt situations:

(1) **Husband and wife; parent and child.** Only transfers made without consideration between husband and wife, parent and child, or vice versa, are exempt. A Family Affidavit (Form 794) must be included with the other supporting documentation and is to be attached to the Title documentation. This exemption does not apply to transfers between in laws or grandparents to grandchildren.

(2) **Out-of-state residence and registration; nonresident military.** Any vehicle brought into Oklahoma by a person formerly living in another state is exempt, if the person owned and registered the vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in Oklahoma. Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply).

(3) **Governmental entities.** Any vehicle is exempt if registered by the State of Oklahoma or any political subdivision thereof. Additionally, vehicles leased by a county, municipality, or a school district are exempt from the excise tax.

(4) **Title by inheritance.** Any vehicle on which legal ownership was obtained by inheritance is exempt from the levy of the excise tax.

(5) **Certain transfers of corporations and partnerships.** Legal Ownership of vehicles obtained by transfer as set out in Section 2105(9) of Title 68 **may** also be exempt.

(6) **Moped.** A motorized bicycle (moped) is exempt if sales tax was paid.

(7) **Rural water districts.** A Rural Water District is exempt.

(8) **Rural electric cooperatives.** A Rural Electric Coop is exempt.

(9) **Federal reserve banks.** Federal Reserve Banks are exempt.

(10) **Vehicles registered under International Registration Plan.** Transfer of vehicles registered under the International Registration Plan between lessor and lessee at the termination of the lease are exempt from the excise tax.

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being

transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

(12) **Foreclosure of lien or mortgage; insurance contracts.** Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract, is exempt from excise tax.

(13) **New vehicles registered by new car dealers.** A new vehicle registered by a new vehicle dealer is exempt for a period of four (4) months.

(14) **Insurance companies.** An insurance company may obtain title to a vehicle on which they paid a loss exempt from excise tax.

(15) **Revocable trusts.** Transfers made without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke are exempt.

(16) **Limited liability companies.** A limited liability company is a combination of a corporate and a partnership business organization structure. Excise tax exemption applies to the following transfers:

(A) Transfers to the limited liability company if former owners are members of the limited liability company and the interest in the company is in proportion to interest in the vehicle prior to the transfer. A notarized bill of sale indicating such will be required as supporting documentation.

(B) Transfers of ownership from a limited liability company to members when a dissolution is made. A notarized affidavit indicating such is required.

(17) **Vehicle lease or lease-purchase agreements.** Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued.

(18) **Fire Protection Districts.** Vehicles acquired by a Fire Protection District are exempt from the levy of excise tax.

(19) **Exemption for disabled veterans in receipt of compensation at the one hundred percent rate.** Persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service is exempt from vehicle excise tax for one (1) vehicle in a consecutive three (3) year period.

(A) To prove eligibility a disabled veteran must submit either an Oklahoma Tax Commission exemption card with the notation "Sales Tax Exemption:100% Disabled Veteran" or a letter from the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States, certifying that the veteran is receiving disability compensation at the 100% rate.

(B) In order to qualify for the exemption, the vehicle must have been purchased on or after July 1, 2005 and the name of the eligible disabled veteran must be included as an owner on the vehicle title.

(C) The consecutive three (3) year period computation is to be based upon the actual purchase date of the vehicle(s), as reflected in the ownership assignment date on the MSO or title certificate surrendered to the Commission at time of title application. To qualify for this excise tax exemption, the actual date of purchase of the vehicle must be more than three (3) years removed from the date of purchase of the prior vehicle to which the exemption was most recently applied.

(20) **Exemption for repossessed vehicle transferred back to former owner.** Ownership of a vehicle transferred by the repossessor back to the former owner(s) within thirty (30) days of issuance of the repossession title.

(A) Ownership must be identical to that reflected in the title record immediately prior to issuance of the repossession title. Ownership (as assigned by the repossessor) may reflect an additional name without the assessment of excise tax only if an exemption exists between the owners. Otherwise, any change in ownership will result in the assessment of excise tax.

(B) Title assignment to the former owner(s) must be completed within thirty (30) days of issuance of the repossession title.

710:60-7-5. Licensed dealer exemptions

(a) **Determination of latest manufactured model vehicle.** For the purpose of determining an exemption for licensed dealers, the latest manufactured model vehicle is the newest year of vehicle available at the retail level. For this purpose, July 1 is the date that most vehicles for the next year go on sale. If a certain model comes out before that date, that model becomes the latest manufactured model for that specific line.

(b) **New dealers.** Any vehicle of the latest manufacturers model purchased by a franchised Oklahoma motor vehicle dealer which holds a franchise of the same line or make as the vehicle being registered is exempt from excise tax. This exemption does not apply if the vehicle is of a different make than the dealer's franchise. In that situation, "new vehicle" excise tax would be assessed. New dealers may register a vehicle for a period of four (4) months for personal use by an individual. A photocopy of the MSO should be surrendered at the tag agency and a title record will be created showing a hold status of "DM" with no excise tax due.

(c) **Used dealers.** Any vehicle owned and being offered for sale by a person currently licensed as a dealer in used vehicles is exempt from excise tax except on the latest manufactured model. If the vehicle is being titled from an MSO or is the latest manufactured model and has not been previously titled and excise tax paid in Oklahoma, excise tax is due and the "new vehicle" rate will be charged. The assignment must be

made to the dealership's name only. However, a title with an assignment showing an ~~individuals~~individual's name "DBA" a dealership name will be accepted if the dealership is a partnership or is individually owned and the name on the assignment is a partner or the owner. Excise tax is ordinarily not exempt when transferring ownership from a licensed dealership to the individual owner of the dealership. ~~Refer to OAC 710:60-3-57.~~

710:60-7-8. Tornado excise tax credit

Credit will be allowed with respect to the excise tax due on a vehicle which is a replacement for a vehicle destroyed by a tornado on October 9, 2001, or May 8 or 9, 2003, or destroyed by a tornado in 2013 for which a Presidential Major Disaster Declaration was issued and on whish excise tax had been paid on or after January 1, 2012. Unless otherwise noted, excise~~Excise~~ tax on the destroyed vehicle must have been paid within one (1) year preceding the loss. Credit will be allowed in the amount of excise paid on the destroyed vehicle, excluding any penalties. The credit may only offset any excise tax due on the replacement vehicle. No excess credit may refunded.

[OAR Docket #14-455; filed 6-20-14]

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

[OAR Docket #14-456]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4 [AMENDED]
Subchapter 9. Permits
710:65-9-8 [AMENDED]
710:65-9-10 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 29. Manufacturing
710:65-13-154 [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-170 [AMENDED]
710:65-13-172 [AMENDED]
710:65-13-173 [AMENDED]
AUTHORITY:
68 O.S. § 203; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 19, 2014
ADOPTION:
March 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

Section 710:65-3-4 has been amended to update and delete obsolete language.

Section 710:65-9-8 has been amended consistent with the provisions of House Bill 1039 [2013] which modifies the definition of "special event" found in 68 O.S. § 1364.2(K)(2) to exclude registered farmers markets.

Sections 710:65-9-10, 710:65-13-170 and 710:65-13-173 have been amended to implement House Bill 1399 [2013] which allows certain healthcare providers to obtain a direct payment permit to make sales/use tax payments directly to the Tax Commission on items used in Oklahoma in a taxable manner. **[68:1364.1]**

Section 710:65-9-10 has also been amended to reflect the provisions of Section 1 of Senate Bill 1465 [2012] which provides that sales made to direct payment permit holders of tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service are not subject to Oklahoma sales tax. **[68:1364.1]**

Section 710:65-13-154 has been amended to update rule references consistent with governing statutory authority. **[68:3607]**

Section 710:65-13-172 has been amended to conform to legislative changes made in Section 3 of House Bill 1104 to correct an out-of-date U.S. Code reference relating to the sales tax exemption afforded certain health centers. **[68:1356(22)]**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, ~~1367~~1367.1]

(b) **Remuneration.** When the sales tax report with all required information included is timely filed, the vendor may deduct the applicable remuneration of one percent (1%) as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, ~~P.O. Box 269057, Oklahoma City, OK, 73126-9057~~440 S. Houston Suite 501, Tulsa, OK, 74127-8913, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of one percent (1%).

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access~~; and,~~

~~(C) The taxpayer is unable to use the Telefile system~~.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC*~~710:1-5-21~~710:1-5-20 through ~~710:1-5-48~~710:1-5-49, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

SUBCHAPTER 9. PERMITS

710:65-9-8. Special event permits and reporting

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

(1) **"An event held on an irregular basis"**, for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

(2) *"**Person**" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.* [68 O.S. § 1352(18)]

(3) *"**Promoter**" or "**organizer**" means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq.* of Title 68 of the Oklahoma Statutes *by special event vendors*. [68 O.S.~~Supp.2003~~ § 1364.2]

(4) *"**Special event**" means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold. "**Special event**" shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits. "**Special event**" shall not include:*

(A) ~~any~~a county, district or state fair.~~or~~

(B) a public or private school or university-sponsored event.~~or~~

(C) an event sponsored by a church organization exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code~~.~~,

(D) ~~**"Special event"** shall not include~~ an event sponsored by a city or town that includes less than ten special event vendors~~.~~ or

(E) a registered farmers market which is a designated area where farmers, growers, or producers from a defined region gather on a regularly scheduled basis to sell at retail nonpotentially hazardous farm food products and whole-shell eggs to the public. [68 O.S.Supp.~~2003~~2013 § 1364.2]

(5) ***"Special event vendor"*** *means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes.* [68 O.S.~~Supp.2003~~ § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Taxpayer Assistance Division, Oklahoma Tax Commission at least 20 days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events. The application form for a special event permit may be obtained from the Compliance Division, Oklahoma Tax Commission, 409 N.E. 28th Street, Oklahoma City, OK 73194, or online at www.tax.ok.gov.

(c) **Fee.** There is a fee of fifty dollars ($50.00) for each application filed, which must be remitted with the application.

(d) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide sales tax report forms to special event vendors that will be selling tangible personal property and taxable services at the event.

(e) **Promoter or organizer to collect reports and tax from special event vendors.** At the end of the event, special event promoters are required to collect the sales tax reports, along with the sales tax due from each special event vendor.

(f) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

(1) Promoters and organizers are required to file the sales tax reports within fifteen days following the last day of a special event.

(2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,

(3) The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.

(4) Promoters and organizers are only liable for the failure to report and remit the sales taxes that have been collected by them from special event vendors.

(g) **Limitation of responsibilities of promoters or organizers.** Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

(1) Submitting of an application for a special event permit as provided in (b) of this Section;

(2) Providing report forms to special event vendors as provided in (d) of this Section; and,

(3) Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

(h) **Denial of limitation.** Requests submitted pursuant to (g) of this Section may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to comply with the requirements of this Section or failure by vendors of the promoter's previous special events to comply with the provisions of (i) of this Section.

(i) **Vendor reporting and remitting pursuant to subsection (g).** A special event vendor who has participated in a special event approved under subsection (g) shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special event. Sales taxes shall be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the fifteenth (15th) day following the event.

(j) **Reporting and remitting tax when event lasts 30 days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the 15th day of the following month.

(k) **Remuneration.** Provided that the required sales tax reports are timely filed and the tax due remitted, promoters and organizers to whom special event permits have been issued may deduct the applicable remuneration allowed by 68 O.S. § 1367.1.

710:65-9-10. Direct payment permits (DPP)

(a) **General provisions.** The holder of a valid Oklahoma direct payment permit may make purchases of taxable items, for use in its Oklahoma enterprises and not for resale, and defer the taxes imposed by the Oklahoma Sales and Use Tax Codes until such time as the items are first used or consumed in a taxable manner, if all requirements described in this Section are met. [**See:** 68 O.S. § 1364.1]

(b) **Qualification for direct payment permit.** To qualify for a direct payment permit, valid for three (3) years, an applicant must meet the requirement set forth in paragraph 1, 2, or 3.~~In addition to any other conditions mandated by statute, all applicants for a direct payment permit must comply with~~

~~all conditions, prerequisites and qualifications described in (1) through (5) of this subsection:~~

(1) ~~**Qualifying purchases threshold.**~~**Documentation for established businesses.** The applicant must be making purchases of $800,000.00 annually in taxable items for the use in its Oklahoma enterprises, and not for resale~~.~~and

~~(A) **Documentation for established businesses.** Annual~~annual purchases of $800,000.00 must be verifiable from the applicant's sales or use tax records.

(2~~B~~) **Documentation for new or expanding businesses.** An applicant without any qualifying sales and use tax reporting history in Oklahoma must submit to the Commission along with its application, a sworn statement that "applicant shall purchase $800,000.00 of taxable items and services annually for use in its Oklahoma enterprises and not for resale." Adequate records or documentation must be available to support the statement of projected purchases.

(3) **Documentation for healthcare providers.** The applicant must be making purchases of drugs for the treatment of human beings, medical appliances, medical devices and other medical equipment including but not limited to corrective eyeglasses, contact lenses, hearing aids, prosthetic devices, durable medical equipment, and mobility-enhancing equipment for administration or distribution by a practitioner, as defined in 68 O. S. § 1357.6(B), who is authorized by law to administer or distribute the referenced items and the cost of such items will be reimbursed under the Medicare or Medicaid programs.

(c) **Other qualifications.** In addition to any other conditions mandated by statute, all applicants for a direct payment permit must comply with all conditions, prerequisites and qualifications described in (1) through (4) of this subsection:

(~~2~~1) **Overall compliance with tax provisions.** The applicant must be in compliance with all pertinent tax laws of the State of Oklahoma and with the respective rules of the Commission.

(~~3~~2) **Applicant must establish reliability and accuracy of accounting methods.** All ~~The~~ applicant(s) must be able to establish to the satisfaction of the Commission that the applicant is or will be using an accounting method which clearly distinguishes between taxable and nontaxable purchases. An explanation of the accounting procedures which will be used to determine the taxability of any purchase and to ensure that any tax due is correctly accrued and remitted must accompany the application for a direct payment permit. Additionally to substantiate the exempt purchase of medical equipment pursuant to subsection (a) of 710:65-13-173, a healthcare provider holding a direct pay permit must maintain separate from confidential patient records the following information:

(i) Patient case number or account number;

(ii) Type of insurance and

(iii) Item description or product number.

(~~4~~3) **Compliance with reporting and remitting requirements; waiver of discount.** The applicant must agree to accrue and pay all taxes imposed by the Sales or Use Tax Codes, on the applicable direct payment sales or use tax return, for items not specifically exempted. The applicant must agree to make the payments to the State on or before the 20th day of the month following ~~each monthly~~the applicable reporting period in which the items become subject to the tax by reason of their consumption in this State. A written agreement to this effect, signed by an officer or other person authorized to legally bind the applicant, and an acknowledgement that the discount allowed by Section 1367.1 of Title 68 is waived on all purchases which are taxable to the applicant, must be furnished to the Commission and it must be signed and returned along with the application for a direct payment permit.

(~~5~~4) **Compliance with restrictions on purchases for resale.** The applicant must agree to give a resale certificate, rather than a direct payment permit, for any item that will be resold, as provided by the Sales or Use Tax Codes.

(~~c~~d) **Application for direct payment permit.** Application for a direct payment permit may be made to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194.

(~~d~~e) **Granting of permit discretionary; options available upon denial.** The Oklahoma Tax Commission shall be the sole judge of an applicant's qualifications and may deny an application or refuse to issue a direct payment permit. However, an applicant is not precluded from submitting an amended application or may submit a new application after a reasonable period of time from the date of the original application. For purposes of this subsection **"reasonable period of time"** means a period of time of not less than twelve (12) calendar months duration from the date of the Commission denial or refusal to issue the permit.

(~~e~~f) **Issuance, scope, limitations of direct payment permit.** When a direct payment permit is issued to a particular legal entity, it will include all branches and divisions of that entity which are purchasing taxable items. A direct payment permit issued to a supplier by one branch or division shall apply to purchases made by all branches or divisions from the same supplier. For purposes of this Section, **"branches and divisions"** shall be limited those subunits or groups associated with a single unique federal employers' identification number. A direct payment permit-holder may not authorize any other person or entity to purchase any taxable items under the permit. Use by unauthorized persons may result in revocation of the permit.

(~~f~~g) **Use of direct payment certification procedure with vendors.** A direct payment permit-holder must provide its vendors with the direct payment certification defined in this Section and a copy of its direct payment permit in order to make those purchases to which the permit is applicable.

(~~g~~h) **"Direct payment certification" described. "Direct payment certification"** means the procedure by which a direct payment permit-holder provides a vendor with properly completed documentation and certification as to its deferred status. Properly completed documentation may consist of a copy of the direct payment permit, multi-state exemption certificate,

or other document, so long as it contains the information described in (1) through (4) of this subsection.

(1) A **copy** of the purchaser's Direct Payment Permit (DPP), or if unavailable, the name, address, and DPP number of the purchaser;

(2) A statement that the permit-holder claims deferral of the payment of state, city and county sales or use taxes upon its purchases of taxable tangible personal property or services;

(3) A statement that the articles purchased are for use in the purchaser's Oklahoma enterprises, and not for resale;

(4) The signature of the purchaser or a person authorized to legally bind the purchaser, and date signed.

(~~h~~i) **Limitations on use of direct payment procedure.** Direct payment certification procedures are not applicable to the purchase of materials or supplies used, transferred, or consumed by a third party in performing services for the direct payment permit-holder, regardless of whether the third party is a contractor, service provider, or other person.

(~~i~~j) **Incidence of tax for purchases made pursuant to direct payment permit and stored in Oklahoma.** For taxable items purchased under a direct payment permit, the incidence of Oklahoma sales and use taxes to be accrued and remitted on items stored in Oklahoma is to be determined by reference to this subsection, as well as to the provisions of the Oklahoma Sales and Use Tax Codes. [**See:** 68 O.S. § 1361(C)]

(1) **Use tax to be accrued on items and goods purchased outside Oklahoma.** Items and goods purchased outside Oklahoma pursuant to an Oklahoma direct payment permit, which are intended solely for use in other states, but which are stored in the State pending shipment to such other states, or which are temporarily retained for the purpose of fabrication, repair, testing, alteration, maintenance, or other service, are not subject to Oklahoma use tax. However, if the items purchased out-of-state are first used or consumed in Oklahoma, then Oklahoma use tax and any applicable city use tax shall be accrued and remitted to the Commission by the direct payment permit-holder.

(2) **Sales tax to be accrued on items and goods purchased in Oklahoma.** Items and goods purchased in Oklahoma pursuant to a valid Oklahoma direct payment permit are subject to Oklahoma sales and applicable city and county sales taxes at the time they are first used or consumed in a taxable manner. ~~Removal of goods originally purchased tax free in Oklahoma from an inventory held in this State, even if the goods are intended for transfer to another state, constitutes a taxable event or incidence upon which Oklahoma sales tax and applicable city and county sales taxes must be accrued and remitted to the Commission by the direct payment permit holder.~~ Sales made to direct payment permit holders of tangible personal property intended solely for use in other states, but which is stored in Oklahoma pending shipment to other states or which is temporarily retained in Oklahoma for the purpose of fabrication, repair, testing, alteration, maintenance, or other service are not subject to Oklahoma sales tax.

(~~j~~k) **Monthly reports required.** All direct payment permit-holders must file ~~monthly~~ sales and use tax returns, in the manner set out in this subsection, whether or not they have either sales tax or use tax to report.

(1) Purchases made in Oklahoma, using the taxpayer's DPP, such that the Sales Tax otherwise due has been deferred, are to be reported monthly on the Sales Tax Report Form which bears taxpayer's Direct Payment Permit Number. This report is in addition to any Sales Tax Report which is required to be filed using taxpayer's Sales Tax Permit Number.

(2) Purchases made outside Oklahoma, using the taxpayer's DPP, such that the Use Tax otherwise due has been deferred, are to be reported monthly on the taxpayer's Use Tax Report Form, using the Use Tax Account Number.

(~~k~~l) **Cancellation, suspension, revocation of permit.** A direct payment permit may be cancelled by the Commission if the annual purchases fall below the qualifying threshold. Further, the Commission may revoke a permit upon information that the permit has been used by persons other than to whom it was issued. Finally, the Commission may suspend, cancel, or revoke a direct payment permit, at any time, for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a license or permit pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

(~~l~~m) **Procedure upon cancellation, revocation, or forfeiture.** Any entity whose direct payment permit is either voluntarily forfeited, or is cancelled or revoked by action of the Commission, must immediately notify all vendors from whom purchases of taxable items are made advising them that any certification provided to them pursuant to the forfeited, cancelled or revoked direct payment permit is no longer valid.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 29. MANUFACTURING

710:65-13-154. Limitation on credits

No qualified establishment, nor its contractors or subcontractors, receiving an incentive payment pursuant to the Oklahoma Quality Jobs Program Act, 68 O.S.§ 3601 et seq., shall be eligible to receive the credit described in 710:65-13-153, 710:65-13-155, or 710:65-13-156. [**See:** 68 O.S. ~~Supp. 1993~~, § 3607]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S.§ 1357(9)]

(b) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(c) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to patients, regardless of whether the tangible items are billed separately.

(d) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.

(e) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

(f) **Direct payment permits (DPP).** Health care providers may qualify for a direct payment permit, valid for three (3) years, pursuant to the provisions of Section 710:65-9-10 of this Chapter.

710:65-13-172. Exemption for ~~community~~ health centers, ~~migrant health centers,~~ indigent health care clinics, certain community-based health care centers, and community mental health centers

(a) **Qualification for the exemption for ~~community~~ health centers, ~~migrant health centers,~~ indigent health care clinics,~~and~~ certain community-based health care centers and community mental health centers.** Sales tax does not apply to the sale of tangible personal property or taxable services when sold to:

(1) Any ~~federally qualified community~~ health center as defined in Section ~~254c~~254b(a) of Title 42 of the United States Code;

(2) ~~Any migrant health center as defined in Section 254b of Title 42 of the United States Code;~~

~~(3)~~ Any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statues;

(~~4~~3) Any community-based health center which provides primary care services at no cost to the recipients, **and** is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). For purposes of this Section, "**primary care services**" means health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians, and where appropriate, physician assistants, nurse practitioners, or other licensed medical professionals; or

(~~5~~4) Any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes. For purposes of this Section, "**community mental health center**" means *a facility offering:*

(A) *A comprehensive array of community-based mental health services, including, but not limited to, ~~inpatient treatment,~~ outpatient treatment, emergency evaluation and care,~~partial hospitalization, emergency care,~~ consultation,~~and~~ education, rehabilitation services, and aftercare, and*

(B) *Certain services at the option of the center, including, but not limited to, ~~prescreening, rehabilitation services, pre-care and after-care,~~inpatient treatment, training programs, and research and evaluation programs.*

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division , Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with the applicable documentation set forth in (c) of this Section:

(c) **Supporting documentation required.**

(1) **~~Federally qualified community health~~Health centers ~~or migrant health centers~~.** ~~Federally qualified community health~~Health centers ~~or migrant health centers,~~ must submit the letter of notification from the U.S. Department of Health and Human Services, recognizing that the center qualifies under ~~the terms of the relevant statute~~Section 254b(a) of Title 42 of the United States Code.

(2) **Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund.** Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund must submit a copy of the letter or disbursement voucher from the Fund, showing the date the funds were disbursed.

(3) **Community-based health centers.** Community-based health centers must submit the documentation described in (A) through (C) of this paragraph:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the primary care services provided must be submitted, stating the activities of the organization, and evidenced by copies of the following, as applicable:

(i) By-laws;

(ii) An audit or other financial statement, showing the types and amounts of revenue received; and

(iii) Intake documents or other forms used to obtain information from clients and which specifically reflect that the primary care services were being provided at no cost to the recipients.

(C) For the purposes of this paragraph, **"at no cost to the recipient"** means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Centers which provide primary care services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(4) **Community mental health centers.** Community mental health centers must submit to the Commission, as part of its application, proof of recognition by the Oklahoma Department of Mental Health and Substance Abuse Services that applicant qualifies as a Community Mental Health Center, along with a written description of the comprehensive array of community-based mental health and other optional services the facility offers, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying health care organizations exempt from sales tax.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and

(3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order;

(3) A copy of the eligible recipient's Medicare card; and

(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items. The documentation set out in (1) through (3) of this subsection must be obtained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(e) **Medical equipment purchased pursuant to a direct payment permit.** To substantiate the sales tax exemption for certain medical equipment pursuant to subsection (a) of this

Section, a healthcare provider holding a direct pay permit must maintain separate from confidential patient records the following information:

(1) Patient case number or account number;
(2) Type of insurance and
(3) Item description or product number.

(~~e~~f) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of **medical appliances, medical devices, and medical equipment** is as follows:

(1) **IPPB, circuits, devices and supplies.**
  (A) Air oxygen mixers
  (B) Emergency oxygen delivery units
  (C) Manual resuscitators
  (D) Nebulizers, tubing
(2) **Oxygen equipment.**
  (A) Cylinder stands, support devices
  (B) Cylinder transport devices (sheaths, carts)
  (C) Face masks
  (D) Liquid oxygen base dispenser
  (E) Liquid oxygen portable dispenser
  (F) Nasal cannulas
  (G) Oxygen concentrators
  (H) Oxygen cylinders
  (I) Oxygen fittings, accessories
  (J) Oxygen humidifiers
  (K) Oxygen tubing
  (L) Regulators, flowmeters
  (M) Tank wrench
(3) **Respiratory therapy equipment.**
  (A) Aerosol compressors (stationary and portable)
  (B) Aspirators
  (C) Percussors, vibrators
  (D) Room humidifiers (with script)
  (E) Ultrasonic nebulizers
  (F) Volume ventilators, respirators and related device supplies

(~~f~~g) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:

(1) Adhesive bandages
(2) Alternating pressure mattresses
(3) Alternating pressure pads
(4) Alternating pressure pads
(5) Anesthesia trays
(6) Aneurysm clips
(7) Arterial bloodsets
(8) Artificial sheepskin
(9) Aspirators
(10) Atomizers
(11) Autolit
(12) Back cushions
(13) Bathing aids
(14) Bathing caps
(15) Bathtub grab bars
(16) Bathtub lifts
(17) Bathtub seats
(18) Bed pans
(19) Bed rails
(20) Bedside commodes
(21) Bedside rails
(22) Bedside tables
(23) Bedside trays
(24) Bedwetting prevention devices
(25) Belt vibrators
(26) Biopsy needles
(27) Biopsy trays
(28) Blood administering sets
(29) Blood cell washing equipment
(30) Blood pack holders
(31) Blood pack trays
(32) Blood pack units
(33) Blood pressure meters
(34) Blood processing supplies
(35) Blood tubing
(36) Blood warmers
(37) Bone fracture therapy devices
(38) Breast pumps
(39) Breathing machines
(40) Canes
(41) Cannula systems
(42) Cardiac electrodes
(43) Cardiac pacemakers
(44) Cardiopulmonary equipment
(45) Catheter trays
(46) Cervical pillows
(47) Chair lifts
(48) Clamps
(49) Commode chairs
(50) Communication aids for physically impaired
(51) Connectors
(52) Contact lens cases
(53) Contact lenses
(54) Contact solution
(55) Convoluted pads
(56) Corrective eyeglasses
(57) Cotton balls
(58) Crawlers
(59) Crutch cushions
(60) Crutch handgrips
(61) Crutch tips
(62) Crutches
(63) Crutches
(64) Crutches, crutch pads, tips
(65) Decubitus prevention devices
(66) Decubitus seating pads, bed pads
(67) Dialysis chairs
(68) Dialysis machines
(69) Dialysis supplies
(70) Dialyzers
(71) Dietetic scales
(72) Disposable diapers
(73) Disposable gloves
(74) Disposable underpads
(75) Donor chairs

(76) Drainage bags
(77) Dressing aids, button loops, zipper aids, etc.
(78) Dressings
(79) Drug infusion devices
(80) Dry aid kits for ears
(81) Earmolds
(82) Eating and drinking aids
(83) EKG paper
(84) Elastic bandages
(85) Elastic supports
(86) Electrodes
(87) Emesis basins
(88) Endo trach tubes
(89) Enema units
(90) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
(91) Exercise devices
(92) Eyeglasses
(93) First-aid kits
(94) Fistula sets
(95) Fitted stroller
(96) Foam seating pads
(97) Foam slant pillows
(98) Foam wedges
(99) Gauze bandages
(100) Gauze packings
(101) Gavage containers
(102) Geriatric chairs
(103) Geriatric chairs
(104) Grooming aids
(105) Grooming aids, dental aids
(106) Hand exercise equipment putty
(107) Hand sealers
(108) Head halters
(109) Hearing aid carriers
(110) Hearing aid repair kits
(111) Hearing aids
(112) Heart stimulators
(113) Heat lamps
(114) Heat pads
(115) Hemodialysis devices
(116) Hemolators
(117) Hospital beds
(118) Hospital beds
(119) Hot water bottles
(120) Household aids for the impaired
(121) Hydraulic lifts
(122) Hydro-collators
(123) Hydro-therm heating pads
(124) Hypodermic syringes and needles
(125) I.V. administering sets
(126) I.V. connectors
(127) I.V. stands
(128) I.V. tubing
(129) Ice bags
(130) Ident-a-bands
(131) Incontinent garments
(132) Incubators
(133) Infrared lamps
(134) Inhalators
(135) Insulin infusion devices
(136) Invalid rings
(137) Iron lungs
(138) Irrigation apparatus
(139) Irrigation solutions
(140) Karaya paste
(141) Karaya seals
(142) Kidney dialysis machines
(143) Knee immobilizers
(144) Laminar flow equipment
(145) Latex gloves
(146) Leg weights (rehab. related)
(147) Leukopheresis pumps
(148) Lift recliners
(149) Lithotripter
(150) Lumbosacral supports
(151) Lymphedema pumps
(152) Manometer trays
(153) Massagers
(154) Maternity belts
(155) Medigrade tubing
(156) Modulung oxygenators
(157) Moist heat pads
(158) Muscle stimulators
(159) Muscle stimulators
(160) Myelogram trays
(161) Myringotomy tubes
(162) Nebulizers
(163) Needles
(164) Nerve stimulators
(165) Neuromuscular electrical stimulators [when not worn on the body]
(166) Overbed tables
(167) Oxygen equipment
(168) Page turning devices
(169) Pap smear kits
(170) Paraffin baths
(171) Patient lifts
(172) Patient lifts slings
(173) Patient safety vests
(174) Patient transport devices, boards
(175) Physicians instruments
(176) Pigskin
(177) Plasma extractors
(178) Plasmapheresis units
(179) Plaster (surgical)
(180) Plastic heat sealers
(181) Post-surgical bust forms
(182) Posture back supports
(183) Posture back supports for seating
(184) Prescribed device repair kits
(185) Pressure pads
(186) Raised toilet seats
(187) Reaching aids
(188) Respirators
(189) Restraints

(190) Resuscitators
(191) Sauna baths
(192) Security pouches
(193) Servipak dialysis supplies
(194) Shampoo trays
(195) Shelf trays
(196) Shoulder immobilizers
(197) Shower chairs
(198) Shower grip bars
(199) Shower seating
(200) Side rails
(201) Sitting and sleeping cushions
(202) Sitz bath kit
(203) Small-vein infusion kits
(204) Specialized seating, desks, work stations
(205) Specially built hospital beds
(206) Specially designed hand utensils
(207) Specimen containers
(208) Spinal puncture trays
(209) Sponges (surgical)
(210) Stairglides, lifts in home
(211) Stairway elevators
(212) Standing frames, devices and accessories
(213) Steri-peel
(214) Stethoscope
(215) Stools
(216) Stopcocks
(217) Strap-on urinals
(218) Suction equipment
(219) Sun lamps
(220) Surgical bandages
(221) Surgical equipment
(222) Suspensories
(223) Sutures
(224) Thermometers
(225) Toilet aids
(226) Toilet safety frames
(227) Toilet seat rails
(228) Toilet seat risers
(229) Tourniquets
(230) Trach tubes
(231) Traction equipment
(232) Traction stands, pulleys, etc.
(233) Transcutaneous electrical nerve stimulators (tens unit) [when not worn on the body]
(234) Transcutaneous nerve stimulators
(235) Transfer boards
(236) Transfusion sets
(237) Trapeze bars-bar stand
(238) Trapezes
(239) Tub sealers
(240) Underpads
(241) Urinals
(242) Vacutainers
(243) Vacuum units
(244) Vaporizers
(245) Venous blood sets
(246) Vibrators
(247) Walker accessories
(248) Walkers
(249) Walkers, including walker chairs
(250) Walking bars
(251) Walking canes, quad canes, accessories
(252) Water beds
(253) Wheel walkers
(254) Wheelchairs
(255) Whirlpools
(256) Writing and speech aids for the impaired
(257) X-ray film

(~~g~~h) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:

(1) Abdominal belts
(2) Anti-embolism stockings
(3) Arch supports
(4) Arm slings
(5) Artificial arteries
(6) Artificial breasts
(7) Artificial ears
(8) Artificial eyes
(9) Artificial heart valves
(10) Artificial implants
(11) Artificial larynx
(12) Artificial limbs
(13) Artificial noses
(14) Athletic supporters
(15) Bone cement
(16) Bone nails
(17) Bone pins
(18) Bone plates
(19) Bone screws
(20) Bone wax
(21) Braces
(22) Cast heels
(23) Casts
(24) Catheter devices and supplies
(25) Catheters
(26) Cervical braces
(27) Cervical collars
(28) Clavicle splints
(29) Colostomy devices
(30) Colostomy supplies and devices
(31) Corrective braces
(32) Corrective pessaries
(33) Corrective shoes
(34) Cosmetic gloves
(35) Dental prosthesis
(36) Dorsolumbar belts
(37) Dorsolumbar supports
(38) Eyelid load prosthesis
(39) Heart valves
(40) Hernia belts
(41) Ileostomy devices
(42) Iliac belts
(43) Mastectomy pads
(44) Neuromuscular electrical stimulators [when worn on the body]

(45) Organ implants
(46) Orthopedic implants
(47) Orthopedic shoes
(48) Orthotic supports (Bandages, belts, and similar supplies)
(49) Ostomy devices
(50) Pacemaker equipment
(51) Pacemakers
(52) Penile implants
(53) Rib belts
(54) Rupture belts
(55) Sacroiliac supports
(56) Sacrolumbar belts
(57) Sacrolumbar supports
(58) Space shoes
(59) Splints
(60) Splints, holders
(61) Stoma appliances (colostomy, ileostomy, ureterostomy, catheters)
(62) Stoma bags
(63) Transcutaneous electrical nerve stimulators (tens unit) [when worn on the body]
(64) Trusses
(65) Ureostomy devices

[OAR Docket #14-456; filed 6-20-14]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #14-457]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:90-1-3 [AMENDED]
Subchapter 3. Returns and Payments
710:90-3-6 [AMENDED]
710:90-3-7 [AMENDED]
710:90-3-17 [AMENDED]
AUTHORITY:
68 O.S. § 203; Oklahoma Tax Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 14, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:90-1-3 has been amended to update a statutory citation.
Proposed amendments to Subchapter 3, "*Returns and Payments*" have been made to implement the provisions of House Bill 2576 [2012] which modified certain withholding tax remitters reporting requirements and changed the date late payment penalty is imposed for wage, royalty and pass through withholding. [**68:2385.3, 2385.6, 2385.28, 2385.31**]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-3. Registration of employers

(a) Every employer required to deduct and withhold tax as required under 68 O.S. §2355(B) and 68 O.S. §~~2385~~2385.2 shall register with the Commission for purposes of withholding, reporting, and remitting such tax. An employer must register on the prescribed Commission Business Registration Form and shall furnish such information as required by said form to include the following:

(1) How the business is owned;
(2) Federal Employer Identification Number; (If a Federal Employer Identification Number has been applied for but not received, indicate "applied for" in the space provided.)
(3) Business phone;
(4) Ownership information consisting of:
(A) Name of legal owner, social security number, if applicable, and mailing address;
(B) Name of partners or corporate officers, social security numbers, titles, and residential mailing address;
(5) Withholding Tax information:
(A) Is tax withheld;
(B) Date Withholding Tax was or is expected to commence;
(C) Is the amount withheld greater than $500.00 per quarter;
(6) Name of officer, partner, employee, or agent responsible for the remittance of Withholding Tax, social security number, title, and residential mailing address;
(7) Other information required to include but not limited to: Location information, previous owner information, etc.;
(8) Signature of sole owner, partner, officer or agent and the date thereof.

(b) All taxes withheld must be reported and paid when due.

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-6. Employer overpayment of withholding tax not withheld

(a) Any employer who pays to the Commission more than the correct amount of tax **not deducted or withheld from employees wages**, may adjust the overpayment by entering the amount as a deduction on any future report. The report on which the adjustment is entered shall have attached:

(1) A written statement setting forth in detail the grounds and facts relied on in support of the adjustment;

(2) The report period in which the error occurred;

(3) Sufficient documentary evidence in support of the adjustment.

(b) Alternatively, an employer may submit a claim for refund resulting from either the overpayment of tax not deducted or withheld or the overwithholding of tax repaid or reimbursed to any employee. Such claim for refund should not be made with any ~~monthly or~~ quarterly report. Refund claims shall include:

(1) A written statement setting forth in detail the grounds and facts relied on in support of the refund request;

(2) The report period in which the overpayment occurred;

(3) Sufficient documentation to substantiate that the overpaid amount was not withheld or deducted from employee's wages; and,

(4) A written statement from each employee showing Social Security Number, date and amount of repayment or reimbursement, if applicable.

710:90-3-7. Employer repayment of tax erroneously withheld from any employee

(a) If during any ~~monthly or~~ quarterly report period an employer withholds more than the correct amount of tax from an employee, the employer shall not include on any report or pay over to the Commission the amount overwithheld if:

(1) The employer repays the amount overwithheld before the report for such period is filed and before the end of the calendar year in which the overcollection was made; and

(2) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of repayment.

(b) Any amount not repaid to and receipted for by the employee or required in (a) of this Section shall be reported and paid with the report for the period in which overcollection occurred.

(c) An employer may repay or reimburse an employee for tax overwithheld in any subsequent report period in either the same calendar year or in a subsequent calendar year. The employer may reimburse the employee by applying the amount overwithheld against the tax required to be withheld from wages paid the employee in a subsequent period.

(d) If the employee is repaid, the employer must obtain and keep as part of the records the written receipt of the employee showing the date and amount of repayment.

(e) If an employer repays or reimburses an employee for the overcollection of tax, the employer may adjust the overcollection by entering the amount as a deduction on the return for the report period in which the employer repays or reimburses the employee. The return on which the adjustment is entered shall have attached the following information:

(1) A written statement explaining in detail the adjustment and the facts relied on in support of the adjustment; and

(2) The return period in which the error occurred,

(3) If from a previous calendar year:

(A) A written statement from each employee that the amount of overcollection repaid or reimbursed has not been refunded or claimed;

(B) A copy of the written receipt of each employee showing the date and amount of repayment or reimbursement;

(C) Each employee's social security number; and,

(D) The report period in which the error occurred.

710:90-3-17. Penalty and interest

(a) If an employer fails to file a return or to pay the Commission the Withholding Tax when due, there shall be imposed on such employer a penalty of ten percent (10%) of the amount of tax, or ten percent (10%) of the amount of the underpayment of tax, if such failure is not corrected ~~on or before the last day of the month when due~~within fifteen (15) days after the tax becomes delinquent.

(1) There is also imposed upon the employer interest at the rate of one and one-quarter percent (1 1/4%) per month.

(2) If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty percent (50%) shall be assessed.

(b) At the discretion of the Commission, the interest or penalty may be waived, provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained or provided the taxpayer can demonstrate that the failure to pay the tax resulted from a mistake by the taxpayer of either law or fact or inability to pay such interest or penalty resulting from insolvency. Requests for waiver must be made in writing to the Account Maintenance Division and must include all pertinent facts to support the request.

[OAR Docket #14-457; filed 6-20-14]

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

[OAR Docket #14-458]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Rental Tax on Motor Vehicle Rentals
710:95-4-4 [AMENDED]
Subchapter 19. Business Activity Tax
710:95-19-5 [AMENDED]
Subchapter 21. Quality Events
710:95-21-2 [AMENDED]
710:95-21-3 [AMENDED]
710:95-21-4 [AMENDED]
710:95-21-5 [AMENDED]
AUTHORITY:
Oklahoma Tax Commission; 68 O.S. §§ 203 and 4309
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 19, 2013
COMMENT PERIOD:
January 15, 2014 to February 17, 2014
PUBLIC HEARING:
February 19, 2014
ADOPTION:
March 6, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:95-4-4 has been amended to update a statutory citation.

Section 710:95-19-5 has been updated to implement the provisions of Senate Bill 1436 [2012] which provided that upon certification by the State Election Board of the approval by the people of Oklahoma of the provisions of Enrolled Senate Joint Resolution No. 52 of the 2nd Session of the 53rd Oklahoma Legislature, the Oklahoma Business Activity Tax Code expired for tax years beginning after December 31, 2012. [**68:1228**]

Subchapter 21 has been amended to reflect the changes made to the Quality Event Incentive Act, 68 O.S. §§ 4301 et seq., pursuant to the adoption by the Oklahoma Legislature of SB 976 [2013] effective August 23, 2013.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 4. RENTAL TAX ON MOTOR VEHICLE RENTALS

710:95-4-4. Collection, reporting, remittance of the tax; interest and penalties

(a) The tax is to be collected by the rental business at the time of the payment of the rental agreement.

(b) The following filing requirements apply to all taxpayers required to report and remit tax on motor vehicle rentals:

(1) Taxpayers must report the tax on forms prescribed and furnished by the Oklahoma Tax Commission.

(2) Returns are due on the 20th day of each month, for the liability incurred the previous calendar month. However, taxpayers who are permitted to file semiannual sales tax reports pursuant to 68 O.S. §~~1365(B)~~1365(E) may file semiannual Rental Tax Reports and remit taxes due thereunder to the Tax Commission on or before the 20th day of January and July of each year for the preceding six-month period.

(c) If payment of the tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the 20th of the month, the tax shall be delinquent from that date. Reports timely mailed shall be considered timely filed. If a remittance is not timely made, interest at the rate of one and one-fourth percent ($1\frac{1}{4}$ %) per month shall be charged from the date the remittance should have been made until the tax is actually paid.

(d) If payment of the tax due is not made within thirty (30) days of the due date, a ten percent (10%) penalty will be applied.

SUBCHAPTER 19. BUSINESS ACTIVITY TAX

710:95-19-5. Tax rate

~~(a)~~ **Tax imposed for tax years 2010 through 2012.**

(1) For any corporation and any other person subject to the franchise tax levied under the provisions of 68 O.S. §§ 1203 through 1205, the Business Activity Tax is equal to the amount of franchise tax such person paid or was required to pay for the taxable period ending prior to December 31, 2010.

(2) Sole proprietors filing Federal Schedule C or Federal Schedule C-EZ, farmers filing a Federal Schedule F, and limited liability companies doing business in the State of Oklahoma are levied an annual minimum tax of Twenty-five Dollars ($25.00).

~~(b)~~ ~~**Tax imposed for tax years 2013 and subsequent years.**~~

~~(1) For tax years beginning on or after January 1, 2013, there is levied on each person doing business in the State of Oklahoma an annual minimum tax of Twenty-five Dollars ($25.00).~~

~~(2) In addition to the minimum tax, there is levied an additional tax of one percent (1%) of the net revenue derived from business activity that is allocated or apportioned to the State of Oklahoma.~~

SUBCHAPTER 21. QUALITY EVENTS

710:95-21-2. Definitions

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

*"**Certified sponsor**" means an entity or organization authorized to promote and conduct a quality event, which is incurring expenses for the promotion of such event to be conducted within the corporate limits of an eligible municipality or an unincorporated area within a county.*

"Commission" means the Oklahoma Tax Commission.

*"**Economic impact study**"* means a study of the geographic area designated by a host community pursuant to Section 710:95-21-4(b), which includes:

(A) A description ~~and, if applicable, history~~ of the quality event,

(B) Information regarding the site selection process for the quality event,

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event,

(D) An estimate of the total gross sales made by vendors within the designated area during any period of time during which no quality event activity occurs,

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event,

(F) The general economic impact likely to occur in the designated area as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and

(G) Any additional information the Oklahoma Tax Commission may require.

*"**Eligible local support amounts**" means:*

(A) *Any payment made by a local government entity or transfer of monies from the general fund or transfer of tax revenues derived from a locally imposed tax to a certified sponsor for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event, or*

(B) *Any direct payment made by a certified sponsor to a for-profit or nonprofit entity, other than the host community, for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event.*

*"**Event history**" means:*

(A) *Historical information on the event including past locations of the event,*

(B) *A description of previous attempts by the host community to secure the event,*

(C) *Information regarding attempts by other communities to recruit the event, and*

(D) *If applicable, the competitive bidding process for securing the event by the host community.*

*"**Host community**" means any county, incorporated city or town, or any combination of counties, incorporated cities or towns of the state which are authorized by their respective governing bodies to host or assist in the presentation of a quality event.*

"Incremental sales tax revenue" means, with respect to a new event, a comparison of the amount of additional state sales tax revenue, if any, in excess of the amount of state sales tax revenue collected within a quality event area during the same month of the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b); or, with respect to a recurring event, a comparison of the amount of additional sales tax revenue, if any, in excess of the calculated average amount of sales tax revenue collected in the quality event area during the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b). For purposes of computing the calculated average amount of monthly sales tax revenue collected as required by this paragraph with respect to a recurring event, the Oklahoma Tax Commission shall average total sales tax revenue collected by month but shall exclude revenue collected during the same month or months in a prior year during which the recurring event was conducted and if the event does not occur during the months of November or December, shall also exclude revenue collected during the immediately preceding November and December. The calculated average amount of monthly sales tax revenue shall be used to determine whether a recurring event produces incremental sales tax revenues.

*"**New event**" means a quality event which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held.*

*"**Quality event**" means:*

(A) *~~a~~A new event or a meeting of a nationally recognized organization or its members ~~which is being located at a site chosen through a competitive site selection process in which at least one site not located in this state was considered.~~,*

(B) *A new or existing event that is a national, international or world championship, or*

(C) *A new or existing event that is managed or produced by an Oklahoma-based national or international organization.*

"Quality event area" means a geographic area designated by a host community pursuant to Section ~~710:95-21-3(b)(1)~~710:95-21-3(a)(1) determined to realize direct economic benefit from the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event; provided, the designated area shall never constitute an area greater than thirteen (13) miles from any property line of the primary property at which the quality event is located. The property line shall be based on the legal description or survey of a single location determined by a host community to be the primary property for a quality event area.

"Recurring event" means a quality event which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

"Revenue capture period" means a time period beginning no earlier than two (2) days prior to the quality event date or the first day upon which the quality event occurs and ending no later than two (2) days after the conclusion of the quality event date or the last day upon which quality event activities occur.

"State sales tax revenue" means the proceeds from the state sales tax levy imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes upon taxable transactions occurring within the quality event area during the authorized revenue capture period.

"Vendors" means those persons or business entities making taxable sales of tangible personal property or services within a quality event area and, unless the context otherwise requires, shall have the same meaning as defined by Section 1352 of Title 68 of the Oklahoma Statutes.

710:95-21-3. Quality event requirements, limitations and eligibility

(a) **Designation of quality event.** For purposes of this Subchapter a host community can designate a quality event pursuant to the adoption by the governing body of the host community an ordinance or resolution which must contain designation of the following:

(1) A geographic area as a quality event area;

(2) A length of time of the revenue capture period; and

(3) The type of expenses eligible for payment through distribution of captured revenues to the host community including, but not limited to, advertising, facility rental, promotional materials and security.

(b) **Designation requirements.** The resolution or ordinance must be adopted at least ~~one year~~six months prior to the first day of the quality event.

(c) **Limitations.** A host community may only designate one quality event during a single designated revenue capture period for purposes of the payments authorized by this Subchapter.

(d) **Eligible quality events.** Eligibility for qualify event status is available for events or meetings of a nationally recognized organization or its members which is being located at a site chosen through a competitive site selection process in which at least one site not located in this state was considered to include:

(1) **New events.** Quality events which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held; and

(2) **Recurring events.** Quality events which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

710:95-21-4. Quality event approval and application requirements

(a) **Application for approval.** Within ~~ninety (90)~~thirty (30) days of the adoption date of the ordinance or resolution designating a quality event, the host community must submit a written request for recognition as a quality event to the Tax Policy Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194. The postmark date of the written request for recognition as a quality event is deemed to be its date of delivery.

(b) **Application requirements.** The application for recognition must include the following:

(1) **Ordinance or resolution.** A copy of the ordinance or resolution designating the quality event,~~and an economic impact study~~.

(2) **Economic impact study.** The economic study must include the following information:

(A) A description of the quality event ~~and, if applicable, a history of the quality event~~.

(B) Information regarding the site selection process for the quality event including the host community's bid documents submitted to the site selection organization soliciting the quality event, confirmation from the site selection organization that at least one state other than Oklahoma was considered for the quality event and the letter from the site selection organization designating Oklahoma as the quality event location.

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event which specifically categorizes the type of expenses, such as advertising, anticipated to be incurred along with the estimated costs associated therewith.

(D) An estimate of the total gross sales made by vendors within the designated area during any period of time during which no quality event activity occurs. This estimate must designate the month considered to estimate the total gross sales and the vendors and their sales tax permit numbers.

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event. This estimate must include a list of vendors and sales tax permit numbers within the designated quality event area the Tax Commission is to consider for purposes of incremental sales tax revenue payments. To be included on the list by the host community the vendor must have been making sales subject to the Sales Tax Code in the same month or months of the quality event revenue capture period in the preceding year.

(F) The general economic impact likely to occur in the designated area as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event~~.~~, and

(3) **Event history.** The event history must include the following information:

(A) Historical information on the event including past locations of the event,

(B) A description of previous attempts by the host community to secure the event,

(C) Information regarding attempts by other communities to recruit the event, and

(D) If applicable, the competitive bidding process for securing the event by the host community.

710:95-21-5. Tax Commission review and approval process

(a) **Approval process.** Within ~~ninety (90)~~sixty (60) days from receipt of the host community's request for quality event recognition, the Commission must approve or disapprove, in

whole or in part, the economic impact study. The Commission shall not approve any economic impact study for which the Oklahoma Department of Commerce has not recommended approval in accordance with subsection (c) of this Section.

(b) **Review and approval.** In order for the economic impact study to be approved, the Commission must determine whether the economic impact contains the elements required in Section 710:95-21-4(b)(2) and whether the information provided is validly documented and based on generally accepted economic and statistical standards used for purposes of similar studies.

(c) **Assistance of the Oklahoma Department of Commerce.** Upon receipt of an economic impact study, the Tax Policy Division of the Commission must forward same to the Commerce Department for review and recommendation as to whether the economic impact study should be approved or disapproved.

(d) **Order disapproving request.** An order of the Commission disapproving a host community's economic impact study is not an appealable order under Section 225 of Title 68 of the Oklahoma Statutes.

[OAR Docket #14-458; filed 6-20-14]

TITLE 712. OKLAHOMA COMMISSION FOR TEACHER PREPARATION CHAPTER 10. TEACHER PREPARATION PROGRAM ACCREDITATION

[OAR Docket #14-713]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Teacher Preparation Program Accreditation
712:10-5-1 [AMENDED]
AUTHORITY:
Oklahoma Commission for Teacher Preparation;70 O.S. Supp. 1998, §6-180 et seq. Oklahoma Teacher Preparation Act
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 16, 2013
COMMENT PERIOD:
December 15, 2013 through January 16, 2014
PUBLIC HEARING:
January 16, 2014
ADOPTION:
February 13, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 18, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Teacher Preparation Program Accreditation revisions reflect changes in admission requirements for educator preparation and in the hours of required field experiences for educator candidates. The revisions set minimum requirement for mentor teachers and reflect accountability measures for state program approval process.
CONTACT PERSON:
Renée Launey-Rodolf, Executive Director, 3545 NW 58th Street, Suite 200, Oklahoma City, Ok 73112-4725, 405-525-2612

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINNALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

712:10-5-1. Teacher Preparation Program Accreditation And Review Process

(a) Oklahoma teacher education institutions function under an 'accreditation program' system which requires the evaluation of teacher education units and programs on a periodic basis.

(b) Beginning July 1, 1997 institutions which have no accredited teacher education program and which desire to initiate a certificate program shall follow the format outlined herein based on Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (see 712:10-5-3). Institutional plans are defined as plans developed and prepared utilizing input from education stakeholders (teacher preparation faculty, arts and science faculty, teacher candidates, teachers, administrators, business and community leaders, and parents) which follow the general guidelines and standards for pre-service teacher preparation programs outlined in sections 712:10-5-3. On July 1, 1997 the Oklahoma Commission for Teacher Preparation, hereafter referred to as the Commission, shall assume responsibility for accrediting all teacher education programs in Oklahoma's public and private institutions of higher education.

(c) The program accreditation system shall be a multifaceted system based on:

(1) A competency-based teacher preparation program built around the Standards for Oklahoma Accredited Teacher Education Programs and State Department of Education Competencies, herein after referred to as SDE;

(2) Institution plans as outlined in the Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan Format;

(3) On-site accreditation review team visits to the campuses of the institutions of higher education;

(4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;

(5) Analysis of student satisfaction data;

(6) Analysis of student/teacher candidate portfolios.

(d) Beginning January 1, 1997 all institutions of higher education with teacher education programs must submit an initial institutional plan outlining how the institution will respond to those standards identified in the Oklahoma Standards for Accredited Teacher Education Programs and Initial Institution Plan (See 712:10-5-3, and OS 70 sections 6-199 through 6-202.)

(1) All initial plans will be reviewed by the Program Accreditation Committee, hereafter referred to as the PAC and recommendations for accreditation for seven years, accreditation for two years with a focused visit, accreditation for two years with a full visit, defer decision or denial of accreditation will be forwarded to the Commission within sixty days of submission.

(2) All PAC members and a minimum of ten prospective members will receive performance training on how to evaluate the initial plans. Only those members demonstrating proficiency in evaluation will be allowed to evaluate the plans.

(3) The performance-based training will be conducted by the National Council for Accreditation of Teacher Education, hereinafter referred to as NCATE and/or their designee.

(4) Any Commission member or Commission appointee who is involved in any evaluation and/or accreditation decision related to any teacher education unit and/or program must complete the performance-based training related to the review and accreditation of teacher education units and/or programs prior to voting and/or participating on any accreditation decisions.

(5) Prior to being accredited each institution must meet the NCATE preconditions for accreditation and all requirements of the OCTP, and/or receive the approval of the OSRHE when applicable, and provide required documentation for each precondition.

(A) The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap (consistent with Section 702 of Title VII of the Civil Rights Act of 1964, which deals with exemptions for religious corporations, with respect to employment of individuals with specific religious convictions).

(B) A copy of the institution's official action pledging compliance with nondiscriminatory law and practice.

(e) Beginning July 1, 1997 the Commission will become a performance-based partner with the Oklahoma State Regents for Higher Education (State Regents) and NCATE. All teacher education programs shall be expected to meet all NCATE unit and program standards, SDE competencies, as well as all additional standards established by the Oklahoma Commission for Teacher Preparation.

(1) Application form. The application form containing the required information will be completed by the director of teacher education at the institution seeking Commission accreditation for the teacher education certificate programs.

(2) Institutional plan. The institutional plan shall be utilized by the Commission for program accreditation, State Regents program review, and NCATE accreditation. An institutional plan addressing the standards as outlined in the Oklahoma Commission for Teacher Preparation Standards for Oklahoma Accredited Teacher Education Programs and Institution Plan and criteria established in these rules and as stipulated in OS 70 sections 6-180 through 202 will be sent to the Commission office along with the application form —according to the established timeline.

(3) Records to be kept on file at the institution. The following items and records shall be kept on file at the institution with the director/dean of teacher education.

(A) Copy of the institution plan;

(B) Copy of annual report to the Commission;

(C) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and

(D) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.

(E) Copies of program review reports.

(F) Candidate CEOE scores.

(4) Timelines for evaluation process.

(A) The Oklahoma Commission for Teacher Preparation personnel will establish an accreditation visit schedule in collaboration with the State Regents, NCATE and the institution dean/director of teacher education.

(B) Upon approval by the governing board of the institution, two copies of the institution report and supporting materials including the college catalog shall be sent to the Commission office 75 days prior to the accreditation visit. Upon receiving the names and addresses of the visiting accreditation review team, the institution shall send copies of all documentation to the members of the visiting accreditation review team.

(C) The visiting committee selection process shall be completed a minimum sixty (60) days prior to the accreditation visit.

(D) The on-site accreditation evaluation will be conducted over a three to five day period.

(E) After finalizing the team draft report which results from the accreditation visit, and within fourteen days of the accreditation visit, the team chair shall send the draft report to team members and Commission professional personnel for editing.

(F) Within twenty-one days of the visit the team members and the Commission office shall return their comments and recommendations on the report to the team chair. The chair makes corrections to the report, as appropriate, and sends a copy to the unit head at the institution for factual corrections.

(G) Within twenty-eight days of the visit but not less than five days of the receipt of the report, the unit head sends factual corrections in writing to the team chair. The chair makes changes at his/her discretion, finalizes the report and sends one copy to the Commission office. The report shall be in the format determined by the Commission.

(H) The Commission staff will copy the report with a cover that includes the name of the institution, its location, and the date of the visit.

(I) Utilizing the procedures outlined in 712:10-5-1(e)(8) the Commission will make a final decision

regarding the accreditation of the institution's certificate program(s). That decision will be based on the findings and recommendations of the Commission Program Accreditation Committee and any additional information which may be presented by the institution under review.

(J) All certification program reviews must be submitted to NCATE or to the Commission no later than 12 months prior to the first accreditation visit and according to the established NCATE/OCTP timeline prior to a continuing accreditation visit.

(5) Selection of accreditation review team. Selection of the accreditation review team will be coordinated by the Commission staff as soon as possible after the visitation dates are set. All accreditation review team members shall be determined within sixty (60) days prior to the accreditation review team visit. Selection of the accreditation review team shall be based on the following:

(A) All team members must have been trained by NCATE staff and/or their designee in the application of NCATE standards and on the process for evaluating programs for the Commission.

(B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:

(i) Three to six representatives from the NCATE Board of Examiners (for NCATE accredited institutions).

(ii) State representatives appointed by the Commission including:

(I) One pre-K-12 classroom teacher;

(II) One representative from higher education who is a member of a teacher education unit. For accreditation of private institutions the representative shall be from a private institution; for public institutions this representative shall be from a public institution;

(III) One representative from the Commission;

(IV) One additional at-large member;

(iii) For any institution requesting accreditation of a career technology program(s) an additional accreditation review team member may be recommended by the State Director of Career and Technology Education.

(iv) Special Circumstances:

(I) For accreditation review teams requiring fewer members the Executive Director of the Commission shall collaborate with the Program Accreditation Committee, the director of teacher education at the institution being accredited, and NCATE and Commission staff to determine the team composition.

(v) The Commission will determine observers from representatives of the Oklahoma State Regents for Higher Education, State Department of Education, State Department for Career and Technology Education, professional organizations, and the community-at-large.

(I) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist, but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(II) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(III) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:

(i) NCATE representatives as determined by NCATE (for NCATE accredited institutions);

(ii) State representatives which will number one less than the NCATE representatives;

(iii) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution being reviewed, NCATE, and with the PAC and Commission staff to determine the state committee representation;

(iv) The Commission will determine observers from representatives of the Oklahoma State Regents for Higher Education, State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education shall nominate a team member for any institution requesting accreditation of career and technology program(s);

(v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team with understanding state nuances. They may assist but shall not be required to write any sections of the team report. They shall not be a voting member of the team.

(vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.

(vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.

(D) Accreditation teams for non-NCATE accredited institutions shall be composed of state representatives.

(E) The Executive Director for the Commission for Teacher Preparation or his/her designee shall collaborate with the director of teacher education at the institution requesting state accreditation, NCATE, the State Regents, PAC and Commission staff to determine the team representation.

(6) Logistics of the accreditation visit.

(A) Each institution shall arrange through the Commission for a pre-visit with the chair of the accreditation review team. The pre-visit should be conducted a minimum of sixty (60) days prior to the team visit. The team chair must have received the institutional report prior to the pre-visit.

(B) If it is to be a joint NCATE and Commission visit, the state chair, the NCATE chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(C) For state accreditation only, the state chair and the Commission staff member responsible for program accreditation shall be included in the pre-visit. Logistical arrangements shall be finalized during the pre-visit.

(D) A visitation schedule will be prepared and distributed approximately four weeks prior to the scheduled visit. The schedule will be developed cooperatively by the director of teacher education and the Commission staff in cooperation with the team chair(s).

(E) The following stakeholders may be interviewed during the accreditation visit:

(i) Key faculty from the teacher education and the arts and sciences units;

(ii) Administrators from the university teacher education and the arts and sciences units;

(iii) Other individuals identified by the institution;

(iv) Students (both in organized group settings and in informal settings such as in hallways, student lounges, student union, etc.);

(v) Field supervisors and cooperating teachers of student teaching and internships;

(vi) Practitioners from area schools including, but not limited to, principals, school personnel directors, and teachers; and

(vii) Recent graduates.

(F) The individuals to be interviewed should be representative of the student body being served, and consideration shall be made relative to ethnicity, gender, age and individuals with disabilities.

(G) The visitation schedule shall include:

(i) Dates of the accreditation visit;

(ii) Name, location, telephone number of lodging where reservations have been made for committee members;

(iii) Location of visiting team headquarters on the campus of the institution being evaluated;

(iv) Meeting time and place for team organizational meeting;

(v) Meeting time and place for formal team interviews with constituencies listed in 712:10-5-1(e)(6)(E);

(vi) Meeting time and place for team to complete writing assignments;

(vii) Meeting time and place for team to present the exit report; and

(viii) Fax, telephone, and e-mail addresses of members of the unit.

(H) The completed accreditation review team report will be presented to the PAC, NCATE (as applicable), and the Commission.

(I)Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.

(7) Preparation of the team report. The accreditation review team work will culminate in preparation of a report outlining the findings of the team. Individual writing assignments will be completed prior to the conclusion of the visit. The report will reflect the team consensus on the review.

(A) The accreditation review team report is to be based on the following:

(i) Validating and supporting documents, through interviews with students, faculty members, administrators, and school personnel;

(ii) Validating the institutional report by visiting facilities and reviewing documents; and

(iii) Specific guidelines and competencies for accredited teacher education programs.

(B) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include findings for each standard and state requirement including areas for improvement.

(C) The completed reports will be due to the NCATE and Commission office 52 days after the accreditation review team on-site visit; and

(D) The recommendation of the accreditation review team regarding the program will be made to the PAC and the Oklahoma Commission for Teacher Preparation within 90 days after having received the rejoinder [see 712:10-5-1(e)(8)(B)(iv) and the response to the rejoinder from the team chairs. For NCATE accredited institutions, final accreditation decisions will be made after the NCATE Unit Accreditation Board has forwarded its accreditation decision to the Commission.

(8) Recommendation process.

(A) An electronic copy of the final draft of the accreditation review team report will be forwarded to the Commission personnel and to each of the accreditation review team members who will be given the opportunity to suggest corrections in their respective assignment areas. Additionally, the director of

teacher education will be given the opportunity to offer input regarding corrections in factual information.

(B) The head of the unit, in consultation with the chief executive officer of the institution, is required to acknowledge receipt of the report and is given the opportunity to prepare a rejoinder to the accreditation review team report. The unit can file the rejoinder and supplemental materials pertinent to the facts and conclusions found in the report of the accreditation review team.

(i) The institutional rejoinder to the accreditation review team report is a vital part of the evidence that the PAC considers as it makes its determination regarding first and continuing accreditation. The PAC considers the first/continuing accreditation report, accreditation review team report and the institutional rejoinder as it prepares its recommendations for the Program Accreditation Committee and subsequently to the full Commission. The PAC may affirm the accreditation review team citations in areas for improvement or modify them based on evidence provided in the institutional rejoinder or to bring consistency to its decisions across institutions.

(ii) The purpose of the rejoinder is to clarify information presented in the accreditation review team report and to correct any factual errors in the report. If the judgments of the accreditation review team are being disputed by the unit, the rejoinder must indicate the grounds for such a stance and the available documentation to support it. This information should be summarized, cited, and included in an appendix as appropriate. The rejoinder should be concise, to the point, and complete.

(iii) The following conditions must be adhered to as the institutional rejoinder is prepared by the unit:

(I) All evidence must describe what existed at the time of the accreditation visit. Changes made by the unit after the visit cannot be considered by the PAC in its deliberations. Changes after the visit should be reported to the Commission for Teacher Preparation as part of the unit's annual report;

(II) All evidence must relate directly to NCATE standards, state requirements, and all procedures that applied at the time of the accreditation visit;

(III) The rejoinder must be factual in nature. All inaccurate information in the accreditation report should be corrected and appropriate documentation submitted with the rejoinder; and

(IV) When the unit does not respond, in writing, to the unmet standards and areas for improvement in the accreditation report, the PAC assumes that the unit concurs with the accreditation review team citation and decision.

(iv) The institutional rejoinder should contain the following:

(I) Letter from the unit head to the Commission Executive Director acknowledging the receipt of the accreditation report;

(II) Responses to the areas for improvement. If there is evidence that an area for improvement does not exist, the appropriate documentation should be appended;

(III) Perceptions of procedural concerns, if any, regarding the accreditation review team review or process that might have prejudiced the accreditation review team judgments; and

(IV) Appendices that contain information to support any requests for reconsideration of the accreditation review team judgments. If the data were included in the institutional report and not given adequate consideration by the accreditation review team, the appropriate pages should be cited/reproduced; if the reference exceeds three pages in the institutional report, the page numbers should be cited and not duplicated.

(v) The institutional rejoinder must be submitted to the Oklahoma Commission for Teacher Preparation within 30 days of the receipt of the accreditation review team report. When accreditation review team reports are sent to an institution during semester breaks, additional time to prepare the rejoinder will be considered. Additional time beyond the date indicated in the transmittal letter must be approved by the Commission Executive Director.

(C) Final action on the reports and institutional accreditation will proceed according to Section 712:10-5-1(e).

(D) Final action by the Commission may include the following actions:

(i) First and Continuing Accreditation for seven years.

(I) This accreditation decision is granted to the education unit and program(s) if the Commission finds that standards have been adequately addressed to merit accreditation. This accreditation decision indicates that the unit meets each of the six NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. ~~In its subsequent annual reports, the unit may describe progress made in addressing the areas for improvement cited in NCATE's action letter in preparation for its next visit.~~ In its annual report the institution will be expected to address progress on the areas for improvement cited in the Commission accreditation report. When the Commission has determined that an education unit is not making progress toward the removal of the

areas for improvements cited during their visit, the institution will be notified that the unit will be required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the Commission determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas for improvement, a state-level Focus Visit will be warranted within 18 months. After such Focus Visit the Commission will have the option of granting continuing accreditation or revoking accreditation. This progress will be reviewed, annually, by the PAC. First accreditation is retroactive to the semester in which the accreditation visit occurred.

(ii) Accreditation for two years with a focused visit.

(I) This accreditation decision indicates that the unit has not met one or more of the standards. When the PAC renders this decision, the unit has or maintains its accredited status; but must satisfy provisions by meeting previously unmet standard(s) within an established time period.

(II) If Accreditation for two years with a focused visit is granted, the PAC will require a focused visit on the unmet standard(s) within two years of the semester of the accreditation decision. After a focused visit, the PAC will (1) grant accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for seven years following the semester in which the accreditation visit preceding the focused visit occurred.

(iii) Accreditation for two years with a full visit.

(I) This accreditation decision indicates that the unit has not met one or more of the NCATE standards, and serious problems exist across standards. When the PAC renders this decision, the unit has or maintains its accredited status, but must satisfy conditions by meeting the previously unmet standard(s) within an established time period.

(II) If accreditation for two years with a full visit is granted, the PAC will require a full visit on the unmet standard(s) within two years of the accreditation decision. After a full visit, the PAC will (1) continue accreditation or (2) revoke accreditation.

(III) If accreditation is granted, the next on-site visit is scheduled for seven years following the semester in which the continuing accreditation visit occurred.

(iv) Defer Decision

(I) The UAB or PAC/Commission will make this decision if the BOE team recommended that any standard(s) was met for which the UAB or PAC/Commission did not accept the team's recommendation.

(II) A supplemental rejoinder related to the new unmet standard(s) may be submitted for review by the UAB or PAC/Commission. The supplemental rejoinder must be based on evidence available at the time of the visit. The institution will be required to submit said documentation to the UAB or PAC/Commission as applicable.

(III) For NCATE/State institutions, the PAC/Commission will defer decision until the next NCATE UAB meeting. For State only institutions, the PAC/Commission will defer decision for no more than sixty (60) days.

(IV) If the standard(s) continues to be unmet after the supplemental rejoinder, accreditation will be granted for 18 months with either a focused or full visit.

(v) Denial of accreditation (First).

(I) Denial of accreditation is rendered when the PAC finds that the professional education unit and/or programs have severe and/or numerous areas for improvement that limits its capacity to offer quality programs.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the denial of program accreditation of the unit and programs.

(III) Institutions that are denied accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is denied.

(vi) Revocation of accreditation (Continuing).

(I) Revocation of accreditation terminates current accreditation after a two-year visit if the PAC/Commission finds that critical areas for improvement are not corrected. Accreditation will be terminated at the end of the semester in which the PAC/Commission revokes accreditation.

(II) All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the PAC/Commission decision, as to the revocation of accreditation of the unit and programs.

(III) Institutions that lose their accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

(IV) An on-site interim accreditation visit may be requested by the Appeals Board, hereinafter referred to as AB, acting on behalf of the Commission Administrative Committee. This visit would result from the committee's determination that compelling reasons exist to authorize reexamination of the accreditation

of an institution's professional education unit and/or programs. If the AB determines that a complaint received by the committee needs to be investigated, the committee will authorize an interim accreditation review team visit to the campus. The interim accreditation review team will consist of one member from the first or continuing accreditation review team and the remainder of the members will be appointed by the PAC following the guidelines outlined in 712-10-5(e)(5).

(V) The interim accreditation review team will prepare a report for the PAC. At the next PAC meeting following such a visit, the PAC will recommend the institution's accreditation status to the Commission.

(VI) The Commission may revoke accreditation if the unit and/or program(s) (a) no longer meets the Standards for Oklahoma Accredited Teacher Education Programs, (b) fails to submit annual reports and other documents required for accreditation; (c) misrepresents its accreditation status to the public; (d) fails to meet timelines of conditional or probationary accreditation or (e) fails over a three-year period to meet and maintain teacher candidate performance standards on the competency-based assessments as established by the Commission

(VII) All accreditation decisions shall be reported annually in the Commission annual report to the Education Oversight Board and all entities as outlined in OS 70 section 6-186.

(VIII) In the event that accreditation is denied or revoked, an institution may reapply for first accreditation following a three-year waiting period. Before a first visit may occur, a minimum of three years must have lapsed since accreditation was denied. Reapplication shall occur based on the Standards for Oklahoma Accredited Teacher Education Programs and Institutional Plan (See 712:10-5-3). All procedures for first accreditation will be followed during the reapplication process.

(9) Appeals Board.

(A) For NCATE accredited units the AB shall consider the recommendations of the NCATE appeals board for unit accreditation;

(B) For appeals related to program(s) and non-NCATE accredited institutions the following procedures shall be followed.

(C) Membership of Commission Appeals Board shall be:

(i) Commission chair. The Commission Chair shall be the Chair of the Appeals Board;

(ii) Chair of Program Accreditation Committee;

(iii) Program subject matter and/or standards expert(s). If the appeal is related to a specific program, the program expert shall be in the area(s) being appealed;

(iv) One PK-12 school classroom teacher;

(v) One member from the NCATE Board of Examiners (when applicable);

(vi) One teacher educator; and

(vii) One representative from the arts and sciences faculty or from school administration.

(D) The appeals board shall serve an initial term of two years, with the exception of the Commission Chair, Chair of the Program Accreditation Committee, and the program expert(s).The program subject matter expert(s) shall be appointed by the Commission Chair and serve on the AB only when an appeal is related to a program(s) appeal.

(10) Conditions for appeals.

(A) Any institution that is the object of an adverse decision, as determined by one of the Commission teacher education program review committees and/or unit accrediting committees, may appeal that decision to the Commission Appeals Board.

(B) An adverse decision is defined as the denial or revocation of program(s) or unit accreditation.

(C) An institution may also appeal, in writing, accreditation for two years with a focused visit, accreditation for two years with a full visit, and defer decision accreditation decisions. A adverse decision may be appealed only on the following grounds:

(i) Stated procedures were not followed;

(ii) Evidence favorable to the institution was provided to the accreditation review team but was not considered;

(iii) Evidence was presented to the appropriate board in the form of a rejoinder or stipulation response but was not considered;

(iv) If a college or university believes that one or more of these conditions was a factor in its accreditation, the only available means of redress is through the appeals process; or

(v) There was a lack of the full number of team members due to last minute emergencies; however, that factor alone is not sufficient to uphold an appeal.

(I) The institution must convincingly demonstrate that this fact made a difference in the accreditation decision.

(II) The institution shall prove actual prejudice to it and that the prejudice changed the accreditation decision.

(III) The fact that the institution did not recommend canceling the visit would be evidence that it, at least before the visit, believed that the assembled team would be sufficient to conduct a fair and complete visit.

(D) The findings and recommendations of the AB are received by the full Commission at its first meeting following the meeting of the AB.

(E) Subsequent actions shall be based on grounds upheld by the full Commission and may include, but are not limited to:

(i) Assigning another accreditation review team to revisit an institution;

(ii) Reinstating accreditation or

(iii) Upholding the initial recommendation for denial or revocation of accreditation.

(F) The status of the appellant at the time of the visit remains unchanged until the appeals process has been exhausted.

(11) Process for appeal. The following provisions govern the appellate process:

(A) Within 15 days of receiving notice of the adverse decision, an institution electing to appeal an adverse decision of the Commission must present the Commission Executive Director and the board or committee which issued the adverse decision written notification of its intention to appeal.

(B) No later than 30 days from the date that it submits its notification, the institution must submit a brief to the Executive Director which sets forth the specifics of its appeal and includes full documentation.

(C) The Commission Chair shall convene the AB within 30 days after an appeal brief has been filed. The AB will hear and act on the appeal within this time frame.

(D) The appellant shall have the right to present a 30-minute oral argument on its brief. The appellant shall also have the right to be represented by counsel during the appeal, but may not call witnesses or introduce new evidence on its own behalf.

(E) If the decision appealed is accreditation for two years with a focus visit, accreditation for two years with a full visit or defer decision the appellant's right to appeal is limited to the submission of written documentation.

(F) In the case of an accreditation decision review, the AB has the right to seek clarification of the accreditation review team report from the state team chair, and clarification of the PAC's deliberations from the chair of the PAC.

(G) In the case of an accreditation decision review, all evidence presented in the appellant's brief and considered by the AB must be confined to conditions existing at the time of the accreditation review team visit as cited in the final report, or in the case of a petition for stipulation removal, to conditions existing at the time the petition for stipulation removal was submitted.

(12) Cost of review.

(A) If the appeal leads to an affirmation of the Commission's original decision, the appellant will be liable for the expenses of the AB, the second accreditation review team visit, and all expenses related to the review. All expenses will be reimbursed according to state travel reimbursement guidelines.

(B) If the AB finds in favor of the institution, the Commission will be liable for expenses of the AB and second accreditation review team. All expenses will be reimbursed according to state travel reimbursement guidelines.

[OAR Docket #14-713; filed 7-10-14]

TITLE 735. STATE TREASURER
CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #14-639]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Reporting Requirements
Part 1. General Application
735:80-3-8. through 735:80-3-9.3. [NEW]
AUTHORITY:
State Treasurer, "Uniform Unclaimed Property Act", 60 0.S. § 651 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 6, 2013
COMMENT PERIOD:
January 2, 2014 through February 01, 2014
PUBLIC HEARING:
February 6, 2014
ADOPTION:
February 7, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 10, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Reporting for holders with 15 or more items to report. The proposed revisions are the new rules to carry out the statutory provisions for the filing of unclaimed property reports online pursuant to Title 60 Section 661.
CONTACT PERSON:
Jayne Harrington, Office of the State Treasurer, 2300 N. Lincoln Blvd., Room 217, Oklahoma City, Oklahoma 73105-4895, 405.521.4512, jayne.harrington@treasurer.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. REPORTING REQUIREMENTS

PART 1. GENERAL APPLICATION

735:80-3-8. Report on-line fifteen (15) or more properties; reporting requirement

Holders shall report unclaimed property as prescribed in OS 60 Section 661-Report of Abandoned Property. Holders reporting fifteen (15) or more items of property shall file the report electronically using the State Treasurer's on-line reporting system https://ostdnet.ost.state.ok.us/Hldr Login.asp. Additional reporting information may be located @www.treasurer.ok.gov .

735:80-3-9. File format; reporting requirements; noncompliance

The on-line reporting system allows a Holder to securely upload an encrypted unclaimed property report file via the State Treasurer's website after setting up a password - protected account. All reports must be filed using the National Association of Unclaimed Property Administrators (NAUPA) standard format. Holder reports with fifteen (15) or more items of property that are not filed electronically and/or any other report that is -improperly formatted or otherwise cannot be processed automatically will be returned to the Holder. Reports and remittances that are not properly filed and paid in compliance with statute and administrative rule will be subject to the provisions defined in OS 60 Section 680 - Penalties.

735:80-3-9.1. Supplemental report detail; Verification and Checklist and remittance; reporting requirements

Files created using the NAUPA standard format shall properly categorize unclaimed property types. All pertinent information related to each category of unclaimed property must be included in the electronically filed report as supplemental paper report detail will not be accepted. Holders must continue to complete and mail the required Verification and Checklist located under Holder Reporting Forms and Instructions @www.treasurer.ok.gov. along with remittance(s).

735:80-3-9.2. Encrypt file; reporting requirements

All files uploaded to the State Treasurer's on-line reporting system must be encrypted. Information related to the availability of free reporting software is located under Holder Information @www.treasurer.ok.gov.

735:80-3-9.3. Payment or delivery of property

Notwithstanding the filing of such electronic report, the Holder shall pay or deliver to the Treasurer all unclaimed property reported as required in OS 60 Section 663 -Payment or Delivery of Abandoned Property.

[OAR Docket #14-639; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-640]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:1-1-1. Organization [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amends a basic guideline and protocol for agency operations and administration of Commission business.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

748:1-1-1. Organization

The employees of the Commission shall be organized and divided into such divisions or units, as the Commission deems desirable for efficiency. Such organization and division may be revised by the Commission as it finds necessary or expedient. Copies of the organizational chart are available upon request to the ~~Chairman~~Chief Executive Officer of the Commission.

[OAR Docket #14-640; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 3. GENERAL PROVISIONS

[OAR Docket #14-641]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:3-1-2. Definitions [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of the rule amendment makes permanent certain rules set forth in conformity with amendments to the Oklahoma Uniform Building Code Commission Act, 59 O.S. § 1000.20 - 1000.29 (the "Act"), enacted under HB2659 of the Second Regular Session of the Fifty-Third Legislature, effective November 1, 2012, by deleting the definition for a "Hardship Waiver of Late Fees". The proposed rule amendment modifies the definition of a "Building Permit" by removing the words "or verbal" as a type of building permit.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

748:3-1-2. Definitions

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

"Authority Having Jurisdiction" means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization or approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or the alteration or renovation of an existing, building or structure, including integral finishes, fixtures and building systems therein.

"Building Code" means a collection of required standards and practices intended to apply to all or part of the construction of new, or the alteration or renovation of existing, buildings or structures, including integral finishes, fixtures and building systems therein.

"Building Permit" means any written ~~or verbal~~ authorization or approval, issued by an authority having jurisdiction, which allows the holder or other persons to commence the construction, alteration or renovation of all or part of a residential or commercial building or structure subject to the requirements of the State Adopted Building Codes. For purposes of this Title, the term building permit includes any process wherein authorization, approval or registration is required prior to construction even though: 1) a permitting or registration document is not issued at that time; 2) the authority having jurisdiction refers to the authorization, approval or registration as something other than a "permit"; or 3) the only activities performed by the authority having jurisdiction are fee-based inspections of the work performed. For purposes of this Title, each segment of a multi-segment permit shall be considered a separate building permit if the segment meets each of the following conditions: 1) the authority having jurisdiction requires a separate, stand-alone building permit for the segment work when said work is not performed as part of a multi-segment construction project; 2) the authority having jurisdiction charges a stand-alone building permit fee for the segment work when said work is not performed as part of a multi-segment construction project; and 3) the segment work is subject to the requirements of the State Adopted Building Codes.

"Commercial Construction" means any building related construction or appurtenances for commercial, retail or industrial purposes and residential construction other than one- and two-family dwellings and townhouses.

"Construction Code" and **"Construction Permit"** shall have the same meaning as, and be respectively interchangeable and synonymous with, the terms "Building Code" and "Building Permit" as defined herein, respectively.

~~**"Hardship Waiver of Late Fees"** shall be defined as a waiver of late fees based on or caused by some form of disaster, such as a tornado, flood, straight line winds, hail, fire, etc. or man-made event destroying or impacting business operations of the jurisdiction and/or destroying jurisdictional records. The disaster shall be evidenced by police report, insurance claim forms, and claim forms supplied to FEMA or other documented and quantifiable claim for casualty loss to the property of the governing body of the jurisdiction. Employee turnover, computer issues and similar problems/issues shall not justify a hardship waiver. OUBCC shall be initially notified within 30 days of such disaster/event. A waiver shall only be considered when written request for a waiver is received within 90 days of the initial notification of the hardship disaster/event.~~

"Multi-Segment Permitting" is the administrative process of consolidating multiple building permit work authorizations, approvals and/or registrations and the payment of required permit fees for a multi-segment construction project into a single administrative process.

"Residential Construction" means any building related construction or appurtenances for residential one- and two-family dwellings and townhomes.

"State Adopted Building Codes" means any legally applicable building code currently in force and effect within the State or a governing jurisdiction until superseded by a code adopted by the Commission and all building codes adopted by the Oklahoma Uniform Building Code Commission.

[OAR Docket #14-641; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 5. FEES AND COLLECTION OF FEES

[OAR Docket #14-642]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fees
748:5-1-1. Fee for initial permit and permit renewal [AMENDED]
Subchapter 3. Collection and Late Fee Assessment
748:5-3-1. Late Fee Assessment [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These amendments to the rules change section 748:5-1-1 to remove the reference to the initial point at which the Commission would start collecting fees and the reference to a specific dollar amount to be charged so long as the amount changed does not exceed the amount allowed by statute. Further, 748:5-3-1 has been amended to make permanent certain rules set forth in conformity with the amendments to the Oklahoma Uniform Building Code Commission Act, 59 O.S. § 1000.20 - 10002.9, enacted under HB 2659 of the Second Regular Session of the Fifty-Third Legislature, effective November 1, 2012 by modifying the late fee assessment requirements.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. FEES

748:5-1-1. Fee for initial permit and permit renewal

(a) ~~Beginning the first day of the month 60 days following the Governor's approval of the emergency rules, the~~The Commission shall charge a fee ~~of $4.00~~not to exceed the fee as allowed by 59 O.S. § 1000.25(2) or its successor on all building permits issued by any state agency, municipality, or other political subdivision of this state which authorizes work governed by the State Adopted Building Codes. ~~Beginning the first day of the month 60 days following the Governor's approval of the emergency rules, the~~The Commission shall charge a fee ~~of $0~~not to exceed the fee as allowed by 59 O.S. § 1000.25(2) or its successor on all renewal building permits issued by any state agency, municipality, or other political subdivision of this state which authorizes work governed by the State Adopted Building Codes.

(b) Such fees shall be collected by the state agency, municipality or other political subdivision issuing the building or construction permits within this state. The fees shall be deposited in an account created by the collecting entity for that purpose;

(c) The state agency, municipality or other political subdivision shall remit the monies in the account on a monthly basis directly to the State Treasury for deposit in the Oklahoma Uniform Building Code Commission Revolving Fund created pursuant to Section 1000.28 of Title 59 of the Oklahoma statutes.

(d) Any state agency, municipality or other political subdivision collecting and remitting fees pursuant to this section may levy a fee up to fifty cents ($.50) for every building permit. Any state agency, municipality or other political subdivision collecting and remitting fees pursuant to this section may levy a fee of $0 for any building renewal permit issued. These monies shall be deposited into an account for the sole use of the state agency, municipality or other political subdivision. The state agency, municipality or other political subdivision shall state the total amount of funds collected and the total number of fees imposed to the State Treasury in the report required by subparagraph (g) of this section.

(e) It shall be the responsibility of the state agency, municipality or other political subdivision to account for and ensure the correctness and accuracy of payments made to the State Treasury pursuant to Uniform Building Code Commission Act as found at 59 O.S. §1000.21 et seq.

(f) Funds collected by a state agency, municipality or other political subdivision and remitted to the State Treasury pursuant to the Oklahoma Uniform Building Code Commission Act shall be deposited in the Oklahoma Uniform Building Code Commission Revolving Fund and shall be used solely for the purposes of the Oklahoma Uniform Building Code Commission Act.

(g) Along with the deposits required by subparagraph (d), each state agency, municipality or other political subdivision

shall also submit a report stating the total amount of funds collected and the total number of fees imposed during the preceding month. The report shall be made on computerized or manual disposition forms as prescribed by the Commission.

SUBCHAPTER 3. COLLECTION AND LATE FEE ASSESSMENT

748:5-3-1. Late Fee Assessment

Deposits of fees to the Oklahoma Uniform Building Code Commission Revolving Fund shall be ~~due on the twentieth day of each month~~remitted to the Commission thirty (30) days after the end of~~for the fees collected during~~ the preceding calendar month. ~~There shall be a late fee imposed for failure to make timely deposits as~~Past-due payments of fees shall be charged a late fee each month in an amount in such manner as provided in 59 O.S. § 1000.25 or its successor. ~~The Oklahoma Uniform Building Code Commission, in its discretion, may waive all or part of the late fee.Such late fee shall be one percent (1%) of the principal amount due per day beginning from the tenth day after payment is due and accumulating until the late fee reaches one hundred percent (100%) of the principal amount due.~~

[OAR Docket #14-642; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 7. COMMISSION COMMITTEES

[OAR Docket #14-643]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Standing Committees
748:7-5-1 Standing committees [AMENDED]
Subchapter 7. Technical Committees
748:7-7-1. Specific purpose [AMENDED]
748:7-7-3. Technical committee composition [AMENDED]
748:7-7-4. Member selection [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rule amendments update basic guidelines and protocol for agency operation and administration of Commission business.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. STANDING COMMITTEES

748:7-5-1. Standing Committees

Standing Committees shall be formed and charged with ongoing task assignments and shall have no set schedule to end its task(s) except as directed by the Commission. Standing Committee appointments should be reviewed by the Chairman of the Commission on an annual basis at a minimum to address necessary changes to appointments or reappointments.

SUBCHAPTER 7. TECHNICAL COMMITTEES

748:7-7-1. Specific purpose

Technical committees shall be tasked to review and recommend amendments, modifications or improvements to and for or against adoption of a specific potential construction code or elements contained within such code(s).

748:7-7-3. Technical Committee composition

Technical committees shall be comprised of at least one Commission member who will perform the duties of a Commission liaison to the technical committee and shall be ex officio member with a vote. Typically, the other members of a technical committee will be from the public providing in general for a cross-section of expertise and~~representative~~representatives of the field of construction related to the task assignment given the committee by the Commission. Nominated and elected within the committee, the technical committee chairman and vice chairman will be one of the public members of the committee unless the Commission or Commission chairman directs otherwise. To the extent possible, staff will provide secretarial duties to include preparation of agendas, creation of minutes and help with creating final presentations to the Commission.

748:7-7-4. Member selection

(a) Public members of technical committees shall be selected from individual volunteers, or persons recommended by members of the Commission, or by a permitting jurisdiction, or by a construction industry organization, or by a construction

firm or design firm, or from any other construction related source. Candidates shall submit resumes' and any other of their background data as requested by the Commission, and a statement of interest as to why they would provide the needed expertise and code experience for service based on the task of a specific technical committee. The Commission Vice Chairman, or his designee, will serve as the contact person to receive all such public requests for consideration by a public nominator. The Vice Chairman, or his designee, shall present a recommendation to the Commission for approval of a slate of technical committee members for a specific committee, plus one alternate nominee in each sub-element of the technical committee, such as but not limited to, industry contractors, code regulators, and design team members. The Commission will elect the persons of their choice after considering the recommended slate of the Vice Chairman, or his designee. The membership size of a technical committee shall be set by the Commission and can vary based upon the task assignment.

(b) Serving at the Commission's pleasure, the term of office for a technical committee and the effective office of its members shall remain in force until dismissed by the Commission, individually or collectively.

[OAR Docket #14-643; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 10. CODE ADOPTION PROCEDURES

[OAR Docket #14-644]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:10-1-2. Public input to technical committees [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule change amends a basic guideline and protocol for agency operation and administration of Commission business.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL

748:10-1-2. Public input to Technical Committees

Technical committees shall provide for public comment and suggestions for the task assignments directed by the Commission. This public interaction shall occur during the technical committee's deliberations and before a final report/recommendation is presented to the Commission for action. Depending upon the task assignment, the Commission or Commission staff will determine the number of public meetings that shall be called, as well as, the location and time. To facilitate the work of the Commission and enhance opportunities for increased public involvement and access to the meetings of the technical committees, all such committee meetings shall be held at the offices of the Commission, or at a location approved by the Chairman.

[OAR Docket #14-644; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 15. CODE ADOPTED BY STATE AGENCIES AND POLITICAL SUBDIVISIONS

[OAR Docket #14-645]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:15-1-1. Codes which may be adopted [AMENDED]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule change amends a basic guideline and protocol for agency operation and administration of Commission business.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

748:15-1-1. Codes which may be adopted

State agencies and political subdivisions may adopt construction codes with standards and requirements which exceed the standards and requirements adopted by the Commission. In order to fulfill the Commission's statutory obligation in 59 O.S. § 1000.24 (6), state agencies and political subdivisions are requested to submit code adoption notification at least annually.

[OAR Docket #14-645; filed 7-2-14]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 20. ADOPTED CODES

[OAR Docket #14-646]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. NEC® 2011 Edition
748:20-9-7. NEC® 2011 Chapter 5 Special Occupancies [NEW]
Subchapter 11. IFGC® 2009
748:20-11-8. IFGC® 2009 Chapter 4 Gas Piping Installations [AMENDED]
748:20-11-10. IFGC® 2009 Chapter 8 Referenced Standards [NEW]
Subchapter 13. IMC® 2009
748:20-13-11. IMC® 2009 Chapter 15 Referenced Standards [NEW]
Subchapter 15. IPC® 2009
748:20-15-17. IPC® 2009 Chapter 13 Referenced Standards [NEW]
AUTHORITY:
Oklahoma Uniform Building Code Commission; 59 O.S. §§ 1000.23
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 20, 2013
COMMENT PERIOD:
January 16, 2014 through February 14, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
February 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 21, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
National Fire Protection Association, National Electrical Code®, 2011 Edition, Chapter 5, with modifications
International Code Council, International Fuel Gas Code®, 2009 Edition, Section 404.4.3 and Chapter 8, with modifications
International Code Council, International Mechanical Code®, 2009 Edition, Chapter 15, with modifications
International Code Council, International Plumbing Code®, 2009 Edition, Chapter 13, with modifications
Incorporating rules:
748:20-9-7
748:20-11-8
748:20-11-10
748:20-13-11
748:20-15-17
Availability:
8:00 a.m. to 4:30 p.m., Monday through Friday at the Oklahoma Uniform Building Code Commission, 2401 NW 23rd Street, Suite 2F, Oklahoma City, OK 73107, 405-521-6501
ANALYSIS:
The purpose of the new rules are to amend to the current rules as necessary to implement the provisions of the Oklahoma Uniform Building Code Commission Act, 59 O.S. § 1000.20 - 1000.29 (the "Act"), enacted under SB1182 of the First Regular Session of the 52nd Legislature, effective June 2, 2009, by adding to the NEC®, 2011 a modification requiring a registered professional engineer to engineer and design, and select the equipment and wiring methods for classifications areas, allowing for the installation of the equipment, wiring methods and inspections to be performed by qualified persons; clarifying in the IFGC® when the use of copper and brass tubing will be prohibited; and modifying the referenced standards in the 2009 editions of the IFGC®, IMC®, and IPC® to refer to the modifications made by the Oklahoma Uniform Building Code Commission.
CONTACT PERSON:
Billy Pope, Chief Executive Officer, OUBCC, 2401 NW 23rd, Suite 2F, Oklahoma City, OK 73107, 405-521-6501

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 9. NEC® 2011

748:20-9-7. NEC® 2011 Chapter 5 Special Occupancies

Chapter 5 is adopted with modifications as follows:

(1) Section 505.7 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read: Classification of areas, engineering and design, selection of equipment and wiring methods shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipmentand wiring methods, and inspections shall be performed by qualified persons.

(2) Section 506.6 (A) Implementation of zone classification system. This section has been modified to require a registered professional engineer to engineer and design, and select the equipment and wiring methods for classification areas. It allows for the installation of the equipment, wiring methods and inspections to be performed by qualified persons. This section has been modified to read: Classification of areas, engineering and design, selection of equipment and wiring methods, shall be performed by a Registered Professional Engineer with expertise in Hazardous (Classified) Locations and Zone Systems. The installation of equipment and wiring methods and inspection shall be performed by qualified persons.

SUBCHAPTER 11. IFGC® 2009

748:20-11-8. IFGC®Chapter 4 Gas Piping Installations

Chapter 4 of the IFGC® 2009 is adopted with the following modifications:

(1) Tables 402.4(6), 402.4(7), 402.4(8), 402.4(9), 402.4(10), 402.4(11), and 402.4(12). These tables have been stricken from the code.

(2) Section 403.4.3 Copper and brass. This section has been modified to prohibit the use of copper orbrass piping or tubing for natural gas installations. This section has been modified to read: Copperand brass piping and tubing shall be prohibited for natural gas installations, but shall be allowed forliquefied petroleum gas installations.

(~~2~~3) Section 404.8.1 Insulated union on building riser. This section has been added to the code as a means to isolate the gas piping from the grounding. It shall read: All underground gas piping systems shall have an insulated union installed above ground level before the service enters the building.

(~~3~~4) Section 404.10. Minimum burial depth. This section has been modified to change the minimum burial depth from 12 inches (305 mm) to 18 inches (457 mm) and to allow for an exception when there is no ability to meet that minimum depth. This section has been modified to read: Underground piping systems shall be installed a minimum depth of 18 inches (457 mm) below grade, except as provided for in Section 404.10.1. Exception: Where a minimum depth of 18 inches (457 mm) of cover cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

(~~4~~5) Section 404.10.2. Separation of gas piping from other piping systems. This section has been added to the code as a means to prevent damage to other systems that may have been buried in the same ditch. This section shall read: Gas pipe and any other piping systems shall be separated by 18 inches (457 mm) of undisturbed or compacted earth.

(~~5~~6) Section 404.16 Prohibited devices. This section was modified to add a second exception to allow for new technology to be utilized. The second exception shall read: An approved fitting or device where the gas piping system has been sized to accommodate the pressure drop of the fitting or device.

(~~6~~7) The International Code Council Emergency Amendment dated September 27, 2010 has been adopted. This amendment replaces in its entirety Sections 406.7 through Section 406.7.3 of the IFGC®. These sections shall now read:

(A) Section 406.7 Purging: The purging of piping shall be in accordance with Sections 406.7.1 through 406.7.3

(B) Section 406.7.1 Piping systems required to be purged outdoors. The purging of piping systems shall be in accordance with the provisions of Sections 406.7.1.1 through 406.7.1.4 where the piping system meets either of the following:

(i) The design operating gas pressure is greater than 2 psig (13.79 kPa).

(ii) The piping being purged contains one or more sections of pipe or tubing meeting the size and length criteria of Table 406.7.1.1

(C) Section 406.7.1.1 Removal from service. Where existing gas piping is opened, the section that is opened shall be isolated from the gas supply and the line pressure vented in accordance with Section 406.7.1.3. Where gas piping meeting the criteria of Table 406.7.1.1 is removed from service, the residual fuel gas in the piping shall be displaced with an inert gas.

(D) Table 406.7.1.1 Size and length of piping. The following measurements for table 406.7.1.1 were added. Footnote "a" in relation to Nominal Pipe Size (inches) states CSST EHD size of 62 is equivalent to nominal 2-inch pipe or tubing size.

(i) When nominal pipe size (inches) is greater than or equal to 2 $\frac{1}{2}$ but less than 3, the length of piping (feet) is greater than 50.

(ii) When nominal pipe size (inches) is greater than or equal to 3 but less than 4, the length of piping (feet) is greater than 30

(iii) When nominal pipe size (inches) is greater than or equal to 4 but less than 6, the length of piping (feet) is greater than 15.

(iv) When nominal pipe size (inches) is greater than or equal to 6 but less than 8, the length of piping (feet) is greater than 10.

(v) When nominal pipe size (inches) is greater than 8, the length of piping (feet) is any length. For SI: 1 inch is equal to 25.4 mm; 1 foot is equal to 304.8 mm.

(E) Section 406.7.1.2 Placing in operation. Where gas piping contains air and meeting the criteria of Table 406.7.1.1 is placed in operation, the air in the piping shall first be displaced with an inert gas. The inert gas shall then be displaced with fuel gas in accordance with Section 406.7.1.3.

(F) Section 406.7.1.3. Outdoor discharge of purged gases. The open end of a piping system being pressure vented or purged shall discharge directly to

an outdoor location. Purging operations shall comply with all of the following requirements:

(i) The point of discharge shall be controlled with a shutoff valve.

(ii) The point of discharge shall be located at least 10 feet (3048 mm) from sources of ignition, at least 10 feet (3048 mm) from building openings and at least 25 feet (7620 mm) from mechanical air intake openings.

(iii) During discharge, the open point of discharge shall be continuously attended and monitored with a combustion gas indicator that complies with Section 406.7.1.4.

(iv) Purging operations introducing fuel gas shall be stopped when 90 percent fuel gas by volume is detected within the pipe.

(v) Persons not involved in the purging operations shall be evacuated from all areas within 10 feet (3048 mm) of point of discharge.

(G) Section 406.7.1.4. Combustion gas indicator. Combustion gas indicators shall be listed and shall be calibrated in accordance with the manufacturer's instructions. Combustion gas indicators shall numerically display a volume scale from zero percent to 100 percent in 1 percent or smaller increments.

(H) Section 406.7.2 Piping systems allowed to be purged indoors or outdoors. The purging of piping systems shall be in accordance with the provisions of Section 406.7.2.1 where the piping system meets both of the following:

(i) The design operating gas pressure is 2 psig (13.79 kPa) or less.

(ii) The piping being purged is constructed entirely from pipe or tubing not meeting the size and length criteria of Table 406.7.1.1

(I) Section 406.7.2.1 Purging Procedure. The piping system shall be purged in accordance with one or more of the following:

(i) The piping shall be purged with fuel gas and shall discharge to the outdoors.

(ii) The piping shall be purged with fuel gas and shall discharge to the indoors or outdoors through an appliance burner not located in a combustion chamber. Such burner shall be provided with a continuous source of ignition.

(iii) The piping shall be purged with fuel gas and shall discharge to the indoors or outdoors through a burner that has a continuous source of ignition and that is designed for such purpose.

(iv) The piping shall be purged with fuel gas that is discharged to the indoor or outdoors, and the point of discharge shall be monitored with a listed combustible gas detector in accordance with Section 406.7.2.2. Purging shall be stopped when fuel gas is detected.

(v) The piping shall be purged by the gas supplier in accordance with written procedures.

(J) Section 406.7.2.2 Combustible gas detector. Combustible gas detectors shall be listed and shall be calibrated or tested in accordance with the manufacturer's instructions. Combustible gas detectors shall be capable of indicating the presence of fuel gas.

(K) Section 406.7.3 Purging appliances and equipment. After the piping system has been placed in operation, appliances and equipment shall be purged before being placed into operation.

(~~7~~8) Section 410.4 Excess flow valve. This section has been added to allow for new technologies in use in the field. This section shall read: Where automatic excess flow valves are installed, they shall be listed for the application and shall be sized and installed in accordance with the manufacturer's instructions.

748:20-11-10. IFGC® Chapter 8 Referenced Standards

Chapter 8 of the IFGC® 2009 is adopted with the following modifications:

(1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IBC-09 International Building Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(2) The reference to the International Energy Conservation Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma by the State Fire Marshal until replaced by an adoption done through the Uniform Building Code Commission". This section has been modified to read: IECC-06 International Energy Conservation Code® as adopted and modified by the State of Oklahoma through the State Fire Marshal until replaced byan adoption done through the Uniform Building Code Commission.

(3) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IFC-09 International Fire Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(4) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IMC-09 International Mechanical Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(5) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IPC-09 International Plumbing Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(6) The reference to the International Residential Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IRC-09 International Residential Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(7) The referenced standard for NFPA 70® National Electrical Code® has been modified to change the edition year from 2008 to 2011 and add after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section shall now read: 70-11 National Electrical Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

SUBCHAPTER 13. IMC®2009

748:20-13-11. IMC® 2009 Chapter 15 Referenced Standards

Chapter 15 of the IMC® 2009 is adopted with the following modifications:

(1) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IBC-09 International Building Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(2) The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IEBC-09 International Existing Building Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(3) The reference to the International Energy Conservation Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma by the State Fire Marshal until replaced by an adoption done through the Uniform Building Code Commission". This section has been modified to read: IECC-06 International Energy Conservation Code® as adopted and modified by the State of Oklahoma through the State Fire Marshal until replaced by an adoption done through the Uniform Building Code Commission.

(4) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IMC-09 International Fire Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(5) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IFGC-09 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(6) The reference to the International Plumbing Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission. This section has been modified to read: IPC-09 International Plumbing Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(7) The reference to the International Residential Code® 2009 has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IRC-09 International Residential Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(8) The referenced standard for NFPA 70® National Electrical Code® has been modified to change the edition year from 2008 to 2011 and include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section shall now read: 70-11 National Electrical Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

SUBCHAPTER 15. IPC® 2009

748:20-15-17. IPC® 2009 Chapter 13 Referenced Standards

Chapter 13 of the IPC® 2009 is adopted with the following modifications:

(1) The standard ASCE/SEI 7-05 Minimum Design Loads for Buildings and Other Structures, C8-RAIN LOADS, published by the American Society of Civil Engineers and Structural Engineering Institute has been added to the chapter.

(2) The reference to the International Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission. This section has been modified to read: IBC-09 International Building Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(3) The reference to the International Existing Building Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IEBC-09 International Existing Building Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(4) The reference to the International Energy Conservation Code® has been modified to include after the

title the words "as adopted and modified by the State of Oklahoma through the State Fire Marshal until replaced by an adoption done through the Uniform Building Code Commission". This section has been modified to read: IECC-06 International Energy Conservation Code® as adopted and modified by the State of Oklahoma through the State Fire Marshal until replaced by an adoption done through the Uniform Building Code Commission.

(5) The reference to the International Fire Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IMC-09 International Fire Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(6) The reference to the International Fuel Gas Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IFGC-09 International Fuel Gas Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(7) The reference to the International Mechanical Code® has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IPC-09 International Mechanical Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(8) The reference to the International Residential Code® 2009 has been modified to include after the title the words "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section has been modified to read: IRC-09 International Residential Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

(9) The referenced standard for NFPA 70® National Electrical Code® has been modified to change the edition year from 2008 to 2011 and include the words after the title "as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission". This section shall now read: 70-11 National Electrical Code® as adopted and modified by the State of Oklahoma through the Uniform Building Code Commission.

[OAR Docket #14-646; filed 7-2-14]

TITLE 770. OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-717]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Open Records Act
770:1-5-2. Exemptions from Act [AMENDED]
Subchapter 7. Quality Workforce for Oklahoma's Heroes [NEW]
770:1-7-1. Eligibility [NEW]
770:1-7-2. Qualification and application procedures [NEW]
770:1-7-3. Benefits [NEW]
770:1-7-4. Conditions for receipt of benefits [NEW]
770:1-7-5. Standards [NEW]
770:1-7-6. Eligible Institutions [NEW]
770:1-7-7. Other [NEW]

AUTHORITY:
War Veterans Commission; 72 O.S. §§ 63.1, 63.3, 63.5, 202, 222, 223, 225; and Title 38, Part 51 of the Code of Federal Regulations, and 74 O.S. §§ 1735 *et seq.*, the Quality Workforce for Oklahoma's Heroes Act.

SUBMISSION OF PROPROSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 24, 2014

COMMENT PERIOD:
January 15, 2014, through February 15, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
February 20, 2014

SUBMITTED TO GOVERNOR AND LEGISLATURE:
February 24, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTION:

Superseded rules:
Subchapter 5. Open Records Act
770:1-5-2. [AMENDED]

Gubernatorial Approval:
June 13, 2013

Register publication:
30 Ok Reg 2120

Docket Number:
13-1140

Superseded rules:
Subchapter 7. Quality Workforce for Oklahma's Heroes [NEW]
770:1-7-1. Eligibility [NEW]
770:1-7-2. Qualification and application procedures [NEW]
770:1-7-3. Benefits [NEW]
770:1-7-4. Conditions for receipt of benefits [NEW]
770:1-7-5. Standards [NEW]
770:1-7-6. Eligible Institutions [NEW]
770:1-7-7. Other [NEW]

Gubernatorial approval:
December 3, 2013

Register publication:
31 Ok Reg 333

Docket number:
13-1517

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Subchapter 5 cleans up references to the Open Records Act which are duplicative and do not relate to veterans directly in order to minimize confusion and corrects an error referencing 51 O.S. §24A.11(A), which misquoted the statute.

Subchapter 7 implements the requirements of the Quality Workforce for Oklahoma's Heroes Act (74 O.S. §§ 1725 *et seq.*, which went into effect on November 1, 2013. This Act authorizes the Oklahoma Department of Veterans Affairs to establish education and training programs for positions critical to the quality care of veterans residing within Department institutions. These rules implement the requirements of the Act by establishing the standards for the eligibility of employees, qualification and application procedures, benefits, conditions to receive benefits, standards for continued receipt of benefits, and eligible instituions

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 5. OPEN RECORDS ACT

770:1-5-2. Exemptions from Act

~~(a) Records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, 25 O.S., Section 307, are confidential records. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions. 25 O.S., Section 307, which authorizes public bodies to hold executive sessions, provides "Executive sessions of public bodies will be permitted only for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;..." and "any vote or action taken in an executive session must be taken in public meeting with the vote of each member publicly cast and recorded" [25 O.S., Section 307]; therefore, transcripts of the executive sessions would be exempt from the Act, and actions taken in executive sessions and publicly cast votes would not be exempt. (Note: Actions taken in executive sessions and publicly cast votes are also taken and recorded in open session and, therefore, are a part of the regular minutes of the meetings which are not exempt.)~~

~~(b) "Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project." [51 O.S. Supp. 1985, Section 24A.9]~~

~~(c) "Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law." [51 O.S. Supp. 1985, Section 24A.13]~~

~~(d) "Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right." [51 O.S.Supp. 1985, Section 24A.14]~~

~~(e) Those records relating to district court or court of a higher level, and attorney-client records including any investigation material prepared by the client (agency) at the request of the agency's attorney for the purpose of internal investigations including Ethics and Merit Protection Commission appeal preparation are to be confidential until documents are in such form as described in 51 O.S.Supp. 1985, Section 24A.7(B) (4).~~

~~(f) All documents involved in an internal investigation (grievance or research project) relating to examination and selection material for employment, hiring, appointment, promotion, demotion, discipline or resignation are confidential and exempt from the Oklahoma Open Records Act, 51 O.S.Supp. 1985, Section 24A.7(A)(1). Specific documents include:~~

~~(1) OPM 4 Employment Application~~

~~(2) OPM 4B Personal Data Summary Sheet~~

~~(3) OPM 9 Request for Promotional, Transfer or Demotional Employee Evaluation~~

~~(4) OPM 197 Employee Service Evaluation, as well as all documents maintained in an employee's secondary file for evaluation purposes.~~

~~(g) All documents included in the "Progressive Discipline Procedure" are confidential and exempt from the Oklahoma Open Records Act, 51 O.S.Supp. 1985, Section 24A.7(A)(1). Such documents include documented informal discussions, "Corrective Interview, DVA Form 210", written reprimands and counseling statements.~~

~~(h) All documents included in the "Pre-Discharge Notice and Response Procedure" including DVA Form 211 "Pre-Discharge Hearing Report" are confidential except those documents resulting in the pre-discharge hearing that are at the status as described in 51, O.S. Supp. 1985, Section 24A.7(B)(4).~~

~~(i) All documents included in the "Grievance Procedure" including DVA Form 230 "Advice of Official Grievance" as well as all personal notes taken in the investigation process to be utilized in making reports to the Grievance Review Committee are confidential until information is in a format which reflects any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.~~

~~(j) All documents created by or related to the resignation of an employee are confidential.~~

~~(k) Documents are to remain confidential if the "disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, or employment applications submitted by persons not hired by the public body." [51 O.S. Supp. 1985, Section 24A.7(A)(2)] Specific documents include OPM Form 197 "Employee Service Evaluations" and documents maintained in the secondary file for evaluation purposes.~~

~~(l) All documents required for and reflecting information regarding payroll deductions including savings bonds, credit union deductions, other insurance company premiums, State and Prucare insurance premiums, retirement contributions, state and federal tax withholding amounts, FICA (Social Security) withholdings, membership dues to State authorized organizations and all documents or information relating to the garnishment of the salary of an employee are confidential.~~

~~(m) All employment applications, resumes or letters of interest in employment submitted direct to the Central Office Personnel Division by persons not hired by the department are confidential.~~

~~(n) 74 O.S. 1981, Section 932 provides that all information, documents and copies thereof contained in a member's retirement file shall be given confidential treatment and shall not be made public by the System without the prior written consent of the member to which it pertains, but shall be subject to subpoena or court order.~~

~~(o) 74 O.S. 1981, Section 1322 provides that all information, documents, medical reports and copies thereof contained in a member's insurance file shall be treated as confidential information and shall not be released or made available or open to public inspection without the prior written consent and authorization of the individual to whom it pertains, but shall be subject to subpoena or court order.~~

~~(p) Prior to ... making a recommendation or issuing a report ... personal notes and personally created materials ... prepared as an aid to memory or research leading to the adoption of a policy will remain confidential. [51 O.S.Supp. 1985, Section 24A.9]~~

In addition to records specifically excluded under the Oklahoma Open Records Act, the following records are also exempt under federal rules and statutes:

(~~q~~1) Office copy of claims files of veterans or their dependents, maintained for the purpose of providing continuity and follow-up information to be used in developing the claim and for providing the claimant information at later dates are confidential. Statutory exemptions are as follows:

(~~1~~A) The Privacy Act of 1974 (PL 93-579)

(~~2~~B) Title 38, United States Code, Section 3301; 3302

(~~3~~C) Veterans Administration Regulations 500-527 - promulgated under the provisions of Title 38, United States Code, Section 3301 (f)

(~~4~~D) Letter of Accreditation from the Veterans Administration to Service Organizations and to individual service officer citing that service officer must observe the limitations imposed by Veterans Administration regulations.

(~~r~~2) Confidential records compose that part of the file which contains information obtained from the Veterans Administration, Social Security and Department of Defense files to include:

(~~1~~A) Separation/Discharge Papers

(~~2~~B) Medical Records

(~~3~~C) Monetary Award Letters - (amounts paid from public funds may be revealed)

(~~4~~D) Telegrams or letters from the War Department, Army, Navy, Air Force, Marine Corps, Red Cross as pertains to Prisoner of War or Missing Status. The statutory exemption is as follows:

(~~A~~i) The Privacy Act of 1974

(~~B~~ii) Veterans Administration Regulation 513.

(~~s~~3) Confidential records compose that part of the file which contains information obtained from the Veterans Administration, Social Security and Department of Defense files and includes:

(~~1~~A) Separation/Discharge Papers

(~~2~~B) Medical Records

(~~3~~C) Monetary Award Letters - (amounts paid from public funds may be revealed). The statutory exemption is as follows:

(~~A~~i) The Privacy Act of 1974

(~~B~~ii) Veterans Administration Regulation 513.

(~~t~~4) Medical and psychiatric record exemptions are addressed under ~~numerous~~ State and Federal laws. ~~Information relating to specific State exemptions is addressed in 76 O.S., Section 19. These are not exclusive in that any other such statutes~~Statutes prohibiting release of medical and psychiatric documents currently existing or legally adopted subsequent to these procedures shall apply. Additionally, veterans' medical records are covered specifically in The Privacy Act of 1974 and Veterans Administration Regulations

(~~u~~5) Certain records and information relating to competitive bidding, computer programs or software which may or may not be applicable in the future, which, if disclosed, would give an unfair advantage to competitors or bidders, may be kept confidential; however, agency employees will remain cognizant of their responsibility to comply with 51 ~~O.S.Supp. 1985, Section~~§24A.10.

(~~v~~6) Information relating to library, archive, or museum materials donated to public bodies "to the extent of any limitations imposed as a condition of the donation or any information which would reveal the identity of an individual who lawfully makes a donation to ~~a public body if anonymity of the donor is a condition of the donation"~~or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes" [51O.S.~~Supp. 1985, Section~~§24A.11(A)] may be kept confidential.

(~~w~~7) "Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right." [51O.S.~~Supp. 1985, Section~~§24A. 14]

SUBCHAPTER 7. QUALITY WORKFORCE FOR OKLAHOMA'S HEROES

770:1-7-1. Eligibility

The Quality Workforce for Oklahoma's Heroes applies to fulltime employees of the Oklahoma Department of Veterans Affairs, as defined below:

(1) Must be a current, full-time ODVA employee with at least 12 months continuous employment with the agency;

(2) Must have achieved an overall rating of "meets" or "exceeds" standards on his or her most recent performance evaluation;

(3) Meets the standards of the program as defined within this section; and
(4) Have no pending or formal disciplinary actions in his or her permanent personnel file within the last year from date of application to the program.

770:1-7-2. Qualification and application procedures

Applicants for the Quality Workforce for Oklahoma's Heroes shall provide the following information to the Oklahoma Department of Veterans Affairs Education Review Team for review and determination of eligibility:
(1) A completed application form as prescribed by the Executive Director;
(2) The application must be received prior to the start of the course/program;
(3) The employee must have applied for, and been accepted into, the program by the institution providing the education or training; and
(4) The employee must provide documentation from the education institution for the course(s) or program in which the employee is enrolled;

770:1-7-3. Benefits

(a) Funds of the ODVA may be used to pay salaries, tuition expenses, or fees for employees enrolled in an education or training program leading to quality care of residents and/or to maintain licensure of the Centers.
(b) Employees may be in a work status while attending these training and education programs.
(c) An individual employee is limited to total education and training benefits of $5,250.00 in any one calendar year. The calendar year is determined by the payment date for the benefit.

770:1-7-4. Conditions for receipt of benefits

(a) The employee receiving benefits under this Subchapter shall execute a promissory note to the ODVA (who completes the promissory note and tracks it) to repay the amount of tuition and/or fees paid by the ODVA to the employee or on behalf of the employee if the employee leaves the employment of the ODVA for any reason, except for employees who volunteer or are drafted into active military service.
(b) If the employee participated in the education and training program during working hours, the cost of any pay paid to the employee while attending the course will be included in the total amount of the promissory note.
(c) The amount of the promissory note shall be reduced at a rate of $13.00 per calendar day beginning the first day following graduation or completion from the education or training program.
(d) Should the employee fail to make satisfactory progress, as defined by the ODVA, in the education or training program, or be terminated from the education or training program for any reason, the promissory note shall be reduced at a rate of $13.00 per calendar day beginning the first day following termination from the education or training program.
(e) Should the employee leave employment with the ODVA for any reason, except for employees who have volunteered or have been drafted into active military service, the obligation to the ODVA becomes due and payable immediately.
(f) Violation of the terms of the promissory note shall give rise to a cause of action and suit may be commenced by the ODVA for and on behalf of the State of Oklahoma for restitution of any and all sums plus interest at the statutory rate, costs, and reasonable attorney fees.

770:1-7-5. Standards

The ODVA shall insure the employee:
(1) Makes satisfactory scholastic progress toward the program of education or training until completion of all program requirements;
(2) Maintains a grade point average required for satisfactory academic progress in the program of education or training, as defined by the institution providing the education or training; and
(3) Meets ODVA attendance time and attendance rules if the employee attends the training class during working hours.

770:1-7-6. Eligible Institutions

(a) The ODVA will contract for enrollment in an education and training program only at public schools and institutions accredited by a national accrediting agency recognized by the U.S. Department of Education, or programs offered by licensing or certification entity's.
(b) The ODVA will contract with eligible institutions for education and training programs only for employees that have submitted applications as defined in this Subchapter and have been approved by the Executive Director.
(c) The ODVA will pay licensure and certification fees only for those employees whose positions with the ODVA require such a license or certification, or as the education or training program requires.

770:1-7-7. Other

The total amount available under this Subchapter shall not exceed funds set aside for this purpose in the administrative budget of the ODVA, as approved by the Executive Director and the Commission each year.

[OAR Docket #14-717; filed 7-14-14]

TITLE 770. OKLAHOMA DEPARTMENT OF VETERANS AFFAIRS
CHAPTER 10. CENTER DIVISION PROGRAM

[OAR Docket #14-718]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Maintenance Charges, Patient Funds and Assets
770:10-3-1. Care and maintenance charges [AMENDED]
Subchapter 5. Resident Rights and Responsibilities [NEW]

770:10-5-1. Purpose [NEW]
770:10-5-2. Residents' Rights and Responsibilities [NEW]
770:10-5-3. Involuntary Transfer or Discharge of Resident - Grounds [NEW]
770:10-5-4. Appeal Process for Residents Objecting to Discharge [NEW]
770:10-5-5. Room Relocation [NEW]
770:10-5-6. Complaints [NEW]
770:10-5-7. Complaints to the Central Office of the Oklahoma Department of Veterans Affairs [NEW]

AUTHORITY:
War Veterans Commission; 72 O.S. §§ 63.1, 63.5, 202, 222, 223, 225; and Title 38, Part 51 of the Code of Federal Regulations

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
February 24, 2014

COMMENT PERIOD:
January 15, 2014, through February 15, 2014

PUBLIC HEARING:
February 18, 2014

ADOPTION:
February 20, 2014

SUBMITTED TO GOVERNOR AND LEGISLATURE:
February 24, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014

SUPERSEDED EMERGENCY ACTION:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Revisions to Subchapter 3 bring language relating to income in compliance with statutes and clarify definition of personal income, and basis for computing care and maintenance charges; remove references to specific forms; amend the appeal process to include appeal to an independent Administrative Hearing Officer; increase the amount patients can maintain in personal funds in special accounts maintained by the Oklahoma Veterans Centers; and removes references to domiciliary services, which are not longer offered.

The new Subchapter 5 provides resident rights and responsibilities; reasons for involuntary transfers or discharges; the appeal process to an independent Administrative Hearing Officer; and the complaint procedures. This subchapter brings the Oklahoma Department of Veterans Affairs in compliance with the requirements of the Oklahoma Nursing Home Care Act, Title 63 O.S. §§ 1-1900 *et seq.*, the regulations of the Oklahoma State Department of Health implementing this Act as they apply to State Veterans Centers under the jurisdiction of the Oklahoma Department of Veterans Affairs, and with any requirements of 38 C.F.R. § 51.80.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. MAINTENANCE CHARGES, PATIENT FUNDS AND ASSETS

770:10-3-1. Care and maintenance charges

(a) Patients of all Oklahoma Veterans Centers shall be assessed a monthly care and maintenance charge based upon the level of care provided to them and their individual ability to pay. The claim of the State for such care and treatment shall constitute a valid indebtedness against any such patient and his estate and shall not be barred by any statute of limitations. At the death of the patient, this claim shall be allowed and paid as other lawful claims against the estate.

(b) All sources of personal income, except the income of a working spouse, shall be considered when computing maintenance and care charges. Personal income shall include pensions and awards for aid and attendance from the Veterans Administration. The care and maintenance charges shall be computed to maximize the Veterans Administration pensions and compensation benefits to which the veteran is entitled. Income will be rounded to the nearest whole dollar when computing care and maintenance charges. Notwithstanding any other language under this rule, a veteran shall retain not less than $150.00 per month of total monthly income. Furthermore, no care and maintenance charges will exceed the full cost of care minus the Veterans Administration per diem payment.

(~~b~~c) The charge for nursing care to patients who regularly contribute to the support of legal dependents shall be fifty percent (50%) of their ~~combined~~personal income from all sources except the income of a working spouse. The charge for nursing care to patients who do not regularly contribute to the support of legal dependents shall be eighty-five percent (85%) of their ~~combined~~personal income from all sources. ~~Combined income shall include, but is not limited to, anticipated income to which the veteran is entitled under the Veterans Administration Pension Law elected by the veteran, and the income of the veteran's legal spouse.~~

(~~c~~d) Nursing care shall include room and board in the nursing care or hospital unit of the Veterans Center and the full range of medical and nursing services offered in-house at the Center. Medical and nursing services shall minimally include: staff physician services, skilled nursing care, all required medications and their administration, all necessary x-ray and laboratory services which are performed by the Center, and all laboratory services which are performed by the Center, and all required therapy performed by the Center. Nursing care does not include those medical or other services which a patient requires or receives outside those provided within or by the Center, personal discretionary use items such as tobacco or the purchase of street clothes.

~~(d) The charge for domiciliary care to patients who regularly contribute to the support of legal dependents shall be fifty percent (50%) of their combined income from all sources. The charge for domiciliary care to patients who do not regularly contribute to the support of legal dependents shall be eighty-five percent (85%) of their combined income from all sources.~~

(e) ~~Combined income shall include, but is not limited to, anticipated income to which the veteran is entitled under the Veterans Administration Pension Law elected by the veteran, and the income of the veteran's legal spouse.~~When two veteran residents are married to each other, all sources of income will be considered to include projected income from the Veterans Administration. The maintenance charge will be considered to include projected income from the Veterans Administration. The maintenance charge will be assessed at 50% of the combined income.

(f) ~~Domiciliary care shall include room and board in the Domiciliary Section of the Veterans Center and limited medical care services offered by the Center. Medical services shall minimally include staff physician services, all required medications, all necessary x-ray and laboratory services which are performed by the Center, and all required therapy performed by the Center. Domiciliary care does not include skilled nursing care, administration of medications, required medical or other services not performed by the Center, personal discretionary use items such as tobacco or the purchase of street clothes.~~ If a patient receives reimbursement through long-term care insurance, the insurance payment will be counted as income.

~~(g) Where available, hospital care shall include all necessary services in the acute care hospital section of the Veterans Center and the full scope of medical and nursing services offered within the Center.~~

~~(h) There shall be no charge for acute hospital care at Oklahoma Veterans Centers unless the patient has entered the acute hospital unit for screening for admission to the nursing care unit. In these cases, the normal nursing care maintenance charge will be assessed.~~

(~~i~~g) When the care and maintenance charge assessed any patient does not result in compliance with all statutory requirements, the percentage of charge against income will be increased or decreased accordingly for compliance.

(h) Payment of any supplemental health insurance premium will not reduce the amount retained by the patient below $150.00 per month.

(~~j~~i) Any patient of an Oklahoma Veterans Center or his/her guardian may seek a reduction or waiver of care and maintenance charges for(1) financial hardship resulting from unreimbursed unusual medical expenses of the veteran patient, spouse or legal dependents or (2) financial hardship on patients with dependent children. Requests for reduction or waiver of care and maintenance charges for other reasons will not be considered.

(j) The Veterans Center Administrator will make every effort to ensure the patient is afforded the opportunity to purchase irrevocable burial insurance that will not decrease the amount retained by the patient below $150.00 per month.

~~(k) The procedure and process for the filing and adjudication of appeals for reduction or waiver of care and maintenance charges is as follows:~~

~~(1) The request for reduction or waiver shall be made in writing to the Administrator of the Center where the veteran is a patient, by the veteran, a responsible family member of the veteran, and/or the veteran's guardian.~~

~~(2) The appealing party shall supply the Center Administrator with pertinent financial data for the completion of ODVA Form 403 "Oklahoma War Veterans Commission Review" and shall sign said form attesting to the accuracy of the information recorded thereon.~~

~~(3) Administrator shall submit a letter to the Director of the Oklahoma Department of Veterans Affairs notifying him of the appeal request and stating the Administrator's recommendation in the matter. Additionally, the Administrator shall attach copies of completed forms ODVA 402 "Admission and Financial Information" and 403 "Oklahoma War Veterans Commission review" which describe the appealing party's financial status.~~

~~(4) Director of the Oklahoma Department of Veterans Affairs shall present copies of all appeals to each Oklahoma Veterans Center Administrator at the next Administrators' meeting following the Director's receipt of the appeal. The Director shall also appoint one (1) Administrator to function as Chairman of the committee comprised of the Administrators in attendance at the meeting. Said committee to be titled the "Administrator's Review Panel". This committee will decide by majority vote whether or not the appeals requests are in conformity with policy for presentation to the Oklahoma War Veterans Commission and shall also vote a recommendation on the appeal request. The Chairman of the Administrator's Review Panel shall then record the Committee's recommendation on the applicable ODVA Form 403 "Oklahoma War Veterans Commission Review".~~

~~(5) The Director of the Oklahoma Department of Veterans Affairs shall consider all information presented on appeals including the Administrator's Review Panel recommendation, record his recommendation on the applicable ODVA Form 403 "Oklahoma War Veterans Commission Review" and present all appeal information to the Oklahoma War Veterans Commission for their decision at the Commission's next regularly scheduled meeting following the Administrator's meeting when the appeal was first reviewed.~~

~~(6) The Oklahoma War Veterans Commission shall consider all appeals information as presented by the Director and then shall render a decision on said appeals by majority vote and shall record said decision on the applicable ODVA Form 403 "Oklahoma War Veterans Commission Review".~~

~~(7) The Director of the Oklahoma Department of Veterans Affairs shall notify appealing parties of the Oklahoma War Veterans Commission's decisions on their appeals through the appropriate Center Administrator within five (5) working days following Commission action.~~

(~~l~~k) Care and maintenance charges begin on the first day of admission and cease on the first day of the month in which an Oklahoma Veterans Center patient expires.

(~~m~~l) Care and maintenance charges are to be paid on the first of each month or as soon thereafter as possible for the care and maintenance received in the preceding month.

(~~n~~m) Any patient, his/her guardian, or legal spouse, who knowingly withholds or falsifies income or resource data or who withholds payment of assessed care and maintenance charges may subject the patient to discharge and forfeiture of benefits and may subject the patient, or other parties responsible, to legal action related to the recovery of valid indebtedness to the State of Oklahoma.

(~~o~~n) When a patient's Veterans Administration compensation and pension benefits have been reduced or stopped due to excessive resources or estate, a care and maintenance charge will continue to be assessed at the level which would otherwise be

indicated if the patient was still entitled to receive full Veterans Administration compensation and benefits.

~~(p) Income will be rounded to the nearest whole dollar when computing care and maintenance charges and the care and maintenance charge will be rounded to the nearest whole dollar when the assessment is made.~~

(~~q~~o) Dependents, for purposes of this policy, shall be legal spouses and minor children under the age of eighteen (18) or disabled children who became disabled prior to their eighteenth birthday or legal children through the age of twenty-one (21) years who are enrolled in school full-time.

~~(r) Bonus payments made to domiciliary patients participating in work therapy shall not be considered as income or resource when assessing care and maintenance charges.~~

(~~s~~p) Patients on leave from a ~~center~~Center for outside hospitalization or medical care shall not be charged for care and maintenance after their fourth (4th) day of absence. Patients on leave from a center for personal reasons of their own volition shall continue to be charged for care and maintenance for such period of their leave that their bed is being held open for them.

(q) The procedure and process for the filing and adjudication of appeals for reduction or waiver of care and maintenance charges is as follows:

(1) The request for reduction or waiver shall be made in writing to the Administrator of the Center where the veteran is a patient, by the veteran, a responsible family member of the veteran, and/or the veteran's guardian.

(2) The appealing party shall complete the appropriate Department forms, supply the Center Administrator with pertinent financial data and shall sign said form attesting to the accuracy of the information recorded thereon.

(3) The Administrator shall submit a letter to the Executive Director of the Oklahoma Department of Veterans Affairs notifying him or her of the appeal request and stating the Administrator's recommendation in the matter. Additionally, the Administrator shall attach copies of all information which describe the appealing party's financial status.

(4) The Executive Director will determine whether the appeals requests are in conformity with poicy for presentation to the Oklahoma War Veterans Commission and shall make a recommendation on the appeal request and forward the request to the Commission.

(5) The Commission shall consider all appeals information as presented by the Director and then shall render a decision on said appeals by a majority vote.

(6) The Executive Director shall notify the appealing parties of the Commission's decisions on their appeals through the appropriate Center Administrator within five (5) working days following the Commssion action, along with any appeal procedures.

(7) Adverse decisions may be appealed to an independent Administrative Hearing Officer with the Oklahoma Department of Health. The decision of the Administrative Hearing Officer will be final.

SUBCHAPTER 5. RESIDENT RIGHTS AND RESPONSIBILITIES

770:10-5-1. Purpose

It is the intent of the Oklahoma Department of Veterans Affairs to be in compliance with the requirements of the Oklahoma Nursing Home Care Act, Title 63 O.S. §§ 1-1900 *et seq.*, the regulations of the Oklahoma State Department of Health implementing this Act as they apply to State Veterans Centers under the jurisdiction of the Oklahoma Department of Veterans Affairs, and with any requirements of 38 C.F.R. § 51.80.

770:10-5-2. Residents' rights and responsibilities

Each resident or resident's representative shall receive a copy of the resident statutory rights at the time of admission. A copy of the resident rights shall be posted in an easily accessible, conspicuous place in the facility. The facility shall ensure that its staff is familiar with, and observes, the resident rights.

770:10-5-3. Involuntary transfer or discharge of resident - grounds

(a) Pursuant to 38 C.F.R. §51.80, a resident may be transferred or discharged from a Center for the following reasons:

(1) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the Center, as documented by the attending physician, in consultation with the medical director if the medical director and attending physician are not the same person.

(2) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the Center, as documented by the attending physician, in consultation with the medical director if the medical director and attending physician are not the same person.

(3) The health and/or safety of the resident or the safety of other residents is endangered, as documented by the clinical record. The Center shall show through medical records that:

(A) the resident has had a comprehensive assessment by an interdisciplinary team and alternative measures have been attempted unsuccessfully; or

(B) the resident is a danger to himself, herself or other resident as documented by the medical record and the Center is not capable of managing that resident.

(4) The non-payment of charges for the resident's care, as documented by the Center's business records for services for more than thirty (30) days.

(b) Prior to discharge, the Center Administrator must do the following:

(1) Provide written notice to the resident and, if known, a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists, of the transfer or discharge and the reasons for the move, and in a language and manner they understand.

(2) Record the reasons in the resident's clinical record.

(3) Provide a copy of the notice to the Executive Director of the Oklahoma Department of Veterans Affairs, the Oklahoma long-term care ombudsman, and the Oklahoma State Department of Health.

(c) The notice of transfer or discharge must be given at least thirty (30) days before the resident is transferred or discharged, except notice may be made as soon as practicable before transfer or discharge for the following reasons:

(1) An emergency transfer is mandated by the resident's health care needs and is in accordance with the attending physician's written orders and medical justification; or

(2) The transfer or discharge is necessary for the physical safety or health of other residents, as documented in the clinical record.

(3) The resident's health improves sufficiently so the resident no longer needs the services provided by the facility, as documented in the clinical record.

(d) The facility shall not use a discharge to a hospital as a reason for failing to re-admit a resident after release from the hospital to the first available bed. Such action shall be considered to be an involuntary discharge subject to all the requirements of this section.

(e) The written notice must include the following:

(1) A full explanation for transfer or discharge;

(2) The date of the notice;

(3) The date notice was given to the resident, a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists;

(4) The date by which the resident must leave the facility; and

(5) Information that a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists, may file within ten (10) days of notice a written request for a hearing with the Oklahoma State Health Department by sending a letter to the Hearing Clerk, Oklahoma State Department of Health, 1000 N. E. Tenth Street, Oklahoma City, OK 73117.

770:10-5-4. Appeal process for residents objecting to discharge

(a) If a written request for a hearing is properly filed, the Oklahoma State Department of Health shall convene a hearing within ten (10) working days of receipt of the request.

(b) The request may be in the form of a letter or a formal request for hearing from the resident or resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Oklahoma State Department of Health shall reduce the verbal request to writing and send a copy to the resident. The request should state the reason for the discharge and attach a copy of the letter to the Center and to the Executive Director of the Oklahoma Department of Veterans Affairs.

(c) During the pendency of the hearing, the facility shall not discharge the resident unless the discharge was required by an emergency situation.

(d) If the resident relocates from the facility but wants to be readmitted, the hearing may proceed and the facility shall be required to readmit the resident to the first available bed if the discharge is found not to meet the requirements of the Nursing Home Care Act, state and federal laws applicable to the Oklahoma Department of Veterans Affairs facilities, these regulations and regulations of the Oklahoma State Department of Health, found in OAC 310:675.

(e) The Oklahoma State Department of Health shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident, and the Oklahoma Department of Veterans Affairs, may be represented by counsel or may represent themselves.

(f) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the facility or at another place. Providing the hearing room in such a case shall be the responsibility of the parties. The Department of Health shall maintain a record on the case as it does for any other individual proceeding.

(g) The hearing shall be conducted in accordance with the Oklahoma State Department of Health's procedures, found in Chapter 2 of Title 310 of the Oklahoma Administrative Code. The Administrative Law Judge's order shall include findings of fact, conclusions of law, and an order as to whether or not the transfer or discharge was according to law and shall also comply with any federal certification standards. The more restrictive rule toward the facility shall be applied.

(h) If the Administrative Law Judge finds that the discharge was not according to law, the Department of Health shall review, investigate and issue deficiencies as appropriate.

(i) If the discharge is according to law, the order shall give the facility the right to discharge the resident.

(j) The scope of the hearing may include:

(1) Inadequate notice;

(2) Discharge based on reason not stated in the law;

(3) Sufficiency of the evidence to support the involuntary discharge; or

(4) The finding of emergency.

(k) The Administrative Law Judge shall render a written decision within ten (10) working days of the close of the record.

(l) If the Administrative Law Judge sustains the facility, the facility may proceed with the discharge. If the Administrative Law Judge finds in favor of the resident, the facility shall withdraw its notice of intent to transfer or discharge the resident. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed under the Administrative Procedures Act.

770:10-5-5. Room relocation

If a facility wants to relocate a resident from one room to another, the facility shall give the resident at least forty-eight (48) hours written notice. The notice shall include any costs for transferring the resident's telephone or other utilities, if applicable. If the resident or a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists, agrees in writing to the relocation, the relocation may take place in less than 48 hours. No hearing is required if the resident requests or agrees to relocation from one room to another.

770:10-5-6. Complaints

Each Center shall make available to each resident or a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists, a copy of the Center's complaint procedure. The Center shall ensure that all employees comply with the complaint procedure. The complaint procedure shall include at least the following requirements and shall be posted in a conspicuous place outside the administrator's office:

(1) The names, addresses, and telephone numbers of facility staff persons designated to receive complaints for the facility, along with the name, address, and telephone number for the central office of the Oklahoma Department of Veterans Affairs, the Oklahoma State Department of Health, and the Oklahoma long-term care ombudsman.

(2) Notice that a good faith complaint made against the Center shall not result in reprisal against the person making the complaint; and

(3) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the Center's designated complaint staff, but that the person may submit a complaint to the central office of the Oklahoma Department of Veterans Affairs, the Oklahoma State Department of Health or the Oklahoma long-term care ombudsman without prior notice to the Center.

(4) If a resident, a family member or legal representative of the resident, or an advocate for the resident if no legal representative exists, or a Center employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the Center shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

770:10-5-7. Complaints to the central office of the Oklahoma Department of Veterans Affairs

The following applies to complaints filed with the ODVA:

(1) The ODVA shall provide to each Center a notice identifying the telephone number and location where complaints may be submitted. The Center shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the ODVA in writing, by phone, or personally. The ODVA shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a Center resident, the resident's representative, or a current employee of the facility, the ODVA shall keep the complainant's identity confidential. For other complaints the ODVA shall ask the complainant's preference regarding confidentiality.

(4) The ODVA shall receive and triage complaints and the complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the ODVA within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the ODVA within ten (10) working days;

(C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty-five (25) days; and

(D) A complaint alleging other than immediate jeopardy or actual harm to a resident shall be classified as a primary complaint and shall be investigated within thirty (30) days.

(5) In addition to scheduling investigations as provided above, the ODVA shall take necessary immediate action to remedy a situation that alleges a violation of any federal or state law or regulation, if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) Investigations will be conducted in accordance with the policies, procedures, and regulations of the Oklahoma State Department of Health and the U.S. Department of Veterans Affairs.

[OAR Docket #14-718; filed 7-14-14]

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #14-724]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
777:1-1-1. Purpose [NEW]
777:1-1-3. Authority, interpretation, and severability of rules [NEW]
777:1-1-4. Organization [NEW]
777:1-1-5. Time computation [NEW]
777:1-1-6. Records requests [NEW]
777:1-1-7. Procedures for declaratory rulings [NEW]
777:1-1-8. Petitions for adoption, amendment, or repeal of a rule [NEW]

AUTHORITY:
Statewide Virtual Charter School Board; 70 O.S. § 3-145.4; 51 O.S. §§ 24.A1 et seq.; 75 O.S. §§ 302; 305; 307.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013

COMMENT PERIOD:
December 16, 2013 through January 17, 2014

PUBLIC HEARING:
January 17, 2014

ADOPTION:
March 11, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 12, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's Declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:

The proposed new rules set forth certain organizational and procedural rules for the new Statewide Virtual Charter School Board established pursuant to 70 O.S. §3-145.1. The proposed rules are necessary to comply with the "Required rule" provisions of the Administrative Procedures Act at 75 O.S. § 302(A) and accompanying regulations at 655:10-5-7, which require every agency to promulgate certain organizational and procedural rules.

777:1-1-1 sets forth the general purpose statement for the new Chapter 1 of Title 777, in accordance with the requirements of 655:10-3-48 which requires each chapter to begin with a section containing a purpose statement.

777:1-1-3 establishes a general statement of authority to promulgate the rules and a statement pertaining to rule interpretation and severability.

777:1-1-4 establishes a general statement of the purpose and organization of the Statewide Virtual Charter School Board.

777:1-1-5 establishes a statement of time computation applicable to rules to be included in the Title which reference deadlines.

777:1-1-6 establishes procedures for submission, processing, and response to Open Records Act requests.

777:1-1-7 establishes procedures for filing and disposition of petitions for declaratory rulings pursuant to Administrative Procedures Act at 75 O.S. § 307.

777:1-1-8 establishes procedures for filing and disposition of petitions for adoption, amendment, or repeal of an administrative rule pursuant to the Administrative Procedures Act at 75 O.S. § 305.

CONTACT PERSON
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 1. GENERAL PROVISIONS

777:1-1-1. Purpose

This Chapter contains rules and regulations of general applicability to the administrative operations, formal proceedings, and informal proceedings of the Statewide Virtual Charter School Board.

777:1-1-3. Authority, interpretation, and severability of rules

These rules are adopted pursuant to the provisions of the Oklahoma Charter Schools Act and the Administrative Procedures Act. Should a court of competent jurisdiction or the Attorney General of Oklahoma find any part of these rules to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended. The partial or total invalidity of any section of this Title shall not affect the valid sections.

777:1-1-4. Organization

(a) **Objectives.** As the sole entity authorized to sponsor statewide virtual charter school programs in this state in accordance with the provisions of the Oklahoma Charter Schools Act, the Statewide Virtual Charter School Board shall be charged with establishing any rules, policies, and procedures necessary to regulate operation of statewide virtual charter schools and to ensure that free appropriate public education and related services are provided to statewide virtual charter school students enrolled in statewide virtual charter schools in a manner that is safe, consistent, effective, and appropriate.

(b) **Staff.** The State Department of Education shall provide staff support to the Statewide Virtual Charter School Board until December 31, 2014. Thereafter, subject to the availability of funding, the Statewide Virtual Charter School Board may maintain such staff as is authorized by law and as necessary to fulfill the duties set forth by Oklahoma statutes and regulations.

(c) **Principal office.** The principal office of the Statewide Virtual Charter School Board shall be the Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105.

(d) **Hours of operation.** The official hours of operation of the principal office of the Statewide Virtual Charter School Board shall be the same as the hours of operation of the State Department of Education, and shall exclude Saturdays, Sundays, and legal holidays.

777:1-1-5. Time computation

Any period of time prescribed by this Title shall be calculated in accordance with the following provisions:

(1) The day of the act or event from which the designated period of time begins to run shall not be included;

(2) The last day of the period so computed shall be included, unless:

(A) The last day falls on a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes; or

(B) The last day falls on any other day when the administrative office of the Statewide Virtual Charter School Board does not remain open for public business until 4:30 p.m., in which event the period runs until the end of the next day when the receiving office does remain open for public business until 4:30 p.m.

777:1-1-6. Records requests

(a) **Official records.** All files, records, minutes, proceedings, rules, documents, decisions, opinions, written statements of policy, and written materials of any other nature required by law to be maintained by the Statewide Virtual Charter School Board and not otherwise exempt from public disclosure pursuant to the provisions of state and/or federal law shall be made available promptly for public inspection, copying, or mechanical reproduction upon reasonable notice to the records custodian of the office of the Secretary of the Statewide Virtual

Charter School Board during regular business hours in accordance with the provisions of the Open Records Act at 51 O.S. § 24A.1 et seq. and the procedures set forth below.

(b) **Records subject to disclosure.** Any document which comes within the definition of a "record" set forth in the Open Records Act at 51 O.S. § 24A.3 and is not required to be kept confidential by Oklahoma law or federal law will be available for inspection and/or copying during regular business hours, except state holidays, at the location where the records are housed, which is generally the Oliver Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City.

(c) **Custodian of records.** The Statewide Virtual Charter School Board may designate a records custodian. In absence of a records custodian designated by the Statewide Virtual Charter School Board, the records custodian of the Statewide Virtual Charter School Board shall be deemed to be the Secretary of the Statewide Virtual Charter School Board.

(d) **Procedure for records requests.** Any individual or group seeking access to public records maintained by the Statewide Virtual Charter School Board (the "Requester") shall submit a request to the Statewide Virtual Charter School Board records custodian, by fax, email, regular mail or in person. In order to provide prompt, reasonable access to records, to ensure that records requests are accurately communicated to the records custodian, and to enable the records custodian to accurately process the request, the Statewide Virtual Charter School Board recommends that all records requests be submitted in writing. In addition, all records requests must comply with all of the following provisions:

(1) All records requests must include:

(A) Identification of the individual and/or entity making the request;

(B) If the Requester is an entity rather than an individual, a name of a contact authorized to communicate with the records custodian on behalf of the Requester;

(C) Sufficient contact information at which the Requester may be contacted by the records custodian to comply with the records request procedures set forth in this Section;

(D) A description of the records requested with sufficient detail necessary to enable the records custodian to reasonably identify whether records responsive to the request exist;

(E) Whether the Requester seeks copies of any or all of the records requested and if so, whether the Requester seeks certified copies of any or all of the records requested; and

(F) If the Requester claims the public interest exemption from search fees in accordance with the provisions of (f) of this Section, all information necessary for the records custodian to determine the applicability of the exemption.

(2) An Open Records Act request form is provided on the website of the Board or the OSDE and the form may be submitted by email, fax, or regular mail via the addresses stated on the form. The form may also be obtained by writing to the Secretary of the Statewide Virtual Charter School Board, Oliver Hodge Education Building, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105.

(3) Requests submitted to the Statewide Virtual Charter School Board will not be deemed to have been received unless and until the request has been identified as a request properly filed in accordance with the provisions of the Oklahoma Open Records Act at 51 O.S. § 24A.1 et seq. and the procedures set forth in this Section.

(4) Within a prompt and reasonable time of the date of receipt of the request, the records custodian shall review the request, seek any additional information from the Requester necessary to clarify the request, and shall ascertain whether any records responsive to the request exist.

(5) In addition, the records custodian shall promptly notify the Requester of the following:

(A) Whether the request complies with the provisions of this Section and the provisions of the Open Records Act;

(B) Whether records responsive to the request exist, and if so, instruct the Requester to confirm the record custodian's interpretation of the request;

(C) If records responsive to the request exist and require an additional search of data necessary to identify and/or locate individual records of persons, whether the search will incur any fees and costs pursuant to (f) of this Section and if so, an estimate of search fees;

(D) If the Requester asks to be provided copies of the requested records in lieu of or in addition to inspection, an estimate of the costs of copying the records requested as necessary to deliver the responsive records to the Requester;

(E) That processing of the request will not begin until any applicable records search fees and costs of copying have been received by the agency; and

(F) In the event the actual costs of copying and/or certification of records exceed the estimate provided and the amount of payment actually received from the Requester, that payment of any balance due from the Requester may be required prior to delivery of the requested records.

(6) All records requests will be deemed to have been received and processing of the request will begin when one of the following conditions is met:

(A) If payment of search fees or copying costs is required, upon receipt of

(i) The fees and costs due; and

(ii) Receipt of any additional information necessary from the Requester to clarify and/or process the request; or

(B) If payment of search fees or copying costs is not required, upon receipt by the records custodian of:

(i) The Requester's confirmation of the request required by (5)(B) of this subsection; and

(ii) Receipt of any additional information necessary from the Requester to clarify and/or process the request.

(7) Any request not confirmed by receipt of the requisite search fee within thirty (30) calendar days of the written notification set forth in (5) of this subsection shall be deemed to be abandoned, unless, within the time stated, the Requester can show cause why the confirmation should be delayed or postponed.

(8) If the Requester fails to furnish additional information reasonably necessary to identify the records sought or otherwise enable agency personnel to accurately process the request, any further processing of the request may be suspended by the records custodian. A request that remains suspended for a period of forty-five (45) calendar days or more shall be deemed abandoned.

(e) **Processing and response times.** The agency will provide prompt, reasonable access to records in accordance with the requirements of 51 O.S. § 25A.5. The period of time considered prompt and reasonable is dependent upon a number of variable factors including, but not limited to:

(1) The scope and complexity of the request;

(2) Whether the workload of the agency or agencies necessary to respond to the request permits a response to the request without excessive disruption of essential services of the agency/agencies;

(3) Whether the records request includes:

(A) A sufficiently detailed description of the request by the requester necessary for the agency to ascertain the existence of records responsive to the request;

(B) Records or portions of records deemed confidential by state and/or federal law which must be removed or redacted in order to permit inspection of the records.

(4) Whether the Requester has requested copies of the records requested in addition to or in lieu of inspection of the records and if so, whether the Requester paid applicable fees and/or costs set forth in (d)(5) and (f) of this Section;

(5) Whether additional steps by the agency must be taken in order to ensure that inspection, copying, and/or response to the records can be provided without jeopardizing the integrity and organization of the records; and

(6) Whether student data is included within the scope of its request, and if so:

(A) Time necessary to de-identify and/or aggregate student data in accordance with the requirements of State and federal laws pertaining to confidentiality of records; or

(B) Time necessary to obtain any necessary approval of the State Board of Education in accordance with the requirements of the Student Data Accessibility, Transparency and Accountability Act of 2013 at 70 O.S. § 3-168 and accompanying regulations.

(f) **Fees for record searches and copies of records.** Fees and costs associated with record searches and providing copies of records shall be determined in accordance with the following procedures:

(1) **Fees to recover reasonable and direct costs of record searches.** Requests for individual records of persons that are either solely for commercial purposes or requests that cause an excessive disruption of the essential functions of the agency are subject to fees for recovery of the reasonable, direct costs of record searches. However, requesters shall be exempted from search fees when the release of the requested records is in the public interest, including, but not limited to, release of records in response to requests from:

(A) News media;

(B) Scholars;

(C) Authors; and

(D) Taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

(2) **Fees to recover reasonable and direct costs of record copies.** Requests for records are subject to fees for recovery of the reasonable, direct costs of copying records and/or certification of each individual copy of a record.

(A) For purposes of this paragraph, "copying" of a record may include costs of:

(i) Mechanical reproduction of a paper ("hard copy") record; or

(ii) Conversion of a record into an electronic format (e.g., pdf).

(B) In no instance shall the fees per page fee for copying and/or certification of individual copies of documents exceed the amount set forth in 51 O.S. § 25A.5(3).

(C) The Board is authorized to periodically review and adjust the rates that will be charged for providing copies of records in accordance with the law. Those rates will include costs for record copies, document searches and transcript rates. The rates will be posted at the Oliver Hodge Building and filed with the county clerk as required by law.

(D) All fees and/or costs shall be paid by the requester prior to delivery of the response to the request. All fees must be paid by check or money order. No cash will be accepted.

777-1-1-7. Procedures for declaratory rulings

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) "**Declaratory ruling**" shall mean an informal declaration as to the applicability of a rule or order in an individual case for the purpose of providing a petitioner with a definitive response to a question about an ambiguity in the law as necessary to allow a petitioner to ascertain legal obligations and comply accordingly.

(b) **Petitions for declaratory ruling.** Any person affected by a rule adopted by the Statewide Virtual Charter School Board set forth in this Title or an order issued by the Board may petition for a declaratory ruling as to the applicability of a specific rule or order in a specified set of circumstances

involving petitioner. Petitions for a declaratory ruling shall be submitted in accordance with the following procedures:

(1) The petition must be in writing and submitted to the Secretary of the Statewide Virtual Charter School Board;

(2) The petition shall specifically identify the rule in question by citation to the Oklahoma Administrative Code;

(3) The petition shall pose the specific issue(s) to be answered by the Statewide Virtual Charter School Board;

(4) The petition shall state clearly and with specificity all factual and legal grounds in support of petitioner's interpretation of the rule or order and shall include:

(A) An allegation of all facts upon which the declaratory ruling is based; and

(B) Copies of all documentation cited by petitioner in support of petitioner's claim attached to the petition;

(5) The petition shall be signed by the petitioner or an authorized representative of the petitioner; and

(6) The petition shall state the name, address, telephone number, and email address of the petitioner or an authorized representative of petitioner at which all notices required by this Section shall be served.

(c) **Review of a petition for declaratory ruling.** Upon receipt by the Secretary, the petition will be stamped to show the date of submission, and the Secretary shall promptly notify the petitioner, the agency's legal counsel, and any other interested parties of the date of the board meeting at which the petition has been set for initial review by the Board. The date set for initial review shall be at least ten (10) calendar days from the date of receipt of the petition by the Secretary.

(d) **Initial review of petition.** Upon preliminary review of the petition, the Board may take one of the following actions:

(1) The Board may consider the merits of the petition and issue a ruling at the meeting;

(2) The Board may dismiss the petition on one or more of the following grounds:

(A) The petition was not filed in accordance with the requirements of this Section; or

(B) The request for a declaratory ruling stated in the petition is more appropriately handled through the agency rulemaking process in accordance with the provisions of the Administrative Procedures Act; or

(3) The Board may order a hearing on the matter and specify a date at which petitioner, counsel for the agency and any other individuals or entities deemed interested parties by the Board may present oral argument on the issues raised in the petition. The Board shall prescribe the amount of time allotted for oral argument.

(e) **Declaratory ruling.** At the conclusion of the presentation of the matter, the Board may render a decision on the petition or continue the meeting for further deliberation at a later date. Upon rendering a decision, a written decision memorializing the Board's decision shall be issued and signed by the Chairman of the Board, and a copy of the decision shall be mailed to Petitioner via certified mail within ten (10) calendar days of the date the decision is rendered.

(f) **Judicial review.** A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings set forth in the Oklahoma Administrative Procedures Act at 75 O.S. §§ 317-323.

777:1-1-8. Petitions for adoption, amendment, or repeal of a rule

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning:

(1) "**Rule**" shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(2) "**Rulemaking**" shall have the meaning set forth in the Administrative Procedures Act at 75 O.S. § 250.3.

(3) "**Submission of a petition**" shall mean receipt of a petition by the Secretary in accordance with the requirements of (b) of this Section.

(b) **Petitions.** Any person may initiate an informal proceeding for the purpose of requesting the Board to promulgate, amend, or repeal a rule in this Title. An informal proceeding to request rulemaking in accordance with the provisions of this Section shall be initiated by filing a petition in accordance with all of the following requirements:

(1) Petitions shall be submitted in writing and filed with the Secretary of the Statewide Virtual Charter School Board. The petition shall meet all of the following requirements:

(A) The petition shall state a description of the alleged necessity or basis for the requested change;

(B) The petition shall describe any potential conflicts with any existing statute or regulation that would result from the proposed rulemaking action requested;

(C) The petition shall include citations to all statutory provisions, if any, which provide authority for the Board to promulgate, amend, or repeal the rule;

(D) The petition shall be signed by the petitioner or an authorized representative of the petitioner; and

(E) The petition shall state the name, address, telephone number, and email address of the petitioner or an authorized representative of petitioner.

(2) Upon receipt by the Secretary, the petition will be stamped to show the date of submission, and the Secretary shall review the petition for compliance with all of the provisions of this Section. If the petition complies with all provisions of (b) of this Section, the Secretary may set the petition for consideration by the Board at the next regular meeting of the Board, or at a subsequent meeting if the petition is not received until after the agenda for the next meeting has already been set.

(c) **Review and consideration of petitions.** Petitions for adoption, amendment, or repeal of a rule in accordance with the provisions of this Section shall be considered by the Board in accordance with the following provisions:

(1) If the Board approves further consideration of the proposed change, the decision shall be reflected in the meeting minutes of the Board. Within five (5) business days of the date of the meeting, written notification will

be mailed to petitioner that such proposal will be formally considered for adoption, amendment, or repeal, provided that the process for rule adoption, amendment, or repeal shall be conducted in accordance with the requirements of the Administrative Procedures Act.

(2) In the event the Board determines that the proposal or request should not receive further consideration, the decision shall be reflected in the minutes of the Board. Within five (5) business days of the date of the meeting, written notification of the denial of the petition will be mailed to petitioner.

(3) In the event the Board fails to decide whether or not to take action on the petition within thirty (30) days of the date of submission of the petition, the petition shall be deemed to have been denied in accordance with the provisions of 75 O.S. § 305.

[OAR Docket #14-724; filed 7-15-14]

TITLE 777. STATEWIDE VIRTUAL CHARTER SCHOOL BOARD
CHAPTER 10. STATEWIDE VIRTUAL CHARTER SCHOOLS

[OAR Docket #14-725]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Statewide Virtual Charter Sponsorship [NEW]
777:10-3-1. Purpose [NEW]
777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools [NEW]
AUTHORITY:
Statewide Virtual Charter School Board; 70 O.S. § 3-145.4; 51 O.S. §§ 24.A1 et seq.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 21, 2013
COMMENT PERIOD:
December 16, 2013 through January 17, 2014
PUBLIC HEARING:
January 17, 2014
ADOPTION:
March 11, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 12, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
December 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Statewide Virtual Charter Sponsorship [NEW]
777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools [NEW]
Gubernatorial approval:
July 8, 2014
Register publication:
In this issue
Docket number:
14-824
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed new rule at 777:10-3-1 sets forth a general purpose statement for the subchapter in accordance with the requirements of 655:10-3-48.

The proposed new rule at 777:10-3-3 establishes procedures for submission and disposition of applications for sponsorship of statewide virtual charter schools submitted to the Statewide Virtual Charter School Board; establishes procedures for renewals of contracts for sponsorship of statewide virtual charter schools by the Statewide Virtual Charter School Board; and establishes procedures for termination of contracts for sponsorship of statewide virtual charter schools by the Statewide Virtual Charter School Board.

The proposed new rules are necessary to implement recent amendments to the Oklahoma Charter Schools Act during the 2013 legislative session. SB 267 amended 70 O.S. §§ 3-132, 3-140, and 3-145.1 to provide that the Statewide Virtual Charter School Board shall have the sole authority to authorize and sponsor statewide virtual charter schools. In addition, the amendment to 70 O.S. § 3-145.3 directs the Statewide Virtual Charter School Board to establish procedures for acceptance, approval, and disapproval of statewide virtual charter school applications in accordance with the Oklahoma Charter Schools Act.
CONTACT PERSON
Stephanie Moser Goins, Assistant General Counsel, Oklahoma State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Phone (405)521-4890.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF DECEMBER 15, 2014:

SUBCHAPTER 3. STATEWIDE VIRTUAL CHARTER SCHOOL SPONSORSHIP

777:10-3-1. Purpose

The rules in this subchapter set forth procedures for authorization and sponsorship of statewide virtual charter schools and requirements for contracts for sponsorship of statewide virtual charter schools, including procedures for renewal and termination of contracts for sponsorship of statewide virtual charter schools.

777:10-3-3. Applications to sponsor statewide virtual charter schools; renewal and termination of contracts for sponsorship of statewide virtual charter schools

(a) **Sponsorship application cycle and timelines.** To ensure that timely processing, review, and consideration of applications for sponsorship occurs within the time periods specified by 70 O.S. § 3-134, and to ensure that the application process is completed with sufficient time for new schools to comply with all statutory reporting requirements for the beginning of the next school year, (e.g., statutory state finance reporting deadlines for state aid purposes) the Statewide Virtual Charter School Board shall establish a schedule for each year's application cycle for charter school sponsorship requests. No later than September 1 of each school year, the Board shall approve a timeline for the application cycle for the following

school year that sets forth deadlines for each of the following events:

(1) Completion of charter school training required by 70 O.S. § 3-134(A);

(2) Submission of a letter of intent to submit an application;

(3) Submission of a full application for statewide virtual charter school sponsorship;

(4) Public presentation of application/proposal for sponsorship;

(5) Review of application and recommendation by State Department of Education staff;

(6) Statewide Virtual Charter School Board decision on application for sponsorship;

(7) Submission of an amended application;

(8) Board decision on amended application; and

(9) Negotiation and execution of a contract for sponsorship;

(b) **Sponsorship application requirements.** In addition to meeting the requirements of 70 O.S. § 3-134, new applications to the Statewide Virtual Charter School Board for sponsorship of a statewide virtual charter school must include the following information in the sponsorship proposal:

(1) For initial consideration for sponsorship, every applicant shall submit a set of policies and procedures governing administration and operation of the proposed statewide virtual charter school. The policies and procedures governing administration and operation of the proposed statewide virtual charter school shall be incorporated into the terms of the contract of the virtual charter school, and shall include, but are not limited to, all of the following subject areas:

(A) Each of the following provisions required by 70 O.S. § 3-135:

(i) A description of the charter school program offered by the school which complies with the purposes outlined in 70 O.S. § 3-136;

(ii) Student admission policies and procedures;

(iii) Management and administration of the charter school;

(iv) Requirements and procedures for program and financial audits;

(v) All of the requirements set forth in 70 O.S. § 3-136, including, but not limited to, compliance with all regulations of the State Department of Education pertaining to health, safety, civil rights and insurance and financial reporting and auditing requirements;

(vi) Assumption of liability by the charter school;

(vii) Employment rights and personnel policies of the school required to be included in employee contracts pursuant to 70 O.S. § 3-135(B);

(B) Duties and responsibilities of the charter school governing body;

(C) Student grade placement, promotion, retention, and graduation requirements;

(D) Use and maintenance of charter school property and facilities, including:

(i) Virtual provider technology, course delivery and technical support;

(ii) Facility safety and emergency and crisis management;

(iii) School calendar, school instructional hours, school holidays, dismissals and closures; and

(E) Any other topics deemed necessary by the Statewide Virtual Charter School Board to assess the applicant's capability to administer and operate the charter school in compliance with all applicable provisions of federal and state laws and regulations to which charter schools are required to comply.

(2) Each applicant shall provide documentation of its school's ability to meet each of the following requirements specific to the virtual delivery of education services:

(A) That each statewide virtual charter school is adequately prepared to deliver services to all enrolled students on the school's first day of operation and for all required instructional hours for every school year through a stable virtual platform;

(B) That each statewide virtual charter school has consistent procedures in place governing admission, transfers, enrollment, and withdrawal of students;

(C) That each statewide virtual charter school has consistent procedures in place governing admission, child find responsibilities, evaluation, and re-evaluation of students with disabilities, as well as applicable procedural safeguards and policies and procedures to ensure provision of free appropriate online and other educational and related services, supplementary aids and services, modifications, accommodations, supports for personnel, and other technical supports provided in the least restrictive environment to students with disabilities and/or other special needs in compliance with applicable federal and state laws and regulations, including:

(i) Students who require or may require individualized education programs pursuant to the Individuals with Disabilities Education Act (IDEA); and

(ii) Students who require or may require accommodations, regular or special education and related aids, or other services under a plan developed in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act;

(D) That each statewide virtual charter school has consistent procedures in place governing the admission, identification, evaluation, re-evaluation, parental notification, and provision of educational programs and services in compliance with applicable federal and state laws and regulations to students with special needs or unique abilities, including, but not limited to:

(i) Students who are English Language Learners/Limited English Proficient and who require services as necessary to overcome language barriers and ensure that they can participate meaningfully in the district's education programs; and

(ii) Students who meet the definition of "gifted and talented children" set forth in 70 O.S. § 1210.301;

(E) That each statewide virtual charter school complies with state and federal law in protection and handling of student records and data, including, but not limited to, protocols for secure storage and transmission of student data;

(F) That each statewide virtual charter school has consistent procedures and technology in place necessary to monitor and report student attendance, student participation in online school activities, and any necessary instruction in accordance with the requirements of state law;

(G) That each statewide virtual charter school has fair and consistent procedures in place to implement necessary and appropriate practices to promote student discipline that include sufficient due process protections for students facing accusations of conduct which may result in suspension and/or expulsion of a student;

(H) That each statewide virtual charter school has consistent procedures and technology in place to ensure delivery of services and that each virtual charter school provider has an adequate plan in place for communicating emergency procedures to students in the event of technical failures of equipment and/or loss of connectivity as a result of weather conditions;

(I) That each statewide virtual charter school has consistent procedures and technology in place to ensure consistent and adequate communication with parents/guardians of students and provide student progress and academic reports to parents/guardians of students; and

(J) That each statewide virtual charter school has provided a full description and explanation of the grade levels in which the provider intends to provide instruction and, for each charter school that offers secondary level coursework for grades nine (9) through twelve (12), whether the charter school will offer coursework as necessary to comply with the graduation requirements of 70 O.S. § 11-103.6 and accompanying regulations.

(3) Each applicant shall provide a written plan for compliance with all state and federal financial recording and reporting requirements for state and federal funds that are applicable to public school districts, including, but not limited to compliance with:

(A) The School District Transparency Act at 70 O.S. § 5-135.4 et seq.;

(B) The Oklahoma Public School Audit Law at 70 O.S. §22-101 et seq.;

(C) Annual itemized expenditure budget and request for appropriated funds and estimate of revenues required by 70 O.S. § 5-128.1; and

(D) Statutes and regulations pertaining to the Oklahoma Cost Accounting System (OCAS).

(4) Each application shall include a contact name, mailing address of record, phone number, and email address of the governing body at which all written notices required by 70 O.S. § 3-134 shall be served. In the event that a change in contact information occurs during the application process, the Board shall provide the Secretary of the Board with updated contact information in writing within five (5) business days of the date that the change occurs.

(c) **Filing, review, approval, and denial of charter school applications for sponsorship.** All applications for sponsorship shall be submitted by the governing body of the prospective charter school to the Statewide Virtual Charter School Board by filing three (3) copies of the application with the Secretary of the Statewide Virtual Charter School Board. Upon receipt of an application for sponsorship, the Secretary shall stamp the application to record the date of receipt, and shall promptly submit written confirmation of the receipt of the application to the contact name and address of record of the governing body listed on the application. In addition, the Secretary shall forward a copy to the State Department of Education Executive Director of School Choice for review and recommendation in accordance with the deadlines established pursuant to (a) of this Section.

(1) **Application review and criteria.** In reviewing an application for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall determine whether the applicant's proposal for sponsorship complies with the provisions of 70 O.S. § 3-134 and other applicable provisions of the Oklahoma Charter Schools Act. In addition, the Board may consider any other factors demonstrating the applicant's capacity to successfully comply with the goals set forth in its mission statement and applicable state, federal, tribal and/or local statutes and regulations. Such factors may include, but are not limited to the following:

(A) Whether the applicant can demonstrate previous experience in operation of one or more virtual charter schools;

(i) If the applicant cannot demonstrate previous experience in operation of one or more virtual charter schools, whether applicant has sufficient resources in place to ensure compliance with applicable state, federal, tribal and/or local statutes and regulations;

(ii) If the applicant can demonstrate previous experience in operation of a virtual charter school, whether applicant has a history of non-compliance with applicable state, federal, tribal and/or local statutes and regulations either in the State of Oklahoma or in other jurisdictions;

(B) Whether the applicant has provided evidence demonstrating financial stability;

(C) Whether the criteria designed to measure the effectiveness of the charter school proposed by the applicant is reasonably calculated to provide accurate benchmarks for evaluation of teacher effectiveness and student learning; and

(D) Whether the charter school has adequate human resources, facilities, systems, and structures in place as necessary to evaluate the needs of and provide services to students with disabilities, English Language Learners, and gifted and talented students.

(2) **Acceptance or denial of sponsorship applications.** The Statewide Virtual Charter School Board shall review and consider the application in accordance with the timeline established pursuant to (a) of this Section, provided that a final decision on the application shall be made no later than ninety (90) calendar days from the date of receipt of the application by the Secretary of the Statewide Virtual Charter School Board. The Secretary of the Board shall promptly submit written notification of the decision of the Board to the applicant via certified mail, return receipt requested, to the contact and address of record of the governing body designated on the application.

(3) **Reconsideration of sponsorship applications.** In the event of a denial of an application for sponsorship, the applicant may submit a revised application for reconsideration in accordance with the following procedures:

(A) The application for reconsideration shall be filed with the Secretary of the Board within thirty (30) calendar days after the date of receiving notification of the rejection. The revised application shall meet all of the application requirements set forth in (b) and (c)(1) of this Section. In the event that delivery of written notification required by (2) of this subsection is refused by the applicant or returned as undeliverable due to the applicant's failure to update the contact of record in accordance with the requirements of (b)(4) of this Section, the date of receipt of notification of the rejection shall be considered the date of the meeting at which the Board took action on the proposed application.

(B) Within five (5) business days of the date of receipt of the application for reconsideration, the Secretary shall set promptly set the application for consideration at a meeting of the Board and submit notification of the date, time, and place of the meeting to the applicant to the contact of record. The meeting to consider the application shall occur within thirty (30) days of the date of receipt of the application.

(C) The Statewide Virtual Charter School shall take action to accept or reject the revised application within thirty (30) days of its receipt by the Secretary of the Board.

(4) **Appeal of denial of sponsorship applications.** In the event that the governing body of the charter school elects to appeal the decision of the Board to deny the application for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(d) **Requirements of the sponsorship contract.** Contracts for sponsorship between the Statewide Virtual Charter School Board and the governing body of a statewide virtual charter school shall include terms that meet all of the following requirements:

(1) The contract shall incorporate the provisions of the charter of the school in accordance with the requirements of 70 O.S. § 3-135, and the charter shall comply with the provisions of 70 O.S. § 3-136;

(2) The contract shall contain terms addressing all of the requirements set forth in 70 O.S. § 3-135;

(3) The contract shall contain terms setting forth measurable goals and objectives for student performance;

(4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording and reporting receipt and expenditures of public funds, including, but not limited to:

(A) Terms providing that the charter school shall conduct annual financial audits in accordance with the requirements of the Oklahoma Public School Audit Law;

(B) Terms providing that the charter school shall comply with all State Department of Education deadlines necessary for budgeting, calculation of appropriations and/or disbursements of state aid and/or federal aid;

(C) Terms providing that the charter school shall comply with all deadlines for recording and reporting of state aid revenue and expenditures;

(D) Terms providing that the charter school shall comply with all requirements of the Oklahoma Cost Accounting System (OCAS); and

(E) Terms providing that the charter school shall comply with all provisions of the School District Transparency Act at 70 O.S. § 5-135.4 et seq.

(5) The policies and procedures governing administration and operation of the statewide virtual charter school shall be incorporated into the terms of the contract;

(6) The term of the contract shall be effective for no longer than five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137;

(7) The term of the contract shall designate at least one contact name and address of record of the governing body of the charter school to which all notices required by the terms of the contract and/or this Section shall be served, including the name, title, mailing address, email address,

and phone number of all individual(s) authorized to receive service of notices required by this Section and pursuant to the terms of the contract; and

(8) The contract shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.

(e) **Renewals of contracts for sponsorship of statewide virtual charter schools.** Renewal of a contract with a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall be conducted in accordance with the requirements of the Oklahoma Charter Schools Act.

(1) **Requests for renewal of contract for sponsorship.** Requests for renewal of the contract for sponsorship shall be submitted by the governing body of the charter school in accordance with the following procedures:

(A) At least one (1) year prior to expiration of the initial contract term, but no earlier than eighteen (18) months prior to the date of expiration of the contract; the governing body of the charter school may submit a proposal for renewal of the contract to the Statewide Virtual Charter School Board by filing three (3) copies of the proposal with the Secretary of the Board.

(B) Within ten (10) calendar days of the date of receipt of the request for informal hearing, the Secretary shall schedule the request for renewal as an action item on the agenda for the next regular meeting of the Board, or at a subsequent meeting if the proposal for renewal is not received until after the agenda for the next meeting has already been set. The Secretary shall timely submit written notice of the date, time, and location of the meeting at which the proposal for renewal will be considered by regular mail to the governing body of the charter school at the address of record set forth in the sponsorship contract. In addition, the Secretary may send a courtesy copy of the notice by facsimile, and/or email.

(C) The Board shall review the proposal for renewal and take action on the request for renewal no later than eight (8) months prior to the date of expiration of the contract.

(D) The Board may base its decision to deny the charter school governing body's request for renewal upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.

(2) **Notice of intent of non-renewal of contract for sponsorship.** Notwithstanding the provisions of (1) of this subsection, the Statewide Virtual Charter School Board may elect to not renew a contract for sponsorship in accordance with the following procedures:

(A) No later than eight (8) months prior to the date of expiration of the contract. The Statewide Virtual Charter School Board shall submit written notice of its intent of non-renewal via certified mail, return receipt requested to the governing body of the charter school at the address of record set forth in the contract. The notice shall include:

(i) A statement of any and all factual and legal grounds upon which the Board's intent to non-renew the contract is based;

(ii) A statement of the date, time, and location of the meeting at which the Board intends to take action on the proposed non-renewal, which shall be held no earlier than thirty (30) calendar days from the date of the notice of intent to non-renew the contract is sent to the charter school.

(B) The Board may base its decision to non-renew the contract for sponsorship upon any of the grounds for nonrenewal or termination set forth in 70 O.S. § 3-137 and/or (f)(1) of this Section.

(C) In the event that the governing body of the charter school elects to appeal the decision of the Board to not renew the contract for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(f) **Terminations of contracts for sponsorship of statewide virtual charter schools.** The Statewide Virtual Charter School Board may terminate the contract with a statewide virtual charter school in accordance with the following procedures:

(1) **Grounds for termination of a contract for sponsorship**: At any time during the term of the contract, the Statewide Virtual Charter School Board may terminate the contract on one or more of the following grounds:

(A) Failure to meet the requirements for student performance set forth in the terms of the contract;

(B) Failure to meet the standards of fiscal management set forth in the terms of the contract;

(C) Violations of applicable state, federal, tribal, or local laws, statutes, and/or regulations;

(D) Other good cause as established by the Board, which may include, but shall not be limited to:

(i) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to meet reporting deadlines necessary for compliance with state or federal statutes or regulations;

(ii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report student enrollment counts;

(iii) Failure by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors to accurately report and/or classify student accountability data;

(iv) Identification and/or designation of the charter school by the State Board of Education as consistently in need of improvement in accordance with subsection (g)(6) of Section 1003 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), pursuant to 70 O.S. § 1210.544;

(v) Any material breach of the terms set forth in the contract for sponsorship; and

(vi) Any action or failure to act by the governing body of the charter school, its charter school administrators, charter school personnel, and/or charter school contractors that presents or results in an immediate and serious danger to the health, safety, and welfare of its students.

(2) **Notice of intent to terminate contract.** At least ninety (90) calendar days prior to termination of a contract for sponsorship of a statewide virtual charter school, the Statewide Virtual Charter School Board shall submit written notice of its intent to terminate the contract via certified mail, return receipt requested to the governing board of the charter school at the address of record set forth in the contract. The notice shall include:

(A) A statement of any and all factual and legal grounds upon which the Board's intent to terminate the contract is based;

(B) A statement of the date, time, and location of the meeting at which the Board intends to take final action on the proposed termination, which shall be held no earlier than forty-five (45) calendar days from the date the notice of intent to terminate is mailed to the charter school; and

(C) A statement that the governing board of the school may request an informal hearing before the Board to present evidence in opposition to the proposed termination by delivering a written request to the Secretary of the Board within fourteen (14) calendar days of receipt of notice of the intent to terminate the contract that includes:

(i) A response to the factual and legal grounds for termination set forth in the notice; and

(ii) A summary of evidence that the school intends to submit in support of its response.

(D) Within ten (10) calendar days of the date of receipt of the request for informal hearing, the Secretary shall schedule an informal hearing and submit written notice of the date, time, and location of the hearing by regular mail to the charter school's address of record set forth in the sponsorship contract. The Secretary may send a courtesy copy of the notice by facsimile, and/or email.

(3) **Informal hearing on termination.** In the event that an informal hearing is requested pursuant to the provisions of (2)(C) of this subsection, the Secretary of the Board shall promptly schedule an informal hearing at which the statewide virtual charter school may present argument and/or evidence in opposition to the proposed termination. The Board shall prescribe the time allotted for oral argument and presentation of evidence. Upon completion of the hearing, the Board may consider the merits of the argument and presentation of evidence and take action on the proposed termination, or it may schedule action on the proposed termination for a subsequent board meeting to provide the board with further opportunity for deliberation.

(4) **Appeals of termination.** In the event that the governing body of the charter school elects to appeal the decision of the Board to terminate the contract for sponsorship in accordance with the provisions of 70 O.S. § 3-145.3, a notice of intent to appeal the decision shall be filed with the Secretary of the Statewide Virtual Charter School Board within thirty (30) days of the date of decision made by the Board. In addition, the procedures for filing appeals to the State Board of Education shall be governed by policies and rules adopted by the State Board of Education.

(g) **Negotiation and execution of contracts for sponsorship.** To facilitate and/or expedite negotiations for new contracts for sponsorship, the Statewide Virtual Charter School Board may adopt a model contract for sponsorship of a statewide virtual charter school for use by the Board and potential statewide virtual charter schools sponsored by the Board. Adoption of a model contract shall not prohibit the Board from further negotiation of contract terms or addition of terms to the contract for sponsorship prior to execution of the contract so long as such terms are in compliance with applicable state, federal, local, and/or tribal law and the provisions of this Section.

(h) **Execution of the contract.** The final contract for sponsorship shall not be executed until approved by the Statewide Virtual Charter School Board at a regular or special meeting. The Board may delegate authority to the Chairman to execute the approved contract for sponsorship on behalf of the Board.

[OAR Docket #14-725; filed 7-15-14]

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

[OAR Docket #14-530]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Local Programs, Career Majors or Instructional Positions: Application; Student Accounting; Evaluation
780:10-7-3.1 [NEW]

AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, Section 14-103, 70 O.S. 2011, Section 14-104, as amended.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014

COMMENT PERIOD:
February 18, 2014 through March 21, 2014

PUBLIC HEARING:
March 25, 2014

ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
For the purpose of determining eligibility for federal student financial assistance programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *Career*Tech institutions and programs, courses and career majors that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education. Moving forward, we need to consider our customers' needs, offering an experience that is customizable and flexible for learning, with an accreditation system to match. These new rules, for pilot schools and 2014-15 and for all schools in 2015-16, are needed to improve the current accreditation process from a mere compliance model to one of continuous quality improvement.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. LOCAL PROGRAMS, CAREER MAJORS OR INSTRUCTIONAL POSITIONS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-3.1. Pilot standards; accreditation; evaluation

(a) **Standards.**

(1) **Establishment; funding.** As appropriate, standards shall be established by the State Board for continuous school improvement, postsecondary and secondary *Career*Tech programs, career majors and/or courses. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality *Career*Tech education. Funding approval is contingent upon meeting these standards or making satisfactory progress toward meeting these standards.

(2) **Standards.**

(A) Standards established for continuous school improvement in the *Career*Tech System shall be approved by State Board. Continuous school improvement standards shall be addressed a minimum of two times for every five year evaluation cycle of technology centers, skills centers, and comprehensive school programs.

(B) Standards established for program improvement shall be required to be completed by CareerTech programs shall be the Baldrige Education Criteria for Performance Excellence and include the following:

(i) CRITERIA 1 Leadership
(ii) CRITERIA 2 Strategic Planning
(iii) CRITERIA 3 Customer Focus
(iv) CRITERIA 4 Measurement, Analysis, and Knowledge Management
(v) CRITERIA 5 Workforce Focus
(vi) CRITERIA 6 Operations Focus
(vii) CRITERIA 7 Results

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *Career*Tech education. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *Career*Tech personnel throughout the state. Evaluation results will be considered in the processes of planning and funding programs.

(5) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program or career major based on the accountability measures developed as required by P. L. 109-270 which include:

(A) Student attainment of challenging State established academic and technical skill proficiencies.

(B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school \diploma, or a postsecondary degree or credential.

(C) Placement in, retention in, and completion of postsecondary education or advanced training, placement in military service, or placement or retention in employment.

(D) Student participation in and completion of career and technology (vocational and technical) education programs or career majors that lead to nontraditional training and employment.

(6) **Monitoring.** Technology Centers and/or programs, not making satisfactory progress toward meeting these standards will be monitored on an annual basis. If a technology center, skills center or comprehensive school has programs, career majors, courses and/or services not meeting evaluation standards, an annual status report addressing completed and/or pending corrective actions will be submitted to the Division of Innovation, Research, and System Quality for review no later than the last Friday in March. During the month of April, the Division of Innovation, Research, and System Quality will notify the school in writing whether the status report was approved or disapproved.

(7) **Technical assistance.** The Department staff will provide technical assistance to help *Career*Tech programs, meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student financial assistance programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education and the Oklahoma Department of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *Career*Tech institutions and programs, courses and career majors or direct assessment/competency based instruction that is not offered for college credit or under the jurisdiction of the Oklahoma State Regents for Higher Education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Accreditation Policies and Procedures.** Technology Centers may apply to US Department of Education for the option of implementing direct assessment/competency based instruction. This publication shall be made available to interested parties from the Division of Innovation, Research, and System Quality of the Department.

(c) **Secondary evaluation.** Secondary *Career*Tech education programs shall be formally evaluated utilizing standards adopted by the State Board.

(d) **Review of secondary programs.**

(1) **Probationary status.** A *Career*Tech secondary program may be placed on a probationary status if:

(A) It fails to meet standards and the deficiencies are documented in writing as a result of a visit or a team evaluation, and/or

(B) It does not meet the specifications as outlined in the **Rules for Career and Technology Education.**

(2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for improvement shall be given to the school administration.

(3) **Reevaluation.** A program on probationary status shall be reevaluated within one year.

(A) **Removal of probation.** If the documented deficiencies have been corrected upon reevaluation, the probationary status shall be removed.

(B) **Reevaluation failure.** If the program in a comprehensive school has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the State Director or his/her designee of the Division of Innovation, Research, and System Quality and the program may be recommended for closure or reduction in funding for the following school year. If the career major in a technology center has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the State Director or his/her designee of the Division of Innovation, Research, and System Quality.

(i) **Written notification; appeal.** The State Director or his/her designee of the Division of Innovation, Research, and System Quality will notify, in writing, the superintendent of the technology center or the comprehensive school in which the program, instructional position or career major is located that the Department is recommending closure or reduction in funding for the program or career major for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement.

(ii) **Recommended program and/or career major closures.** The State Director or his/her designee of the Division of Innovation, Research, and System Quality will make a presentation of recommended program closures, if any, in a technology center or a comprehensive school for State Board approval at the March board meeting.

(4) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probational Accreditation Status" continues to be in noncompliance of the corrective action plan as approved by the State Board.

(e) **Evaluation of recipients receiving federal funds.** Programs of eligible recipients receiving federal funds under P. L. 109-270 shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

[OAR Docket #14-530; filed 6-27-14]

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

[OAR Docket #14-531]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Technology Centers Education
780:15-3-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, Section 14-103, 70 O.S. 2011, Section 14-104, as amended.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 21, 2014
PUBLIC HEARING:
March 25, 2014
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Technology Center Administrator Credential rule provides the process by which a person becomes eligible to be an administrator in an Oklahoma technology center. The intent of the rule change is to streamline the provisional process to one option rather than two.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-2. Establishment/Sustainment of a technology center district; sites and buildings

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;
(B) Total population;
(C) Assessed valuation;
(D) Current school enrollments;
(E) Estimated secondary school enrollments;
(F) Estimated full-time adult enrollments;
(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,
(B) A majority of the membership of a board of county commissioners, or
(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of a technology center district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary

school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months,

or one year, to allow time for the passage of an operational mill levy election.

(6) **State Board approval of sites and additional campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the campus employs a minimum of five full-time instructors who are teaching career majors that have been approved by the Department, then it may be recognized as an official campus and will be eligible for funding under a formula approved by the State Board. Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus at a site other than the existing pre-approved campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to the nearest available technology center campus, district valuation, student enumeration, and local industry needs.

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for board district offices of the board shall be residents of the board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Board District 1: One year
(B) Office Number 2, Board District 2: Two years
(C) Office Number 3, Board District 3: Three years
(D) Office Number 4, Board District 4: Four years
(E) Office Number 5, Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S 2001, § 14-108, as amended, and the county excise board has approved an "Estimate of Needs" for the district or in compliance with the 1996 School District Budget Act in 70 O.S. Supplement 1996, §5-150, as amended.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy. A second election must be requested by the technology center board and approved by the State Board.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time.

Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of instruction. The technology center superintendent shall maintain close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that career and technology education instruction may be closely coordinated with current needs and anticipated employment opportunities. He/she shall evaluate instruction continuously and bring about changes and improvements that will ensure that students will obtain the skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator's credential. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a Career Tech teacher, supervisor, or administrator. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Fourth, the technology center superintendent shall have a Technology Center Administrator's Credential.

(3) **Issuance by the Technology Center Services Division.** The Technology Center Services Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center administrator's credential.

(4) **Technology Center Administrator's Credential.** Other school administrators who are responsible for supervision and administration of Department-approved career majors and for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a standard or a provisional Technology Center Administrator's Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers.

(A) **Standard technology center administrator's credential.** A person who has superintendent's certificate or a secondary principal's certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator of Oklahoma Department of Career & Technology Education (ODCTE)~~Department~~ approved programs and/or career majors and has a valid Oklahoma ~~*Career*~~CareerTech teaching certificate shall be issued a standard technology center administrator's credential.

~~(B) **Provisional technology center administrator's credential, three year.** A person with a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator of Department-approved programs and/or career majors and without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center administrator's credential and be given three years from the date of issuance to complete the nine credit hours specified below to meet the requirements for a standard technology center administrator's credential. The issuance of the technology center administrator's standard credential shall be based on the completion of a minimum of nine credit hours from three of the following four areas.~~

~~(i) History and Philosophy of Career and Technology Education;~~

~~(ii) Technology Center Finance;~~

~~(iii) Curriculum for Career and Technology Education; and,~~

~~(iv) Career and Technology Education Planning Instruction Development and Evaluation.~~

~~(C) **Provisional technology center administrator's credential, five year.** A person who has been employed in an administrator, counselor or coordinator position for at least five years at a technology center, who has a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate or valid school counseling certificate shall be issued a provisional technology center administrator's credential and be given five years from the date of issuance to complete the nine credit hours specified below plus the appropriate ODCTE administrator development program(s) identified when the technology center administrator's credential is issued to meet the requirements for a standard technology center administrator's credential. The issuance of the technology center administrator's standard credential shall be based on the completion~~

~~of a minimum of nine credit hours from three of the following four areas:~~

~~(i) History and Philosophy of Career and Technology Education;~~

~~(ii) Technology Center Finance;~~

~~(iii) Curriculum for Career and Technology Education; and,~~

~~(iv) Career and Technology Education Planning Instruction Development and Evaluation.~~

(B) **Provisional technology center administrator's credential, five year.** Applicant shall have a superintendent's or secondary principal's certificate as defined by the Oklahoma State Department of Education. In addition, the applicant must meet at least one of the following experience requirements:

(i) Three (3) years of experience as a Career and Technology Education teacher of an approved ODCTE career major(s) **or**

(ii) Three (3) years of experience as an administrator supervising and evaluating teachers of an approved ODCTE career major(s) **or**

(iii) Three (3) years of experience in an Oklahoma technology center **and** a letter of endorsement from the current technology center superintendent **or**

(iv) Three (3) years of experience at the Oklahoma Department of Career and Technology Education **and** a letter of endorsement from the current ODCTE State Director.

(v) Once the above criteria is met, the candidate shall be issued a provisional technology center administrator's credential and be given **five years** from the date of issuance to complete the following:

(vi) Nine semester hours from the following coursework:

(I) History and Philosophy of Career and Technology Education;

(II) Technology Center Finance;

(III) Curriculum for Career and Technology Education; and

(IV) Career and Technology Education Program Planning Development and Evaluation

(vii) Completion of the appropriate ODCTE administrator development program(s) identified when the provisional technology center administrator credential is issued.

(5) **Requirements for first-year technology center superintendents.** The State Board of Career and Technology Education reaffirms its commitment to provide support and services to new technology center superintendents in Oklahoma. To assist first-year technology center superintendents in the state in providing their respective districts with maximum leadership, effective management, and strong educational programs, the following professional development requirements shall be met by each technology center superintendent employed for the first time in the state of Oklahoma as a technology center superintendent:

(A) Meet qualifications for the Provisional or Standard School Superintendent Certificate.

(B) Meet qualifications for the Provisional or Standard Technology Center Administrator's Credential.

(C) Attend professional development workshops or training seminars equal to eleven days (66 hours) of training:

(i) 1 day: Attend a meeting of the State Board of Career and Technology Education and a board meeting at a technology center where the first-year technology center superintendent is not currently employed.

(ii) 2 days: Attend the Annual CareerTech Summer Conference.

(iii) 2 days: Attend the Annual Technology Center Superintendents June Workshop.

(iv) 6 days: Attend professional development workshops or training in the following general areas:

(I) Superintendent/Board of Education Relationships

(II) Legal Issues/School Law/Open Meeting Laws

(III) Staff Relationships/Due Process

(IV) Community and Industry Relationships

(V) Technology Center Finance

(VI) Plant Management/School Facilities

(VII) Setting School District Site Goals/Strategic Planning/Planning and Implementing Continuous Improvement Strategies for Schools

(VIII) Individuals with Disabilities Act (IDEA)

(v) If a first-year technology center superintendent can provide evidence that within eighteen months prior to being employed as a technology center superintendent, that he/she has completed one of the training requirements listed above in (iv), the Technology Center Services Division will review his/her documentation and determine if credit should be given for training previously completed.

(D) After July 1, 2009, the Technology Center Services Division of the Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for first-year technology center superintendents. If content and method of delivery is approved by the Technology Center Services Division prior to a first-year technology center superintendent participating in training, a first-year technology center superintendent may complete some of the training requirements by IETV, on-line training, webinars, or similar methods of delivery. The Technology Center Services

Division will issue a certificate to each new superintendent who has successfully completed the training requirements for first-year technology center superintendents. A copy of this certificate will be provided to the Oklahoma State Department of Education. To maintain certificate validity for second-year technology center superintendents, the Technology Center Services Division will provide to first-year technology center superintendents and the Oklahoma State Department of Education a report showing training completed by first-year technology center superintendents. The Technology Center Services Division will continue to consult with the Oklahoma State Department of Education regarding emerging issues that in the future may need to be integrated into first-year technology center superintendent training.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **Approval of capital improvement projects.** After local board approval, all plans and specifications for technology center buildings, additions, including parking lots and modifications designed for *Career*Tech instruction and/or services shall be reviewed by appropriate staff of the Oklahoma Department of Career and Technology Education and shall be approved by the Technology Center Services Division of the Oklahoma Department of Career and Technology Education. In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire marshal and the State Department of Education. The State Board must grant prior approval of all plans and specifications for technology center school buildings, additions, and modifications to school buildings that are designed to provide for the offering of *Career*Tech education and services when the cost of the building project is to be paid with state appropriated funds, which includes projects funded with monies from the Educational Lottery Trust Fund, or both local levies and state appropriated funds. (70 O.S. 2001, Section 14-108, as amended.)

(n) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except equipment purchased with equipment grants. When instruction can no longer be justified, the State Board may remove the equipment and transfer it to another technology center, skills center, or place it in the Department service center.

(o) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in instruction conducted by the district.

(p) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 2008, §46.3.

(q) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

[OAR Docket #14-531; filed 6-27-14]

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

[OAR Docket #14-532]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Career and Technology Education; 70 O.S. 2011, Section 14-103, 70 O.S. 2011, Section 14-104, as amended.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
January 24, 2014
COMMENT PERIOD:
February 18, 2014 through March 21, 2014
PUBLIC HEARING:
March 25, 2014
ADOPTION:
March 25, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Wording is being changed in order to reflect the Science, Technology, Engineering, and Mathematics Division (STEM) and all the subchapters that lie within the division: Technology Engineering, Pre-Engineering, Biomedical Sciences, and Biotechnology at the secondary level. The proposed rule amendment clarifies agency policy in regards to Agricultural Education program placement within the CareerTech system
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Enrollment in Agricultural Education programs is~~are designed for~~limited to junior high and high school students (grades 8 through 12) ~~and adults.~~in programs operated by comprehensive schools. Technology Centers are prohibited from operating Agricultural Education programs or FFA chapters in any location. Secondary students must have a supervised agricultural experience project. Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) **Business and Information Technology Education.** Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health Careers Education.**

(A) ***Career*Tech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades 8 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities in Science, Technology, Engineering and Mathematics and prepares students for post-secondary transition and pathways for careers in STEM.

(7) **Technology Engineering /TechConnect.** ~~Technology Engineering /TechConnect.~~ Technology Engineering programs are designed for students in grades 5 through 10 who desire an opportunity to explore and experience technological occupations. These programs are designed to carry on technological concepts and problem-solving methods learned in the lower grade programs (i.e.: Integrating Concepts and Lessons, Missions curriculum, The Block Academy, Airbase). The programs also tie to Agriculture Education, Business Education, FACS Education, Health Education, Marketing Education, and Trade and Industrial Education in the upper grades at comprehensive high schools and technology centers. These programs give hands-on projects based core curriculum supported through the occupational areas.

(8) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools***.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Engineering, TechConnect, Career Transitions Education, and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(F) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one or two related courses, subject to approval of the appropriate cluster administrator. Science and Math courses listed in the STEM Career Major ~~will~~ can be counted as a STEM course, not a related course, with the approval of the cluster administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties.Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the *Career*Tech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business and Information Technology Education.**

(i) **Methods of delivery.** The Business and Information Technology Education programs provide three methods of delivery:

(I) Business and Information Technology Education internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12.

Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and Information Technology Education programs in technology centers shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Careers Education.**

(i) **Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and career major requirements.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first- and second-year marketing management students in the same class without written permission from the State Department of Education.

(iii) **Technology/equipment.** Marketing Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment.

(G) ~~**Technology Engineering/TechConnect.**~~**Science, Technology, Engineering and Mathematics**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the Technology Engineering/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. Technology Engineering /TechConnect programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, Technology Engineering/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. Technology Engineering /TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of a Technology Engineering/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Engineering/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. Technology Engineering/TechConnect programs shall consist of occupational instruction for two consecutive periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the Technology Engineering/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *Career*Tech programs as well as other personal development components. Technology Engineering/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. Technology Engineering /TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed to introduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics, Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services, Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** A six period day will require two, two-hour blocks or four one-hour blocks with one hour of related instruction for a full time program. One two-period block or less than four one-hour period blocks will constitute a half-time program in a six period day. A seven period day will require three two-hour blocks or five one-hour blocks with one hour of related instruction for a full time program. Two two-hour blocks or less than five one-hour blocks will constitute a half-time program in a seven period day.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Engineering/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Engineering /TechConnect classes, which are each one period in length, shall be considered as a full-time *Career*Tech teacher in a six period day. A Technology Engineering/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes in a seven period day.

(V) **Technology Engineering /TechConnect program operation recommendations.** Technology Engineering/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should offer applied academic courses in English, mathematics, and science for Technology Engineering/TechConnect students. Enrollment in applied courses should be consistent with each Technology Engineering/TechConnect student plan of study. Enrollment in the Technology Engineering/TechConnect applied academic courses should not be limited to Technology Engineering /TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Engineering division.

(H) **Technology Engineering.**

(i) **Course duration.** Each technology engineering course shall be taught in a one-period block of time (45-55 minutes).

(ii) **Curriculum.** The curriculum emphasis will be placed on Project Lead the Way and Engineering by Design, both national pre-engineering curricula. Also, emphasis shall continue on the following technology clusters: Architecture and Construction, Arts, A/V and Communications, Information Technology, Manufacturing, Transportation, Distribution and Logistics, Agriculture, food and natural resources, Health Science and Science, Technology, Engineering & Mathematics. Through these curricula and the Oklahoma Career Information System, all sixteen of the nationally recognized Career Clusters will be explored.

(iii) **Four periods per day.** Each program shall implement the technology engineering curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv) **Equipment.** Technology Engineering programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state program assistance funds to purchase this equipment.

~~(I) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.~~

~~(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.~~

~~(K) **Science, Technology, Engineering, Math-STEM**~~

(~~i~~I) **Pre-Engineering.** The following courses are required to be taught: Introduction to Engineering Design (IED), Principles of Engineering (POE), Engineering Design and Development (EDD), a capstone in addition to the appropriate math and science courses. Other engineering courses may be approved by STEM division of ODCTE. Technology Centers and high schools are required to administer each pre-engineering end of course test if applicable, preferably by a proctor and/or testing liaison.

(~~ii~~J) **Biomedical Sciences and Medicine.** The following courses are required to be taught: Principles of Biomedical Sciences (PBS), Human Body Systems (HBS), Medical Interventions (MI), Biomedical Innovations (BI) in addition to the appropriate science and math courses. Technology Centers and high schools are required to administer each biomedical end of course test if applicable, preferably by a proctor and/or testing liaison.

(~~iii~~K) **Biotechnology.** The following courses are required to be taught in order for an ODCTE biotechnology career major to be accredited and/or funded:

Survey of Biotechnology, Biotechnology I, Biotechnology II, Advanced Biotechnology I, Advanced Biotechnology II and Biotechnology Capstone in addition to the appropriate math and science courses. Other biotechnology courses may be approved by STEM division of ODCTE.

(~~I~~L) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(~~J~~M) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business and Information Technology Education.**

(i) **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology internship. Other Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers.** Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen Living, and Life Management-20 Students

(II) Family and Consumer Sciences I and II-20 Students

(III) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 Students

(IV) Non-laboratory 60 hour courses-25 Students

(V) Laboratory 60 hour courses-21 students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education.

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and 8a maximum of eighteen students per instructor shall

be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and /Entrepreneurship program shall not exceed 25 students per marketing management teacher-coordinator. A maximum of 25 students per class may be enrolled in the marketing internship. Other Marketing Education courses may enroll a maximum of 25 students.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students."** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) ~~**Technology Engineering and TechConnect.**~~**Science, Technology, Engineering and Mathematics.** **Technology Engineering and TechConnect.** The maximum enrollment for each period of Technology Engineering shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

[OAR Docket #14-532; filed 6-27-14]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER

[OAR Docket #14-820]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Permit Application Requirements and Processing
785:30-3-6. Well spacing [AMENDED]
Subchapter 9. Maximum Annual Yield Determinations
785:30-9-6. Issuance of regular permit to temporary permit holder [AMENDED]
Appendix D. Identified Springs that Emanate from a Sensitive Sole Source Groundwater Basin [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., Sections 1020.1 through 1020.22 and 1085.2.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2013
COMMENT PERIOD:
January 2, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
OAC 785:30-3-6 is being amended by adding language governing spacing between (a) new or proposed wells drilled and completed in a sensitive sole source groundwater basin (as defined in 82 O.S. Section 1020.9A) and (b) certain springs and streams emanating from such a basin. The amendment interprets and implements 82 O.S. Sections 1020.9 and 1020.9A. In connection with the amendment of 785:30-3-6, and as a response to comments received during the comment period, a new Appendix D is being added to provide identification of the springs which are protected by the new spacing provisions.
OAC 785:30-9-6 is being amended to correct a reference in subsection (d) thereof.
CONTACT PERSON:
Julie Cunningham, Chief, Planning and Management Division, Oklahoma Water Resources Board, 3800 North Classen, Oklahoma City, Oklahoma 73118, (405) 530-8800, Julie.Cunningham@owrb.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:30-3-6. Well spacing

(a) **Spacing.** Within bedrock groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. Within alluvium and terrace groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. These well spacing provisions shall not be applicable to plugged or abandoned wells or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed.

(b) **Location exceptions.** A location exception shall be granted if the person requesting the exception shows and the Board determines in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, and that notice, as set forth in 785:30-3-4, of the location exception request is provided. The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:

(1) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.

(2) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.

(3) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination and which does not meet the spacing requirements of (a) of this section.

(4) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.

(c) **Well spacing within a sensitive sole source groundwater basin.**

(1) Within a sensitive sole source groundwater basin where the maximum annual yield has been determined:

(A) No new or proposed well shall be drilled and completed within a one thousand three hundred twenty feet (1320') radius of a spring that flows 50 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter;

(B) No new or proposed well shall be drilled and completed within a two (2)-mile radius of a spring that flows 500 or more gallons per minute, emanates from the basin and is identified in Appendix D to this Chapter, unless the Board first determines that the total amount of groundwater authorized to be used from all wells within that radius is no more than 1600 acre feet per year; and

(C) No new or proposed well shall be drilled and completed within one (1) mile of a stream segment considered to be perennial in the U.S. Geological Survey's National Hydrology Dataset and with a base flow of 500 gallons per minute that emanates from the basin.

(2) Provided, an applicant may obtain an exception from the provisions of paragraph (1) of this subsection (c) if:

(A) The applicant first demonstrates to the satisfaction of the Board that the cumulative impact of pumping from the new or proposed well together with authorized pumping from existing and proposed wells will not cause a reduction of more than 25% of the base flow of the subject spring or stream; or

(B) The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the provisions of paragraph (1) of this subsection (c).

(3) Notwithstanding any other provision of this subsection (c), the Board shall not authorize any new or proposed well within a sensitive sole source groundwater basin where the maximum annual yield has been determined if the use of that well *is likely to degrade or interfere with springs orstreams emanating in whole or in part from* [82:1020.9(A)(1)(d)] the basin.

SUBCHAPTER 9. MAXIMUM ANNUAL YIELD DETERMINATIONS

785:30-9-6. Issuance of regular permit to temporary permit holder

(a) As soon as practical after the maximum annual yield and equal proportionate share have been determined for a groundwater basin or subbasin, the Board shall issue a regular permit to each holder of a temporary permit to use groundwater from said basin.

(b) In issuing these regular permits, the Board shall notify the temporary permit holder by first class mail that his equal proportionate share of the basin or subbasin has been determined, that a regular permit has been issued to him based on this allocation, and that his temporary permit has lapsed. A copy of the regular permit shall be included with this notification.

(c) If the temporary permit listed more than one purpose and amounts for each, and the equal proportionate share is less than the total allocated by the temporary permit, the amounts for each purpose will be adjusted proportionately in a ratio equal to the amount for each purpose and the total under the temporary permit.

(1) A request to adjust amounts may thereafter be granted without notice and hearing, provided that the maximum amount for any one of the purposes cannot be greater than the amount allocated for that purpose in the temporary permit.

(2) Such request must be filed within 30 days of receipt of the regular permit.

(d) The regular permit shall contain the condition that no new wells shall be drilled closer than the established well spacing distance, as provided in 785:30-3-6~~(b)~~, unless a location exception is granted.

APPENDIX D. IDENTIFIED SPRINGS THAT EMANATE FROM A SENSITIVE SOLE SOURCE GROUNDWATER BASIN [NEW]

Table 1.
The following springs flow 50 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785:30-3-6(c) of this Chapter.

Spring Name/Other ID	USGS Site ID	Latitude	Longitude	Legal Description
Anderson Spring	342718096380401	34.45496	-96.63432	NW NW SW Sec. 24 T01S R06EIM
Antelope Spring at Sulphur, OK	7329849	34.50444444	-96.9411111	NW NW NE Sec. 1 T01S R03EIM
Bilbo Spring	342732096400601	34.4589808	-96.6686163	NW SW NW Sec. 22 T01S R06EIM
Blue Hole Spring	342108096553801	34.3521	-96.92963	SW NE SW Sec. 30 T02S R04EIM
Boiling Spring	342819097123301	34.47203135	-97.2094644	SE SW NW Sec. 16 T01S R01EIM
Buck Irving Spring	342035096554101	34.34314776	-96.9283451	NW SE NW Sec. 31 T02S R04EIM
Buffalo Spring at Sulphur, OK	7329847	34.5027	-96.9393	NE SW NE Sec. 1 T01S R03EIM
Byrds Mill Spring nr Fittstown,OK	7334200	34.59453434	-96.6655632	SE SW SW Sec. 34 T02N R06EIM
Canyon Spring	343241096360201	34.544738860	-96.600822180	NE SE NE Sec. 19 T01N R07EIM
Chapman Spring	341927096541901	34.32446	-96.90536	NW NW SE Sec. 5 T03S R04EIM
Coffee Pot Spring	343114096332701	34.52064708	-96.5577813	SE SE SW Sec. 27 T01N R07EIM
Cold Spring	342253097165801	34.3814773	-97.2830754	SE NE SE Sec. 15 T02S R01WIM
Colvert Spring	342613096521101	34.43703557	-96.8700114	NE SW SE Sec. 27 T01S R04EIM
Colvert Spring	342613096514701	34.4370356	-96.8633445	NE SE SE Sec. 27 T01S R04EIM
Cummins Spring	342712096373701	34.45342537	-96.6272263	SE NE SW Sec. 24 T01S R06EIM
Daube Spring	341540096485101	34.2612051	-96.8144509	SW SE SE Sec. 30 T03S R05EIM
Deadmans Spring	342411096350101	34.40329	-96.58392	NW NW NW Sec. 9 T02S R07EIM
Desperado Spring	341958096354301	34.33304	-96.59525	SW SE SW Sec. 32 T02S R07EIM
Devils Bathtub Spring	342511097064501	34.41981139	-97.1127954	SE SW SE Sec. 32 T01S R02EIM
Diamond Spring	342414096364701	34.40387215	-96.61329907	NW NE NW Sec. 7 T02S R07EIM
Five Mile Spring	343247097181901	34.4811969	-97.3080775	SE NW SE Sec. 9 T01S R01WIM
Gray Spring	342342096464801	34.39509238	-96.7802852	SE NW SE Sec. 9 T02S R05EIM
Gregor Spring	342732096432201	34.4589807	-96.7230622	NW SE NE Sec. 21 T01S R06EIM
Inslee Spring	342726096380001	34.4573142	-96.6336154	SW SW NW Sec. 24 T01S R06EIM
Lowrance Spring 2	342730096562701	34.45842354	-96.9411256	NW SW NE Sec. 24 T01S R03EIM
Lowrance Springs nr Drake, OK	7329880	34.4589	-96.9414	NW NW NE Sec. 24 T01S R03EIM
Pole Spring	342837097193301	34.47703024	-97.3261333	NW NW NE Sec. 17 T01S R01WIM
Rutherford Spring	342318096325401	34.38842597	-96.5486122	NW NW NW Sec. 14 T02S R07EIM
Seven Springs 2	342150096284002	34.36398146	-96.4780545	NW SW SW Sec. 21 T02S R08EIM
Shadowfax Spring	342732096395801	34.4589808	-96.666394	NE SW NW Sec. 22 T01S R06EIM
Sheep Creek Spring	343422096385101	34.572868	-96.647785	SW SE NW Sec. 11 T01N R06EIM
Smith Spring	342218096411301	34.3717595	-96.6872266	SW NW NW Sec. 21 T02S R06EIM
South Spring	342054096514501	34.34842584	-96.8627874	SW SW SW Sec. 26 T02S R04EIM
Three Springs	342147096393901	34.36314848	-96.6611147	NW SW SE Sec. 22 T02S R06EIM
Three Springs	342148096394001	34.36342625	-96.6613925	SW SW SE Sec. 22 T02S R06EIM
Tired Spring	341933096535201	34.32592599	-96.898066	SE SW NW Sec. 4 T03S R04EIM

Tisdell Spring	342732096402301	34.4589808	-96.6733387	NW SE NE Sec. 21 T01S R06EIM
Unnamed Spring	342724096400202	34.4567586	-96.6675052	SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342712096374101	34.45296	-96.62846	SE NE SW Sec. 24 T01S R06EIM
Unnamed Spring	342254096425501	34.38238	-96.71595	NE NE SW Sec. 18 T02S R06EIM
Unnamed Spring	342757097195501	34.46591938	-97.3322444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342517096453401	34.42148107	-96.7597293	SE SE SE Sec. 34 T01S R05EIM
Unnamed Spring	342537096454701	34.4270365	-96.7633406	SE SW NE Sec. 34 T01S R05EIM
Unnamed Spring	342247097143301	34.37981089	-97.2427967	NE SW SW Sec. 18 T02S R01EIM
Unnamed Spring	342335096462501	34.393148	-96.773896	NW SW SW Sec. 10 T02S R05EIM
Unnamed Spring	342908096373701	34.48564729	-96.6272268	SE SE NW Sec. 12 T01S R06EIM
Unnamed Spring	342428096444301	34.4078702	-96.7419508	NE SW NE Sec. 11 T02S R05EIM
Unnamed Spring	342727096401301	34.4575919	-96.6705608	SW NW Sec. 22 T01S R06EIM
Unnamed Spring	342231096300901	34.37537049	-96.5027775	NW NE NE Sec. 19 T02S R08EIM
Unnamed Spring	342342097134701	34.39508844	-97.2300189	SW NW SW Sec. 8 T02S R01EIM
Unnamed Spring	342337097134801	34.39369958	-97.2302967	NW SW SW Sec. 8 T02S R01EIM
Unnamed Spring	343114096353101	34.52064696	-96.5922266	SE SE SW Sec. 30 T01N R07EIM
Unnamed Spring	342628097163001	34.4411981	-97.2752984	NE NE SW Sec. 26 T01S R01WIM
Unnamed Spring	343606096401301	34.6017564	-96.6705635	SE SE NE Sec. 33 T02N R06EIM
Unnamed Spring	342353097045501	34.39814549	-97.0822389	SE SE NW Sec. 10 T02S R02EIM
Unnamed Spring	342505097094401	34.4181442	-97.1625183	NE NE NE Sec. 2 T02S R01EIM
Unnamed Spring	342342097135501	34.3950884	-97.2322412	SE NE SE Sec. 7 T02S R01EIM
Unnamed Spring	342421097065401	34.40592276	-97.1152951	SW SW SE Sec. 5 T02S R02EIM
Unnamed Spring	342634097104401	34.4428657	-97.1791857	SE SE NE Sec. 27 T01S R01EIM
Unnamed Spring	342818097170501	34.47175286	-97.2850213	NW NE SE Sec. 15 T01S R01WIM
Unnamed Spring	342233096444501	34.37592616	-96.746117	NE NW NE Sec. 23 T02S R05EIM
Unnamed Spring	341638096502301	34.2773159	-96.8400076	NW SE SW Sec. 24 T03S R04EIM
Unnamed Spring	341719096520801	34.28870449	-96.8691754	SE SW SE Sec. 15 T03S R04EIM
Unnamed Spring	342246097143601	34.3795331	-97.24363	NE SW SW Sec. 18 T02S R01EIM
Unnamed Spring	342634097160001	34.44286478	-97.2669649	SE SE NE Sec. 26 T01S R01WIM
Unnamed Spring	342639097160001	34.44425363	-97.2669649	NE SE NE Sec. 26 T01S R01WIM
Unnamed Spring	342738096401401	34.46064745	-96.6708386	SW NW Sec. 22 T01S R06EIM
Viola Spring	342216096314001	34.37966	-96.52692	NE SW SW Sec. 13 T02S R07EIM
Washington Spring	342726096400601	34.45738889	-96.6694167	SW SW NW Sec. 22 T01S R06EIM
Webb Spring	341718096515802	34.2884267	-96.8663976	NW NE NE Sec. 22 T03S R04EIM
Williams Spring	342232096561901	34.37564716	-96.9389017	NE NE NW Sec. 24 T02S R03EIM
Willis Spring	342911096373701	34.4864806	-96.6272269	SE SE NW Sec. 12 T01S R06EIM
Wolf Spring	342116096394601	34.35453746	-96.663059	SE SE NW Sec. 27 T02S R06EIM

Table 2.
The following springs flow 500 or more gallons per minute, emanate from a Sensitive Sole Source Groundwater Basin, and are protected by the spacing provisions of Section 785:30-3-6(c) of this Chapter.

Spring Name	USGS Site ID	Latitude	Longitude	Legal Description
Antelope Spring at Sulphur, OK	7329849	34.50444444	-96.9411111	NW NW NE Sec. 1 T01S R03EIM
Bilbo Spring	342732096400601	34.4589808	-96.6686163	NW SW NW Sec. 22 T01S R06EIM
Blue Hole Spring	342108096553801	34.3521	-96.92963	SW NE SW Sec. 30 T02S R04EIM
Buck Irving Spring	342035096554101	34.34314776	-96.9283451	NW SE NW Sec. 31 T02S R04EIM
Byrds Mill Spring nr Fittstown,OK	7334200	34.59453434	-96.6655632	SE SW SW Sec. 34 T02N R06EIM
Cold Spring	342253097165801	34.3814773	-97.2830754	SE NE SE Sec. 15 T02S R01WIM
Colvert Spring	342613096521101	34.43703557	-96.8700114	NE SW SE Sec. 27 T01S R04EIM
Colvert Spring	342613096514701	34.4370356	-96.8633445	NE SE SE Sec. 27 T01S R04EIM
Cummins Spring	342712096373701	34.45342537	-96.6272263	SE NE SW Sec. 24 T01S R06EIM
Devils Bathtub Spring	342511097064501	34.41981139	-97.1127954	SE SW SE Sec. 32 T01S R02EIM
Gregor Spring	342732096432201	34.4589807	-96.7230622	NW SE NE Sec. 21 T01S R06EIM
Inslee Spring	342726096380001	34.4573142	-96.6336154	SW SW NW Sec. 24 T01S R06EIM
Lowrance Springs nr Drake, OK	7329880	34.4589	-96.9414	NW NW NE Sec. 24 T01S R03EIM
Shadowfax Spring	342732096395801	34.4589808	-96.666394	NE SW NW Sec. 22 T01S R06EIM
Sheep Creek Spring	343422096385101	34.572868	-96.647785	SW SE NW Sec. 11 T01N R06EIM
Tisdell Spring	342732096402301	34.4589808	-96.6733387	NW SE NE Sec. 21 T01S R06EIM
Unnamed Spring	342712096374101	34.45296	-96.62846	SE NE SW Sec. 24 T01S R06EIM
Unnamed Spring	342254096425501	34.38238	-96.71595	NE NE SW Sec. 18 T02S R06EIM
Unnamed Spring	342757097195501	34.46591938	-97.3322444	NE SW SW Sec. 17 T01S R01WIM
Unnamed Spring	342517096453401	34.42148107	-96.7597293	SE SE SE Sec. 34 T01S R05EIM
Unnamed Spring	342537096454701	34.4270365	-96.7633406	SE SW NE Sec. 34 T01S R05EIM
Unnamed Spring	342247097143301	34.37981089	-97.2427967	NE SW SW Sec. 18 T02S R01EIM
Unnamed Spring	342738096401401	34.46064745	-96.6708386	SW NW Sec. 22 T01S R06EIM
Washington Spring	342726096400601	34.45738889	-96.6694167	SW SW NW Sec. 22 T01S R06EIM

[OAR Docket #14-820; filed 7-21-14]

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

[OAR Docket #14-821]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures
785:50-7-1. General procedures [AMENDED]
785:50-7-3. Evaluation procedures for grant applications [AMENDED]
785:50-7-5. Emergency grant priority points system [AMENDED]
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-5. REAP grant priority point system [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 3. General Program Requirements
785:50-9-21. Eligible project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-28. Pre-application for funding [AMENDED]
785:50-9-30. Planning documents [AMENDED]
785:50-9-32. Plans and specifications [AMENDED]
785:50-9-35. Loan closing [AMENDED]
785:50-9-38. Construction phase [AMENDED]
785:50-9-42. Retainage [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-61. Environmental information required by the Board [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., Sections 1020.1 through 1020.22 and 1085.2.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 5, 2013
COMMENT PERIOD:
January 2, 2014 through February 18, 2014
PUBLIC HEARING:
February 18, 2014
ADOPTION:
March 18, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 28, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 12, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Sections 785:50-7-1, 785:50-8-5, 785:50-9-23 and 785:50-9-38 have been amended to correct grammatical errors in the rules. The intended effect is to make the rules in these sections grammatically correct.

Sections 785:50-7-5, 785:50-9-28 and 785:50-9-61 have been amended to correct language, to change the name of document and a newspaper. These changes are proposed to modify language so that it reflects the current name and to clarify the language.

Section 785:50-7-3 has been amended to clarify the date an emergency situation occurs in regards to eligible time constraints in the emergency grant rules. The intended effect is to clarify the language and to allow the grant applicants more time to apply for an emergency grant.

Sections 785:50-7-5, and 785:50-8-5 have been amended to correct numerical errors in the rules. The intended effect is to make the rules in these sections numerically correct.

Section 785:50-7-5 has been amended to correct a mistake that was inadvertently changed previously. The change is proposed to modify language so that it correctly reflects the process.

Section 785:50-9-21 has been amended to delete the term treatment in order to expand the type of project eligible for funding. The intended effect is to ensure that the rule is consistent with the U.S. Environmental Protection Agency (EPA) guidelines.

Section 785:50-9-21 has been amended to change 'initiation of construction' to 'completion of construction' in order to correlate with the design life of the project. The intended effect is to accurately reflect the eligible capacity of a treatment plant and to correlate that with the design life of the project.

Section 785:50-9-30 has been amended to delete the percentage reflected in the rules concerning contingencies. The intended effect is to ensure that the rule is consistent with the Oklahoma Department of Environmental Quality rules.

Section 785:50-9-32 has been amended to change 'design report' to 'final report'. The intended effect is to accurately reflect the document required under EPA guidelines and the current process.

Section 785:50-9-35 has been amended to remove a section of the rule and move it to the appropriate section of the rules. The intended effect is to change the rule to accurately reflect the process that is followed.

Section 785:50-9-42 has been amended to change the retainage requirements to match the Oklahoma State Statutes regarding Competitive Bidding. The intended effect is to update the rules in accordance with updated State Statutes.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 12, 2014:

SUBCHAPTER 7. WATER AND SEWER PROGRAM (BOND PROCEED LOANS AND EMERGENCY GRANTS) REQUIREMENTS AND PROCEDURES

785:50-7-1. General procedures

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the water and sewer program authorized by 82 O.S., §§1085.31 through 1085.49 shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance.

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(3) **Preliminary review.** Upon receipt of the application by the Board, the submitted application shall be given preliminary review by Board staff for an initial determination of project eligibility, applicant eligibility and for completeness and accuracy of all required and necessary information.

(4) **Final review.** Subsequent to preliminary review and based upon the determination of eligibility and adequacy of information submitted, the application shall thereafter be reviewed by Board staff in accordance with this Subchapter and for compliance with such other considerations and factors deemed relevant and necessary for staff recommendation purposes.

(5) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (b) below.

(b) **Board action.**

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate loan closing and/or the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and~~,~~ the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available loan and/or grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval and grant of an application, the Board may authorize loan closing and the execution of all necessary closing documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements, and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-7-3. Evaluation procedures for grant applications

(a) In evaluating a grant request under the water and sewer program, a determination shall be made as to whether an emergency situation exists. For the purposes of this determination, an emergency situation shall be a situation where the life, health or property of the persons served by the entity are endangered. An emergency will be deemed no longer to exist, and a grant application based thereon will not be approved nor funded, after the passage of 180 days following the date the emergency ~~ceased to exist~~ last occurred, unless the Board finds, upon evidence satisfactory to the Board, that the emergency continues to exist at the date of approval and the date of funding.

(b) No emergency may be determined by the Board to exist absent an official declaration of emergency by the entity requesting the grant. The entity's declaration of emergency must be furnished to the Board and must set forth and describe, among other matters, the nature and circumstances of the emergency.

(c) In addition to determining whether an emergency situation exists, the Board shall, in evaluating a grant request, take into consideration the following:

(1) The needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance;

(2) The availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(3) Whether the political subdivision can reasonably finance the project without assistance from the state;

(4) The relationship of the project to the overall statewide water and sewage treatment needs; and

(5) Whether or not the applicant has taken all reasonable measure to limit waste and conserve water.

(d) Upon a determination that an emergency situation does exist, the priority point system set forth in 785:50-7-5 shall be utilized to review pending grant applications and grant applications filed after the effective date of these rules.

(e) For purposes of evaluating, approving and funding an application for a grant, eligible project costs shall include, in addition to those project costs described in 785:50-3-1:

(1) Architecture and/or engineer fees related to the project.

(2) Fees for soil testing.

(3) Fees for surveying.

(4) Payments to contractor(s) for construction of the improvements.

(5) Legal fees and expenses of counsel for the applicant which are related to the project.

(6) Services of full-time or part-time inspector.

(7) Administrative expenses shall not be eligible project costs.

785:50-7-5. Emergency grant priority point system

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is one hundred twenty (120). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:

(A) The emergency situation of the applicant.

(B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

(b) **Priority formula for eligible entities other than school districts.**

(1) **Formula.** The following formula has been devised to rank grant applications: P = E + WR + I + L + MHI + FP + AR + BP - AN, Where:

(A) P = Priority ranking

(B) E = Emergency ranking

(C) WR = Water and sewer rate structure

(D) I = Indebtedness per customer

(E) L = Amount of local contribution toward project

(F) MHI = Median household income

(G) FP = Applicant's ability to finance project

(H) AR = Amount of grant requested

(I) BP = Benefit of project to other systems

(J) AN = Application number

(2) **Explanation.** Each of these criteria are explained below:

(A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and Category 3 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of 30 points for Category 3. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The three (3) emergency ranking categories are as follows:

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provisions of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in

the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 2 emergencies receive 40 points.

(iii) **Category 3.** Water system improvements needed to meet the average and/or maximum daily demands of a system's customers caused by a large increase in the number of customers. The increase could result from annexation or the sale of treated water to another entity(ies) based on an engineering study that indicates purchasing to be the most cost effective alternative. Also included under this category is the construction of a new or extended water or sewer system to serve areas where residents are without sewer system service or without water. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 3 emergencies receive 30 points.

(B) **Water and Sewer rate structure (WR)**

(i) **For Systems Providing Water Service Only:**

(I) If the cost per 5000 gallons is $46.00 or greater, the applicant shall be given 10 points.

(II) If the cost per 5000 gallons is $42.00 to $45.99, the applicant shall be given 9 points.

(III) If the cost per 5000 gallons is $39.00 to $41.99, the applicant shall be given 8 points.

(IV) If the cost per 5000 gallons is $35.00 to $38.99, the applicant shall be given 7 points.

(V) If the cost per 5000 gallons is $32.00 to $34.99, the applicant shall be given 6 points.

(VI) If the cost per 5000 gallons is $28.00 to $31.99, the applicant shall be given 5 points.

(VII) If the cost per 5000 gallons is $25.00 to $27.99, the applicant shall be given 4 points.

(VIII) If the cost per 5000 gallons is $21.00 to $24.99, the applicant shall be given 3 points.

(IX) If the cost per 5000 gallons is $17.00 to $20.99, the applicant shall be given 2 points.

(X) If the cost per 5000 gallons is $13.50 to $16.99, the applicant shall be given 1 point.

(XI) If the cost per 5000 gallons is less than $13.50, the applicant shall be given 0 points.

(ii) **For Systems Providing Water and Sewer Services:**

(I) If the cost per 5000 gallons is $53.00 or greater, the applicant shall be given 10 points.

(II) If the cost per 5000 gallons is $49.00 to $52.99, the applicant shall be given 9 points.

(III) If the cost per 5000 gallons is $46.00 to $48.99, the applicant shall be given 8 points

(IV) If the cost per 5000 gallons $43.00 to $45.99, the applicant shall be given 7 points.

(V) If the cost per 5000 gallons is $40.00 to $42.99, the applicant shall be given 6 points.

(VI) If the cost per 5000 is $36.00 to $39.99, the applicant shall be given 5 points.

(VII) If the cost per 5000 gallons is $33.00 to $35.99, the applicant shall be given 4 points.

(VIII) If the cost per 5000 gallons is $30.00 to $32.99, the applicant shall be given 3 points.

(IX) If the cost per 5000 gallons is $26.00 to $29.99, the applicant shall be given 2 points.

(X) If the cost per 5000 gallons is $23.00 to $25.99, the applicant shall be given 1 point.

(XI) If the cost per 5000 gallons is less than $23.00, the applicant shall be given 0 points.

(iii) **For Systems Providing Sewer Service Only:**

(I) If the cost per connection per month is $31.00 or greater, the applicant shall be given 10 points.

(II) If the cost of connection per month is $29.00 to $30.99, the applicant shall be given 9 points.

(III) If the cost of connection per month is $26.00 to $28.99, the applicant shall be given 8 points.

(IV) If the cost of connection per month is $24.00 to $25.99, the applicant shall be given 7 points.

(V) If the cost of connection per month is $22.00 to $23.99, the applicant shall be given 6 points.

(VI) If the cost of connection per month is $19.00 to $21.99, the applicant shall be given 5 points.

(VII) If the cost of connection per month is $17.00 to $18.99, the applicant shall be given 4 points.

(VIII) If the cost of connection per month is $14.00 to $16.99, the applicant shall be given 3 points.

(IX) If the cost of connection per month is $12.00 to $13.99, the applicant shall be given 2 points.

(X) If the cost of connection per month is $9.50 to $11.99, the applicant shall be given 1 point.

(XI) If the cost of connection per month is less than $9.50, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is $20.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per customer is $17.50 to $19.99, the applicant shall be given 9 points

(iii) If the indebtedness per customer is $16.00 to $17.49, the applicant shall be given 8 points.

(iv) If the indebtedness per customer is $14.50 to $15.99, the applicant shall be given 7 points.

(v) If the indebtedness per customer is $13.00 to $14.49, the applicant shall be given 6 points.

(vi) If the indebtedness per customer is $11.50 to $12.99, the applicant shall be given 5 points.

(vii) If the indebtedness per customer is $10.00 to $11.49, the applicant shall be given 4 points.

(viii) If the indebtedness per customer is $8.50 to $9.99, the applicant shall be given 3 points.

(ix) If the indebtedness per customer is $7.00 to $8.49, the applicant shall be given 2 points.

(x) If the indebtedness per customer is $5.50 to $6.99, the applicant shall be given 1 point.

(xi) If the indebtedness per customer is less than $5.50, the applicant shall be given 0 points.

(D) **Local participation (L).**

(i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.

(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.

(III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.

(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(E) **Median household income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points are awarded as follows:

(I) If the median household income is less than $17,000, the applicant shall be given 10 points.

(II) If the median household income is $17,000 to $20,999, the applicant shall be given 9 points.

(III) If the median household income is $21,000 to $23,999, the applicant shall be given 8 points.

(IV) If the median household income is $24,000 to $28,999, the applicant shall be given 7 points.

(V) If the median household income is $29,000 to $31,999, the applicant shall be given 6 points.

(VI) If the median household income is $32,000 to $36,999, the applicant shall be given 5 points.

(VII) If the median household income is $37,000 to $39,999, the applicant shall be given 4 points.

(VIII) If the median household income is $40,000 to $44,999, the applicant shall be given 3 points.

(IX) If the median household income is $45,000 to $47,999, the applicant shall be given 2 points.

(X) If the median household income is $48,000 to $51,999, the applicant shall be given 1 point.

(XI) If the median household income is $52,000 or greater, the applicant shall be given 0 points.

(F) **Ability to finance project (FP)**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the sate is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assume. The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.1102), divided by the product of (12) multiplied by (C), Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.

(II) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.

(III) (0.1102) = Annual rate factor for a 25 year loan at 10%

(IV) (12) = Number of months per year.

(V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking are awarded as follows:

(I) If the ability to finance the project is $10.00 or greater, the applicant shall be given 12 points.

(II) If the ability to finance the project is $8.00 to $9.99, the applicant shall be given 11 points.

(III) If the ability to finance the project is $6.00 to $7.99, the applicant shall be given 10 points.

(IV) If the ability to finance the project is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the ability to finance the project is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the ability to finance the project is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the ability to finance the project is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the ability to finance the project is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the ability to finance the project is $1.50 to $1.75~~5~~4, the applicant shall be given 4 points.

(X) If the ability to finance the project is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the ability to finance the project is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the ability to finance the project is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the ability to finance the project is less than $0.75, the applicant shall be given 0 points.

(G) **Amount of grant requested (AR).**

(i) Points under this category for amount of grant requested are distributed as follows:

(I) $95,001 to $100,000: -5

(II) $90,001 to $95,000: -4
(III) $85,001 to $90,000: -3
(IV) $80,001 to $85,000: -2
(V) $75,001 to $$80,000: -1
(VI) $70,001 to $75,000: 0
(VII)$65,001 to $70,000: +1
(VIII) $60,001 to $65,000: +2
(IX) $55,001 to $60,000: +3
(X) $50,000 to $55,000: +4
(XI) $45,001 to $50,000: +5
(XII)$40,001 to $45,000: +6
(XIII) $35,001 to $40,000: +7
(XIV) $30,001 to $35,000: +8
(XV) $25,001 to $30,000: +9
(XVI) $25,000 or less: +10

(ii) If a project exceeds $75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funds 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

(i) 1 prior grant = 5 reduction points
(ii) 2 prior grants = 8 reduction points
(iii) 3 prior grants = 10 reduction points
(iv) 4 prior grants = 12 reduction points
(v) 5 or more prior grants = 14 reduction points

(c) **Priority formula for school districts.**

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

(A) The emergency situation of the school district.

(B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of ~~1~~30 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given an maximum of 66 points and is derived by analyzing the following:

(A) Local tax levies
(B) Bonded indebtedness
(C) Local contribution
(D) Median household income within the school district's geographical area
(E) Applicant's ability to finance project
(F) Amount of grant requested
(G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications: P = E + LT + BI + L + MHI + FP + AR - AN, Where:

(A) P = Priority ranking total points
(B) E = Emergency ranking
(C) LT = Local tax levies
(D) BI - Bonded indebtedness
(E) L = School's contribution toward the project
(F) MHI = median household income of population within a school district
(G) FP = Applicant's ability to finance project
(H) AR = Amount of grant requested
(I) AN = Application number

(8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of ~~miles~~mills levied, as follows:

(i) 95 to 100,00 mills = 13 points
(ii) 90 to 94.99 mills = 11 points
(iii) 85 to 89.99 mills = 10 points
(iv) 80 to 84.99 mills = 8 points
(v) 70 to 79.99 mills = 6 points
(vi) 60 to 69.99 mills = 4 points
(vii) 55 to 59.99 mills = 2 points
(viii) 50 to 54.99 mills = 1 point
(ix) 45 to 49.99 mills = 0 points
(x) 40 to 44.99 mills = -1 points
(xi) Less than 40 mills = -2 points

(B) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows: Percentage of Indebtedness Points

(I) 95% to 100% of debt limitation = 10 points
(II) 90% to 94.99% of debt limitation = 8 points
(III) 80% to 89.99% of debt limitation = 7 points
(IV) 75% to 79.99% of debt limitation = 6 points

(V) 70% to 74.99% of debt limitation = 5 points
(VI) 65% to 69.99 of debt limitation = 4 points
(VII) 60% to 64.99% of debt limitation = 3 points
(VIII) 55% to 59.99% of debt limitation = 2 points
(IX) 50% to 54.99% of debt limitation = 1 point
(X) 45% to 49.99% of debt limitation = 0 points
(XI) 40% to 44.99% of debt limitation = -1 point
(XII) 30% to 39.99% of debt limitation = -2 points
(XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

(C) **Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.
(III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.
(IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.
(V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.
(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.
(VII) If the percentage of the project cost locally funded is at least 40% but less than ~~4~~50%, the applicant shall be given 4 points.
(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.
(IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant shall be given 2 points.
(X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant shall be given 1 point.
(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-5. REAP grant priority point system

(a) **Basis of priority system and formula.**

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority cots. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 39 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the latest federal decennial census than for any jurisdiction with a greater population according to the census;

and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) **Priority formula for eligible entities other than school districts and counties.**

(1) **Formula.** The following formula has been devised to rank grant applications: T = P + WR + I + MHI + FP + N + AR + BP + PG, Where:

(A) T = Total of priority points
(B) P = Population
(C) WR = Water and sewer rate structure
(D) I = Indebtedness per customer
(E) MHI = Median household income
(F) FP = Applicant's ability to finance project
(G) N = Need
(H) AR = Amount of grant requested
(I) BP = Project benefit to other systems
(J) PG = Previous grant assistance

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

(B) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).

(ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is $20.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per customer is $17.50 to $19.99, the applicant shall be given 9 points.

(iii) If the indebtedness per customer is $16.00 to $17.49, the applicant shall be given 8 points.

(iv) If the indebtedness per customer is $14.50 to $15.99, the applicant shall be given 7 points.

(v) If the indebtedness per customer is $13.00 to $14.49, the applicant shall be given 6 points.

(vi) If the indebtedness per customer is $11.50 to $12.99, the applicant shall be given 5 points.

(vii) If the indebtedness per customer is $10.00 to $11.49, the applicant shall be given 4 points.

(viii) If the indebtedness per customer is $8.50 to $9.99, the applicant shall be given 3 points.

(ix) If the indebtedness per customer is $7.00 to $8.49, the applicant shall be given 2 points.

(x) If the indebtedness per customer is $5.50 to $6.99, the applicant shall be given 1 point.

(xi) If the indebtedness per customer is less than $5.50, the applicant shall be given 0 points.

(D) **Median household income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).

(E) **Ability to finance project (FP).**

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP = AR (0.1102)/(12)(C), Where:

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to

finance the amount of grant requested for the project.

(II) AR = Amount of grant requested.

(III) (0.1102) = Annual rate factor for a 25 year loan at 10%

(IV) (12) = Number of months per year.

(V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the FP is $10.00 or greater, the applicant shall be given 12 points.

(II) If the FP is $8.00 to $9.99, the applicant shall be given 11 points.

(III) If the FP is $6.00 to $7.99, the applicant shall be given 10 points.

(IV) If the FP is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the FP is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the FP is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the FP is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the FP is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the FP is $1.50 to $1.74, the applicant shall be given 4 points.

(X) If the FP is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the FP is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the FP is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the FP is less than $0.75, the applicant shall be given 0 points.

(F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arouse if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:

(i) If the AR is $140,001 to $150,000, the applicant shall be given -5 points.

(ii) If the AR is $130,001 to $140,000, the applicant shall be given -4 points.

(iii) If the AR is $120,001 to $130,000, the applicant shall be given -3 points.

(iv) If the AR is $110,001 to $120,000, the applicant shall be given -2 points.

(v) If the AR is $100,001 to $110,000, the applicant shall be given -1 point.

(vi) If the AR is $100,000, the applicant shall be given 0 points.

(vii) If the AR is $80,000 to $99,999, the applicant shall be given 1 point.

(ix) If the AR is $60,000 to $79,999, the applicant shall be given 2 points.

(x) If the AR is $40,000 to $59,999, the applicant shall be given 3 points.

(xi) If the AR is $20,000 to $39,999, the applicant shall be given 5 points.

(xii) Any portion of an AR that is more than $150,000 shall be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than $150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply:

(i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.

(ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given -10 points for each REAP grant so received.

(iii) If the qualified entity has been approved for or received one (1) REAP grant more than twelve (12) months in the past, the application will be given -5 points.

(iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given -8 points.

(v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.

(vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.

(vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts: T = ADM + LT + BI + MHI + FP + N + AR + PG, Where:

(A) T = Total of priority points

(B) ADM = Average daily membership

(C) Lt = Local tax levies

(D) BI = Bonded indebtedness

(E) MHI = Median household income of population within the school district or area of county to be served

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) PG = Previous grant assistance

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students shall be given 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100; the applicant shall be given 13 points.

(ii) If the mills are 90 to 94.99, the applicant shall be given 11 points.

(iii) If the mills are 85 to 89.~~00~~99, the applicant shall be given 10 points.

(iv) If the mills are 80 to 84.99, the applicant shall be given 8 points.

(v) If the mills are 70 to 79.99, the applicant shall be given 6 points.

(vi) If the mills are 60 to $69.99, the applicant shall be given 4 points.

(vii) If the mills are 55 to 59.99, the applicant shall be given 2 points.

(viii) If the mills are 50 to 54.99, the applicant shall be given 1 point.

(ix) If the mills are 45 to 49.99, the applicant shall be given 0 points.

(x) If the mills are 40 to 4~~9~~4.99, the applicant shall be given -1 point.

(xi) If the mills are less than 40, the applicant shall be given -2 points.

(C) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:

(I) If the percentage is 95% to 100%, the applicant shall be given 10 points.

(II) If the percentage is 90% to 94.99%, the applicant shall be given 8 points.

(III) If the percentage is 80% to 89.99%, the applicant shall be given 7 points.

(IV) If the percentage is 75% to 79.99%, the applicant shall be given 6 points.

(V) If the percentage is ~~65~~70% to ~~69~~74.99%, the applicant shall be given 5 points.

(VI) If the percentage is 65% to 69.99%, the applicant shall be given 4 points.

(VII) If the percentage is 60% to 64.99%, the applicant shall be given 3 points.

(VIII) If the percentage is 55% to 59.99%, the applicant shall be given 2 points.

(IX) If the percentage is 50% to 54.99%, the applicant shall be given 1 point.

(X) If the percentage is 45% to 49.99%, the applicant shall be given 0 points.

(XI) If the percentage is 40% to 44.99%, the application shall be given -1 point.

(XII) If the percentage is 30% to 39.99%, the applicant shall be given -2 points.

(XIII) If the percentage is less than 30%, the applicant shall be given -3 points.

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-21. Eligible project

(a) The categories of wastewater ~~treatment~~ projects eligible for assistance are as follows:

(1) Category I - Secondary Treatment. The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant;

(2) Category II - Advanced Treatment. The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans;

(3) Category IIIA -- Infiltration/Inflow Correction. The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc;

(4) Category IIIB -- Sewer System Rehabilitation. Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works;

(5) Category IVA -- New Collector Sewer Systems. Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category;

(6) Category IVB - New Interceptor Sewer Systems and Appurtenances. A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility;

(7) Category V -- Combined Sewer Overflow Correction. Correction of combined sewer overflows including cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem;

(8) Category VI - Storm Sewers. Storm water and Brownfield activities;

(9) Category VII - Nonpoint source activities;

(10) Category VIII - Water Reuse; and

(11) Other water quality projects as defined under 82 O.S. §1085.51, as amended.

(b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.

(c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.

(d) Eligibility for equivalency projects is subject to the applicable Federal requirements including those identified in 785:50-9-38(e) and 785:50-9-45(2) through (4).

(e) Additionally, the Board shall consider the following issues in determining project eligibility:

(1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

(A) Eligible capacity for treatment plants will be up to a period of the design life of the project from the estimated date of ~~initiation of~~ construction completion.

(B) Eligible capacity for interceptors and outfalls will be up to 40 years from the estimated date of ~~initiation of~~ construction completion.

(C) Eligible capacity shall be calculated by multiplying the Board approved local population projection by an appropriate local per capita flow figure. The flow thus calculated will be deemed to include all the eligible project flows (residential, commercial, federal facilities, industrial, and infiltration/inflow). Eligible capacity will be determined during the development of the planning documents.

(D) The applicant will be responsible for documenting, in the planning document, the peaking factors used for the project.

(E) Eligible capacity will be determined when planning documents are approved by the Board.

(2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.

(3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.

(4) **Land costs.** Allowable costs for land and rights-of-way include the cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment, including:

(A) The cost of a reasonable amount of land, considering irregularities in application patterns and the need for buffer areas, berms, and dikes;

(B) The cost of land acquired for a soil absorption system for a group of two or more homes;

(C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and

(D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by

the ratio of storage volume to the total volume of the pond.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of storm water and Brownfield activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases or brownfield assessments or planning required by the Department.

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall ~~insure~~ensure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attenders of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, Brownfield activities, and storm water activities, based on the relative impact of the project in achieving the water quality objectives of the Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "Top Ten NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that

provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River or Culturally Significant Water;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallotment or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List,

the applicant must submit a request for such placement to the Board. The request must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the request, and if it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

(i) Submit a certification from the Department that the project is a Brownfield project;

(ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and

(iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source activities.** Requests received for nonpoint source activity projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements

785:50-9-28. Pre-application for funding

(a) The applicant will complete ~~ORF-1~~L1, Pre-application for funding, and submit it to the Board. The applicant must demonstrate that it has the legal, managerial, and financial capability to assure adequate construction, operation, and maintenance of the treatment works throughout the applicants jurisdiction.

(b) Receipt of pre-applications that are acceptable to the Board will be sufficient for remaining on the State's priority list.

(c) The Board shall make an initial determination of whether *an entity meets the criteria to receive funding* [82:1085.58(B)] and the Board shall advise the applicants whether or not to proceed with planning documents for financial assistance based on the information provided in the preapplication form.

(d) The Board staff shall make a preliminary recommendation for approval or rejection of the loan application.

(1) If the preliminary recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with Board requirements and resubmit the same to the Board.

(2) If the preliminary recommendation is for approval, the Board shall notify the applicant.

785:50-9-30. Planning documents

The purpose of the planning document is to present the findings of the engineer or other qualified professional as approved by the Board in a precise fashion with enough attention given to detail so as to allow adequate review of the project by the owner and applicable regulatory agencies. The plan will allow the review of the alternatives from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness and environmental compatibility. A planning document must be submitted to the Board. The document shall contain but not be limited to the following information:

(1) Identification of the planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems through the design life of the project.

(2) Cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting State and federal water quality and public health requirements. The cost effective analysis shall detail all monetary costs including but not limited to the present worth or equivalent annual value of all capital costs and operation.

(3) All basic information necessary for the design of the sewage system and/or treatment works.

(4) Adequate evaluation of the environmental impacts of alternatives in accordance with Part 7 of this subchapter (relating to Environmental Review and Determination) to support the cost effectiveness analysis together with a resolution passed by the applicant which accepts the planning documents and provides a commitment to build the proposed project.

(5) A demonstration that the project is consistent with the State's approved Water Quality Management Plan established by Section 208 of the Act.

(6) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, brownfield assessment fees, all legal fees, fees of registered financial advisors and/or consultants, contingencies ~~(10%)~~, and interest during construction.

785:50-9-32. Plans and specifications

(a) **Submittal.** The applicant shall prepare plans and specifications ~~and a~~based on the final engineering ~~design~~ report on all significant elements of the project. These documents shall conform to the Water Pollution Control Facility Standards, and brownfield cleanup standards which may apply, and a permit to construct or a concurrence must be issued by the Department.

(b) **Additional requirements.** The plans and specifications shall contain the following:

(1) Provisions assuring compliance with the Board rules and regulations and the Oklahoma Bidding Laws.

(2) Forms by which the bid bond, statutory, performance and maintenance bonds will be provided. Bonding requirements outlined in 61 O.S., Section 113(B), are as amended.

(3) Provisions requiring the contractor to obtain and maintain the appropriate insurance coverage.

(4) Provisions giving authorized representatives of the Board access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit and copying during normal business hours.

(5) Those conditions, specifications, and other provisions provided by or requested by the Board to comply with State law and Part 5 of this Subchapter.

(6) Bid proposal that separates eligible construction from ineligible construction.

(c) **Approval of plans and specifications.**

(1) The Board will approve the plans and specifications if they:

(A) Conform to the requirements listed in (a) of this Section (relating to the permit to construct or concurrence issued by the Department).

(B) Are consistent with all relevant statutes.

(C) Pass a biddability, operability, and constructability review by the Board.

(D) Are consistent with Board approved planning documents and environmental determinations required by Part 9 of this Subchapter (relating to Required Environmental Review and Determinations) and 785:50-9-3 (relating to planning document).

(2) Approval of the plans and specifications does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

(3) The applicant shall obtain authorization from the Board before advertising for bids on the project.

785:50-9-35. Loan closing

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.

~~(3) Contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.~~

(~~4~~3) Other or additional engineering data and information, if deemed necessary by the Board staff.

(~~5~~4) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.

(~~6~~5) Evidence that the applicant has obtained all required permits and financing to build the project.

(~~7~~6) Information requested by the Board regarding loan closing documents.

(~~8~~7) A detailed project budget which limits the contingency to the maximum allowable change order amount set forth in Section 121 of the Public Competitive Bidding Act of 1974 as amended.

(~~9~~8) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.

(~~10~~9) If an applicant wishes to close a loan prior to receiving bids, it may do so subject to approval from the OWRB. In order to receive approval, documentation must be provided to the OWRB showing the applicant has the financial ability to pay any costs that exceed the estimated loan amount. This documentation shall include but not be limited to financial statements from the applicant.

(b) **General conditions for all loans.**

(1) Under the federal Water Quality Act of 1987 and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the Clean Water State Revolving Fund Loan Account under the following conditions:

(A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.

(B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987.

(C) Principal and interest payments will begin not later than one year after completion of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the federal Water Quality Act of 1987.

(D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.

(E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.

(F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and

(G) The project is identified in the Board's current Intended Use Plan.

(2) Financial assistance shall not be made from the Wastewater Revolving Loan Account until the conditions in (1) of this subsection are met.

(c) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(d) **Criteria for determining interest rates.**

(1) The interest rates on loans to be made from the Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.

(A) Interest rates for interim construction loans may be reviewed and determined by the Board every six (6) months.

(B) The percentage of the market interest rate to be utilized for long-term loans is set by the Board based on recommendations made by Board staff.

(2) Factors which may be used to calculate the interest rate for a particular entity or class of entities include without limitation the following:

(A) Guidelines utilized by the United States Environmental Protection Agency and federal Farmers Home Administration or successor agency for similar type financial assistance for facilities that could qualify as Clean Water SRF projects.

(B) Maintenance of the Clean Water State Revolving Fund Loan Account in perpetuity.

(C) Statewide needs for Clean Water SRF project financial assistance.

(D) Five-year demand projections of the Board of Clean Water SRF project financial assistance.

(E) Prevailing market interest rates which shall be the interest rates on long-term bonds maintaining a rating of AA.

(F) Debt service requirements of investment certificates issued by the Board to provide funds for the Clean Water State Revolving Fund Loan Account.

(G) Financial resources of the entity.

(H) The ability of the entity to repay the loan.

(I) Whether the entity discharges municipal wastewater into scenic river areas as defined in Section 1452 of Title 82 of the Oklahoma Statutes.

(e) **Security for loan.**

(1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.

(2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.

(3) For purposes of this subsection, the pledge of lien on project revenues shall be a pledge of and lien on such project revenue, as is necessary to secure repayment of the loan obligation of applicant.

(4) Also, for purposes of this subsection, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of an lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.

(5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

(f) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met prior to the release and disbursement of any financial assistance funds:

(1) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(2) Recipient sends disbursement requests based on costs incurred to the Board, who shall review the requests and approve them as appropriate.

(3) Executed contract and agreements to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

785:50-9-38. Construction phase

(a) **Awarding construction contracts.** The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the Board approved draft contract documents in the approved plans and specifications or addenda to the plans and specifications.

(b) **Inspection during construction.** During the building phase of the project, the recipient shall provide independent engineering or other professional services necessary to assure completion of the project in accordance with the loan agreement and the approved plans and specifications.

(c) **Resident inspection.** After the construction contract is awarded, the recipient shall provide for adequate full-time independent resident ~~inspection~~inspector of the project and require assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices. The Board is authorized to inspect the building of any project at any time in order to assure that plans and specifications are being followed and that the works are being built in accordance with sound engineering principles and building practices, but such inspection shall never subject the State of Oklahoma to any action for damages. The Board shall bring to the attention of the recipient and the project engineer any variances from the approved plans and specifications. The recipient and the

project engineer shall immediately initiate necessary action rectifying construction deficiencies.

(d) **Inspection of materials.**

(1) The Board is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. The state inspector is to report the manner and progress of the building or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the project engineer from determining compliance with the requirements of the contract documents.

(2) In the event building procedures or materials are determined by the Board to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the Board may order the recipient to take such action in the manner provided for in the construction contract to correct any such deficiency.

(3) In those instances of dispute between the recipient project engineer and the Board's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the Board may order the recipient to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(4) The contractor and recipient shall furnish the Board's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(5) In addition to normal testing procedures required of the recipient, the Board may require reasonable additional tests of building materials of processes which the Board determines to be necessary during the building of projects financed in whole or in part by Clean Water SRF funds. All tests, whether for the Board or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and the Oklahoma Department of Transportation published procedures, or similar criteria. The Board shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the Board upon request on the construction site.

(e) DBE participation requirements apply to projects constructed with funds directly made available by the federal capitalization grant (equivalency projects).

(1) EPA and the State will negotiate a "Fair Share Objective" (which shall represent a percentage of DBE participation).

(2) When soliciting for a subcontractor (A/E or construction contractor), the loan recipient shall take the following six good faith efforts:

(A) Include qualified Small, DBE businesses on solicitation lists.

(B) Assure that Small, DBE businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum Small, DBE business participation.

(D) Where the requirements of the work permits, establish delivery schedules which will encourage participation by Small, DBE businesses.

(E) Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the United States Department of Commerce, as appropriate.

(F) If any subcontracts are to be let, require the prime contractor or A/E to take the good faith efforts in (A) through (E) of this paragraph (2).

785:50-9-42. Retainage

(a) **Retainage withheld.** Up to ~~ten~~five percent (~~10~~5%) of all partial payments made may be withheld as retainage.

~~(b) **Partial release of retainage.** At any time that the contractor has completed in excess of fifty percent (50%) of the total contract amount the retainage may be reduced to five percent (5%) of the amount earned to date, if prior approval is obtained from the Board.~~

(~~c~~b) **Final release.** After completion of construction, acceptance by the applicant, and receipt of satisfactory test results that all work has been performed according to specifications (if such tests are required), the final release of retainage may be made with approval of the project by the Board.

PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

785:50-9-61. Environmental information required by the Board

Documentation required in this subsection will be submitted to the Board.

(1) Except as otherwise provided in OAC 785:50-9-60(1)(A)(iii), applicants seeking a categorical exclusion will provide the Board with sufficient documentation to demonstrate compliance with the criteria of Section 785:50-9-60(1)(i) of this Chapter and shall satisfy the provisions of 40 C.F.R. Section 6.204. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs;

(B) statement identifying the categorical exclusion that applies to the action;

(C) a statement explaining why no extraordinary circumstances apply to the proposed action; and

(D) a plan map or maps of the proposed project showing:

(i) the location of all construction areas,

(ii) the planning area boundaries, and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a categorical exclusion and for which the Board has made a preliminary determination that an EIS will not be required. The Board will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.

(A) At a minimum, the contents of an EID will include:

(i) The description and need for the proposed action;

(ii) the alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by consent order);

(iii) the effected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(iv) the environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources;

(v) the environmental impacts of the proposed action and alternatives on the other applicable environmental laws and executive orders;

(vi) a listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders; and

(vii) identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts.

(B) Prior to the applicant's adoption of the planning document, the applicant will hold a public hearing on the proposed project and the EID, and provide the Board with a transcript of the hearing. The Board will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will generally be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of attenders, and written testimony, and the applicant's responses to the issues raised. The transcript of hearing can be audio recorded but must be provided to the Board in the form of either a cd, a dvd or a digital file in mp3 or mp4 format.

(C) The applicant will make copies of the EID available to all federal, state, and local agencies and others with an interest in the project. The Board will provide guidance to the applicant regarding coordination requirements.

(3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic and social impacts. The following format must be followed by the applicant unless the Board determines there are compelling reasons to do otherwise.

(A) A cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested, and the date of publication.

(B) An executive summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

(i) a description of the existing problem;

(ii) a description of each alternative;

(iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

(iv) any major conclusions.

(C) The body of the EIS, which will contain the following information.

(i) A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives.

(ii) A balanced description of each alternative considered by the applicant. The description will include the size and location of the facilities and pipelines, land requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that are eliminated from examinations will be presented with the reasons for their elimination.

(iii) A description of the alternatives available to the Board including:

(I) providing financial assistance to the proposed project;

(II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) not providing financial assistance.

(iv) A description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise affect or have an interest in any of the alternatives.

(v) A description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomic, land use, and cultural resources of the facilities planning area. The Board will provide guidance, as necessary, to the

applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.

(D) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commentors will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The Board will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(E) Material incorporated into an EIS by reference will be organized to the extent possible into a Supplemental Information Document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in 785:50-9-61(3)(D) and 785:50-9-61(3)(G)(ii) and (iii).

(F) When an EIS is prepared by contractors, either in the service of the applicant or the Board, the Board will independently evaluate the EIS prior to issuance of the Record of Decision (ROD) and take responsibility for its scope and contents. The Board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(G) The public participation required for an EIS is extensive; but should, depending upon the nature and scope of the proposed project, be supplemented by the applicant. The following requirements represent the minimum allowable to the applicant and the Board.

(i) Upon making the determination that an EIS will be required of a proposed project, the Board will publish in the Oklahoma Register and distribute a notice of intent to prepare an EIS.

(ii) As soon as possible after the notice of intent has been issued, the Board will convene a meeting of the affected federal, state and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the Notice of Intent or prepared as in (2)(B) of this subsection except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting the Board will, at a minimum:

(I) determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

(II) identify the preliminary range of alternatives to be considered;

(III) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) discuss the method for EIS preparation and the public participation strategy;

(V) identify consultation requirement of other laws and regulations;

(VI) determine the relationship between the preparation of the EIS and the completion of the facilities plan and any necessary arrangements for coordination of the preparation of both documents.

(iii) Following the scoping process the Board will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this including a list of the significant issues identified will be provided to the applicant and other interested parties. Preparation of the EIS will be done, at the discretion of the Board: directly, by its own staff; by consultants to the Board; or by a consultant, contracted by the applicant subject to approval by the Board. In the latter two cases, the consultant will be required to execute a disclosure statement prepared by the Board signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of (2)(B) of this section except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The Board will publish, in ~~the Daily~~The Oklahoman and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

[OAR Docket #14-821; filed 7-21-14]

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

[OAR Docket #14-497]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
800:10-1-7. Possession limits [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
AUTHORITY:
Title 29 O.S., Sections 3-103, 4-120, 5-401 and 6-302 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2013
COMMENT PERIOD:
December 2, 2013 - January 10, 2014
PUBLIC HEARING:
January 7, 2014
ADOPTION:
March 3, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE;
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
800:10-1-7. Possession limits [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
Gubernatorial approval
December 3, 2013
Register publication
31 OK Reg 381
Docket number.
13-1553
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
Sets a one smallmouth bass possession limit and a 14-inch minimum size limit on all streams and rivers; reduces the size limit on saugeye/walleye/sauger at Tom Steed and Waurika Lakes to 14 inches; removes the 20 inch minimum length limit on flathead catfish; removes a duplicate section pertaining to black bass length limit on Blue River; allows Wildlife Commission to set individual annual harvest limit for paddlefish and requires online checking of all paddlefish, restricting non-residents to possession of the individual annual harvest limit of paddlefish as listed in the Oklahoma Fishing Regulations; changes daily bag limit for catfish taken by noodling to three blue, channel, or flathead catfish in combination, with only one of them 30 inches or greater and restricts noodling to daylight hours; establishes a statewide bag and size limit for hybrid striped bass of 20 per day with only 5 greater than 20 inches in length.
CONTACT PERSON:
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from public waters unless regulated by specific municipal ordinance or specified in regulations listed below: Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge and American Horse Lake.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

~~(4) All flathead catfish (Pylodictis olivaris) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.~~

(~~5~~4) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka, Tom Steed, Waurika and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(~~6~~5) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(~~7~~6) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately

after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(~~8~~7) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(~~9~~8) All smallmouth bass ~~between nine (9) and twelve (12) inches~~less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from all rivers and streams ~~Baron Fork Creek, Flint Creek,~~including the Illinois River upstream from the Horseshoe Bend boat ramp, and from the Glover River from the confluence with the Little River upstream to the 'Forks of the Glover River'.~~Lee Creek, and Little Lee Creek.~~ Possession of smallmouth bass less than fourteen (14) inches ~~between nine (9) and twelve (12) inches~~ in total length~~ at these~~on all streams and rivers is prohibited.

~~(10) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.~~

(~~11~~9) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(~~12~~10) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

~~(13) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.~~

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer ~~at Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate, of which only one (1) smallmouth bass may be twelve (12) inches or longer, in Glover River from the confluence with Little River upstream to the "Forks of the Glover River" where the limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate of which only three (3) may be smallmouth bass,and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.~~and rivers and streams including the Illinois River upstream from the Horseshoe Bend boat ramp, and from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the limit is six (6) black bass aggregate of which only one may be a smallmouth bass, which must be fourteen (14) inches or longer.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). ~~For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.~~Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5). For noodlers and scuba divers the daily limit is three (3) blue, channel, or flathead catfish or three in aggregate of which only one can be 30 inches or longer from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately 2 mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.

(7) Five (5) striped bass ~~and/or striped bass hybrids,~~ except as designated in 800:10-1-5(8).~~800:10-1-5((8), (10) and (11)).~~

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.

~~(9) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.~~

(~~10~~9) Twenty (20) striped bass ~~hybrids and/or white bass, or twenty (20) in aggregate,~~ of which only five (5) may be twenty (20) inches or longer ~~in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Kaw, Konawa, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.~~ ,except as designated in 800:10-1-5(8) and (10).

(~~11~~10) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.

(~~12~~11) Twenty-five (25) white bass in Lake Texoma.

(~~13~~12) One (1) paddlefish (Polyodon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted ~~year-round~~ by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. ~~Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's paddlefish permit number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.~~

(A) Individual annual harvest limit- An individual harvest limit for paddlefish may be set or amended annually by the Wildlife Conservation Commission and will be listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. Special area (or management unit) paddlefish harvest caps, a general statewide paddlefish harvest cap, and the total number of paddlefish permits issued may be set or amended annually by the Wildlife Conservation Commission for use in determining the individual annual harvest limit. Once an individual angler has reached their annual harvest limit, continued catch and release is permitted.

(B) Paddlefish permit- It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit in the harvest record area provided. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden. This permit shall be valid for paddlefish catch and release fishing in all waters of the state and at any time unless otherwise prohibited.

(C) Harvest Tagging- Paddlefish caught and placed on a stringer or otherwise held in possession must be plainly labeled (tagged) immediately with the angler's paddlefish permit number. Paddlefish taken into possession cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other anglers. Each cleaned paddlefish, or its meat, eggs, or carcass, must be kept separate from all other cleaned paddlefish or its parts. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Anglers must cease snagging for the day when they have taken their daily limit of paddlefish into possession.

(D) Reporting- Harvest of paddlefish must be reported by the harvesting angler to Oklahoma Department of Wildlife within 24 hours of harvest. Instructions for reporting harvest will be provided in the Oklahoma Department of Wildlife Fishing Guide and on the Oklahoma Department of Wildlife website.

~~(14) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or its authorized agent, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.~~

(~~15~~13) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(~~16~~14) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(~~17~~15) One (1) of any fish species classified as those of Special Concern Category I or Category II (as identified in 800:25-19-6). Such harvest must be reported to ODWC.

(~~18~~16) Other fish do not have bag or possession limits. Notwithstanding the foregoing fish bag limits, any bag limits for fish can be superseded and set by Commission resolution as authorized by Section 6-302(B) of Title 29 of the Oklahoma Statutes.

800:10-1-7. Possession limit

(a) No resident or nonresident shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time other than in the field, except for paddlefish which ~~can be four (4) daily bag limits~~shall not exceed the individual annual harvest limit as listed in the Oklahoma Department of Wildlife Conservation Fishing Guide. "In the Field" means while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination.

(b) No person may possess with intent to transport or transport via land based transportation more than 200 shad, for personal use as bait. The sale, offer for sale, transport from Oklahoma with intent to sell or offer to sell shad taken from waters of this state is prohibited.

(c) No person shall transport shad from waters infested with Bighead or Silver Carp. These waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually. If shad are collected from these listed waters for use as bait, they may only be used in the water body from which they were collected.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(3) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(4) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(5) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(6) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately 2 mile) is closed throughout the year with the next 2 mile downstream from the highline crossing closed during periods when the spillway gates are open and discharging water and for seven (7) days following closure of the spillway gates.

(7) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(8) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(9) The taking of paddlefish by bow and arrow is prohibited on the Red River from Denison Dam downstream to the stateline year round.

(10) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(11) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and Wister which is open from 10 p.m. to 6 a.m.; shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of approximately 1/2 mile) is closed throughout the

year with the next 1/ 2 mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(I) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(J) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed. Only one (1) rod and reel is permitted per angler when snagging.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish ~~only throughout the year in all:~~and blue, channel, and flathead catfish; only during daylight hours throughout the year.

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, Ponca and Carl Blackwell and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downsteam to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Netting (noncommercial) is closed statewide.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eights (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half (1/ 2) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half (1/2) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

[OAR Docket #14-497; filed 6-23-14]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 15. COMMERCIAL TURTLE HARVEST

[OAR Docket #14-498]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Commercial Turtle Harvest
800:15-9-3. General; operating provision [AMENDED]
AUTHORITY:
Title 29 O.S., Sections 3-103, 4-120, 5-401 and 6-302 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2013
COMMENT PERIOD:
December 2, 2013 - January 10, 2014
PUBLIC HEARING:
January 7, 2014
ADOPTION:
March 3, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
Removes the minimum size requirement for the common snapping turtle and removes language that pertains to commercially trapping turtles in municipal lakes and streams with landowner permission to clarify that turtle trapping is not allowed in waters of this state.
CONTACT PERSON:
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 9. COMMERCIAL TURTLE HARVEST

800:15-9-3. General; operating provisions

Harvest, sale and purchase of aquatic turtles for commercial purpose shall be in accordance with 29 O.S., Sections 4-103A, 4-103B and 6-204 and the following:

(1) The application for an aquatic turtle harvest license must be signed by a Game Warden, and must list the county or counties from which turtles will be harvested.

(2) The harvest, collection, sale or purchase of the following turtle species is prohibited:

(A) Alligator Snapping Turtle (Macroclemys temminckii);

(B) Chicken Turtle (Deirochelys reticularia);

(C) Map Turtle (Graptemys spp.);

(D) Painted Turtles (Chrysemys ssp.)

(E) Razor-backed Musk Turtle (Sternotherus carinatus)

(F) All State and/or Federal threatened or endangered species;

(G) All soft shell turtles~~ and common snapping turtles~~, except as provided in Title 29 O.S., Section 4-102, greater than sixteen (16) inches in length when measuring the carapace only from the anterior (front) end to the posterior (rear) end shall not be kept in possession or sold or purchased and must be returned to the water immediately.

(3) The possession, buying and/or selling of any terrestrial turtles commonly known as "box turtles", is prohibited.

(4) All traps and nets used in the harvest of turtles for commercial purposes must have an identification tag with the owner's name and address attached and the name and address of all persons authorized to operate the traps and nets. All such traps and nets must be shown to the county Game Warden at the time the Game Warden signs the license application.

~~(5) Private ponds, municipal lakes and streams on or crossing private land that are open to commercial turtle harvest may be fished for turtles only upon permission of the landowner or municipality. Written permission for municipal lakes outside the city limits must be on the municipal letterhead stationary, signed by the municipal authority.~~

(~~6~~5) All persons licensed as a commercial turtle buyer must keep accurate records of all turtles purchased within and exported from the State of Oklahoma. These records shall be available for inspection by any agent of the Department at any time. A copy of each turtle purchase transaction must be given to the seller by the buyer at the time of the sale on forms provided by the Department. A copy of all turtle purchase transactions and turtle exports shall be submitted to the Department as follows:

(A) Each turtle buyer shall complete and submit to the Department a true and accurate purchase record for each turtle purchase transaction. Each purchase record must contain:

(i) the buyer's name and license number;

(ii) seller's name and license number;

(iii) counties from which turtles were harvested;

(iv) the total number of each species purchased;

(v) the total amount paid for each species;

(vi) the total amount paid for the transaction.

(vii) the total pounds of red-eared, common snapping and soft shell turtles purchased;

(B) A copy of each transaction along with a monthly summary must be mailed to the Department by the 15th of each month by each turtle buyer.

(C) Each turtle buyer must supply to the Department shipping bills of lading of all turtles exported from the state during the monthly reporting period. A copy of all shipping bills of lading must accompany all turtle shipments from the state.

(D) The shipping bill of lading must contain:

(i) total number of turtles in shipment;

(ii) number of each species of turtles in shipment;

(iii) date of shipment;

(iv) person firm or corporation's name transporting turtles out of Oklahoma;

(v) person firm or corporation's name(s) that sold or otherwise provided the turtles to be transported out of Oklahoma;

(vi) total pounds of turtles in the shipment;

(vii) total pounds of each species of turtles in the shipment;

(viii) turtle harvest season dates and turtle species legal for harvest;

(ix) state, if other than Oklahoma, were turtles were harvested;

(x) destination of shipment; and

(xi) total purchase price of turtles in shipment.

(E) Each turtle buyer must supply to the Department an annual summary report of all turtles, by species, purchased within and exported from the State of Oklahoma. This report shall contain:

(i) total number of turtles of each species purchased or received;

(ii) total purchase value of turtles purchased or received;

(iii) total number and pounds of turtles of each species exported from Oklahoma.

(iv) total pounds of red-eared, common snapping and softshell turtles purchased or received;

(~~7~~6) Inaccurate or incomplete records or delinquent reports shall be violations of this rule.

[OAR Docket #14-498; filed 6-23-14]

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

[OAR Docket #14-499]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-1. Purpose [AMENDED]
800:25-3-3. Areas open to archery equipment only [AMENDED]
Subchapter 7. General Hunting Seasons
Part 3. Reptiles and Amphibians
800:25-7-7. General provisions [AMENDED]
800:25-7-8. Dates and areas, legal reptiles and bag limit [AMENDED]
800:25-7-9. Dates and areas, legal amphibians and bag limit [AMENDED]
Part 5. Upland Game
800:25-7-19. Wild turkey - general provisions [AMENDED]
Part 13. Deer
800:25-7-50. General provisions for deer [AMENDED]
800:25-7-51. Deer - archery [AMENDED]
800:25-7-52. Deer - primitive firearms (muzzleloading) [AMENDED]
800:25-7-54. Legal firearms and archery specifications [AMENDED]
Part 14. Elk
800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]
Part 15. Furbearers
800:25-7-61. Bag limits [AMENDED]
800:25-7-62. Open areas [AMENDED]
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-81. Altus-Lugert WMA [AMENDED]
800:25-7-82. Atoka WMA [AMENDED]
800:25-7-83. Beaver River WMA [AMENDED]
800:25-7-83.1. Beaver River WMA - McFarland Unit [AMENDED]
800:25-7-84. Black Kettle WMA [AMENDED]
800:25-7-87.1. Candy Creek WMA [AMENDED]
800:25-7-88. Canton WMA [AMENDED]
800:25-7-92.1. Cimarron Bluff Wildlife Management Area [AMENDED]
800:25-7-92.2. Cimarron Hills Wildlife Management Area [AMENDED]
800:25-7-94.1. Cooper WMA [AMENDED]
800:25-7-94.1.1. Cross Timbers WMA [AMENDED]
800:25-7-94.6. Dewey County WMA [AMENDED]
800:25-7-95. Ellis County WMA [AMENDED]
800:25-7-97. Fobb Bottom WMA [AMENDED]
800:25-7-98. Fort Cobb WMA [AMENDED]
800:25-7-101. Fort Supply WMA [AMENDED]
800:25-7-102.1. Grady County WMA [AMENDED]
800:25-7-106. Heyburn WMA [AMENDED]
800:25-7-108. Hickory Creek WMA [AMENDED]
800:25-7-113. James Collins WMA [AMENDED]
800:25-7-116. Keystone WMA [AMENDED]
800:25-7-120. Love Valley WMA [AMENDED]
800:25-7-121. Major County WMA [AMENDED]
800:25-7-125. McGee Creek WMA [AMENDED]
800:25-7-126. Mountain Park WMA [AMENDED]
800:25-7-130. Optima WMA [AMENDED]
800:25-7-134. Packsaddle WMA [AMENDED]
800:25-7-136. Pushmataha WMA [AMENDED]
800:25-7-137. Rita Blanca WMA [AMENDED]
800:25-7-140. Sandy Sanders WMA [AMENDED]
800:25-7-141. Schultz WMA [AMENDED]
800:25-7-142.1. Shorb WMA [NEW]
800:25-7-143. Skiatook WMA [AMENDED]
800:25-7-149. Texoma/Washita Arm WMA [AMENDED]
800:25-7-152. Washita County WMA [AMENDED]
800:25-7-154. Waurika WMA [AMENDED]
AUTHORITY:
Title 29 O.S., Sections 3-103, 5-401and 5-411; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2014
COMMENT PERIOD:
December 2, 2013 - January 10, 2014
PUBLIC HEARING:
January 7, 2014
ADOPTION:
March 3, 2014
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 6, 2014
APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014
FINAL ADOPTION:
June 19, 2014
EFFECTIVE:
September 15, 2014
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rules allow general regulations to be enforced on all COE properties and designate archery only areas around Hugo lake for safety reasons. Restrict taking of certain reptiles and amphibians such as aquatic salamander and amphiuma. Require evidence of sex remain on harvested turkeys until checked and require checking of turkeys statewide. Establish legals means to possess and sell shed antlers. Reduce the minimum draw weight for compound bows to 30 lbs and clarify that no modern firearms may be carried while muzzleloader hunting. Establish a statewide elk season, increase limit on river otters from 2 to 4 and establish a statewide otter season. Legalize enclosed trigger traps on all WMA's that allow trapping, change deer gun season to controlled hunts on Beaver WMA and create archery and shotgun only zone near town of Beaver. Open archery deer and turkey during muzzleloader and the last 7 days of rifle season on Cimarron Bluff and Hills WMA's. Create rules and regulations for new Shorb WMA.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-1. Purpose

This Subchapter provides for certain types of hunting during legal open seasons on U.S. Army Corps of Engineers owned and managed lands. Corps of Engineers lands open to hunting, but not licensed to the Oklahoma Department of Wildlife Conservation are open during the same dates, bag limits, method of harvest, ~~and~~ shooting hours and all other general regulations as Department managed lands at the respective projects unless otherwise provided.

800:25-3-3. Areas open to archery equipment only

The following Corps of Engineers areas are open to archery equipment only:

(1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.

(2) Kaw Lake:

(A) A 400-acre unit in the Washunga Bay Area.

(B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.

(C) A 236-acre unit in the Osage Cove Area open from 1 December to 31 December.

(D) A 60-acre unit south of Kaw City and west of Pioneer Park.

(3) Fort Gibson:

(A) A 515-acre unit on the south side of Mallard Bay.

(B) A 360-acre unit on the north side of the mouth of North Bay.

(C) A 50-acre unit south of Jackson Bay Area.

(D) A 150-acre area on the northeast end of Ranger Creek.

(E) A 488-acre unit on the south side of Whitehorn-Cove Concession.

(F) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.

(G) A 320-acre unit South of North Bay and North of Wagoner City Park.

(H) A 140-acre unit North of Long Bay and South of Wagoner City Park.

(I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of Highway 69.

(J) A 36-acre area in Section 6, T16N, R20E.

(K) A 77-acre area on the north shore of Ranger Creek.

(L) A 166-acre area west of Taylor Ferry South Park in Sections 20 & 21, T17N, R19E.

(4) Copan Lake:

(A) A 50-acre unit north of Copan Point Park.

(B) A 50-acre unit north of the Post Oak area.

(C) A 5-acre unit west of Post Oak Park between the old and new Highway 10.

(D) A 340-acre unit north of the Washington Cove Park.

(5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.

(6) Skiatook Lake:

(A) A 138-acre unit in the Osage Park Area.

(B) A 150-acre unit area below Skiatook Dam.

(C) A 120-acre unit in Hominy Landing.

(7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.

(8) Pine Creek Lake:

(A) A 200-acre unit north of Highway 3 and south of the old highway.

(B) A 120-acre unit west of Little River Park.

(9) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(10) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)

(A) A 500-acre unit 2 mile North of Memorial Road on Midwest Boulevard

(B) 230-acre unit at Douglas and 150th street.

(11) Keystone Lake: A 570-acre area south of the town of Prue (old Walnut Creek #1).

(12) Lake Texoma:

(A) A 610-acre unit in the Burns Run Area

(B) A 125-acre unit south of Alberta Creek

(13) Hugo Lake:

(A) A 13 acre unit located across from Wilson Point in Section 18, east of Highway 147.

(B) A 40 acre unit located north of County Road E2040 in Section 6 and east of Highway 147.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 3. REPTILES AND AMPHIBIANS

800:25-7-7. General provisions

The following are the general provisions for the taking and possession of reptiles and amphibians:

(1) It shall be unlawful to engage in any commercial activities involving any species or subspecies, if more than one exists, of reptiles or amphibians collected from the wild that are indigenous to or whose range extends into the State of Oklahoma, except for provisions for rattlesnakes, water turtles and aquatic salamanders (*Necturus* and *Ambystoma*, except *Ambystoma talpodium* and *Ambystoma annulatum*).

(2) Any person while in the act of taking or attempting to take reptiles and amphibians or possessing reptiles or amphibians must first possess:

(A) A resident or nonresident hunting license, unless otherwise exempt, for land dwelling reptiles or amphibians, with the exception of (C) and (D) of this paragraph.

(B) A resident or nonresident fishing license, unless otherwise exempt, for water dwelling reptiles or

amphibians, with the exception of (C) and (D) of this paragraph.

(C) A commercial turtle harvester license for legal water dwelling turtles if the taking or possession is for commercial purposes.

(D) A commercial resident or nonresident minnow dealers license for legal aquatic salamanders if the taking is for commercial purposes.

(E) The appropriate license required for the taking of bullfrogs according to current statutes and regulations.

(3) Persons possessing a current resident or nonresident hunting license, unless otherwise exempt, may sell lawfully taken rattlesnakes only to those individuals holding a Commercial or Noncommercial Wildlife Breeders license during open season. A Commercial Breeders license is required of all who buy and resell live rattlesnakes.

(4) The method of taking legal water turtles and aquatic salamanders for commercial purposes and the taking of bullfrogs shall be restricted to provisions in the current statutes and regulations. It shall be unlawful to introduce, deposit, place or drain any deleterious, noxious, toxic or petroleum based substance into or around any underground dens or rock crevices for the purpose of taking reptiles or amphibians. With the exception of water turtles and aquatic salamanders taken for commercial purposes and all legal species of frogs, all other reptiles and amphibians may only be taken by hand or any other legal means.

(5) Nothing in this Part shall prohibit the control of reptiles other than those listed as endangered or threatened, by landowners, lessees, or occupants of such land when such reptiles are creating a nuisance.

(6) All persons so licensed for reptiles and amphibians shall keep detailed breeding and hatching records in addition to those records already required by law.

(7) Progeny of lawfully held reptiles may, for six months from date of birth, be held in captivity in excess of the stated limits. Before or upon reaching six months of age, such progeny must be disposed of according to the requirements of the license held, or as directed by the Department. Progeny may be retained for brood stock if replacing parent stock disposed of in the above manner so as not to exceed the stated limits.

(8) It is unlawful to possess an American Alligator without appropriate permit from the Department.

(9) The Director may make exception for education or research purposes to holder of Oklahoma Scientific Collector's permits for both reptiles and amphibians.

800:25-7-8. Dates and areas, legal reptiles and bag limit

The dates and open areas, and the number and species of reptiles that can be taken are as follows:

(1) **No closed season.** All reptiles except those listed in (3) and (5) of this section shall have a year-round season.

(2) **Bag limit.** The bag limit is 6 per day or in possession for each species allowed in section (1) of this section.

(3) **Legal reptiles.** The following reptiles shall be legal to harvest during the dates of March 1-June 30:

(A) Prairie Rattlesnake (*Crotalus viridis*).

(B) Western Diamondback Rattlesnake (*Crotalus atrox*).

(C) Timber Rattlesnake (*Crotalus horridus*).

(D) Massasauga (*Sistrurus catenatus*).

(4) **Bag limit.** There is no bag limit for those species listed in (3) of this section.

(5) **Closed season.** There will be a statewide closed season on the following reptiles:

(A) Texas Horned Lizard (*Phrynosoma cornutum*).

(B) Desert Side Blotched Lizard (*Uta stansburiana*).

(C) Checkered Whiptail (*Cnemidophorus tesselatus*).

(D) American Alligator (*Alligator mississippiensis*).

(E) Western Chicken Turtle (*Deirochelys reticularia*).

(F) Map Turtle (*Graptemys geographica*).

(G) Wandering Garter Snake (*Thamnophis elegans vagrans*).

(H) Gulf Grayfish Snake (*Regina rigida sinicola*).

(I) Alligator Snapping Turtle (*Macroclemys temminckii*).

(J) Earless lizard (*Holbrockia maculata*).

(K) Roundtail horned lizard (*Phrynosoma modestum*).

(L) Western Mud Snake (*Farancia abacura).*

800:25-7-9. Dates and areas, legal amphibians and bag limit

The dates and open areas, and the number and species of amphibians that can be taken are as follows:

(1) **Open season and bag limit.** There will be a statewide year-round open season on the following amphibians:

(A) Frogs of the genera *Rana(except Ranaareolata) and Pseudacris* (Leopard and Chorus frogs); and the bag limit shall be unlimited, except bullfrogs shall have a bag limit of 15, and the bag limit for Woodhouses toad *Bufowoodhousii is* unlimited.

(B) Aquatic salamanders of the genera *Necturus* and *Ambystoma*, except *Ambystoma talpodium*and *Ambystoma annulatum*; and the bag limit shall be unlimited.

(C) All other species of amphibians, except those listed in (2) of this section; and the bag limit shall be 4 per day or in possession of each species.

(2) **Closed season.** There will be a statewide closed season on the following amphibians:

(A) Sequoyah Slimy Salamander *(Plethodon sp.).*

(B) Kiamichi Slimy Salamander *(Plethodon sp.).*

(C) Western Slimy Salamander *(Plethodon sp.).*

(D) Rich Mountain Salamander *(Plethodonouachitae).*

(E) Ozark Zigzag Salamander *(Plethodondorsalis angusticlavius).*
(F) Four-toed Salamander *(Hemidactyliumscutatum).*
(G) Grotto Salamander *(Typhlotriton spelaeus).*
(H) Oklahoma Salamander *(Eurycea tynerensis).*
(I) Cave Salamander *(Eurycea lucifuga).*
(J) Mole Salamander *(Ambystoma talpoideum).*
(K) Ringed Salamander *(Ambystoma annulatum).*
(L) Ouachita Dusky Salamander *(Desmognathus brimleyorum).*
(M) Three-toed Amphiuma *(Amphiuma tridactylum).*

PART 5. UPLAND GAME

800:25-7-19. Wild turkey - general provisions

The following general provisions apply to the taking of turkey:

(1) **Tom turkey description.** A tom turkey is any bearded turkey, regardless of sex.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to sunset.

(3) **Baiting.** Turkeys may not be taken within 100 yards of any bait. "Bait" shall mean the placing, exposing, depositing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain or other feed so as to constitute for such birds a lure, attraction or enticement to, on or over any area where hunters are attempting to take them. Nothing in this section shall prohibit the taking of wild turkey over standing crops, grain crops, properly shucked on the field where grown or grain found scattered solely as the result of normal agricultural operations.

(4) **Roost shooting.** Roost shooting is prohibited.

(5) **Decoys and recorded calls.** Hunting turkey with artificial decoys is permitted. Live decoys and recorded calls are prohibited.

(6) **Tagging.** The following provisions apply to the tagging and checking of turkey:

(A) Persons taking a turkey shall securely attach their name, license number, the current date and time of harvest immediately to the carcass.

(B) Evidence of sex (one leg with foot) or beard must remain on the bird until it has ~~reached final destination~~been checked. Beards on hens must remain intact until the bird has reached final destination.

(C) A separate tag is required for each bird that is hunted. Hunters who possess Oklahoma Department of Wildlife Conservation lifetime hunting or lifetime combination licenses are exempt from the date and time tagging requirements outlined in 6 (A).

(D) Upon harvesting a turkey all annual license/permit holders will be required to complete the 'Record of Game' Section on the back of the license form.

(7) **Reporting.** All turkeys harvested ~~east of I-35~~ must be checked in at a hunter check station, or with an authorized Department employee, or must be checked online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the turkey will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities.

(8) **Fee.** All persons hunting wild turkeys, unless otherwise exempt, must possess a turkey tag. Fee for turkey tags will be $9.00 plus $1.00 vendor fee.

PART 13. DEER

800:25-7-50. General provisions for deer

The following general hunting provisions apply to the taking of deer:

(1) **Bonus deer.** The bonus deer designation includes all controlled deer hunts on public and private lands. A permit awarded by drawing is required for all bonus deer hunts in addition to a bonus deer tag. Hunters may hunt only in that area specified on their bonus deer permit. The bonus deer tag is valid for only the designated controlled hunt. Deer taken during a bonus hunt do not count against the statewide deer limit.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(3) **Antlered deer.** An antlered deer is any deer, regardless of sex, with at least three inch antler length above the natural hairline on either side.

(4) **Tagging and checking.** The following provisions apply to the tagging and checking of deer:

(A) Persons taking a deer shall securely attach their name, license number, current date and time of harvest immediately to the carcass.

(B) All deer must be checked in at a hunter check station, or with an authorized Department employee, or online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the deer will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities. Carcass may be checked in quartered with the sex organs still naturally attached and head accompanying the carcass.

(C) Upon harvesting a deer all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(5) No more than six (6) deer per individual may be taken statewide by anyone regardless of seasons hunted. This limit may include no more than two (2) antlered deer regardless of seasons hunted.

(6) **Legal Means of Taking:** Telemetric radio tracking devices for archery are legal, however, thermal tracking devices or detecting units are prohibited.

(7) **Shed Antlers.** It shall be lawful for persons to gather, possess, and sell shed antlers of deer.

(A) Shed antlers will be defined as: An antler which has been dropped naturally from a deer as part of the annual life cycle and the antler has a rounded base commonly know as the antler button or burr attached which signifies a natural process.

(B) No person may take shed antlers from private property without the permission of the landowner.

(C) The Buyer must possess a Bill of Sale showing:

(i) The Seller/Taker's full name and address.

(ii) The number of individual antlers purchased.

(D) The Seller/Taker must keep or provide:

(i) Total number of individual antlers sold.

(ii) Buyers name and address.

800:25-7-51. Deer - archery

The following hunting dates, open areas, bag limits and legal means of taking apply to hunting deer with archery:

(1) **Dates.** The dates for the deer archery season shall be October 1 through January 15.

(2) **Open areas.** The season is open statewide.

(3) **Bag Limit.** Six (6) deer including no more than two (2) antlered deer. A separate tag is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit.

(4) **Legal means of taking.** The legal means of taking deer with archery shall be as follows:

(A) Legal bows. A legal bow is any compound bow of ~~forty~~thirty (30) pounds or more draw weight, any recurve, longbow, or self-bow of forty (40) pounds or more draw weight or any crossbow having a draw weight of 100 pounds or more. Crossbows must be equipped with safety devices. Leverage gaining devices are permitted. No crossbow may be transported in a motorized vehicle unless uncocked or disassembled. No bow that is at full or partial draw may be transported in a motorized vehicle.

(B) Legal arrows and bolts for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide, including mechanical broadheads meeting these dimensions when fully open. Crossbow bolts must be a minimum of 14 inches in length.

(C) Devices that permit a bow to be held mechanically at full or partial draw are permitted.

(D) Laser sights are prohibited.

(E) Hand-held releases are permitted.

(F) No person shall carry or use any firearm in conjunction with any bow and arrow during the archery deer season while hunting deer with bow and arrow, except under the provisions of the Oklahoma Self-Defense Act, or whenever the archery season is concurrent with any deer gun or deer primitive season and the hunter has the appropriate licenses and legal firearms and clothing requirements to participate in the said gun or primitive season.

800:25-7-52. Deer - primitive firearms (muzzleloading)

The following hunting dates, open areas, bag limits and legal means of taking apply to deer hunting with primitive firearms:

(1) **Dates.** The dates for the deer primitive firearms seasons shall be the fourth Saturday in October continuing nine days through Sunday.

(2) **Open areas.** The season is open statewide.

(3) **Bag limit.** The bag limit shall be one antlered deer and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more than one antlered and two antlerless deer may be taken, and only with the appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an unfilled buck tag may be used to harvest an antlerless deer in designated areas on the last day of the primitive season.

(4) **Legal means of taking.** The legal means of taking deer with primitive firearms shall be as follows:

(A) Muzzleloading rifles, shotguns and pistols: 40 caliber or larger rifle or pistol, or 20 gauge or larger shotgun, firing a single slug or ball that is loaded from the muzzle.

(B) Archery equipment described as legal for the deer archery season may be used during the primitive firearms season. The hunter shall have the option of hunting with a primitive tag or an archery tag. If hunting with a primitive tag, the bag limit is one antlered deer, except as otherwise provided.

(C) Persons hunting with archery equipment with either archery or primitive tags are required to wear either the upper garment or head covering as described in 800:25-7-3(c).

(D) No person shall carry or use any modern firearm in conjunction with any legal primitive firearm (muzzleloader) during the primitive firearm (muzzleloader) deer season while hunting deer with a muzzleloader, except under the provisions of the Oklahoma Self-Defense Act.

800:25-7-54. Legal firearms and archery specifications

The following are the legal firearms specifications for rifles, muzzleloading firearms, shotguns, handguns and bows:

(1) **Rifles.** Centerfire rifles only and firing ammunition with a soft-nosed bullet are legal if firing at least a 55 grain weight bullet and having an overall cartridge case length of 1-1/4 inches or longer. Hollow point bullets are legal. Clips or magazines of all.22 caliber firearms may not be capable of holding more than seven (7) rounds of ammunition. Fully automatic firearms are prohibited.

(2) **Muzzleloading firearms.** Muzzleloading rifles and shotguns that are legal for the muzzleloading season shall also be legal in all areas open to rifles, except

black powder firearms loaded from the breech are also legal. Muzzleloading pistols (singleshot or revolver) with characteristics that are described for 40 caliber rifles are permissible as a secondary firearms, but may be used only for killing a downed animal.

(3) **Shotguns.** Twenty gauge shotguns or larger, firing a single rifled slug.

(4) **Handguns.** Centerfire handguns chambered for a 24 caliber or larger, 100 grain or heavier, soft-nosed bullet having an overall cartridge case length of 1 1/4 inches or longer, any semi-automatic pistol chambered for any centerfire ammunition with a 100 grain or heavier soft-nosed bullet and having a cartridge case size of .40 caliber or larger, or any pistol chambered for any centerfire rifle ammunition with a soft-nosed bullet firing at least a 55 grain bullet and having an overall cartridge case length of 1-1/4 inches or longer . Minimum barrel length is four inches. Fully automatic firearms are prohibited.

(5) **Bows, arrows, and bolts.** A legal bow is defined as any bow of ~~forty (40)~~ thirty (30) pounds or more draw weight, any recurve, longbow, or self-bow of forty (40) pounds or more draw weight or any crossbow having a draw weight of 100 pounds or more and being equipped with safety devices. Crossbow bolts must be a minimum of 14 inches in length. Legal arrows and bolts for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide, including mechanical broadheads meeting these dimensions when fully open. Devices that permit a bow to be held mechanically at full or partial draw are permitted. Laser sights are prohibited. Hand-held releases are permitted.

PART 14. ELK

800:25-7-57. Dates, open areas, bag limit and hunting hours

The following dates, open areas, bag limit and hunting hours apply to elk hunting:

(1) **Dates.** Hunting dates will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting Guide.

(2) **Open areas.** ~~The season is open only on private land in Caddo, Comanche and Kiowa counties in southwest Oklahoma (West Zone) and Adair, Cherokee, Delaware, Mayes, Muskogee and Sequoyah counties in northeast Oklahoma (East Zone).~~The season is open on private lands statewide. Separate elk management zones may be established and will be published in the Oklahoma Hunting Guide.

(3) **Bag limit.** The bag limit, antler restriction and sex restrictions will be established by the Oklahoma Wildlife Conservation Commission. All such restrictions and bag limits will be published in the Oklahoma Hunting Guide.

(4) **Hunting hours.** The hunting hours are the same as those established for the deer gun season.

(5) **Tagging and checking.** The following provisions apply to the tagging and checking of elk:

(A) Persons taking an elk shall securely attach their name, license number, current date and time of harvest immediately to the carcass.

(B) All elk must be checked in at a hunter check station, or with an authorized Department employee, or online at www.wildlifedepartment.com no later than 24 hours upon leaving the hunt area. Once checked, the elk will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities. Carcass may be checked in quartered with sex organs still naturally attached and head accompanying the carcass.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Elk tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Upon harvesting an elk all annual license/permit holders will be required to complete the 'Record of Game' Section on the back of the license form.

PART 15. FURBEARERS

800:25-7-61. Bag limits

The following daily and season bag limits apply to the taking of legal furbearers:

(1) Daily bag limits:

(A) Bobcat - no bag limit.

(B) Gray fox - 2 per licensee.

(C) Raccoon - 10 per licensee.

(D) Red fox - 1 per licensee.

(E) Badger, beaver, coyote, mink, muskrat, nutria, opossum, river otter, spotted skunk, striped skunk, and weasel - no daily bag limit.

(2) Season bag limits:

(A) Bobcat - 20 per licensee.

(B) Gray fox/Red fox combined - 6 per licensee, no more than 2 may be red fox.

(C) Raccoon - 40 per licensee.

(D) Badger, beaver, coyote, mink, muskrat, nutria, opossum, striped skunk and weasel - no bag limit.

(E) River otter - ~~2~~4 per licensee.

800:25-7-62. Open areas

The following provisions apply to areas which furbearers can be legally taken or are closed to harvest:

(1) **Open statewide.** Badger, beaver, bobcat, coyote, gray fox, mink, muskrat, nutria, opossum, raccoon, red fox, river otter, striped skunk and weasel are open to harvest statewide.

(2) **Closed statewide.** Ringtail, spotted skunk, and swift fox are closed to harvest statewide.

~~(3) River otter may be taken in Adair, Atoka, Cherokee, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, McIntosh, Muskogee, Pittsburg, Pushmataha and Sequoyah counties.~~

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-81. Altus-Lugert WMA

The following hunting and trapping seasons apply to the Altus-Lugert WMA. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns.

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie Chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom limit.

(5) Turkey-Spring: Same as statewide dates, 1 tom limit.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Same as statewide season dates.

(15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless hunting. Shotgun only.

(16) Trapping: ~~Open to water sets and live box traps only.~~ Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-82. Atoka WMA

The following hunting and trapping seasons apply to the Atoka WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, except closed during first 9 days of deer gun season.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.

(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-83. Beaver River WMA

The following hunting and trapping seasons apply to the Beaver River WMA:

(1) Quail: Same as statewide dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer - gun: ~~Same as statewide season dates except closed to antlerless hunting and closed last seven days of deer gun season.~~Controlled hunts only.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-83.1. Beaver River WMA - McFarland Unit

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA: That portion of the McFarland Unit lying in Section 1 & 12, T4N, R23E and Section 7, T4N, R24E are restricted to archery and shotgun with pellets only.
(1) Quail: Controlled Hunts Only.
(2) Pheasant: Controlled Hunts Only.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive: Controlled Hunts Only.
(15) Deer - gun: Controlled Hunts Only.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-84. Black Kettle WMA

The following hunting and trapping seasons apply to the Black Kettle WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, one bird either-sex, shotgun only.
(5) Turkey-Spring: Same as statewide season dates, 2 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed last seven days.
(16) Trapping: ~~Open to watersets and live box traps.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-87.1. Candy Creek WMA

The following hunting and trapping seasons apply to the Candy Creek WMA:

(1) Quail: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

(2) Pheasant: Closed Season.

(3) Prairie Chicken: Closed Season.

(4) Turkey - Fall

(A) Archery: Same as statewide season dates, either sex.

(B) Gun: Same as statewide season dates; 1 tom limit.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: September 1 - January 15, except closed during the first nine (9) days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and Gallinule: Same as statewide season dates.

(11) Common Snipe: Same as statewide season dates, except closed the first nine days of deer gun season.

(12) Woodcock: Same as statewide seasn dates, except closed the first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates.

(14) Deer-primitive firearms: Controlled hunts only.

(15) Deer-gun: Controlled hunts only.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed March 16 - August 31 and the first nine (9) days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during the first nine (9) days of deer gun season.

800:25-7-88. Canton WMA

The following hunting and trapping seasons apply to the Canton WMA:

(1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, one bird either-sex , shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 2 tom limit.

(6) Squirrel: Same as statewide dates, except closed the first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.

(8) Crow: Same as statewide season dates except closed the first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule:Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates except controlled hunts opening weekend and the following seven days of the season buck only hunting. Closed the last seven days of the season.

(16) Trapping: ~~Open to watersets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-92.1. Cimarron Bluff Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

(1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.

(2) Pheasant: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, except closed during ~~muzzleloader season and deer gun season~~the first nine days of deer gun season. One (1) bird either-sex.

(B) Gun: Same as statewide season dates, except closed during deer muzzleloader season. One (1) bird either-sex, shotgun only.

(5) Turkey-Spring: Same as statewide season dates, One (1) tom limit.

(6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season.
(10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season.
(11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(13) Deer-archery: Same as statewide season dates, except closed during ~~deer muzzleloader season and deer gun season~~the first nine days of deer gun season.
(14) Deer-primitive firearms: Controlled Hunts Only.
(15) Deer-gun: Controlled Hunts Only.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-92.2. Cimarron Hills Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Hills WMA:
(1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.
(2) Pheasant: Open the Monday following the close of deer gun season through February 15. Hunting hours close at 12:00 noon daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed during ~~muzzleloader season and deer gun season~~the first nine days of deer gun season. One (1) bird either sex.
(B) Gun: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either sex, shotgun only.
(5) Turkey - Spring: Same as statewide season dates, One (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during ~~deer muzzleloader season and deer gun season~~the first nine days of deer gun season.
(14) Deer - primitive firearms: Controlled Hunts Only.
(15) Deer - gun: Controlled Hunts Only.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

800:25-7-94.1. Cooper WMA

The following hunting and trapping seasons apply to the Cooper WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season and hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, one bird either sex, shotgun only.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates except closed during first nine days of deer gun season.
(14) Deer-primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.
(15) Deer-gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates~~, Water sets and live traps only.~~ Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-94.1.1. Cross Timbers WMA

The following hunting and trapping seasons apply to the Cross Timbers WMA:

(1) Quail: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed the first nine (9) days of deer gun season, either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Controlled Hunts only.
(6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
(8) Crow: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun seasons.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.
(13) Deer-archery: Same as statewide season dates, except closed the first nine (9) days of deer gun season.
(14) Deer - primitive: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season~~, water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.
(18) Predator/furbearer calling: Same as statewide seasons dates, except closed from opening day of archery through the first nine (9) days of deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

800:25-7-94.6. Dewey County WMA

The following hunting and trapping seasons apply to the Dewey County WMA:

(1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, one bird of either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates except closed the first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed the first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed Season
(13) Deer - archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except legal archery equipment only, fluorescent orange regulations apply.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-95. Ellis County WMA

The following hunting and trapping seasons apply to the Ellis County WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, either-sex.
(5) Turkey-Spring: Same as statewide season dates, 2 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed last seven days and closed to antlerless deer hunting.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-97. Fobb Bottom WMA

The following hunting and trapping season apply to the Fobb Bottom WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting after the first day.
(15) Deer-gun: Same as statewide season dates, except closed to antlerless hunting after the first day.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-98. Fort Cobb WMA

The following hunting and trapping seasons apply to the Fort Cobb WMA: Unless otherwise provided, hunting is restricted to shotgun or bow and arrow only.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, federally approved nontoxic shot only.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Controlled hunts only.
(15) Deer-gun: Same as statewide season dates, except closed last seven days.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates.

(18) Predator/furbearer calling: Same as statewide season dates.

(19) Waterfowl: Same as statewide season dates.

800:25-7-101. Fort Supply WMA

The following hunting and trapping seasons apply to Fort Supply WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and first nine days of deer gun season. Hunting hours close at 4:30 PM daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, except closed during the first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, one bird either sex, shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.

(14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.

(15) Deer - gun: Same as statewide season dates except closed the last seven days and closed to antlerless deer hunting.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during first nine days of gun season.

800:25-7-102.1.1.Grady County WMA

The following hunting and trapping seasons apply to the Grady County WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates except closed during deer muzzleloader season and the first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, 1 tom.

(5) Turkey-spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer-archery: Same as statewide season dates except closed during deer muzzleloader season and the first nine days of deer gun season.

(14) Deer-primitive firearms: Controlled hunts only.

(15) Deer-gun: Controlled hunts only.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-106. Heyburn WMA

The following hunting and trapping seasons apply to the Heyburn WMA.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, 1 tom.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-113. James Collins WMA

The following hunting and trapping seasons apply to the James Collins WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall
(A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and publsihed in the current Oklahoma Hunting Guide.
(6) Squirrel: Same as statewide dates, except closed from opening day of archery season through first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season.
(8) Crow: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: ~~Open to watersets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through first nine days of deer gun season. In addition, closed during spring turkey season.
(19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through first nine days of deer gun season.

800:25-7-116. Keystone WMA

The following hunting and trapping seasons apply to the Keystone WMA: That portion of the Arkansas River arm of

the Keystone WMA that was formerly the waterfowl refuge has restricted hunting. The west boundary of this portion is a northern extension of Swan Drive in the City of Cleveland. In this designated area, lands in Osage County and in the Arkansas River are restricted to archery and shotgun with pellets only; lands in Pawnee County are restricted to archery only.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex, except closed during deer gun season.

(B) Gun: Same as statewide season dates; one tom limit.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates, bag limit of one antlered and one antlerless deer.

(15) Deer - gun: Same as statewide season dates, except open to antlerless hunting on opening day only, bag limit of one antlered and one antlerless deer, and Cottonwood Creek Wetland Development Unit lands are closed.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-120. Love Valley WMA

The following hunting and trapping seasons apply to Love Valley WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates.

(19) Waterfowl: Same as statewide season dates.

800:25-7-121. Major County WMA

The following hunting and trapping seasons apply to the Major County WMA:

(1) Quail: Same as statewide season dates, except closed the first nine days of deer gun season and hunting hours close at 4:30 p.m. daily.

(2) Pheasant: closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, one bird of either-sex.

(5) Turkey - Spring: Same as statewide season dates, 2 tom limit.

(6) Squirrel: Same as statewide season dates, except closed the first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed the first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season

(11) Common snipe: Same as statewide dates, except closed the first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed the first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates except closed during the first nine days of deer gun season.
(14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season, and closed to antlerless hunting.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-125. McGee Creek WMA

The following hunting and trapping seasons apply to the McGee Creek WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.
(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates except closed opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.
(19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-126. Mountain Park WMA

The following hunting and trapping seasons apply to the Mountain Park WMA: Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates. 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Closed season.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-130. Optima WMA

The following hunting and trapping seasons apply to the Optima WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:

(A) Archery: Same as statewide season dates except closed during first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, One tom only, shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: closed season.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.

(14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.

(15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.

(16) Trapping: ~~Open to water sets and live box traps.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-134. Packsaddle WMA

The following hunting and trapping seasons apply to the Packsaddle WMA.

(1) Quail: Same as statewide season dates except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates; one tom limit.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates,

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates, except closed to mule deer antlerless hunting.

(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates except closed opening day of archery season through deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-136. Pushmataha WMA

The following hunting and trapping seasons apply to the Pushmataha WMA:

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.

(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of archery season through the first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive firearms: controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season. In addition, closed during spring turkey season.

(19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-137. Rita Blanca WMA

The following hunting and trapping seasons apply to the Rita Blanca WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates.

(B) Gun: Same as statewide season dates, one tom only, shotgun only.

(5) Turkey - Spring: Same as statewide season dates; one tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed the first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer-primitive firearms: Same as statewide season dates, except closed to antlerless hunting.

(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless hunting.

(16) Antelope:

(A) Archery: Same as statewide season dates.

(B) Gun: Controlled hunt only.

(17) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(18) Pursuit with hounds: Same as statewide season dates-, except closed during deer gun season.

(19) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

(20) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-140. Sandy Sanders WMA

The following hunting and trapping seasons apply to the Sandy Sanders WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, 1 tom limit.

(B) Gun: Closed season.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Closed season.

(11) Common snipe: Closed season.

(12) Woodcock: Closed season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: ~~Open to live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.

(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.

(18) Predator/burbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-141. Schultz WMA

The following hunting and trapping seasons apply to the Schultz WMA:

(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.

(2) Pheasant - Panhandle: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 PM daily.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, one tom only, shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during the first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Closed season.
(11) Common Snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Same as statewide season dates. Closed to antlerless hunting.
(15) Deer - gun: Same as statewide season dates; except closed the last seven days of deer gun season and closed to antlerless hunting.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-142.1. Shorb WMA

The following hunting and trapping seasons apply to the Shorb WMA:
(1) Quail: Same as statewide season dates, except closed during deer primitive and the first nine days of deer gun season and hunting hours close at 4:30 PM daily.
(2) Pheasant: Same as statewide season dates and bag limit, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates except closed during first nine days of deer gun season, either-sex.
(B) Gun: Same as statewide season dates, One tom only, shotgun only.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: closed season.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during the first nine days of deer gun season.
(14) Deer - Primitive firearms: Same as statewide season dates, except closed to antlerless hunting.
(15) Deer - gun: Same as statewide dates, except closed last seven days of deer gun season and closed to antlerless deer hunting.
(16) Trapping: Open to water sets, live box traps and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-143. Skiatook WMA

The following hunting and trapping seasons apply to the Skiatook WMA:
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex, except closed during first nine days of deer gun season.
(B) Gun: Same as statewide season dates, one bird of either-sex.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
(15) Deer-gun: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-149. Texoma/Washita Arm WMA

The following hunting and trapping seasons apply to the Texoma/Washita Arm WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-152. Washita County WMA

The following hunting and trapping seasons apply to the Washita County WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Closed season.
(15) Deer - gun: Closed season.
(16) Trapping: ~~Open to watersets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-154. Waurika WMA

The following hunting and trapping seasons apply to the Waurika WMA: Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates. 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Closed season.
(16) Trapping: ~~Open to water sets and live box traps only.~~Open to water sets, live box traps, and enclosed trigger traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

[OAR Docket #14-499; filed 6-23-14]

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

[OAR Docket #14-500]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-14. Firearms [AMENDED]

800:30-1-16. Shooting ranges [AMENDED]

AUTHORITY:
Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2014

COMMENT PERIOD:
December 2, 2013 - January 10, 2014

PUBLIC HEARING:
January 7, 2014

ADOPTION:
March 3, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE;
March 6, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 15, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATED BY REFERENCE:
n/a

ANALYSIS:
Make it illegal to possess suppressed firearms on Department managed lands, except by authorized law enforcement or for military training and to discharge firearms for purposes other than hunting except at shooting ranges provided for public use.

CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2014:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-14. Firearms

(a) Unless otherwise specified, all public land areas open for hunting may be hunted by all methods specified in the annual season regulations as legal for the species sought in the county being hunted.

(b) ~~Fully automatic firearms are prohibited for use on any Department managed lands, except as otherwise provided for military training authorization.~~The possession of fully automatic firearms and/or suppressors are prohibited on any Department managed lands, except for Department personnel and law enforcement officers in the performance of their duties, and as otherwise provided for military training authorization.

(c) **Corps of Engineers restrictions.** The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, explosives or explosive devices of any kind including fireworks is prohibited on all U.S. Army Corps of Engineers project lands except as permitted for hunting purposes during authorized hunting seasons or being used at an authorized shooting range.

800:30-1-16. Shooting ranges

(a) On all Department owned or managed lands~~Wildlife Management Areas where specific target or shooting ranges have been provided for public use, the discharge of firearms for purposes other than hunting is restricted to the ranges provided.~~, the discharge of firearms for purposes other than while hunting is restricted to the specific target or shooting ranges provided for public use.

(b) Exemptions to (a) of this Section may only be granted by the Director of the Oklahoma Department of Wildlife Conservation upon prior submission of a written application setting forth the location, date, nature and purpose of such activity.

[OAR Docket #14-500; filed 6-23-14]

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

[OAR Docket #14-500A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-20. Restricted public use areas [AMENDED]

AUTHORITY:
Title 29 O.S., Sections 3-103, 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
November 6, 2014

COMMENT PERIOD:
December 2, 2013 - January 10, 2014

PUBLIC HEARING:
January 7, 2014

ADOPTION:
March 24, 2014

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 26, 2014

APPROVED BY GOVERNOR'S DECLARATION:
Approved by Governor's declaration on June 19, 2014

FINAL ADOPTION:
June 19, 2014

EFFECTIVE:
September 16, 2014

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATED BY REFERENCE:
n/a

ANALYSIS:
Make it illegal to possess a dog(s) on the Honobia Creek, Pine Creek and Three Rivers Wildlife Management Areas (WMA's) from 1 hour before official sunrise to 1 hour after official sunset during the deer gun, deer primitive firearms, and deer youth gun seasons. Except as allowed by the Americans with Disabilities Act.

CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 250.3 AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 16, 2014:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-20. Restricted public use areas

(a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - February 15: Beaver River, Canton, Lexington, except fishing and angler camping is permitted at Lake Dahlgren, Okmulgee, and Ellis County except fishing and angler camping is permitted at Lake Vincent, Fort Supply and Sandy Sanders.

(b) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 - January 31and spring turkey season: Atoka, Cherokee, Cookson, Cross Timbers, James Collins, McGee Creek, Osage, Pushmataha, and Spavinaw.

(c) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.

(d) The following Conservation Education Areas are closed to all non-hunting and non-fishing activities during the period of October 1 - January 15 unless authorized by ODWC; camping and fires of any kind are not permitted unless authorized by ODWC: Arcadia Conservation Education Area.

(e) The following Wildlife Management Areas are closed to the possession of a dog(s) from 1 hour before official sunrise to 1 hour after official sunset during the deer firearms, primitive, and youth seasons, except under the provision of the Americans with Disabilities Act: Honobia Creek WMA, Pine Creek WMA, and Three Rivers WMA.

[OAR Docket #14-500A; filed 6-23-14]